

*AllTech Professional Services, Inc*  
*198 South Carol Malone Blvd.*  
*Grayson, KY 41143*

**MASTER SERVICE AGREEMENT**  
**Construction Services AMENDED**

THIS MASTER SERVICES Agreement (the "Agreement"), made this \_\_\_\_day of \_\_\_\_\_ and in effect from \_\_\_\_, 20\_\_\_\_ through **January 1, 2017** (as extended pursuant to the terms of this Agreement) is entered into by and between AllTech Professional Services, Inc with its principal place of business at 198 South Carol Malone Blvd, Grayson, KY 41143 hereinafter referred to as "AllTech "), and \_\_\_\_\_ a \_\_\_\_\_ corporation, with a principal place of business at \_\_\_\_\_ (hereinafter referred to as "Subcontractor") sets forth the terms and conditions by which Subcontractor will provide its services and/or supply materials for Subcontractor's scope of work. Subcontractor's work shall be identified in subsequent Purchase Orders. Each Purchase Order, taken together with the terms and conditions of this agreement, shall constitute a separate agreement between the parties and shall be considered independent of any other agreements between the parties that incorporate the terms and conditions of the Agreement.

Subcontractor agrees to perform its scope of work, in accordance with the terms and conditions of this Agreement;

The Work, as defined below, is a portion of the services to be provided by AllTech for a wireless communications service provider ("Owner").

**1. TERM OF MASTER SERVICES AGREEMENT**

The term of the Agreement shall be the period specified above in this Agreement, and unless earlier terminated pursuant to Provision 11 entitled "Termination," the Term shall continue after the period described above automatically on annual basis until either party terminates the Agreement upon written notice to the other party (which termination shall not affect current services or payments due and continuing as was initiated during the Term of this Agreement).

Prior to performing the scope and services described in the Purchase Order as contemplated by this Agreement (the "Work"), Subcontractor must have a properly executed Agreement with AllTech and comply with all terms and conditions therein. Should the Agreement expire during the period of performance, all remaining Work will be completed under the terms of the Agreement then in effect on the date of award, unless modified in writing by mutual consent of the parties.

This Agreement is an as-ordered agreement between AllTech and Subcontractor, anticipating the potential issuance of Purchase Orders for specific Work. The Agreement or any Work issued pursuant to this Agreement shall not serve as a commitment by AllTech to award any amount of Work to Subcontractor. Any commitment shall be only as set forth in Purchase Orders issued pursuant to the Agreement and shall be restricted to the project described in the applicable Purchase Order.

**2. SCOPE OF WORK**

Descriptions of the contracted services to be performed by Subcontractor for AllTech shall be listed in a fully executed Purchase Order. AllTech engages Subcontractor to furnish the work described in the Purchase Order. The terms of the Purchase Order shall control, but only for the duration of the services performed under that particular Purchase Order. In an emergency, AllTech may orally request Subcontractor to perform Work. If such an oral request is made, AllTech shall issue a confirming purchase order within three (3) workdays. All work under any Purchase Order shall be performed in a professional manner in accordance with the applicable specifications and drawings and on the basis of unit prices specified in the individual Purchase Order. Purchase Orders shall be issued and administered as set forth in Section 3 below.

### **3. ISSUANCE OF PURCHASE ORDER**

Issuance of Work under this Agreement shall be made from time to time via Purchase Orders to Subcontractor. All Purchase Orders shall reference and incorporate the terms and conditions of the Agreement which shall apply to all work performed under the Purchase Order. In no event shall AllTech be obligated to pay for any services rendered without a Purchase Order.

Estimates of Work provided to AllTech by Subcontractor shall be for planning purposes only and shall not be deemed a commitment to give any or all of the business mentioned to Subcontractor. AllTech reserves the right to hire other Subcontractors or to do the work itself.

**NONEXCLUSIVE RIGHTS** - It is expressly understood and agreed that this Agreement neither grants to Subcontractor an exclusive right or privilege to sell to AllTech any or all work of the type described in this Agreement which AllTech may require. Nor does this Agreement require the purchase of any work from Subcontractor by AllTech. It is, therefore, understood that AllTech may contract with other suppliers and/or subcontractors to perform the work and that AllTech may itself perform such comparable work. Subcontractor agrees that purchases by AllTech under this Agreement shall neither restrict the right of AllTech to cease purchasing nor require AllTech to continue any level of such purchases.

### **4. PRICES AND PAYMENT**

**A.** AllTech agrees to pay Subcontractor in accordance with the price set forth in the Purchase Order, in full consideration of all deliverables and services rendered to the reasonable satisfaction of AllTech. Subcontractor agrees to accept such amounts as full payment for its work to sign such waivers of lien, affidavits and receipts as AllTech shall request in order to acknowledge payments.

**B. Liens:** The Work called for in this Agreement shall be performed, constructed, finished, and delivered to AllTech free from all claims, liens, encumbrances, security interests, and charges whatsoever. If a lien or Notice of Intention is filed by anyone furnishing labor and/or materials to or through Subcontractor against the land, or improvements thereof, of the project or any part thereof, Subcontractor shall cause same to be canceled and discharged of record by bond or otherwise as allowed by law (at the sole cost of Subcontractor) within three (3) days after the filing thereof. Any such cancellation and discharge shall, in all instances, be done in a manner acceptable to any mortgagee or owner of the project property. Additionally, Subcontractor agrees to furnish any other instruments and documents in connection with the canceling and discharging of any such lien or Notice of Intention as may be required by such mortgagee or owner.

Upon final payment or payment of retainage, if any, under this Agreement, Subcontractor shall provide to AllTech a properly executed, unconditional Waiver of Liens.

