

**MASTER DESIGN AGREEMENT  
BETWEEN OWNER AND ARCHITECT**

This Master Design Agreement between Owner and Architect (this “**Master Agreement**”) is made as of \_\_\_\_\_

**BY AND BETWEEN** Owner:

*(Name, legal status, address, and other information)*

Massachusetts Institute of Technology  
Department of Facilities  
77 Massachusetts Avenue  
Building NW23  
Cambridge, Massachusetts 02139

and Architect:

*(Name, legal status, address, and other information)*

Architect shall from time to time, coordinate, supervise and perform architectural services (the “**Architectural Services**” or the “**Services**”) for Owner on various projects at and within Owner’s facilities. In order to simplify the contracting process, Owner and Architect expressly agree, so long as this Master Agreement remains in effect, that this Master Agreement sets forth the general conditions and terms that will apply to any work order executed by Owner and Architect pursuant to this Master Agreement (“**Architect Release**”) for Architectural Services for a particular project (a “**Project**”).

Owner and Architect agree as follows:

**TABLE OF ARTICLES**

**ARTICLE 1. MASTER AGREEMENT TERM; PARTY REPRESENTATIVES; DEFINED TERMS**

**ARTICLE 2. ARCHITECT'S RESPONSIBILITIES**

**ARTICLE 3. SERVICES; ARCHITECT RELEASES**

- 3.1 General Responsibilities
  - 3.1.1 Licensure
  - 3.1.2 Architect's Consultants
  - 3.1.3 Required Information
  - 3.1.4 Meetings
  - 3.1.5 Presentations
  - 3.1.6 Coordination
  - 3.1.7 Recordkeeping
  - 3.1.8 Hazardous Materials
  - 3.1.9 Standards
  - 3.1.10 Deliverables
  - 3.1.11 Emergency Egress
  - 3.1.12 Sustainability, Energy, and Emissions Impacts
  - 3.1.13 Commissioning
  - 3.1.14 Design to Control Budget
  - 3.1.15 Cost Review
  - 3.1.16 Authorization to Proceed
- 3.2 Conceptual Design Phase
  - 3.2.1 Strategic Project Planning
  - 3.2.2 Programming and Space Analysis
  - 3.2.3 Site Analysis and Development
  - 3.2.4 Existing Facilities Assessment
  - 3.2.5 Design Concepts
  - 3.2.6 Estimating
  - 3.2.7 Project Sequencing
  - 3.2.8 Presentation Materials
- 3.3 Schematic Design Phase Services
  - 3.3.1 Strategic Project Planning
  - 3.3.2 Program Review and Evaluation
  - 3.3.3 Design Standards Review and Evaluation
  - 3.3.4 Programming and Space Analysis
  - 3.3.5 Site Analysis and Development
  - 3.3.6 Building Analysis
  - 3.3.7 Existing Facilities Assessment
  - 3.3.8 Analysis of Alternatives
  - 3.3.9 Architectural Design
  - 3.3.10 Structural Design
  - 3.3.11 Mechanical Design
  - 3.3.12 Electrical Design
  - 3.3.13 Civil Design
  - 3.3.14 Landscape Design

- 3.3.15 Interior Design
- 3.3.16 Furniture, Fixtures & Equipment
- 3.3.17 Materials Research and Specifications
- 3.3.18 Estimating
- 3.3.19 Life Cycle Costs
- 3.3.20 Value Engineering
- 3.3.21 Energy and Emissions Impact Calculator (“EEIC”)
- 3.4 Design Development Phase
  - 3.4.1 Program Re-Evaluation
  - 3.4.2 Architectural Design
  - 3.4.3 Space Inventory Information
  - 3.4.4 Structural Design
  - 3.4.5 Mechanical Design
  - 3.4.6 Electrical Design
  - 3.4.7 Civil Design
  - 3.4.8 Landscape Design
  - 3.4.9 Interior Design
  - 3.4.10 Furniture, Fixtures & Equipment (“FF&E”)
  - 3.4.11 Specifications
  - 3.4.12 Estimating
  - 3.4.13 Clash Detection
  - 3.4.14 Constructability Review
  - 3.4.15 Value Engineering
  - 3.4.16 Energy and Emissions Impact Calculator (“EEIC”)
- 3.5 Construction Documents Phase
  - 3.5.1 General
  - 3.5.2 Project Manual
  - 3.5.3 Construction Phasing Plans
  - 3.5.4 Space Inventory Plans
  - 3.5.5 Signage
  - 3.5.6 Estimating
  - 3.5.7 Clash Detection
  - 3.5.8 Constructability Review
  - 3.5.9 Value Engineering
  - 3.5.10 Stamped Set
  - 3.5.11 Project Equipment List
  - 3.5.12 Energy and Emissions Impact Calculator (“EEIC”)
- 3.6 Procurement Phase
  - 3.6.1 Risk Analysis
  - 3.6.2 List of Bidders
  - 3.6.3 Bid Documents
  - 3.6.4 Pre-Bid Conference
  - 3.6.5 Clarifications
  - 3.6.6 Bid Analysis
  - 3.6.7 IFC Documents
  - 3.6.8 GMP Proposal
  - 3.6.9 Early Releases
- 3.7 Construction Phase

- 3.7.1 Commencement
- 3.7.2 Preconstruction Conference
- 3.7.3 Interpretation of Contract Documents
- 3.7.4 Site Visits
- 3.7.5 Submittals
- 3.7.6 Applications for Payment
- 3.7.7 Substantial Completion
- 3.7.8 Final Completion
- 3.7.9 Architect's Conformed Documents

**ARTICLE 4. ADDITIONAL SERVICES**

**ARTICLE 5. OWNER'S RESPONSIBILITIES**

**ARTICLE 6. COPYRIGHTS AND LICENSES**

**ARTICLE 7. CLAIMS AND DISPUTES**

- 7.1 General
- 7.2 Mediation

**ARTICLE 8. TERMINATION OR SUSPENSION OF SERVICE AGREEMENTS**

**ARTICLE 9. COMPENSATION**

**ARTICLE 10. MISCELLANEOUS PROVISIONS**

**ARTICLE 11. SPECIAL TERMS AND CONDITIONS**

- 11.1 Indemnity
- 11.2 Payments
- 11.3 Format
- 11.4 Required Tests
- 11.5 Duty to Correct Instruments of Service
- 11.6 Gratuity
- 11.7 Foreign Corrupt Practices Act
- 11.8 Conflicts of Interest
- 11.9 No Subcontracting
- 11.10 Access to Owner's Facilities
- 11.11 Change in Financial Condition
- 11.12 Records Retention
- 11.13 Assignment and Successors
- 11.14 Audits
- 11.15 Equal Employment Opportunity Requirements

**ARTICLE 12. CONFIDENTIALITY; PUBLIC ANNOUNCEMENT**

**ARTICLE 13. SCOPE OF THIS MASTER AGREEMENT**

**ARTICLE 14. AUTHORITY**

Exhibit A	Architect Release
Exhibit B	Audit Requirements
Exhibit C	Equal Employment Opportunity Requirements

**ARTICLE 1 MASTER AGREEMENT TERM; PARTY REPRESENTATIVES; DEFINED TERMS**

**§ 1.1** This Master Agreement shall be effective for three (3) years after the date first written above (the “**Effective Date**”).

**§ 1.2** This Master Agreement shall apply to all Architect Releases agreed to by Owner and Architect within the term of this Master Agreement until completion of Architect Release. An agreed upon Architect Release together with this Master Agreement (as may be amended from time to time) forms a “**Service Master Agreement**”. A Service Master Agreement represents the entire and integrated agreement between the parties, and supersedes prior negotiations, representations, or agreements, either written or oral. A Service Master Agreement may be amended or modified only by the written agreement of both Owner and Architect.

**§ 1.3** This Master Agreement will renew on an annual basis, on the day and month of the Effective Date, unless either party provides notice of their intent not to renew this Master Agreement. Notice must be provided at least 60 days prior to the renewal date. In the event either party elects not to renew this Master Agreement, the terms of this Master Agreement shall remain applicable until all Architect Releases under this Master Agreement are completed or terminated. Each Architect Release shall be governed by the Master Agreement in effect at the time of the execution and delivery of such Architect Release, except as otherwise provided in a subsequent amendment to such Master Agreement or Architect Release.

**§ 1.4** Owner identifies the following representative authorized to act on Owner’s behalf with respect to this Master Agreement:

Richard L. Amster, Jr., Director of Campus Construction  
or  
Joe Higgins, Director Infrastructure Operations

In each Architect Release, Owner will identify a representative authorized to act on Owner’s behalf with respect to Architect Release.

**§ 1.5** Architect identifies the following representative authorized to act on Architect’s behalf with respect to this Master Agreement:

[INSERT]

In each Architect Release, Architect will identify a representative authorized to act on behalf of Architect with respect to Architect Release.

**ARTICLE 2 ARCHITECT’S RESPONSIBILITIES**

**§ 2.1** Architect may refuse to agree to any Architect Release issued by Owner.

**§ 2.2** Architect shall perform its services expeditiously and consistent with the professional expertise, skill and care ordinarily provided by first-class architects that have successfully completed projects of comparable size and complexity in the Greater Boston and Cambridge region under the same or similar circumstances. Architect shall at all times advance the orderly progress of the services provided pursuant to this Master Agreement.

**§ 2.3** Except with Owner's knowledge and consent, Architect shall not engage in any activity, or accept any employment, interest, or contribution that would reasonably appear to compromise Architect's professional judgment with respect to this Master Agreement or any Service Master Agreement.

**§ 2.4** Architect shall provide and maintain, and shall require its consultants and subconsultants to maintain, the following insurance at all times during the term of this Master Agreement and such extended period as may be required pursuant to this Master Agreement. Immediately upon execution of this Master Agreement, Architect shall deliver to Owner Certificates of Insurance (along with copies of any endorsements specifically applicable to Owner) evidencing that Architect has obtained the insurance required by this Section.

- .1** Professional Liability insurance for claims arising out of the performance of professional services under this Master Agreement. Professional Liability insurance shall have the minimum limit of liability set forth in an Architect Release for each claim and annual aggregate per annual policy period. Architect shall provide to Owner a "prior acts endorsement" to such coverage, plus a certificate of insurance upon request of Owner annually for a total of six (6) consecutive years after Substantial Completion of the Project or, at Architect's option, tail coverage for a total of six (6) years after Substantial Completion. Architect shall also disclose to Owner on demand and in writing the aggregate of claims asserted against Architect's professional liability insurance and the coverage applicable to such claims;
- .2** Commercial General Liability (CGL) with those limits of insurance set forth in an Architect Release form. CGL coverage shall be written on ISO Occurrence form or a substitute form providing equivalent coverage and shall include all standard forms of coverage, including but not limited to Premises (including X-C-U), Broad Form Property Endorsement, Completed Operations, Independent Contractor's, Products, and personal and advertising injury. The policy shall include ISO Additional Insured Endorsement CG 20 10 (11 85) or CG2033 (10 01) and CG2037 (10 01) or an endorsement providing equivalent coverage to the Additional Insureds. This insurance for the Additional Insureds shall be as broad as the coverage provided for the named insured;
- .3** Automobile Liability with limits set forth in an Architect Release for each accident, including coverage for liability arising out of all owned, leased, hired and non-owned automobiles;
- .4** Commercial Umbrella with limits set forth in an Architect Release for per occurrence/annual aggregate. Umbrella coverage must follow the form of the CGL, include as additional insureds all entities defined above as Additional Insureds on the CGL and shall be subject to same terms as stated above;

- .5 Workers Compensation with statutory limits and Employers Liability with limits set forth in an Architect Release for each accident for bodily injury by accident and each employee for injury by disease; and
- .6 All insurance companies shall have an AM Best Rating of "A" or better.

**§ 2.5** Architect shall coordinate its services with those services provided by Owner and Owner's consultants. Architect shall be entitled to rely on the accuracy and completeness of the services and information furnished by Owner and Owner's consultants. Architect shall provide prompt written notice to Owner if Architect becomes aware of any error, omission or inconsistency in such services or information.

**§ 2.6** Architect acknowledges that Owner may enter into a construction contract for a Project (the "**Construction Contract**"), the form of which Construction Contract shall be attached to Architect Release, and Architect agrees that Architect shall administer such Construction Contract as part of the Services for such Project in accordance with Section 3.7 of this Master Agreement and that such administration services shall not be deemed to be Additional Services (as defined below).

### **ARTICLE 3 ARCHITECT SERVICES; ARCHITECT RELEASE**

Architect's Services shall be governed by this Master Agreement. Architect acknowledges and agrees that for each Project, Architect shall perform the Services set forth in an Architect Release executed by Owner and Architect, which Architect Release shall be substantially in the form attached hereto as Exhibit A. For purposes of a Service Master Agreement, the Services shall be defined as follows:

#### **§ 3.1 General Responsibilities**

**§ 3.1.1 Licensure.** If any Governmental Authority requires licenses or registrations for the performance of the Services, or any part thereof, Architect and the consultants to be retained by Architect as part of its Services ("**Architect's Consultants**") shall obtain and hold, or employ persons or entities holding, such valid licenses or registrations.

**§ 3.1.2 Architect's Consultants.** Architect's Consultants shall be identified by Architect in an Architect Release, which shall include all engineering and other consulting services customarily associated with buildings, uses, components and other features of projects of comparable size and complexity. In the event that Architect or Owner believes that Architect must retain Architect's Consultants other than those listed therein, Architect shall disclose such Architect's Consultants to Owner with such supporting information and documentation as Owner may require. Such Architect's Consultants shall be subject to Owner's acceptance in its sole discretion. Architect shall be responsible for the acts and omissions of its personnel, Architect's Consultants of all tiers, and persons and entities directly or indirectly employed by them.

- .1 Fully executed copies of all consulting agreements shall be provided to Owner as soon as they are finalized and before including Architect's services in an invoice to Owner.
- .2 Architect shall require that Architect's Consultants consult and cooperate with Owner, Owner's consultants for a Project ("**Owner's Consultants**"), Owner's contractor for a Project ("**Contractor**"), and one another as necessary to perform their own portions of the Services and to avoid delays and disruptions to a Project or Owner's other projects and operations.

- .3 Architect shall require Architect's Consultants to be bound by the terms of this Master Agreement, and to assume toward Owner all the contractual obligations and responsibilities that Architect has assumed toward Owner with respect to services provided by such Architect Consultants. Architect shall not limit or waive rights or remedies against, or the liability of, any of Architect's Consultants, by agreement or otherwise, unless such limitation or waiver is expressly authorized in advance in writing signed by Owner. This Master Agreement shall control in the event of conflicts or discrepancies between such consulting agreements and the Service Master Agreement.
- .4 Architect hereby assigns, transfers and conveys to Owner all of its right, title and interest in and to any consulting agreement for a portion of the Services. Such assignment shall only become effective as of the effective date of Architect Release to which such agreement applies, and enforceable only after a termination of this Master Agreement as a whole or of the Project to which such agreement applies, and only as to those consulting agreements that Owner expressly accepts by written notification from Owner to Architect.
- (a) Any agreements assigned to, and accepted by, Owner in accordance herewith may, in turn, be assigned by Owner, in its sole discretion, without recourse to Owner, in which event such assignee shall assume Owner's rights and obligations under the consulting agreement.
- (b) Architect shall, at Owner's option, assign all of its right, title and interest in and to any consulting agreement(s) directly to Owner's designee.

**§ 3.1.3 Required Information.** At the earliest possible date, Architect shall provide Owner with a list of information or documentation required from Owner for the performance of the Services. Architect shall assemble, review and coordinate documents furnished from Owner's record storage and return such documents.

**§ 3.1.4 Meetings.** As a minimum at the intervals set in Architect Release, Architect and Architect's Consultants shall attend meetings in all phases with representatives of Owner and Contractor, and as required by Owner, and shall be represented at such meetings by persons having knowledge of the matters to be addressed and authorized to act for such entities at all times. Prior to the Construction Phase, Architect shall prepare the agenda, preside over and record written minutes of all meetings and shall provide Owner and meeting attendees with an electronic and hard copy of such minutes within a reasonable time after such meeting. Any exceptions taken or clarifications to the minutes shall be submitted to Architect and Contractor within seven (7) days or prior to the next meeting, or the minutes shall be deemed accepted, and such exceptions or clarifications shall be taken up at the next meeting. Any such clarifications or exceptions shall be noted in the meeting minutes for the next regular meeting.

**§ 3.1.5 Presentations.** Architect shall attend, make presentations and participate in meetings as Owner may direct in connection with the Services. In addition to the Instruments of Service to be prepared by Architect hereunder, Architect shall assist Owner in the preparation of documentation, records and submissions required by Governmental Authorities or Owner.

**§ 3.1.6 Coordination.** Architect shall be solely responsible for coordinating all portions of the Services under this Master Agreement, including those Services performed by its personnel and Architect's Consultants within the scope of this Master Agreement, to ensure that the Drawings

and Specifications are integrated into a complete and coordinated set of documents, are compatible with existing conditions and fully describe the entirety of the Work to be performed in a constructible, unified, and coherent manner without ambiguities or inconsistencies.

- .1 To the extent that any portion of the Services is interdependent upon the services of third parties, including Owner's Consultants, Architect shall coordinate with such persons or entities as part of its Services. However, Architect shall not be responsible for the accuracy, timeliness or technical sufficiency of the services provided by such other parties.

**§ 3.1.7 Recordkeeping.** Architect acknowledges that Owner has particular requirements with respect to accounting, billing, reimbursement and administration of the Work, and it agrees to fully cooperate in keeping, organizing and maintaining project documentation in accordance with the requirements of Owner's audit requirements attached hereto as Exhibit B.

- .1 Architect and Architect's Consultants of all tiers shall keep and maintain detailed, organized documents and data relating to the Services for a period of at least six (6) years after the date of Final Completion of the Work on a Project or off-season Commissioning of all equipment, whichever is later.
- .2 Architect and Architect's Consultants of all tiers shall grant access to Owner, or its representatives, to inspect, audit and copy all their documents, data, records and files, electronic or otherwise pertaining to the Services, at any reasonable time during or after completion of the Services.
- .3 Owner may direct Architect to use E-Builder (or such other software as Owner may choose) in the performance of the Services subject to additional terms, conditions and instructions that Owner shall provide to Architect. Architect shall cause its personnel and those of Architect's Consultants to take any training courses required by Owner, at no additional cost to Owner. Owner shall provide a license for E-Builder for Architect and Architect's Consultants as necessary for Architect to furnish the Services. Architect acknowledges and agrees that Architect's use of E-Builder shall not alter any notice requirement or obligation set forth in this Master Agreement.

**§ 3.1.8 Hazardous Materials.** If Architect or Architect's Consultants know or become aware of Hazardous Materials at a Project Site other than those introduced by those performing the Work, or if they become aware of any spill or release of Hazardous Materials at a Project Site, Architect shall immediately notify Owner and where applicable denote in project documents. Unless otherwise agreed in writing, Architect and Architect's Consultants shall have no responsibility for the presence, handling, removal or disposal of, or exposure of persons to Hazardous Materials at a Project Site unless Architect or those for whom it is responsible fails to provide such notice or introduces the Hazardous Materials to the Project Site. Architect shall not approve any submittal (per Section 3.7.5) that uses or incorporates materials containing asbestos, mercury, lead or PCBs in any Owner Project or Project Site.

**§ 3.1.9 Standards.** Architect and Architect's Consultants shall familiarize themselves with each Project and Owner's requirements and perform the Services in accordance with this Master Agreement (including but not limited to the provisions of Section 2.2), all applicable laws, ordinances, rules, regulations, statutes, by-laws, court decisions, and orders and

requirements of all public authorities (collectively, "**Applicable Law**"), and all of the following:

- .1 Design standards provided to Architect by Owner, as may be updated from time to time ("**Owner's Design Standards**"), to the extent applicable to the Services. If, at any point during a Project, Architect judges a portion of the Design Standards to be in conflict with a Project or design requirement or is otherwise detrimental to a Project, Architect shall provide an explanation and seek written permission from Owner to deviate from the Design Standards. If Architect deviates from the Design Standards without specific written permission from Owner, Owner may, regardless of the time of discovery, instruct Architect to modify the Instruments of Service as necessary, without additional compensation, to comply with the Design Standards.
- .2 Owner's CAD & BIM Guidelines, current as of the date of issuance of Architect Release.
- .3 industry practices and standards with which Architect and Architect's Consultants must comply in order to fulfill Architect's duties under this Master Agreement, including those set forth in Section 2.2.
- .4 the Instruments of Service requirements described herein and as may be specified in Architect Release.

**§ 3.1.10 Deliverables.** Architect shall furnish Owner with, at a minimum, those Instruments of Service specified herein and in Architect Release, in the Design Standards, or as otherwise required by above standards. Architect shall re-perform, revise, or cause to be re-performed or revised, at no cost to Owner and without delay to the Project, any of its Instruments of Service that fail to comply with Section 2.2 or Applicable Law, whenever discovered.

**§ 3.1.11 Emergency Egress.** Architect shall reasonably cooperate with Contractor as Contractor analyzes existing emergency egress pathways, occupant loading and all emergency gathering areas adjacent to the Project and prepares the Project-specific NFPA 241 plan. If Architect anticipates or becomes aware of any egress pathways or gathering areas that will be blocked, changed or impaired (either temporarily or for the duration of the Project), Architect shall inform Owner and Contractor and provide suggested interim measures in the Project-specific NFPA 241 plan. If egress impairment is not anticipated but is raised by Contractor at any point during the Project, Architect shall reasonably cooperate with Contractor and/or work with the fire safety consultant for the Project, as appropriate, to ensure Contractor is aware of the necessary egress requirements and any other requirements.

**§ 3.1.12 Sustainability, Energy, and Emissions Impacts.** Architect shall review with Owner alternative approaches that affordably and reasonably achieve Owner's objectives to design and construct environmentally responsible buildings and renovations that are efficient throughout the building's life cycle and, unless requested otherwise by Owner, shall include preparation of a preliminary or first order assessment and projection of operating costs. Architect shall lead a systematic, interdisciplinary "high-performance" design process engaging Owner, all Owner's Consultants and any Contractor providing preconstruction services in idea generation, materials and systems research, design options generation, analysis, detailed design, documentation, construction observation, Commissioning, and training of Owner's

operations personnel in an attempt to optimize actual performance of the Project in measurable ways against goals established early in this process. Services shall be conducted in a manner consistent with the requirements of filing for LEED certification. However, the actual filing for any certification of the sustainable features of a Project pursuant to one or more rating systems shall be established in Architect Release or as an Amendment. Architect will oversee the project engineer in the completion of MIT's Energy and Emissions Impact Calculator that will quantify the Project's energy and greenhouse gas impacts with respect to MIT's goals, such Energy and Emissions Impact Calculator to be provided by MIT.

**§ 3.1.13 Commissioning.** Owner may retain a commissioning agent to prepare a commissioning plan with testing forms and procedures to be implemented as part of Commissioning prior to Substantial Completion and to verify that mechanical, electrical, plumbing, fire protection, fire alarm and building envelope systems are designed, purchased, installed and performing in accordance with the Contract Documents. In all phases, Architect shall cooperate with the commissioning agent, participate in the development and implementation of the commissioning plan, and require Architect's Consultants and Subcontractors to comply with the commissioning plan.

