

**MASSACHUSETTS TECHNOLOGY COLLABORATIVE**

**75 NORTH DRIVE  
WESTBOROUGH, MASSACHUSETTS 01581**

**MASTER AGREEMENT FOR SERVICES AND CONSTRUCTION**

This MASTER AGREEMENT FOR SERVICES AND CONSTRUCTION (as amended from time to time, the "Agreement") is made and entered into as of \_\_\_\_\_, (the "Effective Date") by and between Massachusetts Technology Park Corporation d/b/a Massachusetts Technology Collaborative, 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 \_\_\_\_\_, a **[Insert type of organization OR an individual]**, with a **[principal place of business OR residing]** at \_\_\_\_\_, ("Contractor").

Whereas, MTC desires to retain Contractor to render certain services to MTC and Contractor desires to be so retained by MTC 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. **Certain Definitions:** The following capitalized terms have the following meanings for purposes of this Agreement:
  - a) "Agreement" means this Master Agreement for Services and Construction, including all work orders entered into hereunder and attached hereto and all other referenced attachments hereto and thereto, as the same may be amended from time to time in accordance with the terms of this Agreement.
  - b) "Applicable Third Party" means any Applicant, any Recipient, or any third party to which MTC is under an obligation to keep the information in question confidential or any Applicant, Contractor Grantee, Recipient or Respondent other than MTC who will directly benefit from the services provided hereunder.
  - c) "Applicant" means any Person who has sought funding or other financial support from, or has submitted one or more proposals for projects to, MTC in connection with any of MTC's programs or initiatives as in effect from time to time, including any former Applicant.
  - d) "Commonwealth" means the Commonwealth of Massachusetts (and its political subdivisions or agents where the context so requires).
  - e) "Contract Documents" means the Agreement, Drawings, Specifications, Schedules, addenda issued prior to execution of the Agreement, other documents listed in the Agreement and Modifications issued after execution of the Contract. A Modification is (1) a written amendment to the Agreement signed by both parties, (2) a Change Order, or (3) a written order for a minor change in the Work issued by the Project Engineer. Unless specifically enumerated in the Agreement, the Contract Documents do not include other documents such as bidding requirements (advertisement or invitation to bid, Instructions to Bidders, sample forms, the Contractor's bid or portions of addenda relating to bidding requirements).
  - f) "Contract Sum" means the maximum amount payable by MTC to the Contractor for performance of the Work under the Contract Documents, including authorized adjustments.

- g) "Contract Time" means the period of time, including authorized adjustments, allotted in the Contract Documents for completion of the Work.
- h) "Contractor" means any Person providing the services contemplated hereunder.
- i) "Day" means a calendar day, unless otherwise specifically defined.
- j) "Drawings" means the graphic and pictorial portions of the Contract Documents, wherever located and whenever issued, showing the design, location and dimensions of the Work, generally including plans, details, and diagrams.
- k) "General Counsel" means MTC's General Counsel, or, in the event that no Person holds such title at the time in question, such other legal counsel to MTC as MTC's Executive Director may designate.
- l) "Governmental Authority" means any national or federal government, any state or other political subdivision thereof, and any other Person exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government.
- m) "Grantee" means any Person who has received funding or any other type of support from MTC pursuant to any of MTC's programs or initiatives as in effect from time to time, including any former Grantees (also referred to herein as Recipient).
- n) "MTC" means the Massachusetts Technology Park Corporation d/b/a Massachusetts Technology Collaborative and any of its subsidiaries, subdivisions or affiliates, and the successors or assigns thereof.
- o) "Person" means any individual, partnership, corporation, limited liability company, joint venture, trust, unincorporated organization, Governmental Authority or any other entity.
- p) "Project Engineer" means the firm or individual retained by MTC to serve as MTC's engineering and technical representative.
- q) "Project Personnel" means, with respect to each project hereunder, the employees or other personnel of each party responsible for such project.
- r) "Public Records Act" means the Massachusetts Public Records Act, M.G.L. Chapter 66, and any successor thereto.
- s) "Recipient" means any Person who has received funding or any other type of support from MTC pursuant to any of MTC's programs or initiatives as in effect from time to time, including any former Recipients (also referred to herein as Grantee).
- t) "Respondent" means any Person who has submitted one or more proposals in response to a request for such proposals made by MTC, including any former Respondents.
- u) "Sensitive Information" means any confidential, proprietary or otherwise sensitive information concerning the organization, business, operations, financial condition, capitalization, finances, employees, activities, existing or prospective technology, plans or prospects of MTC or any Applicable Third Party. "Sensitive Information" includes, without limitation, MTC's or any Applicable Third Party's trade secrets or any commercial or financial information regarding the operation or the current or prospective competitive position of MTC or of any Applicable Third Party; internal policies and methods of doing business; databases and analytical models; personnel records; products, inventions, designs, know-how, techniques, methods, systems, processes, procedures, prototypes, chemicals, biologics, software programs, works of authorship and other developments; actual or prospective customers, vendors, suppliers, licensors, licensees, investors, strategic or financial partners, products or services; and business plans, projects, proposals and contractual arrangements (including the terms of this Agreement); in each case regardless of whether such Sensitive Information is in oral form or in the form of Written Materials.