AllTech reserves the right to make direct payment to Subcontractor's lower tier subcontractors and deduct the payment from amounts due to Subcontractor or to make payments jointly to Subcontractor and its lower tier subcontractors as AllTech determines necessary to protect AllTech's rights under this Agreement or to protect any job site from liens. Nothing in this Section 4(B) will create any obligation on the part of AllTech to make a payment to any lower tier subcontractor and no payment by AllTech to a lower tier subcontractor will create any obligation to make any further payment to said lower tier subcontractor.

**C.** Any progress payments or payments prior to a final payment to Subcontractor shall not be construed as final acceptance by AllTech of any portion of Subcontractor's Work.

**D.** Final payment shall not release Subcontractor from the terms of any warranty contained in this Agreement.

**E.** Subcontractor's acceptance of final payment by AllTech shall constitute a release and waiver of any and all claims whatsoever by Subcontractor against AllTech except for unsettled claims which have been presented to AllTech in writing prior to the tender of final payment by AllTech and have been identified in the final payment lien waiver.

**F.** Subcontractor shall present invoices to AllTech within a reasonable period of time, and AllTech shall make a good faith effort to make payment within forty-five (45) days from the receipt of a properly prepared invoice. Failure by AllTech to make payment within forty-five (45) days or a reasonable time thereafter does not constitute a breach of this Agreement. For any purchase orders \$5,000 or greater, Subcontractor shall invoice 80 percent upon completion of the agreed upon SOW and shall invoice the remaining 20 percent pending Customer closeout approval. Subcontractor expressly agrees that payment by the Owner to AllTech for any Work performed by Subcontractor is a condition precedent to any payment by AllTech to Subcontractor, and AllTech is under no obligation to make partial and final payments to Subcontractor, until and unless AllTech has been paid by the Owner.

**G.** Unless otherwise authorized, AllTech shall not be responsible for payment of any invoices submitted by Subcontractor to AllTech in excess of ninety (90) days after the final completion of the project.

## **5. INDEPENDENT SUBCONTRACTOR RELATIONSHIP**

Subcontractor is and shall act as an independent contractor in the performance of its obligations under this Agreement. Subcontractor shall exercise full control of and supervision over its employees. Subcontractor acknowledges that its personnel (if any) performing work are agents, employees or subcontractors of Subcontractor and are not employees or agents of AllTech. Nothing in this Agreement shall be construed to create an employer-employee relationship, a partnership or joint venture between AllTech and the Subcontractor or AllTech and the Subcontractor's employees or lower tier subcontractors.

## **6. SUBCONTRACTING**

**A.** Subcontractor shall not subcontract any part of the Work without the prior written notification to and consent of AllTech , which consent shall not be unreasonably withheld. All Work performed by a lower tier subcontractor shall be deemed work performed by Subcontractor.

**B.** Subcontractor shall only hire lower tier subcontractors after the execution of agreement that expressly binds said lower tier subcontractor to all terms and conditions of this Agreement. Subcontractor agrees not to hire any lower tier Subcontractor to whose employment AllTech reasonably objects.

**C.** If, in the opinion of AllTech , the work of any lower tier subcontractor is unsatisfactory or unnecessarily delayed, or the lower tier subcontractor violates any of the provisions of this Agreement, AllTech may order Subcontractor to terminate such lower tier subcontractor and Subcontractor shall immediately terminate the agreement with its lower tier subcontractors without any liability to AllTech whatsoever. Additionally, Subcontractor shall, at its own cost and expense, properly complete the Work within the required time or arrange for a capable lower tier subcontractor, approved by AllTech , to do so.

## **7. MODIFICATIONS AND CHANGES TO THE SCOPE OF WORK**

**A. Change Order.** AllTech , without invalidating this Agreement, may order changes in the Work consisting of additions, deletions, or modifications (“Change Order”), pursuant to a completed written change order signed by AllTech . Such Change Order shall set forth any changes to the applicable Purchase Order and the price and time adjusted accordingly if any. In connection with the Change Order, AllTech will issue to Subcontractor a subsequent Purchase Order identifying any change in the Work price and/or time. In no event shall AllTech be obligated to pay for any services rendered without a Purchase Order.

Upon receipt of the Change Order and prior to the commencement of any Work covered by such Change Order, Subcontractor shall submit in writing to AllTech any material adjustments to the Contract Sum for AllTech's approval.

If AllTech and Subcontractor are unable to agree on the Change Order, AllTech may, upon written notice to Subcontractor, terminate this Agreement and arrange for another subcontractor to perform the Work. If this Agreement is so terminated, AllTech shall pay Subcontractor for Work performed and accepted pursuant to the Purchase Order.

**B. Construction Change Directives.** Without in any way invalidating this Agreement, AllTech may issue a Construction Change Directive (“CCD”), thereby ordering changes in the Work within the general scope of the Contract Documents. The ordered changes may consist of additions, deletions, or other revisions, which may also result in an adjustment of the Contract Sum and the Completion Date.

A CCD does not require Subcontractor’s written consent and may be used in the absence of Subcontractor’s concurrence with the amount of adjustment, the method for determining the amount of adjustment, and the revised Contract Sum and Completion Date. Preparation of a CCD serves to provide an alternative price adjustment provision without the need to terminate this Agreement.

**C.** If the Construction Change Directive provides for an adjustment to the Contract Sum, the adjustment shall be based on one of the following methods:

- (i) Mutual acceptance of a lump sum amount, properly itemized and supported by sufficient substantiating data to permit evaluation.
- (ii) Mutual acceptance of a fixed or percentage fee adjustment; or
- (iii) Unit process as provided in the Contract Documents or as subsequently agreed.