**§ 3.1.14 Design to Control Budget.** If at any time prior to establishing of the Stipulated Sum or GMP, Owner-approved reconciled estimate, the lowest bona fide bid or the negotiated proposal for the Stipulated Sum or GMP exceeds the Control Budget, Owner may, in its sole discretion: (a) require Architect to modify the Drawings and Specifications to conform to Control Budget and to the Schedule without additional compensation (unless Owner has materially reduced the Control Budget or program for reasons for which Architect is not responsible); (b) increase the amount of the Control Budget accordingly, with a corresponding increase in the compensation due to Architect, if applicable; (c) withhold authorization to commence the subsequent phase, in whole or in part; (d) confer with Architect as to a method of reducing the Project costs; (e) authorize re-bidding or re-negotiate the bids or proposal; and (f) suspend or terminate in accordance with this Master Agreement. In the event that Owner does not develop its own estimate, Architect shall establish its own estimate for the purposes of reconciling with the Control Budget. Until Owner establishes a Control Budget, the provisions of this paragraph shall not apply.

**§ 3.1.15 Cost Review.** In each design phase, Architect shall cooperate with Owner and its cost Consultant(s), if any, in their preparation of estimates, and shall review and advise Owner on such estimates.

**§3.1.16 Authorization to Proceed.** In each phase set forth in this Article, Owner, Architect and, if applicable, Contractor will meet and review Architect's Drawings and Specifications and identify necessary changes due to comments received from Owner and Governmental Authorities. Architect will document the decisions reached and the actions to be taken for each necessary change.

- .1 Each design phase will be complete upon Owner's authorization to proceed to the next design phase. Unless noted otherwise in Architect Release, Architect shall not proceed with Services of subsequent phases without such written authorization. Owner shall have no obligation to compensate Architect for Services undertaken but not authorized.

**§3.2 Conceptual Design Phase.** If specified in an Architect Release, Architect shall provide the following Services during the Conceptual Design Phase, based on the information provided in Architect Release:

**§ 3.2.1 Strategic Project Planning.** Meet with representatives of Owner's involved departments, offices and other designees to define common goals, objectives, organization and procedures for the Project. Develop a work plan that outlines the process by which these will be attained. Upon reaching consensus, prepare and submit a summary of the goals and objectives of the planning study and the work plan to be followed.

**§ 3.2.2 Programming and Space Analysis.** Conduct interviews and workshops, and collect other information as necessary to document the current and anticipated program needs and space requirements. Describe all desired spaces by function, size, environmental requirements, required relationships and adjacencies and special requirements for equipment, floor loading, special systems, sound isolation, access control, and the use of chemical, biological or radiological materials. Identify requirements for flexibility and expandability. Project total net and gross square footage required to meet the program and space requirements. Project estimated operating costs, if of significant magnitude. Prepare and submit a summary, including appropriate Instruments of Service, of Architect's conclusions and recommendations as to the program needs and space requirements. Provide updates to such Instruments of Service as the Services progress.

**§ 3.2.3 Site Analysis and Development.** Inspect the Project Site to become familiar with the conditions in which the Work is to be performed. Analyze the development of the proposed Project Site, including land utilization, structure placement, facilities development, movement systems (traffic, circulation and parking), lay-down storage areas, utility systems, surface and subsurface conditions, ecological and historical requirements, topography, zoning and other legal restrictions (including but not limited to the Americans with Disabilities Act (the "ADA"), variances, and local building codes), and landscape concepts and forms. Prepare and submit a report, including appropriate Instruments of Service, of Architect's site analysis. Provide updates to such Instruments of Service as the Services progress. Under the direction of Owner, Architect shall seek out and coordinate with community groups, owners, design professionals and contractors active involved in projects and operations at adjacent or nearby properties whose activities may be impacted by or may impact the Services or the Work.

**§ 3.2.4 Existing Facilities Assessment.** Make such field inspections and measurements as necessary to become familiar with existing conditions at the Project Site and conduct whatever investigations of existing conditions are necessary to ensure that the design is appropriate and complete. Verify configuration of existing spaces. Field measure critical dimensions. Verify type and condition of architectural, mechanical, electrical and other systems. Assess size and capacity of existing equipment and systems based on Owner-provided information and Architect's inspection. Prepare and submit a report, including appropriate Instruments of Service, certifying the performance of such investigation and indicating the building's capabilities, limitations and deficiencies based on the identified program requirements.

**§ 3.2.5 Design Concepts.** Based on Owner's direction regarding preferred conceptual alternative(s), develop alternative(s) based on the program needs and space requirements. Prepare and submit blocking and stacking diagrams of required spaces Document circulation and flow patterns, and the conceptual design approach for all relevant building systems. Identify any special design considerations that may require specialty Architect's Consultants.

**§ 3.2.6 Estimating.** Prepare a complete estimate of the Stipulated Sum or GMP based on area, volume and similar conceptual methods of estimating. Reconcile its estimate with those of Owner or any Owner's cost Architect's Consultants.

**§ 3.2.7 Project Sequencing.** Determine Owner's criteria for Project sequencing. For each selected design concept(s), collaborate with Owner, and Contractor if any, to investigate options for sequencing the Project as a series of discrete projects or phases. Identify Project sequencing based on such criteria.

**§ 3.2.8 Presentation Materials.** For use in fundraising or any other purpose by Owner, prepare and submit Instruments of Service, including models, renderings and final Drawings, of a type and quality ordinarily presented to Owner during design reviews.

**§3.3 Schematic Design Phase Services.** If specified in an Architect Release, Architect shall provide the following Services during the Schematic Design Phase, based on the approved Conceptual Design Phase documents or other documents approved by Owner:

**§ 3.3.1 Strategic Project Planning.** Meet with representatives of Owner's involved departments, offices and other designees to define common goals, objectives, organization and procedures for the Project. Develop a work plan that outlines the process by which these will be attained. Upon reaching consensus, prepare and submit a summary of the goals and objectives of the planning study and the work plan to be followed.

**§ 3.3.2 Program Review and Evaluation.** Carefully review and examine the program and other information furnished by Owner and its designees, to ascertain the requirements of the Project. Evaluate Owner's program, Schedule and Control Budget, each in terms of the other. Meet as needed with Owner and its designees to confirm Owner's needs with respect to aesthetic, functional, time, financial and other design-related requirements.

**§ 3.3.3 Design Standards Review and Evaluation.** Thoroughly review and evaluate Owner's Design Standards, and develop a strategy for incorporation into the Project design.

- .1 Notify Owner as to any portion of the Design Standards that Architect judges to be in conflict with a Project or design requirement or is otherwise detrimental to the Project, as required by Section 3.1.9.
- .2 If specified in Architect Release, prepare "basis of design" documentation for architectural, structural, mechanical, electrical, plumbing and other major building systems, as applicable to a Project.
- .3 If LEED certification is specified in Architect Release, prepare the LEED scorecard, sustainability matrix or sustainability checklist, as appropriate, to demonstrate how a Project will attain Owner's sustainability objectives.

**§ 3.3.4 Programming and Space Analysis.** Conduct interviews and workshops, and collect other information as necessary to document the current and anticipated program needs and space requirements. Describe all desired spaces by function, size, environmental requirements, required relationships and adjacencies and special requirements for equipment, floor loading, special systems, sound isolation and access control. Identify requirements for flexibility and expandability. Project total net and gross square footage required for meeting the program and space requirements. Prepare and submit a summary, including appropriate Instruments of

Service, of Architect's conclusions and recommendations as to the program needs and space requirements. Provide updates to such Instruments of Service as the Services progress.

**§ 3.3.5 Site Analysis and Development.** Inspect the Project Site to become familiar with the conditions in which the Work is to be performed. Analyze the development of the proposed Project Site, including land utilization, structure placement, facilities development, movement systems (traffic, circulation and parking), lay-down storage areas, utility systems, surface and subsurface conditions, ecological and historical requirements, topography, zoning and other legal restrictions (including but not limited to the ADA, variances, and local building codes), and landscape concepts and forms. Prior to any subsurface work, Architect working with Owner's Project Team must check and verify any required conditions or actions based on MIT's activity Use Limitation ("AUL") list and GIS map. If site has an AUL, Architect shall collaborate with Owner's project team to meet its requirements. Prepare and submit a report, including appropriate Instruments of Service, of Architect's site analysis. Provide updates to such Instruments of Service as the Services progress.

**§ 3.3.6 Building Analysis.** Review existing drawings, specifications, surveys, reports and other documents available from Owner. Where non-destructive field inspections and measurements of existing conditions are needed, make such reasonable inspections and measurements as necessary to become familiar with the existing condition of the building, including architectural, structural, mechanical, electrical, plumbing, communications, A/V, fire protection, security and specialty systems. Evaluate functionality, size, capacity and life expectancy of systems and equipment. Verify configuration of existing spaces. Subject to the AUL requirements referenced in Section 3.3.5 above, recommend destructive testing to determine concealed existing conditions if such conditions could impact the design, the Stipulated Sum or GMP or the Schedule. Review and confirm all existing fire rated enclosures and fire control areas present. Provide analysis of the Project's use of the existing fire control areas or the Project's creation of new control areas. Field measure critical dimensions. Identify limitations that restrict future functional flexibility or expandability. Identify major building code/life safety deficiencies and limitations and necessary remedies. Prepare and submit an inventory of spaces (including those to be impacted), appropriate Instruments of Service and a report of the building's capabilities, limitations and deficiencies based on the identified program requirements, classifying such deficiencies based on the difficulty to remedy. Provide updates to such Instruments of Service as the Services progress.

**§ 3.3.7 Existing Facilities Assessment.** Make such field inspections and measurements as necessary to become familiar with existing conditions at the Project Site and conduct whatever investigations of existing conditions are necessary to ensure that the design is appropriate and complete. Verify configuration of existing spaces. Field measure critical dimensions. Verify type and condition of architectural, mechanical, electrical and other systems. Assess size and capacity of existing equipment and systems based on Owner-provided information and Architect's inspection. Prepare and submit a report, including appropriate Instruments of Service, certifying the performance of such investigation and indicating the building's capabilities, limitations and deficiencies based on the identified program requirements.

**§ 3.3.8 Analysis of Alternatives.** Analyze and develop alternative approaches to the design of the Project for the purpose of maximizing Owner's objectives for the Project, including scope, cost, Schedule, design intent, and sustainability, energy management and materials specification. Perform the following:

- .1 Review with Owner a number of alternative approaches to the overall design and construction of the Project as set forth in Architect Release.
- .2 Suggest alternatives to various building systems and components and construction methodologies. Evaluate each approach in terms of overall Project concept, current and future program needs, operating costs, continuing operation, expected useful life of completed facility, impact on programs and operations during the Construction Phase, methods of minimizing such impact and, in collaboration with Owner's designee, phasing, constructability, Schedule and cost.

**§ 3.3.9 Architectural Design.** Based on the program requirements, Control Budget, and other design criteria, prepare and submit Instruments of Service describing each alternative approach to the overall design of the Project. Identify any special design considerations that may require specialty Architect's Consultants.

**§ 3.3.10 Structural Design.** Develop preliminary design solutions for selected structural systems. Identify systems characteristics and limitations, including practical span lengths, bay spacing and typical sizes of structural members.

**§ 3.3.11 Mechanical Design.** Develop preliminary design solutions for new, and/or for connecting to existing mechanical, heating and ventilation, air conditioning, energy conservation, plumbing, fire protection, special mechanical and control systems. Prepare preliminary load assessments. Identify general design criteria.

**§ 3.3.12 Electrical Design.** Develop preliminary design solutions for power service and distribution, lighting, telephones, fire detection and alarms, security systems, electronic communications and special electrical systems. Prepare preliminary load assessments. Identify general design criteria.

**§ 3.3.13 Civil Design.** Develop preliminary design solutions for Project Site drainage systems, storm water management, grading, paving, curb cuts, utilities and fire protection. Develop preliminary design solutions for off-site utility systems improvements required for the Project.

**§ 3.3.14 Landscape Design.** Develop preliminary design solutions for landforms, lawns, plantings, site furniture and other landscape elements.

**§ 3.3.15 Interior Design.** For each alternate floor plan layout, develop and submit preliminary design solutions for materials, equipment, partition locations and furniture and equipment layout.

**§ 3.3.16 Furniture, Fixtures & Equipment ("FF&E").** Prepare and submit a preliminary inventory of required furniture, fixtures and equipment, including a preliminary budget for FF&E salvage, donation, disposal and restoration.

**§ 3.3.17 Materials Research and Specifications.** Review with and advise Owner concerning recommended Performance Specifications, sustainability, efficiency, and quality standards for potential materials, systems and equipment for each discipline listed above and in accordance with Section 3.1.11 and Section 3.3.8. Prepare and submit outline Specifications in a systems format designated by Owner.

**§ 3.3.18 Estimating.** Prepare a complete, detailed estimate of the Stipulated Sum or GMP. Reconcile its estimate with those of Owner or Owner's cost consultants.

**§ 3.3.19 Life Cycle Costs Analysis.** If life cycle costs analysis is required, Architect shall evaluate and submit a report on the economic performance and long-term expense of owning and operating the Project over its design life using the MIT Life Cycle Cost tool.

**§ 3.3.20 Value Engineering.** Architect shall propose value engineering alternatives and meet with Owner's cost consultants as part of regular design reviews for the purpose of reviewing and analyzing specific value enhancements proposed by such cost consultants, and shall make recommendations for acceptance or rejection. In addition to first cost, life-cycle cost analysis shall be completed for all such enhancements that have an energy impact. All such enhancements shall not materially degrade or limit environmental health and safety. Record and submit a list of value engineering modifications considered by Owner. Advise Owner promptly if redesign or a change in the Schedule is required to incorporate the accepted modifications.

**§ 3.3.21 Energy and Emissions Impact Calculator ("EEIC").** Architect shall oversee the project engineer in the completion of the EEIC, which estimates the impacts that small projects have on Owner's greenhouse gas emissions and energy reduction goals, and shall calculate and submit the EEIC to Owner for review.

**§ 3.4 Design Development Phase Services.** If specified in an Architect Release, Architect shall provide the following Services during the Design Development Phase, based on the approved Schematic Design Phase documents:

**§ 3.4.1 Program Consistency.** Confirm that Owner's program, Schedule and Control Budget are consistent with each other. Meet as needed with Owner and its designees to confirm Owner's needs with respect to aesthetic, functional, time, financial and other design-related requirements.

**§ 3.4.2 Architectural Design.** Establish the final scope, relationships, forms, size and appearance of the Project through plans, sections, elevations, typical construction details, final materials selection, equipment layouts and perspective sketches. Provide study models where requested by Owner or deemed appropriate by Architect to convey three-dimensional aspects of the design. At Owner's option, (a) provide required documentation for necessary variances for Project or (b) redesign the Project to remove the need for variances.

**§ 3.4.3 Space Inventory Information.** Submit a progress print of plans depicting, room use descriptions, floor numbers, and square footages in accordance with the system maintained by Owner for tracking space, along with information required by Owner in order for Owner to designate room numbering. Submit updates as Owner assigns room numbers.

**§ 3.4.4 Structural Design.** Based on the accepted structural system, establish final structural design criteria, foundation design criteria, bay spacing and other dimensions, preliminary sizing of major structural components and critical coordination clearances.

**§ 3.4.5 Mechanical Design.** Develop final design solutions for new, and/or for connecting to existing mechanical, heating and ventilation, air conditioning, energy conservation, plumbing, fire protection, special mechanical and control systems. Calculate final HVAC loads and plumbing

fixture counts. Establish final equipment sizes and capacities, equipment, distribution, and piping layouts, wastewater treatment; required space for equipment; required chases and clearances; required safe (OSHA) access and protections for operation and maintenance; acoustical and seismic control; visual impact; energy conservation measures; and develop control schematics.

**§ 3.4.6 Electrical Design.** Develop final design solutions for power service and distribution, lighting, telephones, fire detection and alarms, security systems, electronic communications and special electrical systems. Establish the final scope of the lighting, electrical and communication systems. Establish sizes and capacities of major components; equipment layouts; required space for equipment; required chases and clearances; and energy conservations measures.

**§ 3.4.7 Civil Design.** Establish the final scope of, and submit preliminary details for, on-site and off-site civil engineering work.

**§ 3.4.8 Landscape Design.** Establish final scope of, and submit preliminary details for, landscape construction, materials, plantings, fixtures and furnishings.

**§ 3.4.9 Interior Design.** Establish final scope of, and submit preliminary details relative to, interior construction of the Project; special interior design features; and materials, finishes and colors.

**§ 3.4.10 Furniture, Fixtures & Equipment (FF&E).** Inventory Owner's existing furniture, fixtures and office equipment, if any, and determine which pieces will be reused for the Project, salvaged for Owner's future use, offered for donation, recycled or listed for disposal. Prepare and submit a detailed inventory of new and, if applicable, reused furniture, fixtures and equipment required for the Project. Prepare FF&E plans showing the proposed sizes and locations of the items on the FF&E inventory. Coordinate the power, communication and other engineering aspects of the Project with the requirements and locations of FF&E items, and confirm that all items fit properly within the architectural space. The Services and Fee do not include procurement of furniture.

**§ 3.4.11 Specifications.** Prepare and submit Design Development Phase Specifications consisting of summary Specifications sections organized according to an Owner-approved format. Review Owner's form of Division 1 (General Requirements) and potential bidding requirements and collaborate with Owner's designee regarding their further development for the Project. Submit proposed modifications to Owner's form of Division 1 (General Requirements) consistent with the Contract Documents, along with summary Specifications sections identifying major materials and systems and establishing quality levels in general terms.

- .1 If the design will require Contractor to provide professional design services or certifications by a design professional related to systems, materials or equipment, Architect shall include Performance Specifications in the Design Development Phase Specifications.

**§ 3.4.12 Estimating.** Prepare a complete, detailed estimate of the Stipulated Sum or GMP. Reconcile its estimates with those of any Owner's cost consultants.

**§ 3.4.13 Clash Detection.** If BIM is required in Architect Release, prepare and submit a complete 3D building information model including architectural, structural and MEPFP components. Analyze the constructability of the consolidated design progress and submit a

report summarizing the results thereof to Owner. Resolve all clashes and inconsistencies prior to submission of the Design Development Phase Instruments of Service.

**§ 3.4.14 Constructability Review.** Architect and the major Architect's Consultants shall participate in meetings with Owner and Contractor, if any, for the purpose of reviewing design and construction details and methodologies that affect construction feasibility (including laydown storage areas), efficiency, available labor and materials, alternate equipment and building systems that may be available, and possible means and methods of attaining efficiencies in the Schedule or Stipulated Sum or GMP.

**§ 3.4.15 Value Engineering.** Architect shall propose engineering alternatives and meet with Owner's cost consultants as part of regular design reviews for the purpose of reviewing and analyzing specific value enhancements proposed by such cost consultants that do not affect compliance with Applicable Law, and make recommendations for acceptance or rejection. In addition to first cost, life-cycle cost analysis shall be completed for all such enhancements that have an energy impact. Record and submit a list of value engineering modifications considered by Owner. Advise Owner promptly if redesign or a change in the Schedule is required to incorporate the accepted modifications.

**§ 3.4.16 Energy and Emissions Impact Calculator ("EEIC").** Architect shall update and recalculate the initial EEIC and submit the same to Owner for review.

**§3.5 Construction Documents Phase Services.** If specified in an Architect Release, Architect shall provide the following Services during the Construction Documents Phase:

**§ 3.5.1 General.** Based on the approved Design Development Phase Instruments of Service, Owner's comments, and any adjustments in the scope, quality or Control Budget authorized by Owner, prepare Drawings, Specifications and other Instruments of Service setting forth in detail the design requirements for the Project, developed in such form as to constitute the basis of the Bid Documents and allow for competitive bidding and complete construction of the Work. Provide, as a material part of the Services, Drawings and Specifications that are detailed, coordinated, constructible, complete and accurate, as required herein, so as to promote accurate bidding and minimize Change Orders attributable to such documents.

**§3.5.2 Project Manual.** Prepare the Project Manual, including:

- .1 Bidding requirements as provided by Contractor, with Architect's recommendations based on the specific conditions and requirements of the Project. If Owner has not retained a Contractor, Architect shall prepare the bidding requirements for inclusion in the Project Manual.
- .2 Contractor's Master Agreement, in a form provided by Owner.
- .3 Division 1 (General Requirements) of the Specifications, based on Owner's standard form in effect on the date of Architect Release with Architect's recommended modifications to reflect specific conditions and requirements of the Project. Division 1 (General Requirements) shall not modify Contractor's Master Agreement or Master General Conditions without Owner's express, written approval of such alterations.
- .4 The remainder of the Specifications, consisting of the Performance Specifications, specific conditions and technical requirements of the Work,

prepared by Architect and Architect's Consultants. Such remaining Specifications shall not modify Contractor's Master Agreement without Owner's express, written approval of such alterations.

- .5 Technical data provided by Owner, Architect or a Separate Contractor for the information of the bidders, including boring logs and hazardous materials surveys.

**§ 3.5.3 Construction Phasing Plans.** Assist and advise Owner and Owner's designees in developing construction phasing plans based on the critical sequence of events and the current Schedule prepared by Contractor, if applicable. Prepare separate Instruments of Service as necessary for portions of the Work to be included in early release packages.

**§ 3.5.4 Space Inventory Plans.** Submit updated plans depicting room numbers as determined by Owner, room use descriptions, floor numbers, and square footages in accordance with the system maintained by Owner for tracking space.

**§ 3.5.5 Signage.** Submit sign design, schedules, specifications and location plans for exterior and interior room identification and wayfinding signage.

**§ 3.5.6 Estimating.** Prepare a complete, detailed estimate of the anticipated Stipulated Sum or GMP. Reconcile its estimates with those of any Owner's cost consultants.

**§ 3.5.7 Clash Detection.** If BIM is required in Architect Release, update the complete 3D building information model including architectural, structural and MEPPF components. Analyze the constructability of the consolidated design progress and submit a report summarizing the results thereof to Owner. Resolve all clashes and inconsistencies prior to submission of the Schematic Design Phase Instruments of Service

**§ 3.5.8 Constructability Review.** Architect and the major Architect's Consultants shall participate in a meeting with Owner and Contractor, if any, for the purpose of reviewing design and construction details and methodologies that affect construction feasibility (including laydown storage areas), efficiency, available labor and materials, alternate equipment and building systems that may be available, and possible means and methods of attaining efficiencies in the Schedule or Stipulated Sum or GMP.

**§ 3.5.9 Value Engineering.** Architect shall propose engineering alternatives and meet with Owner's cost consultants as part of regular design reviews for the purpose of reviewing and analyzing specific value enhancements proposed by such cost consultants, and make recommendations for acceptance or rejection. In addition to first cost, life-cycle cost analysis shall be completed for all such enhancements that have an energy impact. Record and submit a list of value engineering modifications considered by Owner. Advise Owner promptly if redesign or a change in the Schedule is required to incorporate the accepted modifications. Submit a list of affidavits and reports necessary for permitting submissions

**§ 3.5.10 Stamped Set.** Promptly upon Owner's written authorization to proceed, Architect shall deliver to Owner one tangible set of the Drawings and Specifications with the seals and authorized signatures of Architect and, as applicable, Architect's Consultants, along with a complete set in electronic form.

**§ 3.4.11 Project Equipment List.** Architect shall provide a utility equipment matrix to indicate all new, altered, and/or replaced equipment installed in the Project, which matrix shall include all equipment numbers and locator tags.

**§ 3.4.16 Energy and Emissions Impact Calculator (“EEIC”).** Architect shall update and recalculate the revised EEIC and submit a final EEIC to Owner for review.