- v) "Specifications" means the portion of the Contract Documents consisting of the written requirements for materials, equipment, construction systems, standards and workmanship for the Work, and performance of related services.
  - w) "Work" means the means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment and services provided or to be provided by the Contractor to fulfill the Contractor's obligations. Contractor acknowledges and agrees that the Contract Documents are adequate and sufficient to provide for the completion of the Work and include all Work, whether or not shown or described, which may be reasonably inferred to be required or useful for the completion of the Work in accordance with all applicable laws, codes and professional standards. Any differences between the requirements of the Drawings and the Specifications or any differences noted within the Drawings themselves or within the Specifications themselves have been referred to MTC and Project Engineer by Contractor. If any such differences or conflicts were not called to MTC's and Project Engineer's attention before the submission of bids, Project Engineer shall decide which of the conflicting requirements will govern, based upon the most stringent of the requirements, and, subject to the approval of MTC, Contractor shall perform the Work at no additional cost and/or time to MTC in accordance with Project Engineers decision.
  - x) "Written Materials" means any and all documentary materials or data relating to any matter within the scope of the business or mission of MTC or concerning any of its dealings or affairs, or relating to any Applicable Third Parties under MTC's programs, regardless of the physical form or characteristics of such documentary materials or data. "Written Materials" include, without limitation, notes, memoranda, letters, reports, documents, files, lists, records, drawings, sketches, specifications, software programs, and other documentation and other materials of any nature and in any format, including data stored on computers, floppy disks c/d roms or other electronic media.
2. **Scope of Services:** MTC hereby retains Contractor to provide services to MTC 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 MTC and in accordance with the terms and conditions of this Agreement and acknowledges that MTC is relying upon such representation in entering into this Agreement. This Agreement shall apply to all services provided from time to time by Contractor to MTC during the term specified in Section 6. The Contractor shall perform the scope of services as provided in the technical specifications contained in Attachment C.
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 MTC, Contractor and Project Engineer; an order for a minor change in the Work may be issued by the Project Engineer alone.
  - c) Changes in the Work shall be performed under applicable provisions of the Contract Documents, 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 Contract Documents 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 MTC or Contractor, the applicable unit prices shall be equitably adjusted.
  - e) A Change Order is a written instrument prepared by the Project Engineer and signed by MTC, Contractor and 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 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 Contract Documents. Such changes shall be effected by written order and shall be binding on MTC and Contractor. The Contractor shall carry out such written orders promptly.

**4. Correction of Work:**

- a) The Contractor shall promptly correct Work rejected by the Project Engineer or failing to conform to the requirements of the Contract Documents, 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 Project Engineer's services and expenses made necessary thereby and any cost, loss, or damages to MTC 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 Contract Documents and are neither corrected by the Contractor nor accepted by MTC.
- c) If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a fifteen-day period after receipt of written notice from MTC to begin and prosecute correction of such default or neglect with diligence and promptness, MTC may, without prejudice to other remedies MTC 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 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 MTC.
- d) If the Contractor does not proceed with correction of such nonconforming Work. within a fifteen day period after receipt of written notice from MTC, MTC 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, MTC 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 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 MTC.
- e) If MTC prefers to accept Work which is not in accordance with the requirements of the Contract Documents, MTC 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) MTC shall compensate Contractor as set forth in Attachment B. Payments hereunder will generally be made by MTC within forty-five (45) days following receipt of a reasonably detailed invoice from Contractor evidencing that payment is due hereunder. Before the first invoice for payment is submitted, MTC 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 MTC and the Project Engineer

may require. This schedule, unless objected to by MTC and the 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 MTC 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 Contract Documents, MTC 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 Contract Documents; provided, however, any such holdback shall be limited to any amount sufficient in the reasonable opinion of MTC 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 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 MTC, 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) MTC 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 MTC shall not constitute acceptance of Work not in accordance with the Contract Documents.
- 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 Project Engineer will make such inspection and, when the Project Engineer finds the Work acceptable under the Contract Documents and the Agreement fully performed, the Project Engineer will promptly issue a letter to MTC stating that to the best of the Project Engineer's knowledge, information and belief, and on the basis of the Project Engineer's observations and inspections, the Work has been completed in accordance with terms and conditions of the Contract Documents 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 remaining retained percentage shall become due until the Contractor submits to MTC:- (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which MTC might be responsible or encumbered (less amounts withheld by MTC) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents 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 MTC, (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 Contract Documents, (4) consent of surety, if any, to final payment; (5), if required by MTC 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 MTC; and (6) evidence of compliance with all requirements of the Contract Documents.

6. **Term of the Agreement:** This Agreement shall take effect as of the Effective Date set forth in the first paragraph of this Agreement, and shall remain in effect until \_\_\_\_\_, or until Contractor has completed all services specified in the attached work order(s), whichever is later, unless terminated sooner under the provisions of Section 11.
7. **Priority of Contract Documents:** In the event of any conflict among the Contract Documents, 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.
8. **Project Personnel and Subcontracting:**
  - a) A list of the relevant Project Personnel shall be submitted to MTC 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 MTC, nor shall Contractor subcontract any services to anyone without the prior written consent of MTC.
  - 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 Contract Documents, and to assume toward the Contractor all the obligations and responsibilities which the Contractor, by these Documents, assumes toward MTC. Each subcontract agreement shall preserve and protect the rights of MTC under the Contract Documents 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 Contract Documents, has against MTC. 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 Contract Documents 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 Contract Documents. 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 Owner for cause pursuant to Section 11 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.