**D.** Upon receipt of a CCD, Subcontractor shall (1) promptly and diligently proceed with change; and (2) advise AllTech of its agreement or disagreement with the method utilized in determining the adjustment in the Contract Sum or the Completion Date as follows:

- (i) If Subcontractor accepts the CCD, it shall execute same and such executed document becomes and will be recorded as a Change Order.
- (ii) If Subcontractor does not accept the CCD or does not respond promptly, Subcontractor shall maintain, and present to AllTech in such form as it may direct, an itemized accounting of costs incurred, together with appropriate supporting data. Unless otherwise provided in the Service Agreement, costs for the purposes of this Section 7(B)(b) are limited to the following:
  - a. Costs of labor, including social security, old age and unemployment insurance, fringe benefits required by agreement or custom, and workers' compensation insurance;
  - b. Costs of materials, supplies and equipment, including cost of transportation, whether incorporated or consumed;
  - c. Rental costs of machinery and equipment exclusive of hand tools, whether provided by Subcontractor or others;
  - d. Costs of premiums for all bonds and insurance, permit fees, and sales, use or similar taxes relevant to the Work;
  - e. Additional costs of supervision and office personnel directly attributable to the change; and
  - f. Additional lower tier subcontractor costs.

**E. Minor Changes in the Work.** AllTech may order minor changes in the Work not involving adjustment in the Contract Sum or the Completion Date and not inconsistent with the intent of the Contract Documents. Such changes shall be effected by written order and shall be binding on AllTech and Subcontractor. Subcontractor shall carry out such written orders diligently and promptly.

All other modifications to this Agreement shall be by written Amendment signed by both parties.

## **8. INSPECTION OF WORK**

AllTech shall have the opportunity to review and inspect all elements of the Work in a reasonable manner. AllTech shall have the right to require repair or replacement of any Work which is defective or not performed in accordance with the Purchase Order or deviates from other

requirements of this Agreement, provided Subcontractor shall have until acceptance to complete such repair or replacement. Subcontractor shall be solely responsible for all construction means, methods, techniques, procedures and safety and security programs in connection with the performance of the Work.

## **9. INSURANCE**

**A.** Subcontractor shall obtain, at their own cost and expense, and maintain the following insurance in full force and effect during the term of the Agreement:

(i) Comprehensive general liability insurance providing coverage for bodily injury, property damage, operations, independent contractors, underground explosion and collapse hazard, and for contractual liability with respect to liability assumed by Subcontractor hereunder. The limits of coverage for such insurance shall not be less than \$1,000,000 combined single limit per occurrence and \$2,000,000 annual aggregate.

(ii) Comprehensive automobile liability insurance covering the use and maintenance of owned, non-owned, hired and rented vehicles will be covered under subcontractor's current policy with limits of not less than 1,000,000.

(iii) Worker's Compensation as described by the state or nation in which the Work is performed; or if Worker's Compensation is not required by the law of the state or nation, Employers Liability insurance with limits of at least \$500,000 for each occurrence or disease.

(iv) Umbrella/Excess Liability with limits of not less than \$5,000,000 combined single limit in excess of the above-referenced Commercial General Liability, Employer's Liability and Business Auto Liability.

**B.** All such insurance (other than Worker's Compensation and Employer's Liability) shall designate AllTech, any and all AllTech employees, agents and representatives as additionally insured for ongoing and completed operations using the ISO CG 2010 and CG 2037 10 01 editions. Also, they shall be primary and required to respond and pay prior to any other available coverage.

**C.** All insurance policies shall be obtained by Subcontractor and shall be agreed upon by AllTech prior to the commencement of the Work. The rating of the insurance carrier should be A or A+. During the term of this agreement, Subcontractor must promptly produce upon AllTech's reasonable demand, evidence of the required insurance coverage and payment of premiums thereon unless AllTech assumes responsibility for payment of such premiums. If not so produced, AllTech shall have the immediate right, but not the duty, to procure the required insurance on behalf of the Subcontractor, and to charge and deduct the cost thereof from the within price, but AllTech shall not be under any obligation to do so.

**D.** AllTech shall be listed as an additional insured on the Comprehensive General Liability, Automobile and Excess Liability Policies. AllTech is to receive 30 days notice of cancellation or non-renewal of coverage and/or changes in limits of coverage.

**E.** Subcontractor must agree to a Waiver of Subrogation in which subcontractor relinquishes right to collect from AllTech for damages paid on the behalf of subcontractors insurance.

**F.** Lower Tier Subcontractor Insurance. All policies of Subcontractor shall contain an endorsement whereby the insurance carriers agree that its insurance is primary and not contributory

with or in excess of any coverage which AllTech may carry, Subcontractor shall require that all lower tier subcontractors carry proper and adequate insurance policies similar to those required in this Agreement for Subcontractor and require lower tier subcontractor to execute similar indemnification and waiver provisions prior to the commencement of Work. Properly executed Certificates of Insurance must be on file with AllTech and Subcontractor prior to the commencement of work. Should work commence prior to Subcontractor submitting their certificate of insurance to AllTech, same shall not be construed as a waiver of any part of any part of this Section 9 or of this Agreement.

**G. Equipment Insurance.** Subcontractor shall secure, pay for, and maintain whatever insurance they may deem necessary for protection against loss of owned or rented capital equipment and tools including any tools by mechanics, any tools, equipment, staging, towers and forms owned or rented by their Subcontractors or agents under this agreement. The requirement to secure and maintain such insurance is solely for the benefit of Subcontractor. Failure of Subcontractor to secure such insurance or to maintain adequate levels of coverage shall not obligate AllTech or their agents and employees for any losses of owned or rented equipment.