**§3.6 Procurement Phase Services.** If specified in an Architect Release, Architect shall provide the following as Procurement Phase Services:

**§3.6.1 Risk Analysis.** Architect and Architect’s Consultants shall participate in a risk analysis meeting, in which they shall analyze the financial risk to the Project for undefined costs (including six, 12 and 24 month delays in project commencement), and advise and assist Owner in defining, evaluating and applying probabilities and costs to each identified risk

**§ 3.6.2 List of Bidders.** Architect shall review and comment on the list of recommended potential bidders provided by Owner and shall disclose to Owner any familial or business relationship, direct or indirect ownership or control interest or other financial interest it may have with any potential bidders. Owner shall take into account any reasonable objections by Architect to any potential bidders before a list of bidders is finalized

**§ 3.6.3 Bid Documents.** Architect shall confer with Owner and Contractor, if applicable, and agree upon groupings of Drawings and Specifications that will facilitate bidding. With Owner’s consent, Alternates may be included in the bid packages. Architect shall prepare and deliver to Owner integrated Bid Documents that are complete and ready for bid in accordance with the Schedule. Architect shall incorporate the Bid Documents into bid packages and, if Owner so directs, distribute them to prospective bidders, or assist Owner and Contractor, if any, in doing so.

**§ 3.6.4 Pre-Bid Conference.** Architect shall set the agenda, or assist Owner in setting the agenda, and attend a conference at the Project Site to familiarize prospective bidders with local conditions affecting the Work, Project schedules, any special systems, materials or methods, and other agenda items required in the Specifications. Architect shall prepare and circulate minutes to attendees, and prepare and issue Addenda, if any, to all prospective bidders.

**§ 3.6.5 Clarifications.** Architect shall promptly respond to written requests made by prospective bidders or through Owner for an interpretation of the Bid Documents in the context of the Work to be performed in the form of Addenda for circulation by Owner and Contractor, if applicable.

**§ 3.6.6 Bid Analysis.** After the opening of the bids, Architect will analyze the bids and provide Owner with its written recommendations regarding the bids and any proposed Substitutions. Architect shall promptly provide Owner with its written response to Contractor’s recommendations, if applicable.

**§ 3.6.7 IFC Documents.** Incorporate all Addenda and other approved changes into the Bid Documents and reissue them as an “Issued For Construction” set within seven (7) days of submittal of bids.

**§ 3.6.8 GMP Proposal.** Architect shall review and advise Owner regarding Contractor’s Guaranteed Maximum Price (GMP) Proposal, if any, including review of subcontractor bids, if requested by Owner. Architect shall respond to questions from Owner, and if requested by Owner, meet with Owner and Contractor to discuss the GMP Proposal.

**§ 3.6.9 Early Releases.** If early release is required for demolition, site work, long-lead items or any other reason, Architect shall prepare bid documents for such items as a separate early package and shall participate in accordance with this Article 3.6 in separate Procurement Phase activities related to that package.

**§3.7 Construction Phase Services.** Architect shall provide administration of the construction contract as set forth below:

**§ 3.7.1 Commencement.** Prior to the commencement of the Construction Phase, Architect shall provide Owner with the status of each Substitution and Alternate in terms of acceptance, rejection or deferral by Owner, and with full descriptions of negotiated modifications to any accepted or deferred Substitutions or Alternates.

- .1 Substitutions and Alternates that have been accepted by Owner shall be incorporated into this Master Agreement and the Contract Documents, and shall be in full force and effect as though originally included. As part of the Services, Architect shall coordinate related work and modify surrounding work as required to properly integrate accepted Substitutions and Alternates with the Work.

**§ 3.7.2 Preconstruction Conference.** Architect shall attend a preconstruction conference at the Project Site.

**§ 3.7.3 Interpretation of Contract Documents.** Architect shall promptly respond to requests by or through Owner or Contractor for interpretation of the Contract Documents so as not to delay the progress of the Work. Architect's responses shall be in written and/or graphic form, copied to Owner, and in accordance with the intent of the Contract Documents. Architect shall promptly inform Owner if it expects an interpretation to lead to Pricing Request or Construction Change Directive or an impact on the Schedule. If additional time is needed for an interpretation or if information is needed to interpret the Contract Documents, Architect shall promptly notify and propose a time and/or plan to Owner and Contractor for the gathering of such information and/or preparation of a response.

- .1 Architect has no authority to order or approve any changes, extra-contractual work or services; to contractually bind Owner; or to alter Owner's rights and obligations under any contract.
- .2 Architect shall promptly review all requested changes in the Work and make recommendations to Owner with respect to them within seven (7) days. If the Prompt Pay Act applies, (a) Architect shall include a written explanation of the factual and contractual basis for any recommendation to reject a requested change, certified as made in good faith; and (b) Architect shall track time limits for Owner's approval or rejection of each request for a change in the Work and shall provide Owner with written notice two (2) days in advance of such limit for any request that has not been approved or rejected.
- .3 As required by Owner, Architect shall meet with Owner and Contractor every two (2) weeks to review outstanding requested Change Orders and Construction Change Directives and shall institute procedures for their prompt disposition.

- .4 Architect shall, within three (3) business days of Owner's request, evaluate on a preliminary basis and advise Owner on the merits of any Claims made on a Project. Owner may defer any decision on any Claim until it fully assesses the basis of the Claim and the effects thereof.
- .5 Architect shall prepare and maintain its own Architect Record Documents (as defined below) during the Construction Phase and shall digitally update them and issue them to the Contractor and Owner on a regularly agreed upon schedule. As part of the regular updates, if Contractor's As-Built Documents (as defined below) contain any omission, incorrect information or inconsistency, Architect shall immediately inform Owner and Contractor in writing. For purposes of this Master Agreement, the following definitions shall apply:
  - (a) "Architect Record Documents" shall mean a drawing set kept by Architect and updated per contraction pay period to include all authorized contract document changes to drawings and specifications, including changes based on Contractor submittals.
  - (b) "Contractor's As-Built Documents" shall mean a drawing set maintained and updated by Contractor that records the differences between the design shown on the Contract Documents and the actual conditions of the Project as constructed on the Project Site.

**§ 3.7.4 Site Visits.** As a minimum at the intervals set in Architect Release or as reasonably requested by Owner, Architect and Architect's Consultants shall visit the Project Site and, as Owner may direct, familiarize itself with the progress and quality of the Work and observe if the Work is proceeding in accordance with the Contract Documents. On a monthly basis, Architect shall review Architect Record Drawings and Contractor's As-Built Drawings for completeness of updates, integrity of Contractor's annotations, and to confirm that Contractor is maintaining on-site documentation in the manner required by the Contract Documents. Architect and Architect's Consultants shall prepare and maintain a written summary of on-site observations, provide weekly field reports to Owner, and immediately report to Owner and Contractor any defects or deficiencies observed in the Work or on-site documentation, or if any portion of the Work is being performed in a manner indicating that it will not be in conformance with the Contract Documents when complete.

- .1 Architect shall witness all testing and inspection that Applicable Law requires be conducted by third parties, and shall conduct all other required inspections, upon receipt of written notice from Contractor that a portion of the Work is ready for a required testing or inspection and of the date fixed for such testing or inspection. Architect and Architect's Consultants shall promptly review the results of third-party inspections.
- .2 Architect shall immediately notify Owner when it discovers that Work for which testing or inspection was required or requested has been covered before such testing or inspection is performed.

**§ 3.7.5 Submittals.** Architect shall confer with Contractor and agree upon a schedule of required submittals. Upon Owner's acceptance of such submittal schedule, Architect shall perform its obligations as to submittals in accordance therewith.

- .1 Owner and Architect may rely upon professional certification of performance characteristics of materials, systems or equipment that is required by the Contract Documents and included in a submittal.
- .2 Architect shall review all submittals in order to confirm conformance with the design concept expressed in the Contract Documents, but not for purposes of any construction means, methods, techniques, sequences or procedures contained therein or to enhance or modify the design of a Project. Architect shall return submittals to Contractor in accordance with the accepted submittal schedule, with a copy to Owner, with Architect's stamp and signature affixed thereto.

**§ 3.7.6 Applications for Payment.** Architect shall review and certify Contractor's applications for payment forward it to Owner with Architect's signature or recommendation to withhold payment, in accordance with the payment requirements of a Construction Contract. If Architect fails to act within the required time period, Owner may treat the application for payment as if Architect had signed it. If the Prompt Pay Act applies, (a) Architect shall include a written explanation of the factual and contractual basis for any recommendation to withhold payment, certified as made in good faith; and (b) Architect shall track time limits for Owner's approval or rejection of each application for payment and shall provide Owner with written notice two (2) days in advance of such limit for any application that has not been approved or rejected.

**§ 3.7.7 Substantial Completion.** Architect shall perform Services relating to Substantial Completion as defined and set forth in the Construction Contract.

**§ 3.7.8 Final Completion.** Architect shall perform Services relating to Final Completion as defined and set forth in the Construction Contract.

- .1 On or before the proposed date of Final Completion, Architect shall provide a short written description of the mechanical, electrical and plumbing systems and their operations, together with single-line diagrams as required, for use of maintenance and repair personnel. Architect shall coordinate and cross-reference its systems description and diagrams to the maintenance manuals furnished by Contractor.
- .2 Before the proposed date of Final Completion, Architect shall provide training assistance for Owner. At the beginning of each discipline training session, Architect shall present an overall system design concept overview and shall include a review of all systems using the single-line diagrams outlined above.

**§ 3.7.9 Architect's Conformed Documents.** Within twenty-one (21) days of receipt of Contractor's As-Built Documents from Contractor, Architect shall review Contractor's As-Built Documents for conformance to the Project as completed on the Site.

- .1 Architect shall inform Owner and Contractor of any errors or deviations from Contractor's As-Built Drawings to the Project as completed on the Site and shall review subsequent changes to Contractor's As-Built Drawings until conformance to the Project as completed on the Site is achieved.

- .2 Architect may record required changes to Contactor's As-Built Drawings on a separate sheet, clearly identified and inserted at the beginning of each section to which they pertain.
- .3 Upon completion of such review, Architect shall provide Owner with a stamped set of documents reflecting the completed Architect Record Drawings (the "**Architect Conformed Documents**"), with any deviation from the Contractor's As-Built Drawings noted on Architect Conformed Documents or documented by a separate sheet inserted into the front of the applicable section.
- .4 Architect is not required to field measure as-built conditions and may rely on Contactor's As-Built Drawings for the accuracy of as-built conditions provided therein.

**ARTICLE 4      ADDITIONAL SERVICES**

**§ 4.1** Additional Services may be provided after execution of a Service Master Agreement without invalidating the Service Master Agreement. Except for services required due to the fault of Architect, any Additional Services provided in accordance with this Section 4.1 shall entitle Architect to compensation pursuant to Section 9.3.

**§ 4.2** Unless otherwise provided in an Architect Release, upon recognizing the need to perform the following Additional Services, as they relate to the services provided pursuant to Architect Release, Architect shall notify Owner with reasonable promptness and explain the facts and circumstances giving rise to the need. Architect shall not proceed to provide the following services until Architect receives Owner's written authorization:

- .1 Services necessitated by a change in the Initial Information, a change in previous instructions or approvals given by Owner, or a material change in the Project including, but not limited to, size, quality, complexity, Owner's schedule or budget for Cost of the Work, or procurement or delivery method;
- .2 Changing or editing previously prepared Instruments of Service (as defined below) necessitated by the enactment or revision of codes, laws or regulations or official interpretations;
- .3 Services necessitated by decisions of Owner not rendered in a timely manner or any other failure of performance on the part of Owner or Owner's consultants or contractors;
- .4 Preparing digital data for transmission to Owner's consultants and contractors, or to other Owner authorized recipients;
- .5 Preparation of design and documentation for alternate bid or proposal requests proposed by Owner;
- .6 Preparation for, and attendance at, a public presentation, meeting or hearing;
- .7 Preparation for, and attendance at, a dispute resolution proceeding or legal proceeding, except where Architect is party thereto;
- .8 Evaluation of the qualifications of bidders or persons providing proposals; or
- .9 Consultation concerning replacement of Work resulting from fire or other cause during construction.

**ARTICLE 5      OWNER'S RESPONSIBILITIES**

**§ 5.1** Owner is not required to issue any Architect Releases under this Master Agreement and Architect shall have no obligation to perform any Services under this Master Agreement until Owner and Architect enter into an Architect Release for a Project.

§ 5.2 Owner shall provide information in a timely manner regarding requirements for, and limitations of, each Architect Release. Within 15 days after receipt of a written request from Architect, Owner shall furnish the requested information as necessary and relevant for Architect to evaluate, give notice of, or enforce lien rights.

§ 5.3 Owner shall render decisions and approve Architect's submittals in a timely manner in order to avoid unreasonable delay in the orderly and sequential progress of Architect's services.

§ 5.4 Owner shall coordinate the services of its own consultants with those services provided by Architect. Upon Architect's request, Owner shall furnish copies of the scope of consulting services in the contracts between Owner and Owner's consultants. Owner shall furnish the services of consultants as designated in an individual Architect Release, or authorize Architect to furnish them as an Additional Service, when Architect requests such services and demonstrates that they are reasonably required by the scope of Architect Release. Owner shall require that its consultants maintain professional liability insurance as appropriate to the services provided.

§ 5.5 Owner shall furnish all legal, insurance and accounting services, including auditing services, that may be reasonably necessary at any time to meet Owner's needs and interests under a Service Master Agreement.

§ 5.6 Owner shall provide prompt written notice to Architect if Owner becomes aware of any fault or defect in the services or work related to a Service Master Agreement, including errors, omissions or inconsistencies in Architect's Instruments of Service.

## **ARTICLE 6      COPYRIGHTS AND LICENSES**

§ 6.1 The Drawings (as defined below), specifications (the "**Specifications**") and other documents prepared by Architect in connection with the Services are defined herein as the "**Instruments of Service**" and, unless otherwise provided, Architect shall be deemed the author of these documents and shall retain all common law, statutory and other reserved rights, including copyright. Architect shall not, however, use the Drawings, Specifications or other documents for any purpose not relating to the Project without Owner's prior written consent, except as permitted by Section 12.4; provided, however, that this restriction shall not apply to design elements that are not unique to the Project and are combined with other design elements by Architect in a manner that does not materially resemble the Project. Owner shall have the irrevocable right (the "**License**") to retain, use, reproduce, exhibit and distribute copies, including reproducible copies (and copies of computer disks or other computer memory storage devices), of the Drawings, Specifications and other documents prepared by Architect for any and all of the following purposes ("**Licensed Purposes**"): (i) information and reference in connection with the construction, reconstruction, renovation, repair, maintenance, use, occupancy or design of the Project or any other facilities now or hereafter located on Owner's campus, as the same may change or expand from time to time, (ii) Owner's historical documentation of the Project (including, without limitation, transforming such Drawings, Specifications and other documents into other forms of media for purposes of archival presentation), (iii) education of Owner's students, faculty, staff, alumni, and the public, (iv) fundraising, (v) promotion of the Project and Owner, and (vi) research. The term "**Drawings**" as used in this Section 6.1 includes, without limitation, graphic images and two- and three-dimensional depictions of the Project in any form of media, including, but not limited to those contained in computer files stored on computer disks, tapes or other computer memory storage media, and the License includes the right to receive, in the form of such computer memory storage media, and to retain

and use, copies of Architect's CADD Drawings as maintained in Architect's computer files for the purposes set forth above. Owner may transfer any or all of its rights under this Article 6 to any assignee or sublicensee of Owner, including, without limitation, any source providing funding for the Project. Architect hereby consents to the transfer of the License to any assignee of Owner. Architect shall not be responsible for, or otherwise liable to Owner or Owner's successors in interest for, any damages or claims arising from changes made to the Drawings, Specifications or other documents prepared by Architect by Owner or by Owner's successors in interest without Architect's participation as provided in this Master Agreement. Owner, on behalf of itself and its successors in interest, agrees to release, remise, and forever discharge Architect from any claim, liability or cost arising out of any such changes, or arising out of the use of such Drawings, Specifications or other documents by Owner for any purpose other than the construction, reconstruction, renovation, repair, maintenance, use or occupancy of the Project.

**§ 6.2** Submission or distribution of documents to meet official regulatory requirements or for similar purposes in connection with the Project is not to be construed as publication in derogation of Architect's reserved rights.

**§ 6.3** Architect and Owner intend this to be a contract for services and each considers all products and results of the services to be rendered by Architect hereunder (except for the Drawings and Specifications) (the "**Work Product**") to be a work made for hire. Architect acknowledges and agrees that the Work Product (and all rights therein, including, without limitation, copyright) belongs to and shall be the sole and exclusive property of Owner. If for any reason the Work Product would not be considered a work made for hire under Applicable Law, Architect does hereby sell, assign, and transfer to Owner, its successors and assigns, the entire right, title and interest in and to the copyright in the Work Product and any registrations and copyright applications relating thereto and any renewals and extensions thereof, and in and to all works based upon, derived from, or incorporating the Work Product. Architect shall have the rights set forth in Section 12.4 with respect to representations of the design of the Project.

**§ 6.3.1** Any and all software applications used, developed, or enhanced by Architect in conjunction with Architect's performance under this Master Agreement, together with any documentation and/or hardware/software configurations, used developed or enhanced by Architect in conjunction with Architect's performance under this Master Agreement, shall be and remain the sole and exclusive property of Architect, and Architect in its ownership and copyright therein shall be entitled to the broadest protection afforded under the copyright and other laws of The Commonwealth of Massachusetts, the United States of America, and under international convention. Notwithstanding the foregoing, Owner, and Owner's successors in interest, if any, shall have the right to retain, use, reproduce, exhibit and distribute copies, including reproducible copies, of such applications for any Licensed Purpose. If Owner participates in the development of such software application, the rights thereto shall be governed by the provisions of Section 6.5 below.

**§ 6.4** Architect shall retain the ownership of all rights, including, without limitation, those of patent and/or copyright, pertaining to the design and licensing for manufacture of any and all furnishings, furniture, fixtures, office partition modules, special hardware and the like (the "**FFE**") designed by and/or developed solely by Architect with respect to the Project, to which Architect shall be entitled to the broadest protections available under the laws of The Commonwealth of Massachusetts, the laws of the United States of America, and under international convention. Notwithstanding the foregoing, Owner

shall have the right to use, reproduce, exhibit and distribute any and all such designs for any Licensed Purpose. If Owner or its agents or students participates in the design or development of any element of the FFE, the rights in and to such element shall be governed by the provisions of Section 6.5 below.

**§ 6.5** Owner and Architect anticipate that they may collaborate together for the design, development, construction, implementation, and installation of certain improvements, fixtures, and systems for the Project (the "**Innovations**"). If and to the extent such Innovations have application beyond the Project, Owner shall retain all ownership and rights therein and Architect hereby assigns all right, title and interest thereto to Owner; provided, however, that Architect hereby retains and Owner hereby grants to Architect, the right to use such Innovations in any future projects in which Architect is engaged, without compensation to Owner but with acknowledgment of Owner's contribution thereto. Owner shall be deemed the owner and author of, and shall retain all common law, statutory and other rights, including, without limitation, copyrights, in and to, any drawings, specifications, and other documents related to the Innovations.

## **ARTICLE 7 CLAIMS AND DISPUTES**

### **§ 7.1 General**

**§ 7.1.1** Owner and Architect shall commence all claims and causes of action, whether in contract, tort, or otherwise, against the other arising out of or related to any Service Master Agreement, in accordance with the requirements of the method of binding dispute resolution selected in this Master Agreement, within the period specified by Applicable Law, but in any case not more than 10 years after the completion of the services provided pursuant to a specific Service Master Agreement, whichever is sooner. Completion of the services pursuant to a specific Service Master Agreement shall be the date of Substantial Completion of construction related to the services performed pursuant to the Service Master Agreement or, where there is no construction work related to a Service Master Agreement, the date Architect completes its services under the Service Master Agreement. Owner and Architect waive all claims and causes of action not commenced in accordance with this Section 7.1.1.

**§ 7.1.2** To the extent damages are covered by property insurance during construction, Owner and Architect waive all rights against each other and against the contractors, consultants, agents and employees of the other for damages. Owner or Architect, as appropriate, shall require of the contractors, consultants, agents and employees of any of them similar waivers in favor of the other parties enumerated herein.

**§ 7.1.3** Neither Architect nor Owner shall be liable to the other party for any indirect, incidental, punitive, special, or consequential damages (including, without limitation, any damages arising from loss of use or lost business, revenue, profits, data or goodwill) arising in connection with this Master Agreement, whether in an action in contract, tort, strict liability or negligence, or other actions, even if advised of the possibility of such damages. The foregoing exclusions of and limitations on liability shall not apply to:

- .1** damages arising from or relating to:
  - a.** breaches of the Confidentiality provisions to the extent that such breaches relate to the security system, or ownership of Instruments of Service provisions of this Master Agreement;
  - b.** misappropriation of Owner's property; or
  - c.** a party's willful misconduct or gross negligence; or

.2 the cost of procurement of substitute services in the event that Architect fails to perform Architectural Services required under this Master Agreement.

**§ 7.1.4** No member, officer, director, principal, stockholder, general or limited partner, joint venture, beneficiary, trustee, representative, volunteer participant, employee, agent or representative of Owner shall be personally liable to Architect under any term or provision of this Master Agreement for Owner's payment obligations or otherwise, or because of any breach hereof, Architect agreeing to look solely to Owner for the satisfaction of any liability of Owner hereunder. In no event shall Owner be liable to Architect except for payment for services rendered pursuant to and in accordance with this Master Agreement. No member, officer, director, principal, stockholder, general or limited partner, joint venture, beneficiary, trustee, representative, supplier, volunteer participant, employee, agent or representative of Architect shall be personally liable to Owner under any term or provision of this Master Agreement for Architect's obligations or otherwise, or because of any breach hereof, Owner agreeing to look solely to the assets of Architect for the satisfaction of any liability of Architect hereunder.

**§ 7.1.5** All claims, disputes or other matters arising out of or in connection with or related to this Master Agreement shall first be subject to mediation conducted in accordance with the provisions of Article 7.2 below.

**§ 7.1.6** The law of the Commonwealth of Massachusetts (without giving effect to its conflicts of law principles) shall govern all matters arising under or related a Service Master Agreement.

**§ 7.1.7** The provisions of this Article 7 shall survive the expiration or termination of this Master Agreement.

## **§ 7.2 Mediation**

**§ 7.2.1** Any claim, dispute or other matter in question arising out of or related to an Architect Release shall first be subject to mediation as a condition precedent to binding dispute resolution. If such matter relates to or is the subject of a lien arising out of Architect's services, Architect may proceed in accordance with Applicable Law to comply with the lien notice or filing deadlines prior to resolution of the matter by mediation or by binding dispute resolution.

**§ 7.2.2** Owner and Architect shall endeavor to resolve claims, disputes and other matters in question between them by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of this Master Agreement. A request for mediation shall be made in writing, delivered to the other party to this Master Agreement, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of a complaint or other appropriate demand for binding dispute resolution but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order.

**§ 7.2.3** The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Master Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

**§ 7.2.4** If the parties do not resolve a dispute through mediation pursuant to this Section 7.2, all disputes shall be subject to adjudication by a court of competent jurisdiction, and the venue for such action shall be Suffolk County or Middlesex County, Massachusetts. Owner and Architect hereby waive any and all rights to a jury trial with respect to disputes arising out of a Service Master Agreement and agree that any claim for a jury trial shall be stricken by consent if either party violates this provision. Owner and Architect agree that this is a commercially reasonable term and that it shall be specifically enforced.

