

**APPENDIX D: CERTAIN TERMS TO BE INCLUDED IN THE  
CONTRACT**

**Ownership of Property.** IMCA's members own and retain full rights and control over property purchased with IMCA-provided funds, unless otherwise specifically agreed in writing. Contractor has no ownership interest in IMCA or in any IMCA property.

**Patent Rights, Publication Rights and Confidentiality.** (a) As between IMCA and Contractor, any and all inventions, discoveries, ideas, drawings, sketches, models or prototypes made or conceived under this Agreement solely by employees or students of Contractor will become the exclusive property of Contractor. Contractor shall pay all expenses incident to the preparation or prosecution of any patent application on such inventions, discoveries, ideas, drawings, sketches, models or prototypes. It is the responsibility of Contractor to determine whether the resulting inventions in any way conflict with existing patents or copyrights.

(b) Contractor, its employees and students may publish, without restriction, except as set forth in Subsection (c) of this Section, any discoveries and results of the IMCA CAT beam line development work, but not the discoveries and results of experiments conducted by beam line users.

(c) Contractor shall, and shall cause each IMCA CAT staff employee and each Contractor student to, sign a confidentiality agreement with IMCA in form and substance satisfactory to IMCA. Contractor shall cause each Contractor student and each IMCA CAT staff employee to abide by such confidentiality agreements.

Any IMCA member may declare as confidential any experiment or work it intends to perform at IMCA's APS beam line (a "Confidential Experiment") by so declaring on a written form provided for that purpose by the Director. With regard to any Confidential Experiment, the identity of the sample that is the subject of the experiment and all data derived from the experiment shall be deemed confidential.

(d) IMCA members will have and retain, in perpetuity, a royalty-free right and license to make, use or practice at any beam line facility any inventions, discoveries or ideas (whether or not patentable) made or conceived by employees or students of Contractor in the course of this Agreement. Contractor further agrees not to charge royalty fees to any beam line users. The foregoing license is non-transferable except to another member of IMCA or an affiliate thereof.

**Liability and Indemnification.** Contractor shall indemnify, defend and hold harmless IMCA and its members from and against any claims, damages, losses and expenses arising out of Contractor's performance under this Agreement and caused by the negligence or intentional misconduct of any Contractor employee or student. In addition, Contractor assumes responsibility for and shall indemnify IMCA and its members against loss, destruction or damage to IMCA property located at Contractor's facilities away from the APS or being transported to or from Contractor's facilities away from the APS by Contractor or any Contractor employee or student, irrespective of whether or not there was any negligence or willful misconduct on the part of any Contractor employee or student.

### **Term and Termination of Agreement.**

(a) This Agreement's term commences on January 1, 2005 and, unless earlier terminated pursuant to Subsection (b) of this Section, extends through December 31, 200\_\_, or until any further date hereafter agreed to in writing by the parties. Neither party is under any obligation, express or implied, to extend the term of this Agreement or to negotiate for the extension of this Agreement or for a new Agreement extending beyond December 31, 200\_\_.

(b) IMCA may terminate this Agreement upon six (6) months written notice in the event of any of the following:

(i) Any Key Personnel leave Contractor's employment, or for any reason are unable to continue to act, and Contractor and IMCA are unable to agree upon their successors. Contractor and IMCA will designate in writing from time to time which Contractor personnel are to be considered Key Personnel.

(ii) IMCA dissolves.

(iii) There is for any reason a cancellation or prolonged disruption of APS operation.

(iv) IMCA is unable to secure, maintain or remain in compliance with mutually satisfactory agreements with the Department of Energy, Argonne and/or APS where such agreements or compliance are required in order for IMCA's members to continue to enjoy the benefits of proprietary use of the IMCA beam lines at APS.

(v) Contractor fails to show due diligence or good faith in the performance of its duties under this Agreement.

(c) Within thirty (30) days after termination of this Agreement, regardless of the cause or reason for such termination, Contractor shall return all unexpended funds to IMCA.

### **Compliance with Laws**

In connection with the services performed pursuant to this Agreement, Contractor will comply with all applicable laws, rules and regulations in regard to civil rights, equal employment opportunity, the Americans with Disabilities Act, sexual or other harassment in the workplace, and smoke-free environments. Contractor certifies that it does not and will not maintain or provide any segregated work facilities whether or not associated with Contractor's performance of this Agreement.