9. **Timely Performance:** Contractor acknowledges that expeditious completion of Contractor's services and the expeditious delivery of related deliverables is of the utmost importance to MTC.
10. **Notices:** Unless otherwise specified in an attachment hereto, any notice hereunder shall be in writing and shall be sent either (i) by facsimile or telecopier, (ii) by courier, or (iii) by first class mail, postage, prepaid, addressed to the Project Personnel listed in the applicable work order at the addresses of such Persons indicated in the first paragraph of this Agreement (or to such other address as a party may provide by notice to the party pursuant to this Section 10), and shall be effective (i) if dispatched by facsimile or telecopier 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. A copy of each notice required to be sent pursuant to this Agreement shall also be sent to the General Counsel.
11. **Termination or Suspension:**
  - a) Procedures: This Agreement will terminate on the date specified in Section 6, unless amended in accordance with Section 22 to extend the term hereof, or unless earlier terminated or suspended as provided in this Section 11.
    - 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, the provisions of Section 2 and/or 5 and the related provisions of the Contract Documents shall 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, MTC 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 MTC 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 MTC with cause, MTC 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 MTC may deem expedient. MTC shall be entitled to collect from the Contractor all direct, indirect, and consequential damages suffered by MTC on account of the Contractor's default, including without limitation additional services and expenses of the Project Engineer made necessary thereby. MTC shall be entitled to hold all amounts due the Contractor at the date of termination until all of MTC'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 MTC, and this obligation for payment shall survive the termination of the Agreement. Such costs incurred by MTC will be determined by MTC and confirmed by the Project Engineer."

- iv) *Termination Without Cause:* MTC may terminate the Agreement without cause at any time upon provision of written notice to Contractor at least seven (7) calendar days before the effective date of such termination.
  - v) *Suspension by MTC for Convenience:* MTC 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 MTC may determine. The Contract Sum and Contract Time 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.
  - vi) *Change of Law:* MTC 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 MTC which is inconsistent with performing its obligations under this Agreement or rendering further performance by MTC of its obligations hereunder impracticable or impossible.
  - vii) *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 MTC has persistently failed to fulfill its obligations under the Contract Documents with respect to matters important to the progress of the Work, the Contractor may, upon seven additional days' written notice to MTC and the Project Engineer, terminate the Agreement and recover from MTC payment for Work properly executed according to the Contract Documents 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 MTC.
- 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 MTC 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 MTC a compendium of all documentation related to the Work.

- ii) *Payment:* Contractor shall be paid for all requested and authorized Work described in the Contract Documents and executed up to and including the date of termination. In the event MTC 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 MTC but not executed.
- iii) Sections 10 and Sections 12 through 26 of this Agreement shall survive termination of this Agreement.

12. **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, including, without limitation, the statutes referenced in Sections 12(e), 12(f), 16, 18 and 19.
- 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 Contract Documents;
- e) Contractor and its employees are independent contractors of MTC, and not employees, partners or joint-venturers of MTC. 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) The 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.

10. 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 Contract Documents with each other and with any additional information furnished by MTC and shall at once report to the Project Engineer any error, inconsistency, or omission the Contractor may discover. Any necessary change shall be ordered as provided in Section 3, subject to other provisions of the Contract Documents. If the Contractor proceeds with the work without such notice to the 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 Contract Documents before commencing activities. Errors, inconsistencies or omissions discovered shall be reported to the Project Engineer at once.
- c) The Contractor shall perform the Work in accordance with the Contract Documents and submittals approved by MTC.
- d) The Contractor shall give the 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 Contract Documents, but shall request additional drawings or instructions from the Project Engineer as provided in Section 10(d). 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 Contract Documents 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 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 Contract Documents. 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 Contract Documents, unless the Contractor has given timely notice to MTC and the Project Engineer in writing that such means, methods, techniques, sequences, or procedures are not safe or suitable, and MTC has then instructed the Contractor in writing to proceed at MTC's risk.

- g) The Contractor shall be responsible to MTC 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 Contract Documents either by activities or duties of the Project Engineer in the Project Engineer's administration of the Contract, or by tests, inspections or approvals required or performed by persons other than the Contractor.
- i) 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.
- j) Contractor has the responsibility to insure that all suppliers of material and subcontractors, their agents and employees, adhere to the Contract Documents 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.
- k) Contractor shall provide access to the Work for MTC, the Project Engineer, other persons designated by MTC 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.
- l) 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.
- m) 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 MTC, MTC may, at its option, take such actions and make such payments as are necessary to obtain such discharge or procure such bond, but MTC shall have no obligation to take such actions or make such payments. Contractor shall indemnify and hold harmless MTC 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.
- n) Unless otherwise provided in the Contract Documents, 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.
- o) 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.
- p) It is not the Contractor's responsibility to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, building codes, and rules and regulations. However, if the Contractor observes that portions of the Contract Documents are at variance therewith, the Contractor shall promptly notify the Project Engineer and

MTC 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 Project Engineer and MTC, the Contractor shall assume full responsibility for such Work and shall bear the attributable costs.

- q) 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 Contract Documents, bear the cost.
- r) 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.