## **ARTICLE 8      TERMINATION OR SUSPENSION OF SERVICE AGREEMENTS**

**§ 8.1** If Owner fails to make payments to Architect in accordance with an Architect Release, such failure shall be considered substantial nonperformance and cause for termination of Architect Release or, at Architect's option, cause for suspension of performance of services under Architect Release for which Owner failed to make payment. If Architect elects to suspend services, Architect shall give seven (7) days' written notice to Owner before suspending services. In the event of a suspension of services, Architect shall have no liability to Owner for delay or damage caused Owner because of such suspension of services. Before resuming services, Architect shall be paid all sums due prior to suspension and any expenses incurred in the interruption and resumption of Architect's services. Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

**§ 8.2** If the services under an Architect Release have been suspended by Owner, Architect shall be compensated for services performed prior to notice of such suspension. When the services under Architect Release are resumed, Architect shall be compensated for expenses incurred in the interruption and resumption of Architect's services. Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

**§ 8.3** If Owner suspends the services under an Architect Release for more than ninety (90) cumulative days for reasons other than the fault of Architect, Architect may terminate Architect Release by giving not less than seven days' written notice.

**§ 8.4** Either party may terminate an Architect Release upon not less than seven (7) days' written notice should the other party fail substantially to perform in accordance with the terms of Architect Release, through no fault of the party initiating the termination. Termination of an Architect Release under this Section 8.4 shall not be deemed a termination of other Architect Releases under this Master Agreement.

**§ 8.5** Owner may terminate an Architect Release, upon not less than seven (7) days' written notice to Architect for Owner's convenience and without cause.

**§ 8.6** In the event of termination of an Architect Release not the fault of Architect, Architect shall be compensated for services performed prior to termination, together with Reimbursable Expenses (as defined in Section 9.4) then due and all Termination Expenses (as defined in Section 8.7).

**§ 8.7** "Termination Expenses" are in addition to compensation for Architect's services and include expenses directly attributable to termination for which Architect is not otherwise compensated, plus an amount for Architect's anticipated profit on the value of the services not performed by Architect.

§ 8.8 Owner's rights to use Architect's Instruments of Service in the event of termination of an Architect Release are set forth in Article 6 and Section 12.4 of this Master Agreement.

**ARTICLE 9 COMPENSATION**

§ 9.1 Owner shall compensate Architect for the services described in an Architect Release pursuant to Architect Release and as set forth in this Article 9.

§ 9.2 Except as otherwise set forth in an Architect Release, the hourly billing rates for services of Architect and Architect's consultants, if any, are set forth below.

*(If applicable, attach an exhibit of hourly billing rates or insert them below.)*

«Hourly at the rates set forth in Architect Release, unless otherwise agreed in writing. »

Employee or Category	Rate (\$0.00)

§ 9.3 Except as otherwise set forth in an Architect Release, Owner shall compensate Architect for Additional Services designated in Article 4 as follows:

*(Insert amount of, or basis for, compensation. If necessary, list specific services to which particular methods of compensation apply.)*

« Hourly at the rates set forth in Article 9.2 above.

**§ 9.4 Compensation for Reimbursable Expenses**

§ 9.4.1 "Reimbursable Expenses" are in addition to compensation for Architect's professional services and include expenses incurred by Architect and Architect's consultants directly related to an Architect Release, as follows:

- .1 Transportation and authorized out-of-town travel and subsistence;
- .2 Long distance services, dedicated data and communication services, teleconferences, Project Web sites, and extranets;
- .3 Fees paid for securing approval of authorities having jurisdiction over the Project;
- .4 Printing, reproductions, plots, standard form documents;
- .5 Postage, handling and delivery;
- .6 Expense of overtime work requiring higher than regular rates, if authorized in advance by Owner;
- .7 Renderings, models, mock-ups, professional photography, and presentation materials requested by Owner;
- .8 Architect and Architect's consultant's expense of professional liability insurance dedicated exclusively to the Project, or the expense of additional insurance coverage or limits if Owner requests such insurance in excess of that normally carried by Architect or Architect's consultants, and disclosed by Architect in writing prior to execution of this Master Agreement or a related Architect Release;
- .9 All taxes levied on professional services and on reimbursable expenses;
- .10 Site office expenses; and
- .11 Other similar expenditures related to Architect's services.

**§ 9.4.2** For Reimbursable Expenses the compensation shall be the expenses incurred by Architect and Architect's consultants at the actual cost of the expenses incurred.

**§ 9.4.3** Reimbursable Expenses will be allocated to each Architect Release.

**§ 9.5 Intentionally Deleted**

**§ 9.6 Payments to Architect**

**§ 9.6.1** Unless otherwise agreed, payments for services provided pursuant to an Architect Release shall be made monthly in proportion to services performed. Payments are due and payable within thirty (30) days of Owner's receipt of Architect's invoice.

**§ 9.6.2** Owner shall not withhold amounts from Architect's compensation to impose a penalty or liquidated damages on Architect, or to offset sums requested by or paid to contractors for the cost of changes in the Work unless Architect agrees or has been found liable for the amounts in a binding dispute resolution proceeding. In any event, Owner shall not withhold payments to Architect pertaining to an Architect Release to offset amounts in dispute under a separate Architect Release.

**§ 9.6.3** Intentionally Deleted.

**§ 9.6.4** Records of Reimbursable Expenses, expenses pertaining to Additional Services, and services performed on the basis of hourly rates shall be available to Owner at mutually convenient times. Architect shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management under this Master Agreement, and the accounting and control systems shall be reasonably satisfactory to Owner. Owner and Owner's accountants shall be afforded access to, and shall be permitted to audit and copy, Architect's records, books, correspondence, instructions, drawings, receipts, subcontracts, purchase orders, vouchers, memoranda, and other data relating to Reimbursable Expenses or provided on an hourly basis under this Master Agreement, and Architect shall preserve these for a period of six (6) years after final payment, or for such longer period as may be required by law (the "Retention Period").

**§ 9.6.5** Architect's invoices shall include, at a minimum, the following information:

- .1 identification of the Project;
- .2 with respect to billings for Architectural Services, the month to which the invoice relates broken down by phase and/or category of services, and showing a comparison of the total amount billed to date for such phase and/or category of services versus the total agreed compensation for such phase and/or category of services;
- .3 a detailed list of the Additional Services performed during the month to which the invoice relates;
- .4 for all Additional Services that are to be compensated on the basis of hourly rates, then for each individual working on such Additional Services, their name, position, hourly rate and number of hours spent on the Additional Service;
- .5 for all Additional Services that are to be compensated on the basis of a lump sum mutually agreed by Owner and Architect, a statement of the basis for the amount due for the month to the invoice relates; and

- .6 for all Reimbursable Expenses, a detailed list of all Reimbursable Expenses for which Architect is seeking reimbursement, including the date on which such Reimbursable Expenses were incurred together with original invoices and / or receipts, where appropriate, together with a statement of whether the Reimbursable Expenses incurred to date are consistent with the estimate given to Owner as set forth in Article 9.4.2 and an explanation of any deviations.

**§ 9.6.6** Thirty (30) days after the final completion of Architectural Services, Architect shall submit a final request for payment which shall set forth all amounts due and remaining unpaid to Architect, including all Reimbursable Expenses, and, if properly due, Owner shall pay to Architect the amount due under such final request for payment within thirty (30) days of Owner's receipt of the request. Architect shall deliver to Owner together with such a final request for payment a complete release of all liens and an affidavit from Architect to the effect that to Architect's knowledge, belief and information, the release includes and covers all materials and services over which Architect has control for which a lien could be filed. Owner shall be under no obligation to pay Architect the amounts shown in the final request for payment until such an affidavit and lien release, in form(s) reasonably acceptable to Owner are submitted by Architect. Notwithstanding anything to the contrary set forth in this Master Agreement or in any Architecture Release, Owner shall have no responsibility (financial or otherwise) with respect to any invoices or expenses (including Reimbursable Expenses) incurred by Architect in connection with a Project if such invoices or expenses are submitted to Owner after the expiration of the 30-day time period set forth above.

## **ARTICLE 10 MISCELLANEOUS PROVISIONS**

**§ 10.1** Each Architect Release shall be governed by the law of the place where the Project described in Architect Release is located.

**§ 10.2** For each Architect Release, terms not defined in this Master Agreement or in Architect Release shall have the same meaning as those in AIA Document A201-2007, General Conditions of the Contract for Construction.

**§ 10.3** Owner and Architect, respectively, bind themselves, their agents, successors, assigns and legal representatives to each Architect Release. Neither Owner nor Architect shall assign an Architect Release without the written consent of the other, except that Owner may assign an Architect Release to a lender providing financing for the Project if the lender agrees to assume Owner's rights and obligations under Architect Release.

**§ 10.4** If Owner requests Architect to execute certificates, the proposed language of such certificates shall be submitted to Architect for review at least 14 days prior to the requested dates of execution. If Owner requests Architect to execute consents reasonably required to facilitate assignment to a lender, Architect shall execute all such consents that are consistent with Architect Release, provided the proposed consent is submitted to Architect for review at least 14 days prior to execution. Architect shall not be required to execute certificates or consents that would require knowledge, services or responsibilities beyond the scope of Architect Release.

**§ 10.5** Nothing contained in this Master Agreement or in an Architect Release shall create a contractual relationship with or a cause of action in favor of a third party against either Owner or Architect.

§ 10.6 Unless otherwise required in an Architect Release, Architect shall have no responsibility for the discovery, presence, handling, removal or disposal of, or exposure of persons to, hazardous materials or toxic substances in any form at the Project site.

§ 10.7 The performance of Owner or Architect may be suspended to the extent and for the period of time that such party is prevented or delayed from fulfilling its obligations due to a Force Majeure Event. A “**Force Majeure Event**” shall mean any unforeseen event beyond a party’s reasonable control (including, without limitation, acts of God, acts of terrorism, acts of civil or military authority, fires, floods, wars or riots); providing that the non-performing party is without fault in failing to prevent or causing such default or delay, and such default or delay could not have been prevented or circumvented by the non-performing party through the use of reasonable alternate services, work around plans or the reasonable precautions. After ninety (90) cumulative days of suspension by one party due to a Force Majeure Event, the other party may, at its sole discretion, terminate its obligations under the Master Agreement without any further liability, except with respect to those provisions which survive the expiration of this Master Agreement. In no event shall Owner’s obligation to pay Architect be excused by a Force Majeure Event.

§ 10.8 Failure of either party, at any time to enforce any of the provisions of this Master Agreement shall not be deemed to be a waiver of such or of any other provision hereof.

§ 10.9 This Master Agreement is not intended to create, nor should it be construed as creating, an agency, joint venture, partnership or similar relationship between the parties. Architect will act solely as an independent contractor of Owner and neither Owner nor Architect will have the right to act for or bind the other party in any way or to represent that the other party is in any way responsible for any acts or omissions of such party.

§ 10.10 Owner and Architect each represents and warrants that the execution and delivery of this Master Agreement has been duly authorized, that it has full power and authority to perform its obligations under this Master Agreement and that the person executing this Master Agreement on its behalf has the full authority to do so.

#### **ARTICLE 11 SPECIAL TERMS AND CONDITIONS**

Special terms and conditions that modify this Master Agreement are as follows:

§ 11.1 **Indemnity** To the fullest extent permitted by law, Architect at its own expense shall indemnify and hold harmless Owner, its affiliates, and their respective trustees, directors, officers, representatives, employees, successors and assigns, and each of them (collectively, the “**Indemnified Parties**”) from and against any claims, actions, proceedings, liabilities, losses, damages, costs and expenses, including reasonable legal fees, which the Indemnified Parties sustains as a result of any misconduct or any wrongful or negligent act, error or omission of Architect, its consultants, officers, agents, employees, or subconsultants that arise out of the Services hereunder or arise out of or result from Architect’s breach of the terms of this Master Agreement, except to the extent caused by the negligence or willful misconduct of any of the Indemnified Parties. Architect shall cause this indemnity obligation to be insured under its Professional Liability Insurance. The indemnity and hold harmless obligation set forth in this Section 11.1 shall survive the expiration or termination of this Master Agreement.

**§ 11.2 Payments.** To the extent that Owner has made the payments then due and payable to Architect under this Master Agreement with respect to any third parties hired by Architect to assist in the performance of Architectural Services, Architect shall indemnify and hold harmless the Indemnified Parties from and against any and all claims, demands, actions, damages, losses, costs and expenses (including without limitation, reasonable attorneys' fees) arising out of or relating to any claim made by any of such third parties for payment in connection with the Project. This indemnity and hold harmless obligation shall survive the expiration or termination of this Master Agreement.

**§ 11.3 Format** Prior to any electronic exchange by the parties of the Instruments of Service or any other documents or materials to be provided by one party to the other, Owner and Architect shall agree in writing on the specific conditions governing the format thereof. Unless otherwise agreed, all non-graphic documents shall be in Microsoft Word, Excel, Project format or Adobe Acrobat. All graphic documents shall be in Adobe Acrobat, or at Owner's request, Revit (.rvt) or Autocad (.dwg).

**§ 11.4 Required Tests** Before commencement of the construction phase of the Project, Architect shall provide to Owner for Owner's approval a list of all tests, inspections or reports that are required in the Contract Documents, including, but not limited to, those provided by Architect as a part of Architectural Services. This list shall designate the party responsible for the engagement of and payment to providers of those testing services. However, to the extent that testing or surveying services are necessary as a result of negligent errors, omissions or inconsistencies in the Contract Documents prepared by Architect, or in the negligent performance of Architectural Services by Architect, Architect shall pay the costs thereof.

**§ 11.5 Duty to Correct Instruments of Service** Architect shall promptly re-issue at no cost to Owner portions of or all of the Contract Documents or other Instruments of Service if (i) necessary to correct design errors or omissions found prior to or during the course of fabrication and/or construction, (ii) necessary due to failure to follow written instructions of Owner during any phase of the design, fabrication or the construction of the Project, or (iii) necessary due to Architect's failure to comply with the terms of this Master Agreement. Architect shall also be responsible for and shall indemnify Owner for all additional costs incurred by Owner, including but not limited to, additional consultants' costs (excluding betterment), if any, required to correct errors and/or omissions by Architect and the additional time and/or work made necessary as a result of such errors and omissions and Architect's subsequent correction of the Instruments of Service.

**§ 11.6 Gratuity** Architect warrants that it has not offered or given, and shall not offer or give, to any employee, agent or representative of Owner or its affiliates any gratuity or inducement with a view toward securing any business from Owner or its affiliates or influencing such person with respect to terms, conditions, or performance of any business dealing with or from Owner or its affiliates. Architect, its agents, employees and/or representatives warrant that they have not been offered or given by any consultant, subcontractor or other third party in connection with the Project, any gratuity or inducement with a view toward securing any business from Architect. Any breach of this Article 11.5 shall be considered a material breach of this Master Agreement, and shall allow Owner to terminate this Master Agreement immediately at its sole discretion and allow Owner to avail itself of any and all remedies either at law or in equity.

**§ 11.7 Foreign Corrupt Practices Act** Architect represents, warrants and covenants that it has not and shall not violate, or cause Owner to violate the United States Foreign Corrupt Practices Act or any other applicable anticorruption laws or regulations ("FCPA") in connection with the Services provided to Owner

under this Master Agreement and that it has not, and agrees that it shall not, in connection with the Services, or in connection with any other business transactions involving Owner, pay, offer, promise, or authorize the payment or transfer of anything of value, directly or indirectly to: (a) any government official or employee (including employees of government owned or controlled companies or public international organizations) or to any political party, party official, or candidate for public office or (b) any other person or entity if such payments or transfers would violate the laws of the country in which made or the laws of the United States.

It is the intent of the parties that no payments or transfers of value by Owner or Architect in connection with this Master Agreement shall be made which have the purpose or effect of public or commercial bribery, or acceptance of or acquiescence in, extortion, kickbacks, or other unlawful or improper means of obtaining business.

Architect represents, warrants and covenants that it is familiar with the provisions of the FCPA and agrees that: (a) neither Architect nor its owner's, partners, officers, directors, employees, or agents is a government official or employee (including an employee of a government-owned or -controlled company or of a public international organization), is a political party official or employee of a political party, or is a candidate for public office, in each case in a non-U.S. location; and (b) it has not previously engaged in conduct that would have violated the FCPA had Architect been subject to its terms.

**§ 11.8 Conflicts of Interest** Architect shall promptly notify Owner if during the term of this Master Agreement, Architect becomes aware of any situation which may present a material conflict of interest between Architect and/or its affiliates on one side and Owner and/or Owner's affiliates on the other side, and Architect agrees that it shall not proceed, and shall cause its affiliates not to proceed, with the conflict of interest situation without Owner's consent. Potential conflict of interest situations include but are not limited to the following: (i) Architect or its affiliates are employed by Owner in any capacity; (ii) Architect or its affiliates hold a direct or indirect ownership interest in any proposed subconsultant which Architect recommends for award of a contract on a Project; and (iii) Architect or its affiliates hold a direct or indirect proprietary interest in any patent or design of construction, in any building procedures or materials, or in any insurance products recommended by Architect, which if used on the Project, would involve the payment of royalties, fees, or commissions benefiting Architect apart from the amounts payable to Architect under this Master Agreement.

**§ 11.9 No Subcontracting.** Architect shall not subcontract any part of Architectural Services without the prior written approval of Owner, which consent may be withheld in the sole discretion of Owner. Architect shall not subcontract any part of Architectural Services to entities not incorporated or based in the United States of America. Any subcontracting of any part of Architectural Services shall be on the following terms and conditions:

**§ 11.9.1** Any subcontracting hereunder shall not relieve Architect of its responsibility for the performance of all its obligations under this Master Agreement.

**§ 11.9.2** Architect shall be responsible for all payments due to its subcontractors and for all payments due to their subcontractors and shall supply Owner evidence of such payment promptly upon demand by Owner.

**§ 11.9.3** Architect shall be responsible for the work and activities of each of its subcontractors, including compliance with the terms of this Master Agreement. Architect shall ensure that all

third parties engaged by Architect (as permitted by Owner), including any subcontractors, are expressly made aware of all applicable terms and provisions of this Master Agreement and that such third parties strictly abide by the terms of this Master Agreement. Owner shall not be a party to or be liable under any contracts between Architect and any third party, but Owner is an intended third party beneficiary of all contracts with all subcontractors and other agreements between Architect and such third parties. Architect shall incorporate this provision of this Master Agreement into its respective contracts with subcontractors and other agreements between Architect and third parties related to this Master Agreement.

**§ 11.9.4** Prior to Architect entering into a subcontract with a third party for the performance of any Architectural Services or any of its other obligations under this Master Agreement, Architect shall (i) give Owner reasonable prior written notice specifying the components of Architectural Services affected, the scope of the proposed subcontract, the identity and qualifications of the proposed subcontractor, and the reasons for subcontracting the Services in question; and (ii) obtain Owner's prior written approval of such subcontractor. In addition, Owner shall have the right to review and approve the subcontract (other than financial terms), or a summary of the relevant subcontract terms between Architect and such a subcontractor. Owner shall also have the right to revoke its prior approval of a subcontractor or otherwise direct Architect to replace or cause the replacement of such subcontractor as soon as possible where the subcontractor's performance is materially deficient (with respect to the scope of the Services performed by such subcontractor) or if there are other reasonable grounds for removal related to such subcontractor's ability to perform Services. Architect shall remove such subcontractor and continue to perform its obligations under this Master Agreement, notwithstanding the removal of the subcontractor.

**§ 11.9.5** Any mechanic's lien filed against the Project site for services claimed to have been done for, or materials claimed to have been furnished to Architect shall be discharged by Architect within thirty (30) days after the filing thereof, at the expense of Architect, by filing the bond required by Law or otherwise. If Architect fails so to discharge any lien within such thirty (30) day period, then thereafter Owner may do so upon ten (10) days' notice to Architect at Architect's expense and Architect shall reimburse Owner for any reasonable expense or cost incurred by Owner in so doing within thirty (30) days after rendition of a bill therefore, together with interest on such cost or expense at the rate of Owner's then Prime Rate plus two percent (2%) from the date of such payment, which interest shall be due and payable only in event the reimbursement occurs after the thirty (30) day period provided herein.

**§ 11.10 Access to Owner's Facilities.** If Owner provides access to Owner's facilities, then Architect shall comply with the provisions of this Section 11.10, any such other Owner's rules, regulations and procedures provided to Architect, and Applicable Law.

**§ 11.10.1** While onsite at any of Owner's facilities, Architect, its employees, subcontractors and agents shall not:

- .1 prop open any exterior door at any time;
- .2 use Owner's equipment (e.g. computer, television, radio) without prior written authorization from Owner; or

- .3 make any outgoing calls using Owner's telephones *with the exception* of calling 911 or Owner. In the event 911 or Owner is contacted:
- (a) Architect, its employees, subcontractor or agents shall be permitted to answer Owner's telephone in order to eliminate any false police dispatches by Owner;
  - (b) Architect, its employees, subcontractor or agents shall be required to return to the location to secure any exterior door that they have left unlocked (at no cost to Owner);
  - (c) in the event an individual does not speak English, he/she shall call his/her supervisor who shall then call Owner using the number provided to them; and
  - (d) Architect shall be responsible for fully reimbursing Owner for the cost of any alarms or damages to equipment caused by Architect's negligence or failure to follow the these procedures.

**§ 11.10.2** Architect shall not permit or accompany any unauthorized persons onto any of Owner's property (including personal acquaintances, children, relatives or spouses of Architect's employees, subcontractors or agents).

**§ 11.10.3** Architect, its employees, subcontractors or agents shall contact Owner's Security Command Center if any individual (other than recognized members of Owner's, Architect's or Contractor's development team on the Project) arrives at Owner's location that is not accompanied by Owner's staff member and requests access to the property while Architect is onsite including, but not limited to, law enforcement officers.

**§ 11.10.5** Subject to Applicable Law, and in addition to its other obligations as set forth in this Master Agreement, Architect shall require any individual it employs or engages in connection with the performance of its obligations under this Master Agreement and in connection with performing and providing Architectural Services and to abide by the following terms:

**§ 11.10.5.1** keep any keys to any of Owner's locations secured on their person at all reasonable times while undertaking Architectural Services;

**§ 11.10.5.1** at all times comply with established entry procedures when entering Owner's locations;

**§ 11.10.5.1** Architect shall suitably reprimand any individual who fails to de-activate alarms as required under any entry procedures and who has been instructed as to the correct procedure.

**§ 11.10.6** When keys to Owner's locations are held at Architect locations, they shall be kept safe and secure and, without prejudice to the foregoing generality, in a secure immovable lockable cabinet or safe.

§ 11.10.7 When keys to Owner's locations are lost (including by reason of theft) or misplaced, Architect shall notify Owner within twenty-four (24) hours of the loss via telephone and electronic mail. Architect shall be responsible to reimburse Owner for any costs incurred by Owner to replace such keys and locks within thirty (30) calendar days from the date the locks or keys were replaced.

§ 11.10.8 Architect shall perform audits of all keys and combination locks on a quarterly basis and shall maintain, for the term of this Master Agreement, an accurate log, which shall include key owners, individuals with copies of keys and combinations, and proper records indicating that any individual who leaves Owner's account has properly returned all keys.

§ 11.10.9 Owner shall, at its own discretion, be authorized to audit Architect's key and combination lock procedures related to access to Owner's locations. Where provided, Architect shall use Owner's template for tracking keys.

§ 11.10.10 Keys shall not be tagged in such a manner that they contain information identifying them as Owner's keys.