**H. Certificates of Insurance.** Subcontractor shall furnish or cause its insurance broker to furnish to AllTech certificates of such insurance issued by the insuring carrier or carriers. Subcontractor shall not commence work hereunder until the obligations of Subcontractor with respect to insurance have been fulfilled. The fulfillment of such obligations, however, shall not otherwise relieve Subcontractor of any liability assumed by Subcontractor hereunder nor in any way modify Subcontractor's obligations to indemnify AllTech.

**I. Additional Insurance.** AllTech may require Subcontractor at any time during the term of this Agreement to obtain and maintain in force additional insurance with coverage or limits in addition to those above described. Additional insurance will be on a per project basis.

**J. Notice of Cancellation/Rating of Insurer.** The Certificates of Insurance and the insurance policies required by this Agreement must contain a provision stating all coverage afforded under the policies will not be canceled, materially altered or allowed to expire unless AllTech has received at least thirty (30) days prior written notice. If any of the foregoing insurance coverage is required to remain in force after final payment and is reasonably available, an additional certificate evidencing continuation of this coverage must be submitted with the final application for payment. Each insurer must be reputable and admitted to do business in the state where the Subcontractor is performing the Work for AllTech and must have a rating by AM Best of at least A-VII. Subcontractor agrees it is responsible for all deductible payments under its insurance policies.

## **10. TIME AND PROGRESS OF WORK**

**A. Time is of the essence for all Work under this Agreement.** Subcontractor shall commence Work on the date(s) stipulated on each Purchase Order for each Project. Subcontractor shall carry the Work forward expeditiously according to the work schedule and with adequate forces to achieve final completion of the Work identified on the Purchase Order.

**B.** No extension of performance time for any Work will be accepted without the prior written consent of AllTech, which consent shall not be unreasonably.

**C.** Under no circumstances shall the Subcontractor be the cause of any delay in the Work during any dispute as to the meaning of this Agreement as it pertains to the Work or to

compensation, or because of any dissatisfaction with any decision of AllTech . The Subcontractor shall carry on the Work and maintain the Work Schedule during any pending dispute. If AllTech or the Subcontractor has a dispute, or Subcontractor disagrees with or desires to contest AllTech's decision, the Subcontractor shall, notwithstanding the dispute and the pursuit of its resolution, perform and carry on that portion of the undisputed Work and shall maintain the Work Schedule in accordance with this Agreement. As to the particular matter in dispute, the Subcontractor shall comply with AllTech's directive with regard thereto pending the resolution of the dispute by arbitration or otherwise. Upon the resolution of the dispute, the party in whose favor the dispute is resolved shall be compensated in an appropriate manner.

**D. Liquidated Damages.** AllTech's relationships with its customers were built over several years of performing quality work on a timely basis, often under difficult conditions. Subcontractor acknowledges that any delay, disruption or failure by Subcontractor to complete any work under this agreement on schedule ("Completion Date") will cause AllTech to suffer economic damages which are difficult to accurately assess in advance of work. It is thereby agreed that Subcontractor shall pay AllTech the reasonable sum specified in the individual Purchase Order as compensation for each calendar day (after due allowance for such extension of time as authorized according to paragraph B above) following the agreed upon Completion Date during which the Work described in said Purchase Order is not completed. Subcontractor acknowledges that this provision is in no way designed to constitute a penalty or forfeiture.

## **11. TERMINATION OF AGREEMENT**

**A. Termination for Subcontractor's Default.** AllTech may terminate this Agreement or any Purchase Order without cause or prejudice to any other right or remedy it may possess upon three (3) days prior written notice to Subcontractor. AllTech may take control of the work and of all materials owned by AllTech and may proceed with the completion of the work as contemplated by this Agreement by whatever method deemed expedient by AllTech upon the occurrence of any of the following events (which shall be deemed events of a default by Subcontractor):

- (i) Subcontractor, in the reasonable judgment of AllTech , fails to supply a sufficient number of skilled workers or suitable materials or equipment for performance of the Work;
- (ii) Subcontractor fails to make payments to its lower tier subcontractors for labor, material or equipment;
- (iii) Subcontractor disregards laws, ordinances, rules, regulations or orders of any public authority;
- (iv) Subcontractor otherwise violates any provision of this Agreement;
- (v) Any lower tier subcontractor files a Notice of Intention to File a Mechanic's Lien and such Notice of Intention is not removed by Subcontractor within three (3) days of the filing date;
- (vi) Subcontractor fails to maintain the required levels of insurance coverage or fails to give AllTech notice of termination or reduction of insurance coverage. Either of such failures shall be just cause for AllTech to terminate this Agreement as of the date of such insurance termination or reduction.



**B. Consequences of Termination.** In the event AllTech terminates or cancels this Agreement or any Purchase Order pursuant to any provision of this agreement, AllTech shall have no liability to Subcontractor except for charges for Work performed by Subcontractor and accepted by AllTech prior to Subcontractor's receipt of notice of termination or cancellation.

**C. AllTech's Remedies for Subcontractor's Default.** If Subcontractor fails to perform any Work in accordance with this Agreement, AllTech may notify Subcontractor of such default, either orally or in writing. Upon receipt of such notification, Subcontractor shall have twenty-four (24) hours to commence and continue correction of such default. In the event that Subcontractor does not commence correction of said default within twenty-four (24) hours, AllTech may, without prejudice to any other remedies available to it, at its option, remedy such default and deduct the cost thereof from any payments retained or thereafter due to Contractor.