**11. Indemnification and Insurance:**

- a) To the fullest extent permitted by law, Contractor shall indemnify and hold harmless the Commonwealth, MTC, and each of their respective agents, officers, directors and employees (together with the Commonwealth and MTC, the "Covered Persons") from and against any and all liability, loss, claims, damages, fines, penalties, costs and expenses (including reasonable attorney's fees), judgments and awards (collectively, "Damages") sustained, incurred or suffered by or imposed upon any Covered Person resulting from (i) any breach of this Agreement or false representation of Contractor under this Agreement, or (ii) any negligent acts or omissions or reckless or intentional misconduct of Contractor or any of Contractor's agents, officers, directors, employees or subcontractors. Without limiting the foregoing, Contractor shall indemnify and hold harmless each Covered Person against any and all Damages that may directly or indirectly arise out of or may be imposed because of the failure to comply with the provisions of applicable law by Contractor or any of its agents, officers, directors, employees or subcontractors.
- b) Contractor shall promptly advise MTC 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 MTC and conduct with due diligence and in good faith the defense of such action, proceeding or investigation, with counsel satisfactory to MTC; provided, however, that MTC 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 MTC, and if MTC 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, MTC 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 11, which shall protect the Contractor and MTC

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 11 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 MTC 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. MTC shall be added as an Additional Insured on all policies.
- e) The insurance required by Section 11 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 MTC 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 MTC 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 MTC 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 MTC.
- g) Each requirement for the Contractor's insurance contained in this Section 11 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 MTC'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 MTC, upon request, with certificates satisfactory to MTC concerning the effectiveness and the terms of the insurance required by this Agreement. MTC 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. MTC 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 MTC, 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 MTC 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 MTC. The Contractor shall assist and cooperate with any insurance company in the adjustment or litigation of all claims arising under this Agreement.

**12. Performance Bond and Payment Bond:**

- a) MTC 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 Contract Documents on the date of Execution of the Agreement. If required, Contractor, and each subcontractor designated by MTC, shall furnish to MTC, 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 MTC, shall be submitted to MTC for approval as to form, shall name MTC 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 MTC within seven days after execution of this Agreement. The premium and any and all other costs of all bonds required under this Section 12 shall be included in the Contract Sum.
- b) 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.

**13. Ownership of Intellectual Property:**

- a) Unless provided otherwise by law or by MTC 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, MTC, as "works made for hire" or otherwise. MTC 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 MTC will have the exclusive, unlimited and unrestricted right to publish, reproduce, distribute, transmit and publicly display all Materials prepared by Contractor. MTC shall retain exclusive intellectual property rights in all graphics and text provided to Contractor by MTC for incorporation into final Materials prepared by Contractor. Contractor shall use

graphics and text provided by MTC 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 MTC 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 MTC (or its designee(s)) in and to all Materials. Without limiting the foregoing, Contractor shall, at the request and cost of MTC (or its designee(s)), sign, execute, make and do all such deeds, documents, acts and things as MTC and its duly authorized agents may reasonably require, including, without limitation:
  - i) to apply for, obtain and vest in the name of MTC alone (unless MTC 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.

- 14. **Nonsolicitation and Noninterference:** During the term of this Agreement and for a period of one year after the termination, Contractor shall not, directly or indirectly, either for itself or on behalf of or through any other Person:
  - a) recruit, solicit, entice or persuade (or attempt to recruit, solicit, entice or persuade) any Person who is (or at any time during the year prior to termination of this Agreement was) an employee, consultant, contractor, vendor or supplier of MTC to leave the services of MTC for any reason;
  - b) hire (or attempt to hire) any Person who is (or at any time during the year prior to termination of this Agreement was) an employee of MTC;
  - c) interfere with (or attempt to interfere with) MTC's relations or arrangements with any Person who is (or at any time during the year prior to the termination of this Agreement was) an employee, or a consultant, Applicant, Contractor, Grantee Recipient, Respondent, customer, vendor, supplier or contractor of MTC.
- 15. **Assignment:** MTC may assign its rights and obligations under this Agreement to any Person who succeeds to all or any portion of MTC'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. Contractor further agrees to provide MTC with the information listed in Attachment E hereto and to disclose all financial interests in the subject matter of this Agreement held by either Contractor or Contractor's other clients. Contractor and its subcontractors, if any, shall not take any action which it knows or has a reasonable basis to believe would cause any officer or employee of MTC to participate in any decision relating to this Agreement which affects his/her personal interest or any corporation, partnership, or association in which (s)he is directly or indirectly interested or to have any interest, direct or indirect, in this Agreement or the proceeds thereof.