§ 11.10.11 Architect shall account for all keys in its possession and have written records of Architect employees who have keys at all times.

§ 11.10.12 Architect shall provide prior written notice no less than thirty (30) days of its intent to provide any Owner's-authorized subcontractor with keys to Owner's facilities. No subsequent transfer of keys is authorized without Owner's prior written approval. Architect shall maintain an auditable list of the names of any subcontractor's employees who have possession of keys.

**§ 11.11 Change in Financial Condition.** Architect shall provide prompt notice to Owner in the event of any significant change in Architect's financial condition or business strategy that may result in an impact to the Services including, but not limited to, significant staffing reductions or Architect's decision to outsource or sell operations or support divisions associated with the applications, data, network or other critical components of the environment used to provide Architectural Services to Owner.

**§ 11.12 Records Retention.** Architect shall maintain complete and accurate records of, and supporting documentation for, all services provided under this Master Agreement ("**Contract Records**"). Until the end of the Retention Period, Architect shall maintain and provide access upon request to the Contract Records. Before Architect destroys or otherwise disposes of any Contract Records, Owner shall have the right to request Architect to return such Contract Records by giving notice at least sixty (60) days prior to the applicable record retention expiration date, and Architect shall deliver such information to Owner.

**§ 11.13 Assignment and Successors.** Neither party may assign its rights or delegate its duties hereunder, whether by operation of Law or otherwise, without the express written consent of the other party, which consent shall not be unreasonably withheld. Any attempted assignment that does not comply with the terms of this Section shall be null and void. Notwithstanding the foregoing, Architect hereby consents to any future Owner assignments of its rights or delegation of its duties to one or more of Owner's Affiliates, or to an acquiring or surviving entity in a merger or acquisition in which Owner is the acquired entity (whether by merger, reorganization, acquisition or sale of stock) or to the purchaser of all or substantially all of Owner's assets. This Master Agreement shall bind and inure to the benefit of

the parties to this Master Agreement and their respective successors, representatives, and permitted assigns.

**§ 11.14 Audits.** Architect shall, from time to time during regular business hours and upon reasonable notice, permit Owner, its representatives, federal regulators or federal contractors to perform audits of Architect's and its subcontractors' facilities, equipment, books and records (electronic or otherwise), operational systems, employees, contractors, subcontractors, and such other audits to the extent necessary to ensure Architect's and its subcontractors' compliance with the terms and conditions of this Master Agreement, as well as Applicable Laws and to ensure Architect's financial and operational viability, including but not limited to Architect's internal controls, pre-engagement employee screening, information and other security, business resumption, continuity, recovery, Service Level compliance, and contingency plans. The terms and conditions of such audit shall be governed by Exhibit B attached hereto.

**§ 11.14 Equal Employment Opportunity Requirements.** Architect shall perform the Services in compliance with, and shall be subject to, the terms and conditions of Owner's Equal Employment Opportunity Requirements, which are set forth in Exhibit C attached hereto and incorporated herein.

## **ARTICLE 12 CONFIDENTIALITY; PUBLIC ANNOUNCEMENTS**

**§12.1** Architect shall maintain as confidential and, except as required by law, shall not disclose, copy, or use for purposes other than the performance of this Master Agreement, any Confidential Information, and agrees to protect such Confidential Information with the same degree of care a prudent person would exercise to protect its own confidential information and to prevent the unauthorized, negligent, or inadvertent use, disclosure, or publication thereof. For purposes of this Master Agreement, "**Confidential Information**" shall mean any and all written, oral and visual technical, trade secret or business information of Owner or its affiliates, including without limitation, financial information, business or real estate plans, requirements or strategies, technology and security plans, equipment or systems, which is disclosed to Architect by Owner, its affiliates or their contractors, agents or representatives. Confidential Information shall not include information that is publicly known at the time of the disclosure or becomes publicly known through no wrongful act or failure of Architect, or any of Architect's personnel, attorneys, accounts, its consultants, sub-consultants or other advisors.

**§12.2** Architect shall notify Owner in writing of any unauthorized, negligent or inadvertent use or disclosure of or access to the Confidential Information promptly following Architect's discovery of such use, disclosure or access and shall promptly take measures to minimize the effect of such inadvertent use, disclosure or access and prevent its recurrence.

**§12.3** Architect shall be liable under this Master Agreement to Owner for any use or disclosure in violation of this Article 13 by Architect or any of Architect's personnel, attorneys, accountants or other advisors. Upon expiration or termination of this Master Agreement, or at any time upon demand by Owner, Architect agrees to return to Owner all Confidential Information. The parties agree that disclosure of Confidential Information will cause irreparable damage to Owner and therefore, in addition to all other remedies available at law or in equity, Owner shall have the right to seek injunctive relief, and to recover the amount of damages (including reasonable attorneys' fees and expenses) incurred in connection with such unauthorized use.

**§12.4** Architect shall not make any public announcements or publicity releases regarding the Project or this Master Agreement without Owner's prior written consent, which Owner may withhold in its sole discretion. Architect shall not use nor permit its Subcontractors or Architect's Consultants to use (a) the name of "Massachusetts Institute of Technology," or any variation, adaptation, or abbreviation thereof, or (b) the names of any of its trustees, officers, faculty, students, employees, or agents, or (c) any trademark owned by Owner, or (d) any terms of this Master Agreement in any promotional material or other public announcement or disclosure without the prior written consent of the Director of Owner's Technology Licensing Office and Owner's Designated Representative, such consent to be granted or withheld in Owner's sole discretion. Architect may include photographic or artistic representations of such design in its promotional, academic, and professional materials provided they have been publicly released by Owner or are approved in advance by Owner and they do not include any Confidential Information. Architect shall be given reasonable access to the completed Project to make such representations. Any of Owner's promotional materials specifically referring to such design shall where fitting give credit to Architect.

**ARTICLE 13 SCOPE OF THIS MASTER AGREEMENT**

This Master Agreement represents the entire and integrated Master Agreement between Owner and Architect and supersedes all prior negotiations, representations or agreements, either written or oral. This Master Agreement may be amended only by written instrument signed by both Owner and Architect.

**ARTICLE 14 AUTHORITY**

**§ 14.1** Owner represents and warrants to Architect as follows: (i) the person or persons executing this Master Agreement on behalf of Owner has or have been duly authorized to do so; (ii) such execution has fully obligated and bound Owner to all the terms and provisions of this Master Agreement; and (iii) Owner has no obligation to obtain the consent of any joint venture party or other third party to enter into this Master Agreement, or, if Owner has any such obligation, such consent has been previously obtained and is in full force and effect.

**§ 14.2** Architect represents and warrants to Owner as follows: (i) the person or persons executing this Master Agreement on behalf of Architect has or have been duly authorized to do so; (ii) such execution has fully obligated and bound Architect to all the terms and provisions of this Master Agreement; and (iii) Architect has no obligation to obtain the consent of any joint venture party or other third party to enter into this Master Agreement, or, if Architect has any such obligation, such consent has been previously obtained and is in full force and effect.

***[SIGNATURE PAGE FOLLOWS]***

This Master Agreement is entered into by the undersigned as of the Effective Date.

**OWNER**

**ARCHITECT**

**MASSACHUSETTS INSTITUTE OF TECHNOLOGY**

**[INSERT]**

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

Name: Richard L. Amster, Jr.

Title: Director, Campus Construction

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

Name:

Title:

**Reviewed for form (only one approval is necessary):**

Maya K. Plotkin  
Office of the General Counsel

Michael M. Lieberman  
Manager – CRSP & Contracts Administration

**Reviewed for content:**

Project Manager: \_\_\_\_\_  
Department of Facilities

EXHIBIT A

FORM OF ARCHITECT RELEASE

ARCHITECT RELEASE NUMBER

THIS ARCHITECT RELEASE NUMBER « » is made as of the « » day of « » in the year « » (the "Effective Date") by and between the following parties,

**OWNER:**

Massachusetts Institute of Technology  
Department of Facilities  
77 Massachusetts Avenue  
Building NW23  
Cambridge, Massachusetts 02139

**ARCHITECT:**

« »  
« »  
« »  
« »

for the following **PROJECT:**  
(Name, location and detailed description)

MIT Project No.  
MIT Contract No.

**THE SERVICE AGREEMENT**

This Architect Release, together with the Master Design Agreement between Owner and Architect dated as of \_\_\_\_\_, 2018 (the "Master Agreement"), shall form a "Service Agreement". A Service Agreement represents the entire and integrated agreement between the parties and supersedes prior negotiations, representations, or agreements, either written or oral. A Service Agreement may be amended or modified only by a Modification. To the extent the terms of this Architect Release conflict with the terms of the Master Agreement, the terms of this Architect Release shall control.

**TABLE OF ARTICLES**

- 1 PROJECT INFORMATION**
- 2 INSURANCE**
- 3 ARCHITECT'S SERVICES**
- 4 OWNER'S RESPONSIBILITIES**
- 5 COMPENSATION**
- 6 ATTACHMENTS AND EXHIBITS**

**ARTICLE 1  
PROJECT INFORMATION**

**1.1 Initial Information.** Unless otherwise provided in an exhibit to this Architect Release, this Architect Release and the Service Agreement are based on the Initial Information set forth below:

- Contractor:** [Name]  
[Address 1]  
[Address 2]
- Program and Project Requirements:** [Provide available information regarding requirements for the Project, including design objectives, constraints, criteria, space requirements and relationships, flexibility, expandability, special equipment and systems and site requirements.]
- Digital Design Documents:** Owner requires the use of two dimensional computer aided design (CAD) for this Project.
- In addition, Owner requires the use of building information modeling (BIM) for this Project in the:
    - Conceptual Design Phase
    - Schematic Design Phase
    - Presentation Design Phase
- Sustainability, Energy, and Emissions Impacts:**
- Applicable green building rating system certification level: [Insert level]
  - Green building certification is not applicable
  - Completed Energy and Emissions Impact Calculator (EEIC)
  - Project has no impact on energy or greenhouse gas emissions
- Control Budget:**
- Owner and Architect acknowledge that the Control Budget is \$ \_\_\_\_\_, and that this amount is sufficient to construct the Project.
  - The Control Budget may be established by Owner upon written notice to Architect at which time Architect accepts that this amount is sufficient to construct the Project unless notice to Owner is provided in accordance with Article 4 of the Agreement.
- Progress Meetings** Regular meetings in accordance with § 3.1.4 will be completed:
- \_\_\_\_\_ times per \_\_\_\_\_ on average at all times during all design phases
  - \_\_\_\_\_ times per \_\_\_\_\_ on average during the Construction Phase

« »

**1.2 Construction and Completion Dates.** Unless otherwise provided in an exhibit to this Architect Release, Owner's anticipated dates for commencement of construction and Substantial Completion of the Work are set forth below:

.1 Commencement of construction date:

« »

.2 Substantial Completion date:

« »

**1.3 Representatives.**

(a) Owner identifies the following representative in accordance with Section 1.4.1 of the Master Agreement:

*(List name, address and other information.)*

Richard L. Amster, Jr.  
Director, Campus Construction  
77 Massachusetts Avenue  
Building NW23  
Cambridge, Massachusetts 02139

(b) Architect identifies the following representative in accordance with Section 1.5.1 of the Master Agreement:

*(List name, address and other information.)*

« »  
« »  
« »  
« »  
« »  
« »

**1.4 Architect's Consultants.** Architect identifies the following consultants in accordance with Section 3.1.2 of the Master Agreement (collectively the "Architect's Consultants"):

*(List name, address and other information.)*

« »  
« »  
« »  
« »  
« »  
« »

**1.5 Reliance on Information.** Owner and Architect may rely on the Initial Information. Both parties, however, recognize that such information may materially change and, in that event, Owner and Architect shall appropriately adjust the schedule, Architect's services and Architect's compensation.

**ARTICLE 2  
INSURANCE**

Architect shall maintain insurance as set forth in the Master Agreement. If Architect is required to maintain insurance exceeding the requirements set forth in the Master Agreement, those additional requirements are as follows:

Commercial General Liability

\$2,000,000 Combined Single Limit Bodily Injury and Property Damage Each Occurrence  
 \$2,000,000 Personal and Advertising Injury  
 \$4,000,000 General Aggregate  
 \$4,000,000 Products and Completed Operations Aggregate

Automobile

\$2,000,000 Combined Single Limit Each Accident

Worker's Compensation

Statutory limits

Employer's Liability

\$1,000,000 Bodily injury for each accident  
 \$1,000,000 Bodily injury for disease for each employee  
 \$1,000,000 Bodily injury disease aggregate

Professional Liability (Errors and Omissions)

	<u>Each Claim</u>	<u>Annual Aggregate</u>
If Control Budget is < \$2,000,000:	\$2,000,000	\$5,000,000
If Control Budget is \$2,000,000 – \$100,000,000:	\$5,000,000	\$5,000,000
If Control Budget is > \$100,000,000:	\$10,000,000	\$10,000,000

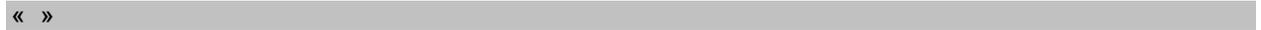
Professional Liability (Environmental Consulting\*)

\$5,000,000 Each Claim

Umbrella Liability

\$5,000,000 Each Claim

\* Including environmental impairment liability endorsement (pollution/mold)



**ARTICLE 3  
ARCHITECT'S SERVICES**

**3.1 Services Performed.** The Services shall be governed by and shall be performed in accordance with and pursuant to the Master Agreement. Architect acknowledges and agrees that for the above-referenced Project, Architect shall perform all of the Services set forth in Section 3.1 of the Master Agreement and those certain Services selected below by checkmark, as defined and more fully set forth in the referenced paragraphs of the Master Agreement (collectively, the "**Base Services**").

**§ 3.2 Conceptual Design Phase Services**

§ 3.2.1 Strategic project planning

§ 3.2.2 Programming and space analysis

- § 3.2.3 Site analysis and development
- § 3.2.4 Existing facilities assessment
- § 3.2.5 Design concepts
- § 3.2.6 Estimating
- § 3.2.7 Project sequencing
- § 3.2.8 Presentation materials
- Other: [Describe service]
- Other: [Describe service]
- Require written notice to proceed with next phase

### § 3.3 Schematic Design Phase Services

- § 3.3.1 Strategic project planning
- § 3.3.2 Program review and evaluation
- § 3.3.3 Design standards review and evaluation
- § 3.3.4 Programming and space analysis
- § 3.3.5 Site analysis and development
- § 3.3.6 Building analysis
- § 3.3.7 Existing facilities assessment
- § 3.3.8 Analysis of at least 3 alternatives
- § 3.3.9 Architectural design
- § 3.3.10 Structural design
- § 3.3.11 Mechanical design
- § 3.3.12 Electrical design
- § 3.3.13 Civil design
- § 3.3.14 Landscape design
- § 3.3.15 Interior design
- § 3.3.16 FF&E
- § 3.3.17 Materials research and specifications
- § 3.3.18 Estimating
- § 3.3.19 Life Cycle Costs Analysis
- § 3.3.20 Value Engineering
- § 3.3.21 Energy and Emissions Impact Calculator
- Other: [Describe service]
- Other: [Describe service]
- Require written notice to proceed with next phase

### § 3.4 Design Development Phase Services

- § 3.4.1 Program re-evaluation
- § 3.4.2 Architectural design
- § 3.4.3 Space inventory information
- § 3.4.4 Structural design
- § 3.4.5 Mechanical design
- § 3.4.6 Electrical design
- § 3.4.7 Civil design
- § 3.4.8 Landscape design
- § 3.4.9 Interior design
- § 3.4.10 FF&E
- Detailed furniture Specification
- § 3.4.11 Specifications
- § 3.4.12 Estimating
- § 3.4.13 Clash Detection
- § 3.4.14 Constructability review
- § 3.4.15 Value engineering
- § 3.4.16 Energy and Emissions Impact Calculator

- Other: [Describe service]
- Other: [Describe service]
- Submissions at [80]% and 100%
- Require written notice to proceed with next phase

### § 3.5 Construction Documents Phase Services

- § 3.5.1 General
- § 3.5.2 Project manual
- § 3.5.3 Construction phasing plans
- § 3.5.4 Space inventory plans
- § 3.5.5 Signage
- § 3.5.6 Estimating, at [80]%
- § 3.5.7 Clash Detection
- § 3.5.8 Constructability review
- § 3.5.9 Value engineering
- § 3.5.10 Stamped set
- § 3.5.11 Project equipment list
- § 3.5.12 Energy and Emissions Impact Calculator
- Other: [Describe service]
- Other: [Describe service]
- Submissions, at [80]% and 100%
- Require written notice to proceed with next phase

### § 3.6 Procurement Phase Services

- § 3.6.1 Risk analysis
- § 3.6.2 List of bidders
- § 3.6.3 Bid documents
- § 3.6.4 Pre-bid conference
- § 3.6.5 Clarifications
- § 3.6.6 Bid analysis
- § 3.6.7 IFC documents
- § 3.6.8 GMP proposal
- § 3.6.9 Early releases

### § 3.7 Construction Phase Services

- § 3.7.1 Commencement
- § 3.7.2 Preconstruction conference
- § 3.7.3 Interpretation of Contract Documents
- § 3.7.4 Site visits
- § 3.7.5 Submittals
- § 3.7.6 Applications for payment
- § 3.7.7 Substantial Completion
- § 3.7.8 Final Completion
- § 3.7.9 Conformed As-Built Documents
- Other Services (Detailed Scope Attached)**
  - [Describe service]
  - [Describe service]

« »

**3.3 Additional Services**

*(Describe below the Additional Services Architect shall provide pursuant to this Architect Release or state whether the services are described in documentation attached to this Architect Release.)*

« »

**ARTICLE 4  
OWNER'S RESPONSIBILITIES**

Owner shall have those responsibilities set forth in the Master Agreement and as follows:  
*(Describe Owner's responsibilities related to this Architect Release not otherwise described in the Master Agreement, including, as applicable, surveys, tests, inspections, and reports to be provided by Owner, and Architect's access to the site.)*

« »

**ARTICLE 5  
COMPENSATION**

**5.1 Base Services.** For Base Services, Owner shall compensate Architect as follows:  
*(Insert amount of, or basis for, compensation. Where the basis of compensation is set forth in an exhibit to this Architect Release, such as a Scope of Architect's Services document, list the exhibit below.)*

**Basis of the Fee:**

- Fixed Fee
- Not to Exceed (NTE) against hourly billings
- Percentage of Control Budget

Fee by Phase	Fee	Completion date
Memorandum of Understanding	\$ 0.00	
Test Fit Plans	\$ 0.00	
Conceptual Design Phase	\$ 0.00	
Preliminary Design Phase	\$ 0.00	
Design Development Phase	\$ 0.00	
Construction Documents Phase	\$ 0.00	
Procurement Phase	\$ 0.00	
Construction Phase	\$ 0.00	
<b>Total</b>	\$ 0.00	

Separately Priced Services	Fee	Basis	Reimbursable Expenses	Completion Date
[Describe service]	\$ 0.00	Fixed	Included	
<b>Total</b>	\$ 0.00			

« »

**5.2 Additional Services.** For Additional Services described under Section 3.1.2 or in the Master Agreement, Architect shall be compensated in accordance with the Master Agreement unless otherwise set forth below:

*(Insert amount of, or basis for, compensation if other than as set forth in the Master Agreement. Where the basis of compensation is set forth in an exhibit to this Architect Release, such as a Scope of Architect's Services document, list the exhibit below.)*

« »

**5.3 Reimbursable Expenses.** For Reimbursable Expenses, Architect shall be compensated in accordance Section 9.4 of the Master Agreement unless otherwise set forth below:

*(Insert amount of, or basis for, compensation if other than as set forth in the Master Agreement. Where the basis of compensation is set forth in an exhibit to this Architect Release, such as a Scope of Architect's Services document, list the exhibit below.)*

« »

**ARTICLE 6  
ATTACHMENTS AND EXHIBITS**

The following attachments and exhibits, if any, are incorporated herein by reference:

Exhibit A: Form of Construction Contract

*(List other documents, if any, and any exhibits relied on in Article 3.)*

« »

This Architect Release Number \_\_\_\_\_ is entered into as of the Effective Date.

**OWNER**

**ARCHITECT**

**MASSACHUSETTS INSTITUTE OF TECHNOLOGY**

**[INSERT]**

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

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

Name: Richard L. Amster, Jr.

Name:

Title: Director, Campus Construction

Title:

**Reviewed for form (only one approval is necessary):**

Maya K. Plotkin  
Office of the General Counsel

Michael M. Lieberman  
Manager – CRSP & Contracts Administration

**Reviewed for content:**

Project Manager: \_\_\_\_\_  
Department of Facilities

## EXHIBIT A

### FORM OF CONSTRUCTION CONTRACT

#### **Master Construction Agreement Between Owner and Contractor**

#### **(Preconstruction and/or Construction)**

This Master Construction Agreement (this “**Agreement**”) is made effective as of the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ (the “**Effective Date**”) by and between MASSACHUSETTS INSTITUTE OF TECHNOLOGY, a Massachusetts 501(c)(3) non-profit corporation (“**Owner**”), and [INSERT CONTRACTOR NAME], a \_\_\_\_\_ (“**Contractor**”), and establishes terms by which Contractor shall perform the Preconstruction Work and/or Work (as described herein) to be awarded by Owner, in its sole discretion, pursuant to the form of Release attached hereto as Exhibit A, in connection with project(s) of varying size or portions as defined thereof (each a “**Project**”). The scope of Preconstruction Work, Work, schedule, budget and other criteria for each Project will be set forth in the applicable Release. For purposes of this Agreement, the term “Contractor” shall refer to either a contractor or a construction manager, as applicable pursuant to definitions established by common industry standards.