The cost of completion by AllTech in the event of a termination based on the occurrence of any of the conditions specified in Section (A) above shall be deducted from the unpaid balance, if any, then due Subcontractor under the Agreement, and Subcontractor shall not thereafter be entitled to recover further payments until the Work shall have been duly performed and accepted by AllTech. If the ultimate cost of any completion by AllTech is in excess of the unpaid balance, Subcontractor shall reimburse AllTech in the amount of such excess within thirty (30) days of receipt by Subcontractor of an invoice for same.

**D.** All remedies provided in this Agreement are deemed cumulative and are in addition to, and not in lieu of, any other rights or remedies a party might have, at law or otherwise. The parties agree that damages may be inadequate to compensate for the unique losses to be suffered in the event of a breach of this Agreement, and that the damaged party will be entitled, in addition to any other remedy it may have under this Agreement or at law, to seek and contain injunctive and other equitable relief, including specific performance of the terms of this Agreement.

**E. Termination Other Than for Subcontractor's Default.**

**(i)** AllTech may terminate this Agreement, or any Purchase Order award hereunder, at any time, at its discretion, even though no event has occurred which constitutes a default by Subcontractor hereunder, by the giving of written notice to Subcontractor specifying the date of termination. Subcontractor shall, as of the date of termination:

- a. terminate all orders in connection with a terminated Purchase Order which can be terminated without cost to AllTech ;
- b. terminate and settle, subject to approval of AllTech , other orders and subcontracts where the cost of settlement will be less than costs which would be incurred if such orders and subcontracts were to be completed; and,
- c. if directed by AllTech and to the extent stated in the notice of termination, do such work as may be necessary to preserve the Work in progress.

**(ii)** Upon termination of this Agreement or any Purchase Order hereunder in accordance with the provisions of the preceding subsection and upon compliance by Subcontractor with such provisions, AllTech shall pay Subcontractor in full discharge of all obligations under this Agreement:

- a. such portion of the Work as Subcontractor and its lower tier Subcontractors shall have completed; plus
- b. the cost to Subcontractor of terminating and settling orders in accordance with the preceding subsection (a); plus
- c. the reasonable cost to Subcontractor of complying with AllTech's directions relative to the preservation of the Work in progress; minus
- d. the sum of all amounts paid by AllTech to replace defective Work provided by Subcontractor.

(iii) AllTech shall not be obligated to pay Subcontractor for anticipated profit on any portion of the Work not completed. The sum of all amounts payable under subsection (ii) above, plus the sum of all amounts previously paid under this Agreement, shall in no event exceed the total of such Purchase Order. Such costs and expenses shall be subject to audit by AllTech .

(iv) Subcontractor shall submit to AllTech , within ninety (90) days after termination of this Agreement, any claims and costs against AllTech , which Subcontractor may have with respect to matters under the Agreement to the date of termination. Failure to submit such claims and costs within such time will constitute a waiver of all claims and costs and a release of all liability arising out of such matters.

(v) Subcontractor agrees its sole remedy in the event of AllTech's breach or termination of this Agreement or of any Purchase Order hereunder shall be as set forth in this Section 11.

(vi) In no event shall AllTech , its employees, agents or representatives be liable by reason of AllTech's breach or termination of this Agreement or for any acts, omissions in connection with this Agreement for any special, incidental or consequential damages or any kind, however caused, including but not limited to, loss of profits or revenue, loss of data, work interruption, increased cost of work, or any claims or demands against Subcontractor by any other entity, whether remedy is sought in contract, tort (including negligence), strict liability or otherwise. In no event shall AllTech's liability for direct damages in any circumstances set forth in this clause exceed the price payable for the Work to be performed by Subcontractor under the Purchase Order. This Agreement shall not create nor give to any third party any claim or right of action against Subcontractor of AllTech which would arise without this Agreement.

## **12. SUSPENSION OF WORK**

AllTech shall have the right to suspend the work in progress for a reasonable time at the direction of Owner. Suspension of Work shall not relieve or release the Subcontractor from the obligation otherwise to perform the Work in accordance with this Agreement. Subcontractor shall resume performance of the work at AllTech's direction. Upon notification of the suspension of Work, Subcontractor shall immediately take such steps as may be necessary to protect the Work and to eliminate, reduce, and minimize costs. Subcontractor will not be entitled to additional compensation or any damages as a consequence of this suspension. Notwithstanding the foregoing, AllTech shall pass to Subcontractor the related compensation received by Owner due to a suspension of the Work.

## **13. INDEMNIFICATION**

**A.** To the fullest extent permitted by law, Subcontractor shall indemnify and hold harmless AllTech , its subsidiaries, agents and employees (“Indemnitees”) from and against claims, damages, losses and expenses, including but not limited to attorneys’ fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the work itself), but only to the extent caused by acts or omissions of Subcontractor, its employees, agents, lower tier subcontractors, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder.

**B.** Further, Subcontractor shall defend, indemnify and hold harmless AllTech , its agents and employees from and against claims, damages, claims, damages, losses and expenses, including but not limited to attorney’s fees, arising out of or resulting from (i) the failure of Subcontractor to make prompt and proper payments to sub-subcontractors or suppliers for labor, materials or equipment; (ii) another contractor or subcontractor being damaged by an act for which Subcontractor is responsible; (iii) claims or liens filed; (iv) losses caused by Work not progressing in accordance with the Work schedule due to Subcontractor’s acts; and (v) breach of any of Subcontractor’s obligations under this Agreement.

**C.** With regard to any claim of an employee or agent of Subcontractor, an employee of the lower tier subcontractor, or anyone directly or indirectly employed by Subcontractor or anyone for whose acts they may be liable, against any person or entity indemnified, Subcontractor’s indemnification obligation shall not be subject to limitation as to amount or type of damages, compensation or benefits payable by or for Subcontractor or a lower tier subcontractor under workers’ compensation acts, disability benefit acts or other employee benefit acts.