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 MTC (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. MTC, 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 MTC the amount determined by such audit within thirty (30) days of Contractor's receipt of such audit and demand.
18. **Confidentiality; Publicity:**
- a) Contractor hereby agrees to protect the physical security and restrict access to all data compiled for, used by, or otherwise in the possession of Contractor in performance of the services hereunder in accordance with Contractor's reasonable business practices and as otherwise provided in this Agreement. Contractor shall comply with all applicable laws and regulations relating to confidentiality and privacy, including, without limitation, all requirements of M.G.L. c.66A implicated by the subject matter of this Agreement.
  - b) Contractor has read and agrees to comply with, and will cause its agents, officers, directors, employees and subcontractors to comply with, the provisions of this Section 18 and MTC's written policies concerning confidentiality, as set forth in Attachments D-1 and D-2 hereto and as communicated by MTC's Executive Director or General Counsel to Contractor from time to time. Contractor acknowledges that during the term of this Agreement it may receive, have access to or create Sensitive Information which is not generally known by the public, nor as a matter of course disseminated by MTC, published on MTC's website or disclosed by MTC pursuant to the requirements of any Governmental Authority. Contractor agrees, for itself and for its agents, officers, directors, employees and subcontractors, as follows:
    - i. not at any time, whether during or after the termination of this Agreement, to divulge, disclose or reveal to any Person any such Sensitive Information, whether or not such information is produced by Contractor's own efforts, except (A) as specifically required in connection with the fulfillment of Contractor's obligations hereunder, or (B) as otherwise directed by the General Counsel in connection with a disclosure request under the Public Records Act, a request for discovery, subpoena, court or administrative order or other compulsory legal process, disclosure requirement or request relating to such Sensitive Information;
    - ii. not at any time, whether during or after the termination of this Agreement, use any Sensitive Information for Contractor's direct or indirect financial or other benefit or for the benefit of any Person related to or affiliated with Contractor or with whom Contractor is now or hereafter associated, other than MTC, nor will Contractor use or attempt to use any Sensitive Information in any manner which could reasonably be expected to injure or cause loss, whether directly or indirectly, to MTC or any Applicable Third Party;
    - iii. in the event that Contractor (or any of its agents, officers, directors employees or subcontractors) is questioned about Sensitive Information by anyone who is not

known by Contractor to be authorized to receive or have access to such Sensitive Information, or is asked to provide Sensitive Information to any such Person, Contractor agrees to promptly notify the General Counsel and respond to the inquirer in accordance with the General Counsel's instructions; and

- iv. not at any time, whether during or after the termination of this Agreement, reproduce any Written Materials containing Sensitive Information except to the extent necessary to perform Contractor's obligations under this Agreement, nor make or use (or permit its employees or agents to use) any Written Materials other than in connection with the performance of Contractors' obligations under this Agreement and for the benefit of MTC, it being understood and agreed that all Written Materials are, shall be and shall remain the sole and exclusive property of MTC, and immediately upon the termination of the Agreement for any reason, Contractor shall deliver all copies of MTC's Written Materials and all other property of MTC in its direct or indirect possession or control to MTC, at its main office. In addition Contractor shall, upon the termination of the Agreement, delete all Written Materials and Sensitive Information, held by Contractor as data stored on computers, floppy disks c/d roms or other electronic media.
- c) Contractor shall collaborate with MTC's Communications Director to prepare any public statement or announcement relating to or bearing on the work performed or data collected under this Agreement or to prepare any press release or for any news conference in which MTC is concerned or discussed.
- d) Contractor's obligations under Section 18(b) shall not apply to any information that Contractor can demonstrate, through written records (i) is or has become available to the public (including, without limitation, any information filed with any Governmental Authority and available to the public) other than as the result of unauthorized disclosure by Contractor or any of its agents, officers, directors, employees or subcontractors in breach hereof, (ii) was known by Contractor prior to or other than through disclosure of such information by MTC to Contractor (including disclosure to Contractor while previously serving as an employee of or consultant to MTC) and was learned or ascertained by Contractor from Persons who are not associated or connected with this Agreement and who rightfully possessed such information and were not themselves in a confidential relationship with MTC, any Applicable Third Party or Contractor with respect to such information, (iii) Contractor is compelled to disclose by order of a court of competent jurisdiction, administrative agency or governmental body, or by any law, rule or regulation, or by subpoena, or any other compulsory administrative or legal process, provided that Contractor provides prior written notice of such disclosure to the General Counsel, (iv) is disclosed by Contractor in connection with any judicial or other proceeding involving Contractor and MTC relating to this Agreement or (v) is disclosed with the written consent of the General Counsel.

19. **Public Records:**

- a) *General Statement.* As a public entity, MTC is subject to the Massachusetts Public Records Law (M.G.L. c.66 and 66A) and thus certain documents and other materials made or received by MTC are subject to public disclosure unless they are specifically exempted. Contractor has read and agrees to comply with, and will cause its agents, officers, directors, employees and subcontractors to comply with, MTC's written policies concerning the Public Records Law and other legal disclosure requirements, as set forth in Attachments D-1 and D-2 hereto and as communicated by MTC's Executive Director or General Counsel to Contractor from time to time. MTC's policies shall not be construed as a contractual undertaking of any kind, and Contractor specifically acknowledges that it bears the risk that any material submitted by Contractor to MTC pursuant to this Agreement may be deemed not to qualify for a public records exemption.

- b) *Treatment of Sensitive Information.* By signing this Agreement, Contractor acknowledges, understands and agrees that the procedures set forth in Attachments D-1 and D-2 are applicable to any documents submitted by Contractor to MTC and/or to Contractor by MTC, including but not limited to any acknowledgements set forth therein, and that Contractor shall be bound by these procedures.

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

- a) It is the mutual expectation of MTC 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 20 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 MTC. Therefore, in addition to any other remedy that may be available to MTC, MTC 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:** MTC shall be liable only to the extent of its interest in the project; and no officer, director, partner, agent or employee of MTC (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 MTC ever succeeds to the Contractor's rights and obligations under a subcontract.