#### ARTICLE 1 PARTIES; TERM

- 1.1 Owner
- 1.2 Contractor
- 1.3 Term

#### ARTICLE 2 DEFINITIONS; INTERPRETATION

- 2.1 Definitions
- 2.2 Interpretation of Contract Documents

#### ARTICLE 3 PRECONSTRUCTION

- 3.1 General
- 3.2 Preconstruction Work
- 3.3 Compensation for Preconstruction Work

#### ARTICLE 4 CONSTRUCTION WORK

- 4.1 Stipulated Sum
- 4.2 Guaranteed Maximum Price
- 4.3 Time and Materials
- 4.4 General Terms and Conditions – Construction

#### ARTICLE 5 PAYMENT

- 5.1 Schedule of Values
- 5.2 Retainage
- 5.3 Applications for Payment
- 5.4 Certificates for Payment
- 5.5 Decisions to Withhold Certification
- 5.6 Progress Payments
- 5.7 Final Payment
- 5.8 Joint Checks
- 5.9 Failure of Payment
- 5.10 Taxes
- 5.11 Audit
- 5.12 Limitation on Payment

ARTICLE 6 PROCUREMENT SERVICES

- 6.1 Early Release Packages
- 6.2 Prequalification
- 6.3 Bid Packages
- 6.4 Pre-Bid Conference
- 6.5 Bid Analysis

ARTICLE 7 GENERAL TERMS AND CONDITIONS

- 7.1 Safety
- 7.2 Hazardous Materials
- 7.3 Tests, Inspections and Correction
- 7.4 Standard of Care
- 7.5 Personnel; Contractor's Designated Representatives
- 7.6 Subcontractors
- 7.7 Labor
- 7.8 Affirmative Action
- 7.9 Required Information
- 7.10 Communications Protocol
- 7.11 Corrections
- 7.12 Staffing Plan
- 7.13 BIM
- 7.14 E-Builder

ARTICLE 8 INTENTIONALLY DELETED

ARTICLE 9 INSURANCE

- 9.1 Contractor's Insurance Limits and Coverages
- 9.2 Subrogation Waiver
- 9.3 Bonding

ARTICLE 10 OWNER

- 10.1 Fiduciary Relationship
- 10.2 Design Professionals
- 10.3 Owner's Right to Carry Out the Work
- 10.4 Performance by Owner or Separate Contractors

ARTICLE 11 CHANGES IN THE WORK

- 11.1 Owner Changes
- 11.2 Change Orders
- 11.3 Construction Change Directives
- 11.4 Change Pricing.
- 11.5 Support for Changes
- 11.6 Requests for Change Orders.
- 11.7 Unit Prices and Allowances
- 11.8 Concealed or Unknown Conditions

ARTICLE 12 TIME

- 12.1 Time Is Of The Essence
- 12.2 Owner's Calendar
- 12.3 Delays
- 12.4 Early Completion
- 12.5 Acceleration
- 12.6 Liquidated Damages

ARTICLE 13 INDEMNITY

ARTICLE 14 TERMINATION OR SUSPENSION

- 14.1 Suspension
- 14.2 Termination for Cause
- 14.3 Termination for Convenience
- 14.4 Obligations on Termination
- 14.5 Termination Expenses
- 14.6 Work Completed

ARTICLE 15 CLAIMS AND DISPUTE RESOLUTION

- 15.1 Claims
- 15.2 Mediation
- 15.3 Arbitration
- 15.4 Litigation
- 15.5 Limitation on Damages

ARTICLE 16 MISCELLANEOUS

- 16.1 Ownership of Documents
- 16.2 Notices
- 16.3 Confidentiality
- 16.4 Use of Owner's Name
- 16.5 Representations of Project
- 16.6 Non-Assignability
- 16.7 Liens
- 16.8 Compliance with Laws
- 16.9 Continuing Duty
- 16.10 Non-Waiver
- 16.11 Force Majeure
- 16.12 Severability
- 16.13 Third-Parties
- 16.14 Setoff and Recoupment
- 16.15 Independent Contractor
- 16.16 Interpretation
- 16.17 Integration
- 16.18 Governing Law
- 16.19 Successors and Assigns
- 16.20 Multiple Counterparts

ARTICLE 17 EXHIBITS INCORPORATED INTO AGREEMENT.

- Exhibit A Form of Release
- Exhibit B Audit Provisions
- Exhibit C Equal Employment Opportunity Policy

## ARTICLE 1. PARTIES; TERM

### 1.1 Owner:

Massachusetts Institute of Technology  
Department of Facilities  
77 Massachusetts Ave., Building NW23  
Cambridge, MA 02139

### 1.2 Contractor:

<CM>  
<Address>  
<Address>

**1.3 Term.** This Agreement shall be for a term of three (3) years commencing on the Effective Date and shall thereafter renew on an annual basis, on the day and month of the Effective Date, unless either party provides written notice of its intent not to renew this Agreement at least sixty (60) days prior to the renewal date. In the event either party elects not to renew this Agreement, the terms of this Agreement shall remain applicable until all Releases under this Agreement are completed or terminated. Each Release shall be governed by the Agreement in effect at the time of the execution and delivery of such Release, except as otherwise provided in a subsequent amendment to such Agreement or Release.

## ARTICLE 2. DEFINITIONS; INTERPRETATION

**2.1 Definitions.** Terms capitalized in the Contract Documents are defined as follows:

- 2.1.1 A/E.** The prime design professional retained by Owner to provide design and/or engineering services for a Project.
- 2.1.2 A/E Agreement.** Any agreement entered into between Owner and its architect or engineer for a Project.
- 2.1.3 Addendum.** Written or graphic documentation, changes and/or information modifying the Bid Documents during bidding.
- 2.1.4 Allowance.** An amount included in the GMP or Stipulated Sum and accepted by Owner as an estimate of the cost for a portion of the Work whose quality or quantity is not yet precisely defined. Unless otherwise clearly indicated and approved by Owner, an Allowance includes all costs of labor, materials and equipment, delivery, unloading, handling, installation, overhead, profit, fees and all other amounts contemplated for the portion of the Work covered by the Allowance.
- 2.1.5 Alternate.** An amount to be added to or deducted from a Release under terms established by Owner or in a bid package, and in addition to or in lieu of corresponding requirements of the Contract Documents, for alternative products, materials, equipment, systems, methods, units of work or major elements of the Work.
- 2.1.6 Applicable Law.** All laws, statutes, regulations, ordinances, codes, rules, rulings, decisions and orders of Governmental Authorities relating to the Work, the Preconstruction Work or the A/E's Services with respect to a Project.
- 2.1.7 As-Built Documents** A continuously Contractor-maintained set of all current Drawings and Specifications, marked up by Contractor to record the Work as actually performed to the extent that the information differs from or supplements original Contract Documents.
- 2.1.8 Bid Documents.** The Drawings and Specifications prepared by the A/E for bidding and construction and Bulletins issued during procurement.
- 2.1.9 Bulletin.** Written or graphic documentation issued by the A/E to Contractor in the form of an architect's supplemental instructions, pricing request or Construction Change Directive.

- 2.1.10 Change Order.** As defined in Section 11.2.
- 2.1.11 Claim.** A demand or assertion seeking adjustment in compensation, payment of money, extension of time or other relief with respect to, arising out of or relating to a Project. The foregoing shall include, on Projects to which the Retainage Act applies, allegations that a person seeking payment of Retainage breached the person's contract for construction for the Project; provided, however, that a "claim" shall be subject to the Contract Documents.
- 2.1.12 Closeout Items.** As defined in Section 4.4.10.
- 2.1.13 Construction Change Directive.** As defined in Section 11.3.
- 2.1.14 Construction Fee.** Owner shall pay Contractor a fixed fee for its Construction Phase services in an amount or as a percentage of the Cost of the Work as set forth in a Release, which Construction Fee shall include Contractor's total compensation for overhead and profit. If stated as a percentage of the Cost of the Work, then in the event a Release is based on a GMP, the Construction Fee shall be converted from such percentage to a stipulated sum.
- 2.1.15 Consultant.** Any person or entity, other than Contractor, A/E or Owner, that provides professional services for a Project pursuant to a direct contract, purchase order or other agreement with Contractor, A/E or Owner.
- 2.1.16 Contract Documents.** Collectively, this Agreement, the A/E Agreement, any Exhibits attached to this Agreement, and any Releases, Drawings, Specifications, Addenda, Change Orders and Construction Change Directives related thereto.
- 2.1.17 Control Budget.** The target amount that may be set forth in the A/E Release, a Release, or thereafter by Owner in writing as the maximum amount available for the Stipulated Sum or GMP on a Project.
- 2.1.18 Cost of the Work.** The costs set forth in Section 4.2.3.
- 2.1.19 Defective Work.** Along with the terms "defect" or "defective" in reference to the Work, shall mean Work, or any portion thereof, that: (a) is faulty or deficient; (b) fails to strictly conform to the Contract Documents, the directives of Owner or A/E, or the requirements of any inspection, reference standard, test, code or approval specified in the Contract Documents; (c) constitutes a Substitution that is not approved or authorized as provided herein; (d) is damaged by Contractor or those for whom it is responsible; or (e) does not conform to Applicable Law.
- 2.1.20 Deliverables.** Any and all deliverables required to be delivered by Contractor pursuant to this Agreement. On Projects to which the Retainage Act applies, "Deliverables" shall include a project close-out document that shall be submitted by the person seeking payment of Retainage under the person's contract for construction; provided, however, that a lien waiver or release, which is a Deliverable, shall comply with Massachusetts General Laws c. 254; and provided further, that "**Deliverables**" shall not include any document affirming, certifying or confirming completion or correction of labor, materials or other items furnished or incomplete or defective work.
- 2.1.21 Designated Representatives.** Persons identified by Owner, A/E or Contractor in a Release as authorized to make decisions on its behalf with respect to a Project.
- 2.1.22 Drawings.** Plans, elevations, sections, details, schedules, diagrams, and all other graphic or pictorial depictions of the design, location and dimensions of the Work prepared by the A/E or any Consultants.
- 2.1.23 Final Completion.** The date on which the Work on a Project is fully complete, including all Punchlist items, in accordance with Section 4.4.10 below and the Contract Documents.
- 2.1.24 Governmental Authorities.** Local, county, regional, state and federal governmental and quasi-governmental bodies, agencies, departments and bureaus having jurisdiction over the Work or any portion thereof, or from whom permits, approvals or other consents are required.
- 2.1.25 General Conditions Cap.** As set forth in a Release.
- 2.1.26 Intentionally Deleted.**

- 2.1.27 Guaranteed Maximum Price (GMP).** The maximum cost to Owner on account of the Cost of the Work and the Construction Fee for Contractor's performance of Work on a GMP Project, subject to additions and deletions as provided in the Contract Documents.
- 2.1.28 Hazardous Materials.** Any pollutant, hazardous, radioactive or toxic substance, waste or material, or petroleum derivative, including oil products, mold, asbestos, asbestos-containing materials, mercury, lead, lead-containing materials, urea formaldehyde foam insulation, equipment, soils or building materials that contain polychlorinated biphenyls (PCBs), flammables, explosives, radioactive materials or any other material or substance, any so-called "biohazard" materials, any materials on the right to know list of the Occupational Safety and Health Administration, and any material or substance which is (i) designated as a "hazardous substance," "hazardous material," "oil," "hazardous waste" or toxic substance under any law, statute or regulation or (ii) contains any component now or hereafter designated as such.
- 2.1.29 Intentionally Deleted.**
- 2.1.30 Preconstruction Work.** The consulting services to be performed by Contractor pursuant to this Agreement and a Release.
- 2.1.31 Product Data.** Illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by Contractor to illustrate materials or equipment for some portion of the Work.
- 2.1.32 Project.** The entire construction contemplated by Owner and identified in an A/E Release and/or Release, which includes the A/E's Services, the Preconstruction Work and the Work of such Project and any related construction or operations by Owner, its Consultants or Separate Contractors.
- 2.1.33 Prompt Pay Act.** Massachusetts General Laws c. 149 § 29E.
- 2.1.34 Project Site.** The buildings, premises, and spaces on or within which any portion of the Work is performed or used for the performance, or in support of the performance, of any portion of the Work.
- 2.1.35 Project Team.** Owner, A/E and Contractor, together with such other persons or entities designated by Owner in writing.
- 2.1.36 Project Time.** The period of time measured from the commencement of a Project's Work to the date established in the Release for Substantial Completion of the Project, as amended pursuant hereto.
- 2.1.37 Punchlist.** A comprehensive list of Work items that have yet to be completed or corrected prior to Final Completion, and prepared pursuant to [Section 4.4.12](#). The Punchlist shall include, at a minimum, the items set forth in [Section 4.4.13](#). Without limiting the foregoing, the Punchlist shall not indicate final cleaning or completion and balancing of HVAC and other systems.
- 2.1.38 Record Documents.** All current Drawings, Specifications, Addenda, Change Orders, Construction Change Directives.
- 2.1.39 Redline Documents.** Same as As-Built Documents.
- 2.1.40 Related Party.** (a) A parent, subsidiary, affiliate or other entity that owns, controls or manages, is owned, controlled or managed by or has common ownership, control or management with Contractor; (b) any entity in which any stockholder or management employee of Contractor owns any interest in excess of ten (10) percent in the aggregate; or (c) any member of the immediate family of any person identified in (a) or (b) above.
- 2.1.41 Release.** Documentation setting forth specific information for a Project, in the form attached to this Agreement as a Release and executed by Owner and Contractor.
- 2.1.42 Retainage.** A portion or percentage of a payment due Contractor or a Subcontractor that is withheld to ensure full performance of the Work.
- 2.1.43 Retainage Act.** Massachusetts General Laws c. 149 § 29F.
- 2.1.44 Samples.** Physical examples that illustrate materials, equipment or workmanship and establish standards by which the Work will be judged.
- 2.1.45 Schedule.** A diagram, graph, plot or other chart indicating the Project Time, sequencing, and showing start dates, durations and finish dates for all design and construction

activities, as well as all milestones for Shop Drawings, Submittals, long lead-time items, phasing, work in occupied areas, portions of a Project having occupancy priority, Substantial Completion, Final Completion and all other milestones noted in the Contract Documents, rendered in a form acceptable to Owner. Where compliance with the Schedule is required herein, such compliance shall be in accordance with: (a) initially, the times set forth in an A/E Agreement entered into prior to Owner's acceptance of Contractor's Schedule; followed by (b) for GMP Projects, Contractor's Schedule accepted by Owner prior to the execution of the GMP Amendment; and then (c) the baseline construction schedule attached to a Release as Exhibit F (the "**Baseline Construction Schedule**"), each as amended from time to time in accordance herewith.

- 2.1.46 Separate Contractor.** Any person or entity that provides labor, materials, equipment or construction services to a Project or Owner's other projects pursuant to a direct contract, purchase order or other agreement with Owner.
- 2.1.47 Shop Drawings.** Drawings, diagrams, schedules and other data prepared by Contractor or those for whom it is responsible to illustrate some portion of the Work.
- 2.1.48 Specifications.** A written description of the quantitative and qualitative requirements for materials, equipment, systems, standards and workmanship for the Work, including Performance Specifications, prepared by the A/E.
- 2.1.49 Stipulated Sum.** The Stipulated Sum is the total amount payable by Owner to Contractor for performance of the Work on a Stipulated Sum Project, subject to additions and deletions as provided in the Contract Documents.
- 2.1.50 Subcontractor.** Any person or entity of any tier that provides labor, materials, equipment or construction services for a Project on behalf of Contractor pursuant to a direct contract, purchase order or other agreement with Contractor.
- 2.1.51 Submittal.** Shop Drawings, Product Data, Samples and any other graphic or written description of the Work prepared by Contractor or those for whom Contractor is responsible, demonstrating the manner in which the Work is to be performed.
- 2.1.52 Substantial Completion.** As defined in Section 4.4.9.
- 2.1.53 Substitutions.** Products, materials and equipment offered in lieu of those specified in the Contract Documents.
- 2.1.54 Work.** All construction activities, including labor, materials, equipment and other construction services required to perform the work described in a Release, and such other work reasonably inferable therefrom as necessary to produce the results intended by the Contract Documents, except to the extent specifically indicated in the Contract Documents to be the responsibility of others.

**2.2 Interpretation of Contract Documents.** The Contract Documents shall be interpreted in accordance with the following.

- 2.2.1** In the event of any conflicts or discrepancies by, among or between the Contract Documents, interpretations will be based on the following priority (ranked from most to least controlling):
  - .1 Change Orders, with those of more recent date having precedence;
  - .2 Bulletins, with those of more recent date having precedence;
  - .3 The applicable Release;
  - .4 This Agreement;
  - .5 The A/E Agreement (if applicable); and
  - .6 Drawings and Specifications.
- 2.2.2** Captions, headings, cover pages, and tables of contents are inserted only for convenience and in no way define, limit or describe the scope, intent or meaning of any provision of the Contract Documents.

- 2.2.3** Unless otherwise defined herein, words and abbreviations that have well-known technical or trade meanings are used in the Contract Documents in accordance with such recognized meanings.
- 2.2.4** The words “include”, “includes” and “including”, as used in the Contract Documents, shall be deemed to be followed by the phrase “without limitation”.
- 2.2.5** Unless the context clearly indicates to the contrary, words such as “hereunder”, “hereto”, “hereof”, “herewith” and “herein” refer to the whole of the Contract Documents and not to any particular article, section, paragraph, subparagraph or clause.
- 2.2.6** Unless otherwise indicated, “days” as used herein refers to calendar days.
- 2.2.7** Anything indicated in one document but not in the others shall have the same effect as if indicated in all. Any item incorporated by reference from one section of the Specifications to another shall be included in the Work. Failure to cross-reference all applicable Specifications sections, Drawings and BIM shall not relieve the responsible party from the obligation to furnish and install such Work.
- 2.2.8** Where the Contract Documents require compliance with more than one requirement with respect to any aspect of the Project, Contractor shall inform Owner of the multiple requirements and Owner shall select the appropriate requirement.
- 2.2.9** A typical detail indicated in the Drawings shall constitute the standard for workmanship and material and be applicable to similar conditions throughout the Work.
- 2.2.10** Repetitive features shown in outline in the Drawings shall be in exact accordance with corresponding features shown completely elsewhere.
- 2.2.11** Contractor and Subcontractors may not rely on scaled dimensions and must request clarification from the A/E if missing dimensional information is required.
- 2.2.12** Large-scale detail drawings shall take precedence over small-scale drawings..

### **ARTICLE 3. PRECONSTRUCTION**

**3.1 General.** If Owner retains Contractor to perform Preconstruction Work, under no circumstances shall Owner be obligated to award the Work relating to or following from such Preconstruction Work to Contractor. Contractor acknowledges that it has no expectation or right, either at law, in equity, by contract or otherwise to an award for Work that relates to Preconstruction Work that it may perform.

**3.2 Preconstruction Work.** If specified in a Release, Contractor shall provide the Preconstruction Work for a Project set forth in this Section 3.2. Owner may add to and deduct from such Preconstruction Work in the Release and as otherwise allowed herein. Upon execution of a Release by the Parties, Contractor shall commence and proceed expeditiously with the Preconstruction Work.

- 3.2.1 Meetings.** Except as otherwise requested by Owner, Contractor shall attend meetings with representatives of Owner and A/E, or as required by Owner, shall be represented at such meetings by persons having knowledge of the matters to be addressed and authorized to act for it. If Contractor takes exception or has any clarifications to the minutes from such meetings, it shall submit same to the A/E within seven (7) days.
- 3.2.2 Reporting and Record Keeping.** Contractor shall maintain data and submit reports in the form and content as reasonably requested by Owner.
- 3.2.3 Consultant Selection.** Contractor shall assist Owner in identifying and selecting any specialty consultants that Owner wishes to retain in connection with each Project.

**3.2.4 Budget Evaluation.** Contractor shall provide a preliminary written evaluation of Owner's Control Budget in the manner specified by Owner, and update the Control Budget as requested by Owner.

**3.2.5 Estimating.** On or before the times indicated in the Release, Contractor shall prepare and update, in a form acceptable to Owner, estimates of the Cost of the Work for a Project. Contractor's initial estimate shall include cost evaluations of alternate materials and systems. All estimates shall include a written statement of its basis, including a list of Allowances and assumptions, in terms of quantity, quality and cost, made by Contractor in preparing its estimate.

- .1 Unless otherwise directed by Owner, Contractor's initial estimate shall begin with estimates based on area, volume, and similar conceptual methods of estimating. Contractor shall update and refine its estimates of the Cost of the Work based on quantity takeoffs, production rates and crew structures and other methods that are commonly used to estimate competitive bids in the construction industry.
- .2 Upon request, Contractor shall transmit and explain any and all information, work product or data that Contractor receives, produces or compiles in preparing estimates of the Cost of the Work of each Project.
- .3 Contractor shall promptly advise Owner whenever the estimated Cost of the Work exceeds Owner's Control Budget and make recommendations for corrective action.
- .4 Contractor shall meet with the A/E and Owner's independent estimator, if any, to review and reconcile Contractor's estimates. Contractor will revise and resubmit its estimate to Owner with notes on how each item in the estimate was reconciled.

**3.2.6 Constructability Review.** Contractor shall review the design as it is being developed and the Drawings and Specifications as they are being prepared and shall advise Owner of any design and/or cost, construction details and methodologies that affect construction feasibility, efficiency, available labor, materials, alternate equipment and building systems that may be available and possible means and methods of attaining efficiencies in time or costs.

- .1 Contractor shall prepare a logistics plan for the use of a Project Site and its surroundings, temporary facilities, utilities, staging and storage for each Project, which shall be coordinated with the requirements of other projects identified by Owner and the business needs of Owner.
- .2 Contractor shall prepare, for Owner's approval and subject to approval by Governmental Authorities, a Project parking plan for utilization of available on-site and off-site parking.
- .3 Contractor shall advise Owner regarding phased issuance of Drawings and phased construction of the Work, if such phased construction is appropriate for a Project, taking into consideration such factors as economies, time of performance, availability of labor and materials, and provisions for temporary facilities.
- .4 Contractor shall provide recommendations to Owner with regard to long lead items, accelerated or fast-track scheduling and/or procurement and early release of bid packages and shall take into consideration cost reductions, cost information, constructability, provisions for temporary facilities and procurement and construction scheduling issues when providing fast-track recommendations. If Owner requests a limited scope of services from Contractor in connection with such recommendations (the "**Limited Scope Work**"), such Limited Scope Work shall be governed by the terms and conditions set forth in Section 4.2.4.

- .5 If required pursuant to a Release, Contractor shall provide procurement services pursuant to and in accordance with Article 6 of this Agreement.
- .6 Contractor shall make recommendations to Owner regarding the division of the Work in the Drawings and Specifications for a Project to facilitate the bidding and awarding of contracts. Recommendations shall take into consideration all relevant factors including the programmatic objectives as provided by Owner, time of performance, availability of materials and labor, overlapping trade jurisdictions, provisions for temporary facilities, and Owner's activities and events schedules.
- .7 Contractor shall review the Drawings and Specifications with Owner and A/E and provide a written report identifying any existing or potential lack of coordination, areas of conflict, incompatibility or overlap in the Work.
- .8 Contractor shall notify Owner and A/E promptly if it observes or becomes aware of any defect, omission, conflict or inconsistency in any of the Drawings and Specifications or between any Drawings and Specifications and field conditions, or if a portion of any Drawing or Specification is at variance with Applicable Law.

**3.2.7 Value Engineering.** Contractor shall propose value engineering alternatives and attend meetings for the purpose of reviewing and analyzing specific value enhancements proposed by the A/E, Owner or Owner's Consultants, and shall make recommendations for acceptance or rejection.

**3.2.8 Scheduling.** On or before the times indicated in the Release, Contractor shall prepare, update and deliver to Owner Schedules that account for and coordinate the preconstruction and construction activities of Owner, A/E, Contractor and any Consultants, Subcontractors, Separate Contractors and/or Governmental Authorities. The initial Schedule shall adhere to the milestone dates set forth in the applicable Release (if any), unless deviation therefrom is authorized by Owner in writing. Contractor shall also identify any long lead-time items to ensure their timely delivery.

**3.2.9 Existing Conditions Review.** Contractor shall thoroughly familiarize itself with the Project Site and the conditions in which the Work is to be performed. Contractor shall carefully examine the design as it is developed and the Drawings and Specifications for the purpose of facilitating efficient and timely construction and for the purpose of discovering conditions which may present construction difficulties or opportunities. Any such suspected difficulties or opportunities shall be promptly reported to Owner with Contractor's recommendations for follow-up action.

- .1 Where non-destructive field inspections and measurements of existing conditions is needed, Contractor shall make such inspections and measurements as necessary in order to gain a complete understanding of the conditions affecting the Project.
- .2 When appropriate, Contractor shall recommend destructive testing to determine the composition of existing conditions that may impact the design's constructability, the Cost of the Work, the Schedule or safety of persons. Such destructive testing shall be at Owner's expense.