**D.** Subcontractors’ indemnity obligations under this Section 13 shall also specifically include, without limitation, all fines, penalties, damages, liability, costs, expenses (including, without limitation, reasonable attorneys’ fees), and punitive damages (if any) arising out of, or in connection with, any (i) violation of or failure to comply with any law, statute, ordinance, rule, regulation, code, or requirement of a public authority that bears upon the performance of the work by Subcontractor, a lower tier subcontractor, or any person or entity acting under the direction or supervision of the lower tier subcontractor, (ii) means, methods, procedures, techniques, or sequences of execution or performance of the Work, and (iii) failure to secure and pay for permits, fees, approvals, licenses, and inspections as required under this Agreement or a Purchase Order, or any violation of any permit or other approval of a public authority applicable to the Work, by Subcontractor, a Sub-subcontractor, or any person or entity acting under the direction or supervision of Subcontractor or a Sub-subcontractor.

**E.** Subcontractor shall indemnify and hold harmless all of the Indemnitees from and against any costs and expenses (including reasonable attorneys’ fees) incurred by any of the Indemnitees in enforcing any of Subcontractor’s defense, indemnity, and hold-harmless obligations under this Agreement.

#### **14. WARRANTY**

**A.** Subcontractor warrants to AllTech that the work will be performed with promptness and diligence and shall be executed in a quality manner consistent with workmanship standards in the particular trades involved and to AllTech's reasonable satisfaction. Work or materials not meeting the reasonable workmanship standards of AllTech , will be, at AllTech's option, returned for or

subject to refund, repaired, replaced or re-performed by Subcontractor at no cost to AllTech with transportation cost and risk of loss and damage in transit borne by Subcontractor. In addition, if materials furnished by Subcontractor contain one or more manufacturer's warranties, Subcontractor hereby assigns such warranties to AllTech or to whomever AllTech directs.

**B.** AllTech may accept any nonconforming Work instead of requiring its removal and correction upon the condition that Subcontractor shall pay AllTech an appropriate amount for damages and compensation as is mutually agreed upon by AllTech and Subcontractor. Warranty is not waived under such conditions.

**C.** If within one (1) year from the date of completion of Work acceptance, or within one (1) year from the completion of all other services and acceptance by AllTech (or within any longer materials warranty period as set forth above), any defects exists or arise, then in each case upon receipt of notice of such defect, Subcontractor shall (unless AllTech chooses another remedy) promptly cause such defect(s) to be repaired or remedied at Subcontractor's sole cost and expense. Subcontractor shall commence or cause the commencement of repairs immediately upon receipt of notice from AllTech and thereafter diligently pursue same to completion or cause the same to be diligently pursued to completion. AllTech shall have the right without prejudice to any other rights or remedies available to it, (i) to make such repairs and offset the cost thereof against any amounts owed to be paid by AllTech to Subcontractor or invoice Subcontractor therefore which invoice shall be paid net 30 days or (ii) require Subcontractor to refund the price of the Work not meeting the warranties. Subcontractor will extend the warranty period if Subcontractor has been grossly negligent in the performance of any Work or services under this Agreement. Notwithstanding anything to the contrary contained in this Agreement, the Subcontractor shall not be liable or responsible for any defect in any materials used by the Subcontractor if such defect was not due to Subcontractor's faulty installation of such materials.

**D.** Subcontractor's warranties set forth in this Section 14 shall be in addition to, and not in limitation of, any other warranty or remedy provided by law and shall survive inspection and acceptance of the Work and payment therefore. At AllTech's option and at no cost to AllTech, Subcontractor shall repair, adjust or replace any Work, including but not limited to materials or equipment not meeting the warranties of this section.

**E.** Subcontractor warrants the Work shall be performed in such a way that no hazard to the public or others shall be created or remain at the Work Site. In this and all other instances regarding performance of the Work, Contractor warrants it shall adhere to the highest ethical, business and safety standards.

**F.** Subcontractor warrants and certifies that Subcontractor's performance of this Agreement shall conform and comply with all applicable federal, state, county and municipal laws, statutes, regulations and codes limiting environmental or ecological damage to air, water, land, protected species of flora and fauna, protected habitats or environmentally sensitive areas such as wetlands or floodplains, noise pollution, or the management, use and disposal of regulated chemical substances or wastes.

**G.** All express and implied warranties which are available to AllTech under this Agreement will also benefit any landlord, licensor or other party owning or managing and permitting AllTech use of the Work Site.

**H.** Subcontractor shall require each lower tier subcontractor to execute and deliver to AllTech a warranty of the portion of Work to be performed by such lower tier subcontractor, which warranty

equal or exceed the requirements of this Section and which shall otherwise be in form and substance satisfactory to AllTech . Each such lower tier subcontractor's warranty shall be enforceable directly by AllTech and shall be in addition to any warranty provided by Subcontractor.

**I.** These warranties extend to the future performance of the materials and shall continue for the longer of (a) the warranty period applicable to AllTech's sales to its customers of the material or of products which incorporate the material, (b) one year after the material is accepted by AllTech or (c) such greater period as may be specified elsewhere in this Agreement. Repaired and replacement material shall be warranted as set forth above in this clause.

## **15. DUE ORGANIZATION**

Subcontractor is duly organized, existing and in good standing under the laws of its state of formation, and is duly qualified as necessary and is in good standing in all jurisdictions in which it is required to be so qualified to do business.