22. **Amendments and Waivers:** MTC may amend Attachment D and Attachment E (without any action by Contractor) to reflect changes in law or MTC policies and shall promptly deliver any and all such amendments to Contractor in the manner provided in Section 10. Except as provided in the immediately preceding sentence, 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 MTC 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 MTC, 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 – List of Contract Documents
- b) Attachment B – Contract Sum (Including Unit Prices)
- c) Attachment C – Technical Specifications
- d) Attachment D-1 – MTC's Policy and Procedures Regarding Submission of Sensitive Information
- e) Attachment D-2 -- MTC Policy and Procedures for Holding Parties in Possession of Sensitive Information
- f) Attachment E – Consultant/Contractor Mandatory Disclosure Form

- 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**

*[Insert Contractor's Full Legal Name]*

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

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

**Name:** Mitchell Adams

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

**Title:** Executive Director

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

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

**ATTACHMENT A**

**LIST OF CONTRACT DOCUMENTS**

**ATTACHMENT B**

**CONTRACT SUM (INCLUDING UNIT PRICES)**

**ATTACHMENT C**

**TECHNICAL SPECIFICATIONS (SECTIONS 1.07 – 3.12 OF THE RFP)**

ATTACHMENT D-1

**The Massachusetts Technology Collaborative  
Policy And Procedures Regarding Submission Of "Sensitive Information"**

The Massachusetts Technology Collaborative and the Massachusetts Renewable Energy Trust which it administers (collectively referred to herein as "MTC") is subject to the requirements concerning disclosure of public records under the Massachusetts Public Records Act, M.G.L. c. 66 (the "Public Records Act"), which governs the retention, disposition and archiving of public records. For purposes of the Public Records Act, "public records" include all books, papers, maps, photographs, recorded tapes, financial statements, statistical tabulations, or other documentary materials or data, regardless of physical form or characteristics, made or received by MTC. As a result, any information submitted to MTC by a grant applicant, recipient grantee, respondent to a request for response (including, but not limited to an RFQ, RFP and RFI), contractor, or any other party (collectively the "Submitting Party") is subject to public disclosure as set forth in the Public Records Act.

The foregoing notwithstanding, "public records" do not include certain materials or data which fall within one of the specifically enumerated exemptions set forth in the Public Records Act or in other statutes, including MTC's enabling act, M.G.L. Chapter 40J. One such exemption that may be applicable to documents submitted by a Submitting Party is for any documentary materials or data made or received by MTC that consists of trade secrets or commercial or financial information regarding the operation of any business conducted by the Submitting Party, or regarding the competitive position of such Submitting Party in a particular field of endeavor (the "Trade Secrets Exemption").

***It is MTC's expectation and belief that the overwhelming percentage of documents it receives from a Submitting Party does not contain any information that would warrant an assertion by MTC of an exemption from the Public Records Act. Submitting Parties should therefore take care in determining which documents they submit to MTC, and should assume that all documents submitted to MTC are subject to public disclosure without any prior notice to the Submitting Party and without resort to any formal public records request.***

In the event that a Submitting Party wishes to submit certain documents to MTC and believes such a document or documents may be proprietary in nature and may fall within the parameters of the Trade Secrets Exemption and/or some other applicable exemption, the following procedures shall apply:

1. At the time of the Submitting Party's initial submission of documents to MTC, the Submitting Party must provide a cover letter, addressed to MTC's General Counsel, indicating that it is submitting documents which it believes are exempt from public disclosure, including a description of the specific exemption(s) that the Submitting Party contends is/are applicable to the submitted materials, a precise description of the type and magnitude of harm that would result in the event of the documents' disclosure, and a specific start date and end date within which the claimed exemption applies. If different exemptions, harms and/or dates apply to different documents, it is the Submitting Party's responsibility to provide detailed explanations for each such document.
2. At the time of the Submitting Party's initial submission of documents to MTC, the Submitting Party must also clearly and unambiguously identify each and every such document that it contends is subject to an exemption from public disclosure as "Sensitive Information." It is the Submitting Party's responsibility to ensure that all such documents are sufficiently identified as "Sensitive Information," and Submitting Party's designation must be placed in a prominent location on the face of each and every document that it contends is exempt from disclosure under the Public Records Act.

***Information submitted to MTC in any form other than a hard copy document will not be subject to the procedures set forth in this Attachment B. For example, information submitted by e-mail,***

***facsimile and/or verbally will not be subject to these procedures and may be disclosed at any time without notice to the Submitting Party.***