**3.3 Compensation for Preconstruction Work.** Contractor's compensation for the Preconstruction Work of each Project shall be on the basis of a Stipulated Sum or on Time and Materials, as identified and set forth in the Release. There shall be no automatic adjustment in such compensation on account of changes in the Project or in estimated or actual Cost of the Work. Payments for Preconstruction Work shall be invoiced and paid pursuant to Article 5 below. Any amounts unpaid and overdue shall not incur interest.

**3.3.1 Stipulated Sum.** For performance of Work based on a Stipulated Sum, the Stipulated Sum set forth in the Release shall be the total amount payable by Owner to Contractor

for such Work, subject to additions and deletions as provided in the Contract Documents. The Stipulated Sum shall include the Alternates, Allowances and Unit Prices contained in the applicable Release. If Work is to be based on a Stipulated Sum, the total amount of compensation due to Contractor in consideration of the full performance of Work by Contractor under a particular Release, including, without limitation, materials, supplies and all other charges for the Work, is the Stipulated Sum amount set forth in the Release. Owner shall pay Contractor as Work is performed by the Contractor based upon the portion of Work completed.

### **3.3.2 Time and Materials.**

- .1 Time and Materials (Not to Exceed): if a Release indicates that compensation to the Contractor for the Work shall be "Time and Materials (Not to Exceed)", the provisions of Section 4.3.2 apply and the total compensation due to Contractor shall be limited to the amount indicated in the Release.
- .2 Time and Materials (Estimated Amount): if a Release indicates that compensation to the Contractor for the Work shall be "Time and Materials (Estimated Amount)", then a detailed breakdown of estimated costs of labor, materials, equipment and insurance, including a similar breakdown of costs for subcontracted Work, shall be provided in advance of the Work. Such proposals shall be subject Owner's written approval. Reimbursement shall be based on actual incurred costs only and all costs and charges included therein must be fair and reasonable, consistent with current price indexes for labor, materials and equipment, not include unreasonable or inapplicable charges, and shall be in accordance with Sections 11.4.1, 11.4.2, 11.4.3 and 11.4.5, herein, and the Release.

**ARTICLE 4. CONSTRUCTION SERVICES.** On Owner's request, Contractor may submit a proposal to perform the Work on the basis of a Stipulated Sum, GMP or Time and Materials. Upon execution of a Release, Contractor shall commence and proceed expeditiously with the Work in accordance with this Agreement, including the Master General Conditions, and such Release. Owner may add to and deduct from the Work in the Release and as otherwise allowed herein.

**4.1 Stipulated Sum.** For performance of Work based on a Stipulated Sum, the Stipulated Sum set forth in the Release shall be the total amount payable by Owner to Contractor for such Work, subject to additions and deletions as provided in the Contract Documents. The Stipulated Sum shall include the Alternates, Allowances and Unit Prices contained in the applicable Release. If Work is to be based on a Stipulated Sum, the total amount of compensation due to Contractor in consideration of the full performance of Work by Contractor under a particular Release, including, without limitation, materials, supplies and all other charges for the Work, is the Stipulated Sum amount set forth in the Release. Owner shall pay Contractor as Work is performed by the Contractor based upon the portion of Work completed.

**4.2 Guaranteed Maximum Price.** For performance of Work based on a Guaranteed Maximum Price ("GMP"), effective upon the execution of the Release, Contractor guarantees to Owner that the sum of the Cost of the Work and the Construction Fee shall not exceed the GMP set forth in such Release, subject to additions and deletions as provided in the Contract Documents.

**4.2.1 Construction Fee.** The Construction Fee for each Project compensated on the basis of a GMP shall be specified in the applicable Release. The Construction Fee shall include Contractor's total compensation for overhead and profit.

- .1 The Construction Fee shall be adjusted on account of Change Orders by the ratio that the Construction Fee bears to the estimated Cost of the Work in the original GMP, applied to the net increase or decrease in the Cost of Work included in the Change Order.

- .2 If the Cost of the Work plus Construction Fee is less than the GMP, then one hundred percent (100%) of the resulting savings will accrue to Owner. If the Cost of the Work plus Construction Fee exceeds the GMP, then Contractor shall pay one hundred percent (100%) of such excess from its own funds.

**4.2.2 GMP Proposal.** When the Drawings and Specifications are sufficiently complete, or upon Owner's request, Contractor shall submit to Owner a GMP cost proposal that shall include the estimated cost to perform all of the Work (the "**GMP Proposal**"). To the extent that bids for any subcontracts have already been received, the GMP Proposal shall be based on the actual bidding of such subcontracts.

- .1 The GMP Proposal shall include the following:
  - (a) the estimated Cost of the Work shall be broken down by trade and include the Construction Contingency (as defined below);
  - (b) A description of the scope of Work including a list of all Drawings and Specifications, including Bulletins;
  - (c) The Baseline Construction Schedule, which confirms the following: (i) Project Time; (ii) all components of the Work; (iii) commencement and completion dates for each Subcontractor; (iv) schedule of order date and delivery date of products required for the Project, including but not limited to those products that have long lead times; (v) Owner's occupancy requirements; (vi) Owner's requirements for value engineering, safety programs, and commissioning of systems; (vii) Owner's fixtures, furnishings, and equipment activities; (viii) the punchlist process; and (ix) the proposed dates of Substantial Completion (including, without limitation, the proposed date of issuance of a certificate of occupancy and the proposed date for the start of beneficial occupancy) and Final Completion;
  - (d) Rate Schedule (if applicable);
  - (e) Schedule of fixed expenses (if applicable);
  - (f) Clarifications and assumptions, which may also be attached to a Release as Exhibit E;
  - (g) A statement of Allowances, Alternates and unit prices upon which the GMP Proposal is based;
  - (h) A staffing plan of all of Contractor's Designated Representatives, including but not limited to a "Superintendent" and a "Project Manager" and all positions required by Owner for the Project;
  - (i) Unless otherwise agreed in writing, at least three (3) bids from qualified Subcontractors and material and/or equipment suppliers or equipment, broken down by trade, together with a bid analysis in a form acceptable to Owner and all other exhibits relevant to determination of the GMP;
  - (j) A schedule of supplier submittals that is acceptable to Owner and the A/E; and
  - (k) Any other information which Owner deems necessary to evaluate the GMP Proposal.
- .2 The GMP Proposal shall also expressly include the Contractor's proposal for the General Condition Items and the General Requirement Items.
- .3 To the extent that the Drawings and Specifications require further development at the time the GMP Proposal is prepared, Contractor may provide in the GMP Proposal for such further development consistent with Owner's intent and reasonably inferable from the existing Contract Documents. Such further development does not include items covered by Change Orders.

- .4 In preparing the GMP Proposal, Contractor may include a “**Construction Contingency**” to draw upon, with Owner’s approval and to the extent of its availability, in accordance with this Section.
- (a) The Construction Contingency shall not be used to pay for Work that qualifies for a Change Order, or for costs excluded hereunder or in a Release. The Construction Contingency shall not be used to pay for remedial efforts to correct Defective Work.
  - (b) No expenditures from the Construction Contingency shall be made without the prior written approval of Owner, whose approval will not be unreasonably withheld.
  - (c) Contractor shall account to Owner for the allocation of Construction Contingency as part of its monthly summary reporting.
- .5 Upon receipt, Owner may accept, reject, or negotiate Contractor’s GMP Proposal. If Owner accepts the GMP Proposal or a modified version thereof, then the Parties shall execute a GMP Amendment to the applicable Release. If Owner rejects the GMP Proposal, then this action shall be construed as a termination for convenience for the Project in accordance herewith.

**4.2.3 Cost of the Work.** The Cost of the Work shall include the costs reasonably and necessarily incurred by Contractor in the proper performance of Work in accordance with the express terms of this Agreement without additional markup, margin, or contribution. Unless otherwise specified in a Release, the Cost of the Work shall include only the costs set forth in this Section.

- .1 **General Condition Items.** “**General Condition Items**” are those business and administrative costs of Contractor that are directly attributable to the Project which are necessary for execution of the Work but not part of the finished Work, and are set forth below, provided, however, that such costs shall not exceed the General Conditions Cap:
- (a) Costs of management, supervision and administrative staff located at the field office and directly engaged in the technical, logistical and administrative execution of the Work (collectively, “**Labor Costs**”). Owner and Contractor agree that Labor Costs shall be calculated by multiplying the product of the following factors: (1) the employee’s unburdened wage or salary for each pay period typical for employees of Contractor, and; (2) 1.0 for full time employees on the Project or the percentage of straight time worked on the Project for other employees, and; (3) the fixed factor of 1.40 (the “**Multiplier**”). Labor Costs shall include: Payroll Taxes, (FICA, Medicare, FUTA, SUTA, EMAC & workforce training funds), paid time off (Vacation, Holidays, Sick & Personal Time), Health Insurance, Dental Insurance, 401K & retirement contributions, Life Insurance & AD&D, Short Term Disability, Long Term Disability, Bonuses, ESOP (unless a qualified plan), Training, Small Tools, Cell Phones, Computers, Overhead, Profit, Vehicle Expenses (Car, Gas, Parking, Tolls, etc.), and meals. The Multiplier shall be calculated as if paid time off is included in the rates; therefore Contractor shall only be able to bill for the hours actually worked, not hours worked plus paid time off. The Multiplier covers all of the wage-related supervisory and administrative costs of the Work described in this Agreement. In no event shall unburdened wages or salaries include any premium pay, bonus, incentives, or other awards, all of which are covered by the Multiplier.

- (b) Costs of general office supplies and electronic equipment (computers, printers, plotters, etc.) and software licenses installed on on-site computers and/or served by means of LAN or internet web services necessary for the performance of day-to-day management of the Work.
- (c) Costs of telephone equipment and connections and telephone service for local and long-distance telephone calls, postage and express delivery charges, telephone service at the site and reasonable petty cash expenses of the site office, reasonably required for performance of the Work.
- (d) Costs of temporary field offices/trailers, office furniture and utilities, such as temporary electricity and lighting usage, a portion of home office overhead directly attributable to the Project (as approved by Owner), cellular telephone charges, two-way radios, delivery service, document copying and reproduction, progress photography.
- (e) That portion of the pre-authorized travel and subsistence expenses of Contractor's supervisory or administrative personnel incurred while traveling in discharge of duties directly connected with the Work, such as travel to verify material production status at off-site locations or testing laboratories.

**.2 General Requirement Items.** "General Requirement Items" include goods and services procured directly by Contractor, which are necessary for execution of the Work but not part of the finished Work, and which are commonly used by Subcontractors and not assignable to any single Subcontractor, including the items set forth below:

- (a) Costs of construction supervision, construction safety and field engineering staff engaged to direct and coordinate field layouts, quality assurance and construction sequencing;
- (b) Costs of all necessary labor and materials directly employed and/or purchased by Contractor for construction support work such as safety-required protection, cleaning and site staging maintenance;
- (c) Costs of mobilization and demobilization of the site; staging and hosting field safety equipment and structures and construction fences and barricades; protective clothing, cleaning, debris removal, dumpsters and dumping and field sanitary facilities;
- (d) Costs of transportation, installation, maintenance, dismantling and removal of materials, supplies, temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by Contractor at the site and fully consumed in the performance of the Work. Costs of materials, supplies, temporary facilities, machinery, equipment and tools that are not fully consumed shall be based on the cost or value of the item at the time it is first used on the Project site less the value of the item when it is no longer used at the Project site, whether sold to others or retained by Contractor. Costs for items not fully consumed by Contractor shall mean fair market value.
- (e) Rental charges for temporary facilities (except for field offices), machinery, equipment, and hand tools not customarily owned by construction workers that are provided by Contractor at the site, whether rented from Contractor or others, and costs of transportation, installation, minor repairs and replacements, dismantling and removal of such items. The total rental cost of any Contractor-owned item may not exceed the purchase price of any comparable item at fair market value. Notwithstanding the foregoing or any other provision hereof to the

contrary, rates charged for Contractor-owned equipment and quantities of equipment shall be subject to Owner's prior approval.

- .3 Subcontract Costs.** Payments made by Contractor to Subcontractors and Consultants in accordance with approved contracts let in connection with the Project.
- .4 Miscellaneous Costs.**
- (a) The cost of Owner-required performance and payment bonds.
  - (b) The cost of all permits required for the proper execution and completion of Work. Permits required to be obtained directly by the various Subcontractors shall have their costs separately identified in subcontract proposals, and be reported under a separate sub-entry.
  - (c) Royalty and license fees paid for the use of a particular design, process or product required by the Contract Documents.
  - (d) Actual cost of insurance premiums that are directly attributable to the Project.
  - (e) Any other costs submitted by Contractor for approval and approved by Owner as reimbursable.
- .5 Costs Not To Be Reimbursed.** The Cost of the Work shall not include the following, which costs shall be borne by Contractor:
- (a) Salaries and wages of employees and corporate officers of Contractor except when properly acting as a member of the Designated Representatives.
  - (b) Administrative or general overhead expense of Contractor's main or regularly established branch or regional offices.
  - (c) Bonuses, profit sharing, continuing education or other incentive compensation.
  - (d) Human resource expenses including the cost of recruitment, relocation, employment, retention, and separation of personnel.
  - (e) Parties, celebrations and social gatherings not previously approved in writing by Owner.
  - (f) Advertising, marketing and business development expenses, association dues and charitable contributions.
  - (g) Interest on capital or other finance charges.
  - (h) Costs resulting from a breach of this Agreement, negligence or willful misconduct of Contractor or Contractor's personnel.
  - (i) Costs attributable to Contractor's Preconstruction Work.
  - (j) Bonds not required by Owner.
  - (k) Premiums for insurance not required by the Contract Documents.
  - (l) Amounts paid by Contractor on account of its deductibles.
  - (m) Amounts arising out of the repair of Defective Work, defaults, nonperformance or insolvency of Contractor's Subcontractors or

Consultants to the extent of Contractor's breach of this Agreement, Contractor's failure to perform with the requisite standard of care required under this Agreement, or Contractor's negligence or willful misconduct.

- (n) Cost of bonding or securing liens or defending claims by Subcontractors unless due to a default by Owner.
- (o) Sales and use taxes for which Owner is exempt.
- (p) Future costs for storage of records pertaining to the Project.
- (q) Claims by Subcontractors for applications for payment or requests for Change Orders deemed approved by operation of the Prompt Pay Act or Retainage Act, but which should not otherwise have been approved by Contractor pursuant to the Contract Documents.
- (r) All other costs not specifically allowed by Owner herein or in a Release.

**.6 Discounts, Rebates and Refunds.** Contractor shall secure and credit against the Cost of the Work any and all financial benefits obtained directly or indirectly on account of Work, including:

- (a) Trade and cash discounts, including those obtained by volume purchase;
- (b) Cash discounts obtained through advance or prompt payment by Owner, provided that Contractor may retain such discounts if Owner elects not to make such advance or prompt payment;
- (c) Rebates, refunds or credits realized on deposits, insurance premiums, rate reductions, or otherwise; and
- (d) Returns from sale of surplus materials and equipment.

**4.2.4 Limited Scope of Work.** Owner shall have the right to issue a Release with respect to the Limited Scope Work. Contractor shall be entitled to reimbursement for the Cost of the Work (including general conditions costs), reasonably approved by Owner, of any such Limited Scope Work, together with the fee set forth in the applicable Release. The Cost of the Work and any such fees so paid shall be included in the Guaranteed Maximum Price once established in an applicable Release. Payments on account of Limited Scope Work shall be made in accordance with the provisions of Article 5. The parties further agree that Limited Scope Work may be subject to limitations on the Cost of the Work which Contractor is authorized to incur, which shall not be exceeded unless Owner authorizes the Contractor to do so pursuant to written notice or unless Owner issues the Release for the Limited Scope Work with the entire Work, in which case such costs (and any related fee to Contractor) shall be subject to the Guaranteed Maximum Price once established in the applicable Release.

**4.2.5 Contingency.** In preparing Contractor's GMP Proposal, Contractor shall include its contingency (the "**GMP Contingency**") to cover those costs considered reimbursable as the Cost of the Work but not included in a Change Order. Notwithstanding the foregoing or any other provision hereof to the contrary, the GMP Contingency shall not cover costs connected with the further development of the design. The GMP Contingency does not include increases in the scope of Work or compensable costs associated with extensions in the Contract Time. Contractor shall keep separate accounting of all funds expended from the GMP Contingency. Contractor shall not use or apply any portion of the GMP Contingency without Owner's prior approval, which shall not be unreasonably withheld or delayed.

**4.2.6 Additional Conditions.** With respect to any GMP Proposal and/or Project subject to a GMP, the following shall apply:

- .1 All portions of the Work (a) that Contractor does not customarily perform with Contractor's own personnel or (2) as to which Owner considers it to be in the best interests of the Project, shall be performed under subcontracts or by other appropriate agreements with Contractor, subject to Owner's approval. Notwithstanding the foregoing or any other provision hereof to the contrary, Owner shall have the right to require that any or all portions of the Work be performed by Subcontractors rather than Contractor's own personnel.
- .2 Owner will actively participate in the bidding process and will attend the opening of all bids. Contractor will review all bids with and make recommendations to Owner. Contractor shall undertake the bidding and buyout process of Subcontracts as expeditiously as possible so as to achieve pricing terms that are consistent with the best interest of Owner and so as to cause no delay in the commencement and progress of the Work. Owner may designate specific persons from whom, or entities from which, Contractor shall obtain bids.
- .3 During the bidding process, Contractor shall prepare bid packages with add/deduct alternatives that may add value or allow budget compliance. Contractor shall provide to Owner, for Owner's approval, a suggested list of Subcontractors to be considered for prequalification as responsible bidders, which list shall disclose any familial or corporate relationships between Contractor and the suggested Subcontractors.
- .4 Owner shall have the right to require that bids from Subcontractors and suppliers be obtained pursuant to a sealed bid process satisfactory to Owner. Owner shall also have the right to attend bid opening meetings and negotiation sessions with Subcontractors and suppliers. Owner shall then have the right to approve, with the advice of Contractor and the A/E, the bids to be accepted. No Subcontract shall be awarded by Contractor without Owner's prior approval. Notwithstanding any provision of the Contract Documents to the contrary, neither the review, approval or designation by Owner of any Subcontractor or Supplier, nor the participation by Owner in the selection, review or approval of any Subcontractor or supplier, shall relieve Contractor of its full responsibility for the selection of Subcontractors and suppliers, the performance and coordination of the materials and services rendered thereby or the completion of the Work in accordance with the terms of the Contract Documents.
- .5 If Contractor recommends a specific bidder that may be considered a Related Party, then Contractor shall promptly notify Owner in writing of such relationship and notify Owner of the specific nature of the contemplated transaction.
- .6 Notwithstanding any provision hereof to the contrary, the GMP shall be reduced by the amount, if any, by which the estimated amount, on an aggregate basis, to "buy-out" the portion of the Work to be performed by Subcontractors and furnished by suppliers (which shall be set forth on a line-item basis in the GMP Proposal), exceeds the actual amount, on an aggregate basis, of the Subcontracts and purchase orders executed by Contractor upon completion of the "buy-out" process for such portion of the Work. Without limiting the foregoing, Contractor shall submit a report to Owner on a weekly basis (or such other basis as Owner may request) detailing the progress of the "buy-out" process and the amount of any savings or overruns incurred or projected to be incurred by Contractor in connection therewith.

**4.3 Time and Materials.**

**4.3.1** Time and Materials (Not to exceed): if work is to be performed on a Time and Materials basis with a cap, the provisions of Section 4.3.2 apply with the total compensation limited to the amount indicated as “Not to exceed” in the Release.

**4.3.2** Time and Materials (Estimated Amount): if work is to be performed on a Time and Materials basis, then a detailed breakdown of estimated costs of labor, materials, equipment and insurance, including a similar breakdown of costs for subcontracted Work, shall be provided in advance of the Work. Such proposals shall be subject Owner’s written approval. Reimbursement shall be based on actual incurred costs only and all costs and charges included therein must be fair and reasonable, consistent with current price indexes for labor, materials and equipment, not include unreasonable or inapplicable charges, and shall be in accordance with Sections 11.4.1, 11.4.2, 11.4.3 and 11.4.5, herein, and the Release.

#### **4.4 General Terms and Conditions – Construction.**

**4.4.1 Construction Administration.** The scope of Work, Schedule, GMP or Stipulated Sum, and other Project requirements shall be established in a Release, executed by Contractor and Owner. Upon execution of a Release and authorization to proceed, and unless otherwise directed by Owner, Contractor shall commence and proceed expeditiously to execute the Work in accordance with the Contract Documents.

- .1 Contractor shall supervise and direct the Work, using Contractor’s best skill and attention. 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 under the Agreement, unless the Contract Documents give other specific instructions concerning such matters.
- .2 Contractor shall be responsible to Owner for acts and omissions of Contractor’s employees, Subcontractors and their agents and employees, and other persons or entities performing portions of the Work for or on behalf of Contractor or any of its Subcontractors.
- .3 Before starting each portion of the Work, Contractor shall carefully study and compare the various Contract Documents relative to that portion of the Work, as well as any other information furnished by Owner, shall take field measurements of any existing conditions related to that portion of the Work and shall observe any conditions at the Project Site affecting it. These obligations are for the purpose of facilitating construction by Contractor and are not for the purpose of discovering errors, omissions or inconsistencies in the Contract Documents.
- .4 Unless otherwise provided in the Contract Documents, Contractor shall provide labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for the proper execution and completion of the Work whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.
- .5 Contractor shall enforce strict discipline and good order among Contractor’s employees and other persons carrying out the Work. Contractor shall not permit employment of unfit persons or persons not skilled in tasks assigned to them. Contractor shall deliver, handle, store and install materials in accordance with manufacturers’ instructions.
- .6 Contractor shall comply with and give notices required by Applicable Law. Contractor shall promptly notify the A/E and Owner if the Drawings and Specifications are observed by Contractor to be at variance therewith. If Contractor performs Work it knew or should have reasonably known to be contrary to Applicable Law without providing notice to the A/E and Owner,

Contractor shall assume responsibility for such Work and shall bear the costs attributable to correction.

- .7 Contractor shall confine operations at the Project Site to areas permitted by Applicable Law and the Contract Documents and shall not unreasonably encumber the Project Site with materials or equipment. Contractor shall be responsible for cutting, fitting or patching required to complete the Work or to make its parts fit together properly. Contractor shall keep the Project Site and surrounding area free from accumulation of waste materials or rubbish caused by its operations. Upon Substantial Completion and again upon Final Completion, Contractor shall remove from and about each Project Site waste materials, rubbish, Contractor's tools, construction equipment, machinery and surplus material.
- .8 Contractor shall coordinate its Work with Owner's Separate Contractors or employees of Owner to ensure all portions of the Work are performed according to the Contract Documents and pursuant to the Schedule, and so that Contractor and the Separate Contractors and Owner's employees do not impede each other's Work.
- .9 Contractor shall participate in the commissioning process and facilitate the coordination of the commissioning work by the independent commission authority or agent retained by Owner to direct and approve the commissioning process (the "C/A").

**4.4.2 Interpretations.** If not resolved through preliminary discussions, parties seeking interpretation of the Drawings and Specifications will transmit to the A/E through Contractor a written request for information (RFI), including a concise explanation of the portion of the Contract Documents requiring interpretation and a date by which a response is required.

- .1 Contractor will prepare an RFI log to be reviewed in the change management meetings.
- .2 Contractor will distribute clarifications to the Contract Documents to all parties requiring such information.
- .3 Contractor will perform the Work in accordance with the A/E's interpretation unless doing so would require issuance of a modification pursuant to Article 11.