## **16. TAXES**

Fees are inclusive of all taxes and similar assessments, levies and government-imposed obligations with respect to income derived from Subcontractor's performance of Work ("Taxes"). All taxes shall be the obligation of and be paid by Subcontractor.

## **17. PROTECTION OF PERSONS AND PROPERTY**

**A.** Subcontractor represents and warrants: (i) that Subcontractor is an expert in the type of Work to be performed and in the occupational safety and health practices that are required for that type of work; (ii) that Subcontractor's employees are properly trained and equipped to perform the Work; (iii) that Subcontractor is aware of the risks inherent in performing such Work and Subcontractor expressly assumes the risk of loss or injury that may result from the Work. AllTech has relied on Subcontractor's representation and warranties in hiring Subcontractor. Subcontractor is solely responsible for maintaining safe working conditions for Subcontractor's employees. AllTech will neither substitute AllTech's judgment for that of Subcontractor, nor assume any obligation to inspect Subcontractor's Work on a regular basis. Subcontractor shall enforce, in all material respects, all applicable occupational safety and health requirements with Subcontractor's employees.

**B.** Subcontractor shall comply, in all material respects, with all applicable laws (including, without limitation the Federal Occupational Safety and Health Act, OSHA, Hazardous Communication Requirements, and all applicable environmental protection laws, rules, regulations and ordinances), ordinances, rules, regulations and lawful orders of any public authority having jurisdiction for the safety of persons or property or to protect them from damage, injury or loss.

## **18. PERMITS, COMPLIANCE WITH LAWS AND OTHER AGREEMENTS**

**A.** Subcontractor shall, at its sole cost and expense, obtain and maintain all licenses, permits or certificates (collectively "Licenses") required by any applicable law in connection with Subcontractor's performance of Work hereunder. Subcontractor represents and warrants to AllTech that Subcontractor's performance of this Agreement will not violate any other employment, services, confidentiality, consulting or other agreement to which Subcontractor is a party or by which it may be bound.

**B.** Subcontractor shall erect and maintain, as required by existing conditions and progress of the Work, all reasonable safeguards for safety and protection, including posting warning signs.

**C.** If Subcontractor performs Work in a manner contrary to any Laws, Subcontractor shall assume full responsibility for such Work and shall bear all costs attributable to such default.

**19. CLEAN UP**

**A.** Subcontractor shall at all times keep the Work premises free from accumulations of Subcontractor waste material, rubbish, and any other debris resulting from the Work. On an ongoing basis as the Work progresses, and at the completion of the Work, Subcontractor shall restore to essentially its former condition, and to the satisfaction of AllTech, all aspects of the Work site and shall remove all waste and excess materials, tools, and equipment resulting from or used in the Work. All expenses of any type for clean up, restoration, and removal noted above will be borne by Subcontractor at no cost to AllTech.

**B.** If Subcontractor fails in its duties under this clause, AllTech may upon notice to Subcontractor perform the necessary clean up and deduct the costs thereof from any amounts due or to become due Subcontractor or invoice Subcontractor therefore, which invoice shall be paid net 30 days. Manholes, cable vaults, and central office Work areas will be cleared of all litter by Subcontractor on a daily basis where Work is being performed.

**20. WAIVER**

The waiver by either party of any breach of this Agreement by the other party in a particular instance shall not operate as a waiver of subsequent breaches of the same or different kind. The failure of either party to exercise any rights under this Agreement in a particular instance shall not operate as a waiver of the party's right to exercise the same or different rights in subsequent instances.

**21. NOTICES**

**A.** Any written notice or demand which under the terms of this Agreement or under any statute must or may be given or made by AllTech or Subcontractor shall be in writing and addressed to the respective parties as stated in this Agreement. Notice shall be sent by certified, registered or express mail, other overnight delivery service, or shall be hand delivered. Written notice by facsimile shall satisfy the notice requirements of this Agreement where the individual to whom the facsimile is addressed acknowledges receipt of such notice by return facsimile or other means as provided in this Section. The addresses below may be changed at any time by giving prior written notice as above provided.

**TO: AllTech Professional Services, LLC  
198 South Carol Malone Blvd  
Grayson, KY 41143  
Attention: Keith Burchett**

**TO:**

**With a Copy To:**

**With a Copy To:**

**TBD**

**B.** Such notice shall be deemed to have been given or made when actually received or seventy-two (72) hours after being sent as specified above, whichever occurs first.

## **22. SEVERABILITY**

In the event that any one or more of the provisions contained herein shall, for any reason, be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions of this agreement, but this agreement shall be construed as if such invalid, illegal or unenforceable provisions had never been contained herein, unless the deletion of such provision or provisions would result in such a material change so as to cause completion of the transactions contemplated herein to be unreasonable.

## **23. ASSIGNMENT**

**A.** Subcontractor shall not assign any right or interest under this Agreement (excepting monies due, or to become due) or delegate or subcontract any Work or other obligation to be performed or owed under this Agreement without the prior written consent of AllTech. Any attempted assignment, delegation or subcontracting in contravention of the above provisions shall be void and ineffective.

**B.** Any assignment of monies shall be void and ineffective to the extent that (1) thirty (30) days prior written notice of such assignment was not given; or (2) such assignment attempts to impose upon AllTech obligations to the assignee in addition to the payment of such monies or to preclude AllTech from dealing solely and directly with Subcontractor in all matters pertaining to this Agreement including the negotiation of amendments or settlement of charges due. All Work performed by Subcontractor's lower tier subcontractors shall be deemed Work performed by Subcontractor.