3. Documents that are not accompanied by the written notification to MTC's General Counsel or are not properly identified by the Submitting Party as "Sensitive Information" at the time of their initial submission to MTC are presumptively subject to disclosure under the Public Records Act, and the procedures for providing the Submitting Party with notice of any formal public records request for documents, as set forth below, shall be inapplicable.
4. At the time MTC receives documents from the Submitting Party, any such documents designated by Submitting Party as "Sensitive Information" shall be segregated and stored in a secure filing area when not being utilized by appropriate MTC staff. By submitting a grant application, request for response, or any other act that involves the submission of information to MTC, the Submitting Party certifies, acknowledges and agrees that (a) MTC's receipt, segregation and storage of documents designated by Submitting Party as "Sensitive Information" does not represent a finding by MTC that such documents fall within the Trade Secrets Exemption or any other exemption to the Public Records Act, or that the documents are otherwise exempt from disclosure under the Public Records Act, and (b) MTC is not liable under any circumstances for the subsequent disclosure of any information submitted to MTC by the Submitting Party, whether or not such documents are designated as "Sensitive Information" or MTC was negligent in disclosing such documents.
5. In the event that MTC receives an inquiry or request for information submitted by a Submitting Party, MTC shall produce all responsive information without notice to the Submitting Party. In the event that the inquiry or request entails documents that the Submitting Party has previously designated as "Sensitive Information", the inquiring party shall be notified in writing that one or more of the documents it has requested has been designated by the Submitting Party as "Sensitive Information", and that a formal, written public records request must be submitted by the requesting party to MTC's General Counsel for a determination of whether the subject documents are exempt from disclosure.
6. Upon the General Counsel's receipt of a formal, written public records request for information that encompass documents previously designated by Submitting Party as "Sensitive Information", the Submitting Party shall be notified in writing of MTC's receipt of the public records request, and MTC may, but shall not be required to provide Submitting Party an opportunity to present MTC with information and/or legal arguments concerning the applicability of the Trade Secrets Exemption or some other exemption to the subject documents.
7. The General Counsel shall review the subject documents, the Public Records Act and the exemption(s) claimed by the Submitting Party in making a determination concerning their potential disclosure.

***The General Counsel is the sole authority within MTC for making determinations on the applicability and/or assertion of an exemption to the Public Records Act. No employee of MTC other than the General Counsel has any authority to address issues concerning the status of "Sensitive Information" or to bind MTC in any manner concerning MTC's treatment and disclosure of such documents.***

***Furthermore, the potential applicability of an exemption to the disclosure of documents designated by the Submitting Party as "Sensitive Information" shall not require MTC to assert such an exemption. MTC's General Counsel retains the sole discretion and authority to assert an exemption, and he may decline to exert such an exemption if, within his discretion, the public interest is served by the disclosure of any documents submitted by the Submitting Party.***

8. MTC shall provide the requesting party and Submitting Party with written notice of its determination that the subject documents are either exempt or not exempt from disclosure.
9. In the event that MTC determines that the subject documents are exempt from disclosure, the requesting party may seek review of MTC's determination before the Supervisor of Public Records, and MTC shall notify the Submitting Party in writing in the event that the requesting party pursues a review of MTC's determination.
10. In the event the requesting party pursues a review of MTC's determination that the documents are exempt from disclosure and the Supervisor of Public Records concludes that the subject documents are not exempt from disclosure and orders MTC to disclose such documents to the requester, MTC shall notify the Submitting Party in writing prior to the disclosure of any such documents, and Submitting Party may pursue injunctive relief or any other course of action in its discretion.
11. In the event that MTC determines that the subject documents are not exempt from disclosure or the General Counsel determines that, under the circumstances and in his discretion, MTC shall not assert an exemption, MTC shall notify the Submitting Party in writing prior to the disclosure of any such documents, and Submitting Party may pursue injunctive relief or any other course of action in its discretion.

***The Submitting Party's submission of documentation to MTC shall require a signed certification that Submitting Party acknowledges, understands and agrees with the applicability of the foregoing procedures to any documents submitted to MTC by Submitting Party at any time, including but not limited to the acknowledgements set forth herein, and that Submitting Party shall be bound by these procedures.***

All documents submitted by Submitting Party, whether designated as "Sensitive Information" or not, are not returnable to Submitting Party.

## ATTACHMENT D-2

### MTC Policy and Procedures for Holding Parties in Possession of Sensitive Information

From time to time, consultants, contractors, grantees, as well as other third parties interacting with MTC (collectively, the "Holding Party") may receive, have access to or create confidential, proprietary or otherwise sensitive information regarding MTC, its activities, its employees and/or third parties, such as applicants, consultants, grantees, recipients or respondents under MTC programs, which information is not generally known by or disseminated to the public as a matter of course. Information of this nature is sometimes referred to in this Agreement as "Sensitive Information." MTC expects all Holding Parties to maintain the highest degree of professionalism, integrity and propriety with respect to Sensitive Information at all times. In addition, the Massachusetts Conflict of Interest Statute, M.G.L. Chapter 268A, prohibits current and former state employees (defined in the statute to include regular full-time and part-time employees, elected or appointed officials and independent contractors) from improperly disclosing certain categories of Sensitive Information or using it to further their personal interests, and the Massachusetts Fair Information Practices Act, M.G.L. Chapter 66A, contains numerous legal requirements aimed at protecting "personal data" from improper disclosure.

MTC's policy regarding a Holding Party's possession of Sensitive Information has two key elements:

1. Holding Parties should not request or accept any more Sensitive Information -- whether of a business or personal nature -- than is reasonably necessary under the circumstances; and
2. In the absence of a specific legal requirement compelling disclosure of Sensitive Information in a particular instance, all Holding Parties are expected to take appropriate measures to safeguard such information from improper use and disclosure.