## **24. CHOICE OF LAW/FORUM**

The construction, interpretation, and performance of this Agreement and all transactions under it shall be governed by the laws of the State of New Jersey, irrespective of its conflict of law principles. Subcontractor and AllTech shall not be obligated to resolve by arbitration any claim or dispute related to the Agreement. Any controversy or claim arising out of or relating to the Agreement or the breach thereof shall be subject to the jurisdiction of the Superior Court of New Jersey and venued in Bergen County, New Jersey for resolution. The parties hereto hereby waive their right to trial by jury.

## **25. ENTIRE AGREEMENT**

This Agreement shall incorporate the typed or written provisions on AllTech's Purchase Orders issued pursuant to this Agreement and shall constitute the entire agreement between the parties with respect to the subject matter of this Agreement and shall not be modified or rescinded except by a writing signed by the party to be charged. All references in these terms and conditions to this Agreement or to Work, services, material, equipment, products, software, or information furnished under, in performance of, pursuant to, or in contemplation of this Agreement shall also apply to any Purchase Orders or Amendment issued pursuant to this Agreement. All provisions on Subcontractor's forms shall be deemed deleted. Additional or different terms inserted in this Agreement by Subcontractor, or deletions thereto, whether by alterations, addenda, or otherwise, shall be of no force and effect, unless expressly consented to

by AllTech in writing. The provisions of this Agreement supersede all contemporaneous oral agreements and all prior oral and written quotations, communications, agreements, and understandings of the parties with respect to the subject matter of this Agreement. In the event of any inconsistency between this Agreement and any Purchase Orders or other forms used under this Agreement by AllTech or Subcontractor, the terms and conditions of this Agreement, to the extent applicable, shall prevail unless AllTech gives its express written consent otherwise.

Section headings are for reference only and shall not in any way affect the construction or interpretation of this Agreement.

**26. TIME IS OF THE ESSENCE**

Subcontractor acknowledges and agrees that time is of the essence under this Agreement.

**27. AMENDMENT**

This Agreement may be amended or modified only by a written instrument executed by both AllTech and Subcontractor.

**28. RIGHT OF REPLACEMENT**

AllTech may, upon request, require Subcontractor to replace any personnel, including a project manager, deployed by Subcontractor under the terms of this Agreement. Subcontractor will replace any personnel within thirty (30) days after request from AllTech with an employee of Subcontractor reasonably acceptable to AllTech.

**29. NOTICE OF MATERIAL DEFECTS**

Subcontractor agrees to promptly notify AllTech upon learning of any material defect, misstatement or omission in rendering any Work.

**30. FINAL PAYMENT - NON WAIVER**

Final payment shall not be construed as an acknowledgment by AllTech that the Work of Subcontractor has been done in accordance with the terms and conditions of this Agreement, nor shall it relieve Subcontractor of liability or responsibility for faulty materials or workmanship or any breach of this Agreement.

**31. NON-SOLICITATION**

Both parties agree the, during the term of this Agreement and for a period of two (2) years thereafter, shall not, directly or indirectly, for itself or on behalf of or in conjunction with any other person, partnership, corporation, business or organization, solicit, hire, contract with or engage the services of an employee of the other party whom either party or its personnel have contact as a result of the performance of this Agreement, unless the hiring party receives written consent from the other party, as applicable, either as a consultant, employee, partner, shareholder, or otherwise. In the event either party employs or contracts with an employee of the other without the consent in breach of this provision, that party shall pay as liquidated damages two times the then monthly salary of the employee for three month period of time.



**32. DOCUMENT OWNERSHIP AND CONFIDENTIALITY AND USE OF INFORMATION**

Each Party may make available (“Disclosing Party”) to the other (“Receiving Party”) access to certain information whether of a technical, business or other nature, including without limitation trade secrets, know-how and information relating to the technology, customers, business plans, promotional and marketing activities, finances and other business affairs of such Party (collectively, “Confidential Information”). So long as and to the extent that Confidential Information is clearly and identifiably marked “Confidential” or “Proprietary” (if in tangible form) or is not generally available to the public from other sources, each Party shall safeguard such Confidential Information in the manner in which it safeguards its own confidential information, and shall not disclose Confidential Information to its employees, Subcontractors and agents, except to the extent necessary to enable it to fulfill its obligations under this Agreement.

The Parties obligations set forth in this Section 33 shall not apply with respect to any portion of the Confidential Information that the Receiving Party can document by competent proof that such portion: (a) was in public domain at the time it was communicated to the Receiving Party by the Disclosing Party; (b) entered the public domain through no fault of the Receiving Party, subsequent to the time it was communicated to the Receiving Party by the Disclosing Party; (c) was in Receiving Party’s possession free of any obligation of confidence at the time it was communicated to Receiving Party by Disclosing Party; (d) was developed by employees or agents of Receiving Party independently of and without reference to any information communicated to Receiving Party by Disclosing Party; or (e) was communicated by Disclosing Party to an unaffiliated third party free of any obligation of confidentiality.

In addition, Receiving Party may disclose the Disclosing Party’s Confidential Information in response to a valid court order by a court or other governmental body, as otherwise required by law. All Confidential Information furnished to the Receiving Party by the Disclosing Party is the sole and exclusive property of the Disclosing Party or its suppliers or customers. This Paragraph shall survive termination of this Agreement.

IN WITNESS WHEREOF, AllTech AND SUBCONTRACTOR HAVE EXECUTED THIS AGREEMENT AS OF THE DATE FIRST ABOVE WRITTEN.

AllTech \_\_\_\_\_

BY: \_\_\_\_\_ BY: \_\_\_\_\_  
(Print) (Print)

\_\_\_\_\_  
(Signature) (Signature)

TITLE: \_\_\_\_\_ TITLE: \_\_\_\_\_

DATE: \_\_\_\_\_ DATE: \_\_\_\_\_