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 MTC's General Counsel if they have any questions about confidentiality, the scope or proper treatment of Sensitive Information, or MTC's policies or procedures with respect to such topics.** Holding Parties shall not substitute their own judgment for that of MTC's General Counsel in deciding whether particular information is innocuous data or Sensitive Information that should be handled with care, or the advisability or sufficiency of safeguards with respect to particular types of information. **Failure to comply with the policies and procedures relating to Sensitive Information and MTC's obligations pursuant to the Public Records Act and other legal disclosure requirements can result in immediate termination of this Agreement, and/or potential legal liability.**

**It should be noted that the obligations under these policies continue even after MTC's relationship with a particular applicant, recipient or other third party ends or this Agreement terminates.**

In the absence of a specific legal requirement necessitating disclosure of particular information in a specific instance, Holding Parties are expected to protect Sensitive Information from improper use and disclosure at all times. The following are examples of the kinds of protective procedures that should be followed:

- **Limited Communication to MTC Personnel:** Sensitive Information should not be communicated to other MTC employees or consultants, except to the extent that they need to know the information to fulfill their MTC mission-related responsibilities and their knowledge of the information is not likely to result in misuse or a conflict of interest.
- **Limited Communication to Non-MTC Personnel:** Sensitive Information should not be communicated to anyone outside MTC, including family members, except to the extent outside parties need to know the information in order to provide necessary services to MTC, its Holding Parties or as otherwise directed by the General Counsel to comply with legal requirements necessitating disclosure, such as proper requests under the Public Records Act.

- **Notification of Confidentiality:** When Sensitive Information is communicated to any person outside MTC, the individual receiving such information should be informed of its sensitive nature and the need to safeguard such information from improper use and disclosure. When Sensitive Information is communicated to parties inside MTC, the procedures set forth in Attachment B-1 are applicable. MTC may require that Holding Parties execute a confidentiality agreement that has either been provided or approved by the General Counsel before Sensitive Information is disclosed to them.
- **MTC Use Only:** Sensitive Information should only be used for MTC purposes. Under no circumstances may a present or former Holding Party "trade on" such information or otherwise use it, directly or indirectly, for personal gain or for the benefit of any party other than the owner of such information.
- **Prevention of Eavesdropping, Unauthorized Viewing, etc.:** Sensitive matters should not be discussed in restaurants, on public transportation or in other public places or in locations, such as hallways, elevators and building lobbies, where unauthorized individuals could overhear the discussion. Similarly, Sensitive Information should not be exchanged or discussed via cordless or cellular phones or similar "non-secure" communication lines. Speaker phones can amplify conversations and should be used with care when discussing Sensitive Information. Common sense precautions should also be taken with respect to Sensitive Information in written form, such as stamping or marking such documents "CONFIDENTIAL" to flag them for special handling, limiting access to files to those with an MTC-related "need to know," locking documents that contain Sensitive Information in desk drawers or file cabinets when you are away from your desk, carefully limiting the circumstances in which (and exercising appropriate care when) such materials leave MTC's office, delivering sensitive materials to others in sealed envelopes, and limiting the addressees and "cc's" of letters, memoranda, emails and other communications containing Sensitive Information to those individuals who reasonably need to see such communications. Data stored on personal computers, and floppy disks, c/d roms and other electronic media containing Sensitive Information, should be properly secured to keep them from being accessed by unauthorized individuals. Documents containing Sensitive Information that are sent to printers should be picked up promptly.
- **Communications With the Public; Compulsory Legal Process:** All contacts with the media and all speeches or other oral or written public statements made on behalf of MTC, or concerning its activities, applicants or recipients, must be cleared in advance by MTC's Communications Director. In speeches and statements *not* made on behalf of MTC, proper care should be taken to avoid any implication that MTC endorses the views expressed. All disclosure requests under the Public Records Act or in the form of requests for discovery, subpoenas, court or administrative orders or the like must also be referred to the General Counsel for appropriate handling.

**Questions concerning whether a given type of information or document in a Holding Party's possession is a "public record," and thus subject to disclosure under the Public Records Act, or is covered by an available exemption, should be directed to MTC's General Counsel. *No other MTC employee is authorized to make such assessments or to provide any guidance to a Holding Party concerning potential disclosure of any information provided to or in possession of a Holding Party.***

**In addition, all communications seeking inspection or other disclosure of materials in a Holding Party's possession under the Public Records Act must be referred promptly to the General Counsel. Similarly, all subpoenas and other legal process documents requesting or seeking to compel disclosure of materials in a Holding Party's possession must be delivered or promptly forwarded to the General Counsel upon receipt.**

**ATTACHMENT E**

**CONSULTANT/CONTRACTOR MANDATORY DISCLOSURE FORM**

**Additional Income Disclosure.** The following represent any contracts, grants with, or other income from the Commonwealth, including any political subdivision or public authority, in effect at the time of execution of this Agreement. Enter N/A if none. Attach additional sheets as necessary.

**Disclosure of Persons with Financial Interest.** The following individuals have a financial interest in the Agreement and/or more than one percent (1%) interest in the capital stock of Consultant/Contractor. Enter N/A if none. Attach additional sheets as necessary.

**Conflict of Interest.** Consultant/Contractor acknowledges that the individuals performing services under this Agreement may be considered "state employees" subject to the provisions of the Massachusetts Conflict of Interest Law, M.G.L. c.268A, and certifies that these individuals are familiar with the restrictions imposed thereon.

**Key Personnel.** Attach a resume for all key personnel to be assigned to the performance of this Agreement.

The information submitted herein is certified by Consultant/Contractor to be accurate and signed under the pains and penalty of perjury.

**Name of Consultant/Contractor:** \_\_\_\_\_

**Signature:** \_\_\_\_\_

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

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

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