**4.4.3 Submittals.** Contractor shall confer with the A/E and the C/A and agree upon a schedule of required Submittals for Owner's approval. Contractor shall incorporate all required Submittals into the Schedule, allowing the A/E and the C/A a reasonable time, but in no event less than ten (10) days for review. No portion of the Work for which a Submittal is required shall be fabricated, manufactured, installed or constructed until the A/E has approved the respective Submittal in writing.

- .1 Presentation of a Submittal by Contractor shall constitute a representation that all materials, field measurements and field construction criteria related thereto have been examined, and that the Submittal has been checked for dimensional accuracy and coordination with the Contract Documents and contiguous work. Any intended deviation from the requirements of the Contract Documents shall be conspicuously identified. Measurements not available prior to the presentation of a Submittal shall be conspicuously noted as not available and to the extent reasonably possible, such measurements shall be obtained and incorporated into the Submittal by the submitting person or entity prior to fabrication.
- .2 Submittals shall comply with the Contract Documents and shall contain the following information at the time of submission:

- (a) The name of the Project;
  - (b) The name of Contractor;
  - (c) The name of the submitting Subcontractor;
  - (d) The date of the Submittal;
  - (e) The number of the Submittal;
  - (f) The number and date of each revision, if any;
  - (g) The applicable Specification section;
  - (h) The applicable Drawing and detail reference; and
  - (i) Applicable standards, such as ASTM.
- .3 Shop Drawings shall show the design, dimension and connections to adjoining Work in such detail as necessary to demonstrate proper connections and coordination to achieve design intent.
  - .4 Manufacturers' catalog numbers alone are not acceptable as sufficient information or compliance with a requirement to provide Product Data.
  - .5 Samples and their transmittal letters shall be labeled, tagged or clearly identified, leaving sufficient clear space for Contractor's and the A/E's stamps, and shall identify the trade designation and the grade or quality of the material or product.
  - .6 In the event that a range of variations in textures, graining, color or other characteristics may be anticipated in finished materials, assemblies or elements of the Work, a sufficient number of Samples of such materials shall be submitted to indicate the full range of characteristics that will be present in the proposed materials. Any such materials delivered or erected prior to approval of full range Samples shall be subject to rejection by Owner and A/E.
  - .7 Samples shall be submitted from the same source that will actually supply the material. Samples shall be of adequate size to show quality, type, color, range, finish, texture and other specified characteristics.
  - .8 Samples of materials that are normally furnished in containers or packages that bear descriptive labels and/or application or installation instructions shall be submitted with such labels and/or instructions.
  - .9 Contractor shall promptly, in accordance with the Submittal schedule, review all Submittals for coordination and compliance with the Contract Documents and transmit them to the A/E with its stamp affixed thereto as evidence of such review and coordination. The A/E may return the Submittal to Contractor for resubmission, Submittals not bearing Contractor's stamp or the identifying information required, and Contractor shall be responsible for any resulting delay or additional cost.
  - .10 Owner and A/E may rely upon the professional certification (if any) of materials, systems or equipment that is required by the Contract Documents.
  - .11 Review and approval of Submittals by the Project Team shall not relieve Contractor of its responsibility to verify all dimensions, field conditions and measurements, to coordinate with adjoining work and otherwise comply with the Contract Documents.

**4.4.4 Permits.** Contractor shall apply for, secure, maintain, comply with and renew any and all permits, licenses, certificates or other approvals necessary for the proper execution and completion of the Work (including a temporary certificate of occupancy and any final certificate of occupancy) unless a Release specifies that a particular permit or approval is Owner's obligation. Contractor shall maintain records of all government notices incidental to the lawful performance of the Work, and shall deliver same to Owner before the Final Completion of the Project.

**4.4.5 Schedule.** Contractor shall prepare, maintain, refine and update the Schedule for each Project and shall deliver an updated Schedule to Owner on a not less than monthly basis (or more frequently if requested by Owner) in a form acceptable to Owner, which shall conspicuously identify any changes from the prior Schedule. Contractor shall perform in general accordance with the Schedule and in strict accordance with the date of Substantial Completion established therein, which will not be modified or extended except as permitted herein.

- .1 Contractor shall promptly advise Owner, in writing, of any slippage in progress, actual delays, reasonably anticipated delays and any other actual circumstances that may prevent the Project from being completed within the Project Time. In the event of any delays or slippage in the progress of the Work, Contractor shall recommend to Owner a recovery plan for the correction of said slippage or delay.

**4.4.6 Meetings.** Once the Work has commenced, Contractor shall schedule and hold regular meetings at the Project Site with the Project Team, and any other persons whom Owner may reasonably designate, to review the progress of the Project and to exchange information and communicate directives necessary for the efficient administration of the Work. Contractor's Designated Representative shall be present during such meetings as well as other persons within Contractor's control having knowledge of the matters to be addressed. Contractor's Designated Representative shall record written minutes of all such meetings.

- .1 Contractor shall attend, make presentations and participate in meetings with such boards, commissions, committees and public bodies as Owner may direct to discuss details, provide comments, recommendations and progress reports and to obtain approvals.
- .2 Contractor shall schedule and hold regular meetings with its Subcontractors, vendors and product representatives concerning coordination, safety, construction procedures, scheduling, progress, budget and other matters impacting each Project.
- .3 If requested by Owner, Contractor will record written minutes of all subcontractor and other construction meetings and will provide the Project Team and meeting attendees with an electronic and hard copy of such minutes within seven (7) days of such meeting. Any exceptions taken or clarifications to the minutes shall be noted in the meeting minutes for the next regular meeting.
- .4 Contractor shall meet with Owner and A/E on dates and times as requested by Owner to review outstanding Change Order requests and Construction Change Directives, and shall institute procedures for their prompt disposition. Owner and Contractor shall resolve Change Orders and/or Construction Change Directives within thirty (30) days of either their submission or the request to commence extra Work, whichever is later.

**4.4.7 Reporting and Record Keeping.** If requested by Owner, Contractor shall record the progress of the Work based on current data in terms of Schedule, budgets, projected and actual cash flow, safety, general conditions monitoring, and other items that Owner may reasonably require, and shall submit to Owner, a set of monthly summary reports as to each Project.

- .1 The monthly summary reports shall be in a form and software format acceptable to Owner. Such reports shall be distributed within the first week of each month to Owner's Designated Representative, the A/E, and any other persons or entities as directed by Owner.

- .2 If requested by Owner, Contractor shall maintain written daily and monthly equipment and manpower reports, which shall also include a description of the nature and location of the Work being performed. Such reports shall be available for Owner's inspection.
- .3 If requested by Owner, Contractor shall, no less than monthly, take date-stamped, digital photographs and/or videos of the progress of the Work sufficient to adequately document the Project's construction.
- .4 Contractor shall keep and maintain detailed, organized documents and data relating to its Work for a period of not less than ten (10) years following Final Completion of each Project.
- .5 Contractor acknowledges that Owner and, if applicable, its various funding sources, may have particular requirements with respect to accounting, billing, reimbursement and administration of the Work. Contractor agrees to administer the Project in accordance with any such requirements and to fully cooperate in keeping, organizing and maintaining Project documentation in accordance with suit requirements.
- .6 Contractor shall maintain Record Documents and prepare and update As-Built Documents at the Project Site or such other location authorized by Owner, in such format as Owner may require (electronic or otherwise) and shall maintain such material in good order in a clean, dry and legible condition, and separate from those used for construction. The As-Built Documents shall be available for inspection at all times by the Project Team, Subcontractors and Consultants.

**4.4.8 Partial Occupancy and Use.** Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated as Substantially Complete pursuant to the Contract Documents, or upon Owner's written request, provided such occupancy or use is consented to by insurers and authorized by Governmental Authorities.

- .1 Immediately prior to such partial occupancy or use, the Project Team shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.
- .2 Partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Defective Work.

**4.4.9 Substantial Completion.** The criteria and process for Substantial Completion set forth in this Section 4.4.9 shall apply to all Projects.

- .1 For Projects to which the Retainage Act does not apply, "**Substantial Completion**" shall be defined as the date certified by the A/E when the Project is available for occupancy by Owner such that Owner can occupy and operate in a safe and healthy manner, in accordance with all Applicable Laws, without unreasonable interference or interruption by Contractor, and with temporary or final certificate of occupancy issued by the building inspector within the municipality where the Project is being constructed. Notwithstanding the foregoing, Substantial Completion shall be achieved even with outstanding so-called punch list items (determined by the A/E in accordance with Section 4.4.9) of a minor nature. Without limiting the foregoing, the punch list shall not indicate final cleaning or completion and balancing of HVAC and other systems.

- (a) Substantial Completion shall not occur until the commissioning inspection, verification, and testing work for the Project is complete.

- (b) At least ten (10) days before Contractor expects the Project (or a portion thereof that Owner agrees to accept separately) to be substantially complete, Contractor shall submit to the A/E and Owner a Punchlist. Upon receipt thereof, the A/E will make an inspection to determine whether the Project or designated portion thereof is in fact, substantially complete.
- (c) If the A/E determines that the Work (or designated portion thereof) is substantially complete, the A/E will: (a) supplement, revise and annotate Contractor's Punchlist to reflect additional Work to be completed or corrected prior to Final Completion and submit it to Owner and Contractor; and (b) execute a certificate of Substantial Completion, assigning responsibilities of Owner and Contractor for security, maintenance, heat, utilities, correction of damaged or incomplete Work and insurance, and fixing the time within which Contractor shall complete all items on the Punchlist.
- (d) If the A/E determines that the Work (or designated portion thereof) is not substantially complete, the A/E will so notify Contractor in writing, specifying which items of the Work must be performed prior to issuance of a certificate of Substantial Completion.
- (e) If the A/E is required to perform more than two (2) Substantial Completion inspections through no error or omission of the A/E or Owner, such additional inspections shall be performed at the cost of Contractor.

.2 For Projects to which the Retainage Act applies, "**Substantial Completion**" shall be defined as the stage in the progress of the Project when the Work is sufficiently complete in accordance with the Contract Documents so that Owner may occupy or utilize the work for its intended use without unreasonable interference or interruption by Contractor and with an unconditional permanent and full certificate of occupancy issued by the building inspector within the municipality where the Project is being constructed; provided that Substantial Completion may apply to the only a phase of the entire Project if the Contract Documents expressly permits substantial completion to apply to defined phases of the Project.

- (a) Substantial Completion shall not occur until the commissioning inspection, verification, and testing work for the Project is complete.
- (b) Not later than fourteen (14) days after reaching Substantial Completion, Contractor shall submit to Owner a Notice of Substantial Completion (in the form provided in the Retainage Act) stating the date on which the Project was substantially complete.
- (c) Owner shall accept or reject the Notice of Substantial Completion within fourteen (14) days of receipt of the notice and shall indicate its acceptance by signing the Notice in the space provided and shall deliver the Notice to Contractor within the same fourteen (14) day period. If Owner fails to deliver the Notice to Contractor within such fourteen (14) day period, the Notice shall be considered accepted.
- (d) If Owner rejects the Notice of Substantial Completion, Owner shall, within 14 (fourteen) days of receipt of the Notice, notify Contractor, in writing, of the rejection and include in the rejection the factual and contractual basis for the rejection and a certification that the rejection is made in good

faith. A rejection of the Notice shall be subject to the dispute resolution provided herein, which may be commenced by Contractor within seven (7) days of receipt of the rejection of Owner. Contractor and Owner shall prosecute the dispute resolution procedures diligently, expeditiously and in good faith.

- (e) Upon an express or deemed acceptance of a Notice of Substantial Completion, the date of Substantial Completion shall be the date stated in the Construction Manger's Notice for all purposes and the acceptance shall be final and binding on Owner and its successors and assignees.

**4.4.10 Final Completion.** The criteria and process for Final Completion set forth in this Section 4.4.10 shall apply to all Projects.

- .1 For Projects to which the Retainage Act does not apply, Contractor shall notify Owner and A/E in writing at least ten (10) days before the Work is anticipated to be fully complete in accordance with the Contract Documents, setting forth the proposed date of Final Completion. On or before the proposed date of Final Completion, the A/E and Owner will inspect the Work and, if they determine that the Work is fully complete, will execute Contractor's final application for payment.
  - (a) If the A/E or Owner determines that the Work has not achieved Final Completion, the A/E will so notify Contractor in writing, specifying which items of the Work must be performed prior to acceptance of Final Completion. Contractor will take immediate steps to remedy the stated deficiencies.
  - (b) If the A/E is required to perform more than two (2) Final Completion inspections through no error or omission of the A/E or Owner, such additional inspections shall be performed at the cost of Contractor.
- .2 For Projects to which the Retainage Act applies, the process for Punchlist preparation and completion shall be as follows.
  - (a) Not later than fourteen (14) days after the express or deemed acceptance of the Notice of Substantial Completion or, in the case of a dispute, final and binding resolution of the dispute, Owner shall submit to Contractor a written Punchlist describing any incomplete or defective work items or Deliverables required of Contractor hereunder. The list shall be certified by Owner as made in good faith.
  - (b) Not later than twenty-one (21) days after the express or deemed acceptance of the Notice of Substantial Completion or, in the case of a dispute, final and binding resolution of the dispute, Contractor shall submit to each person from whom Contractor is withholding Retainage a written Punchlist describing any and all incomplete or defective Work or Deliverables required by the person under the person's contract for construction, which Punchlist may include items beyond those on Owner's list. The list shall be certified by Contractor as made in good faith.
  - (c) Owner and Contractor shall fulfill their obligations under Section 4.4.13.2 in good faith and in a timely manner.
- .3 For all Projects, Contractor shall complete the following (collectively, the "Closeout Items"):
  - (a) Complete the items on the Punchlist;

- (b) Confirm delivery of attic stock, spare parts, extra stocks of materials and similar physical items to Owner as directed by Owner;
- (c) Complete any remaining commissioning activities for systems required by the Contract Documents that were incomplete as of Substantial Completion, including deferred/seasonal testing and correction of any remaining deficiencies identified through the commissioning process; provided, however, that, as permitted by Owner, a portion of the deferred/seasonal testing, post-occupancy commissioning and 10-month warranty review may occur after Final Completion;
- (d) Instruct Owner's operating/maintenance personnel, whether or not such instruction is a condition of warranty, and in accordance with Owner's training requirements; and
- (e) Furnish the following documents and Deliverables to Owner and A/E:
  - (i) final application for payment, with accompanying documentation as provided in Section 5.3.3;
  - (ii) final permits, approvals, certificates, affidavits, and authorizations for use and occupancy of the Project required by Governmental Authorities, including unconditional permanent and full certificates of occupancy, except only for those for which Contractor has no responsibility;
  - (iii) progress and final photographs and videos,
  - (iv) As-Built Documents;
  - (v) all operating and maintenance manuals as required by the Contract Documents, parts lists, final project directory and repair source lists;
  - (vi) all specific warranties and warranty lists, guarantees, workmanship and maintenance bonds, and maintenance agreements required of or given by Subcontractors and those for whom they are responsible;
  - (vii) acknowledgment of prior payments and lien waivers in the form provided by M.G.L. c. 254, from Contractor and its Consultants and Subcontractors for labor, services, materials and equipment furnished to the Project;
  - (viii) documents and affidavits establishing payment or satisfaction of obligations, Claims and liens arising out of the Project, to the extent and in such form as may be designated by Owner;
  - (ix) mechanical systems balancing report, except for such final balancing as Owner may allow to occur after Final Completion;
  - (x) 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 canceled or allowed to expire until at least thirty (30) days' prior written notice has been given to Owner;
  - (xi) a written statement that Contractor knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents;
  - (xii) consent of surety, if any, to final payment; and
  - (xiii) any other documents specified in the Contract Documents to be provided to Owner at Final Completion.

.4 Owner shall not be obligated to issue the final payment to Contractor unless and until Owner has accepted Final Completion and Contractor has completed the Closeout Items in full.

**4.4.11 Warranties.** Contractor warrants to Owner that the Work will be free from defects not inherent in the quality required or permitted. Contractor will obtain and deliver to Owner specific, written warranties required of or given by Subcontractors, material or equipment

suppliers, manufacturers and those for whom they are responsible, which warranties will expressly provide that they are for the benefit of and enforceable by Owner.

- .1 Except when a longer period is specifically required by the Contract Documents or Applicable Law, all warranties will be in form and content acceptable to Owner, and shall be for a period of no less than twelve (12) months from Substantial Completion.
- .2 For portions of the Work that will not be in commission as of the Substantial Completion, the warranties will terminate twelve (12) months from the date that the final commission report of such portion of Work is accepted by Owner.
- .3 If, within the 12-month period, or such longer warranty period as required herein, a portion of the Work is found not to be in accordance with the Contract Documents and/or representations and warranties herein, Contractor and Subcontractors responsible for such portion of the Work shall at Owner's direction promptly repair, replace or re-execute such Work at no additional expense to Owner.
- .4 The warranties provided hereunder exclude damaged Work or Defective Work caused by modifications not executed by Contractor or Subcontractors, by abuse, improper or insufficient maintenance, improper operation or normal wear and tear and normal usage for which they are not responsible.

## ARTICLE 5. PAYMENT

**5.1 Schedule of Values.** Before the first application for payment and prior to the commencement of the Work, Contractor shall submit to the A/E and Owner a schedule of values, in a form acceptable to Owner, allocating the entire Stipulated Sum or GMP, as applicable, to the various portions of the Work and prepared in such form and supported by such data to substantiate its accuracy as Owner may require (the "**Schedule of Values**"). Separate line items shall be allocated for each Allowance and Alternate and, for GMP Projects, for the Construction Contingency and the Construction Fee. The accepted Schedule of Values shall be attached to a Release as Exhibit C and used as a basis for reviewing Contractor's applications for payment. To the extent that Contractor reallocates funds from one line item for the Work to another line item for the Work for a GMP project, such reallocation shall be memorialized on a Change Order with no charge to Owner.

### 5.2 Retainage.

**5.2.1** For Projects to which the Retainage Act applies, Retainage in the amount of 5% shall be withheld from each application for payment, and payment of Retainage shall be as follows:

- .1 Contractor may submit an Application for Payment of Retainage following the expiration of sixty (60) days after Substantial Completion or, in the case of a dispute, upon a final and binding resolution of the dispute. Applications for payment of Retainage shall be submitted in the same manner as provided for in Section 5.3 below.
- .2 Subject to Section 5.2.1.3, Owner shall release Retainage to Contractor not later than thirty (30) days following submission of the application for payment of Retainage.
- .3 Owner may withhold the following amounts from the payment of Retainage: (i) 2.5% of the total adjusted Stipulated Sum or GMP for outstanding Deliverables, unless a lesser amount is agreed upon in writing by the Parties; (ii) 150% of the reasonable cost to complete or correct incomplete or defective Work items; and (iii) the reasonable value of Claims and any costs, expenses and attorneys' fees incurred as a result of such Claims.

**5.2.2** For Projects to which the Retainage Act does not apply, Retainage in the amount of 10% shall be withheld from the entirety of each application for payment, unless otherwise directed by Owner. Owner and Contractor shall agree on a mutually acceptable procedure for review and reduction of Retainage as to particular Subcontractors. The balance of Retainage shall be paid to Contractor upon Final Completion. Retainage amounts held pursuant to this Section 5.2.2 shall not bear interest.

**5.3 Applications for Payment.** Contractor's application for payment shall be in a form required by Owner (which form may be electronic and submitted through E-Builder) and prepared in accordance with the schedule of values, and shall include only those changes memorialized in an approved and executed Change Order.

**5.3.1** The period covered by each application for payment (the "**Payment Application Frequency**") shall be established in the Release, subject to the following:

- .1 No later than ten (10) days prior to the submittal of an application for payment, Contractor shall submit a draft or pencil requisition to Owner for review and consideration. Owner and Contractor shall review such pencil requisitions together in order to ensure accurate submittals of applications for payment.
- .2 For Projects to which the Prompt Pay Act applies, the period covered by each application for payment shall be no greater than thirty (30) days, except that Contractor's first application for payment may be no more than forty-four (44) days from the Effective Date of the Release.

**5.3.2** The amount of each progress payment shall be computed as follows:

- .1 Take that portion of the GMP or Stipulated Sum properly allocable to completed Work as determined by multiplying the percentage of completion of each portion of the Work by the share of the GMP or Stipulated Sum allocated to that portion of the Work in the schedule of values. Pending final determination of cost to Owner of changes in the Work, amounts not in dispute may be included as provided in Section 11.3.1;
- .2 Add that portion of the GMP or Stipulated Sum properly allocable to materials and equipment delivered and suitably stored at the Project Site for subsequent incorporation in the Work, or if approved in advance by Owner, suitably stored off the site at a location agreed upon in writing;
- .3 For GMP Projects, add the Construction Fee at the percentage rate set forth in the applicable Release; or, if such Fee is fixed, at the same percentage that the completed Cost of the Work bears to the scheduled value of such Work;
- .4 Subtract Retainage from all of the above items;
- .5 Subtract the aggregate of previous payments made by Owner;
- .6 Subtract amounts for which the A/E has withheld or nullified certification or Owner has withheld or rescinded payment, as provided herein; and
- .7 Subtract amounts assessed as liquidated damages as set forth herein.

**5.3.3** Contractor's applications for payment shall be accompanied by:

- .1 Applications for payment and invoices from Subcontractors and persons or entities that furnished portions of the Work on their behalf.
- .2 Partial releases and lien waivers, in the form provided by M.G.L. c. 254, from Contractor and its Consultants and Subcontractors for labor, services, materials and equipment furnished to the Project through the date covered by the current application for payment;
- .3 A certification that Contractor has satisfied all of its financial obligations on account of labor, services, materials and equipment furnished to the Project by

its Consultants and Subcontractors and included in previous applications paid by Owner;

- .4 For portions of the Work for which compensation is based on Cost of the Work or costs that have not been fixed, payrolls, petty cash accounts, received invoices or invoices with check vouchers attached; and
- .5 any other evidence requested by Owner or A/E to demonstrate cash disbursements made by Contractor.

**5.3.4** If Contractor fails within seven (7) days of request to furnish written evidence that it has properly paid Subcontractors amounts paid by Owner, Owner may contact Subcontractors to ascertain whether they have been properly paid.

**5.4 Certificates for Payment.** In taking action on Contractor's applications for payment, the A/E and Owner shall be entitled to rely on the accuracy and completeness of the information furnished by Contractor and such action shall not be deemed to represent that the A/E or Owner have made a detailed examination, audit or arithmetic verification of the documentation submitted by Contractor; that the A/E or Owner have made exhaustive or continuous on-site inspections; or that the A/E or Owner have made examinations to ascertain how or for what purposes Contractor has used amounts previously paid on account of the Contract.

**5.4.1** The A/E shall, within five (5) days after receipt of Contractor's application for payment, either issue to Owner a certificate for payment, with a copy to Contractor, for such amount as the A/E determines is properly due, or notify Contractor and Owner in writing of the A/E's reasons for withholding certification in whole or in part.

**5.4.2** The A/E's issuance of a certificate for payment constitutes its certification that the Work has progressed to the point indicated, that the quality of the Work is in accordance with the Contract Documents to the best of the A/E's information and knowledge in the exercise of its contractual duties, and that the A/E recommends that Owner release payment to Contractor in the amount requested, subject to results of subsequent tests and inspections, correction of minor deviations from the Contract Documents prior to Final Completion and specific, written recommendations for withholding.

**5.4.3** The provisions of this Section 5.4.3 shall apply only to Projects to which the Prompt Pay Act applies.

- .1 Owner will, within fifteen (15) days after submission of Contractor's application for payment, either approve or reject (in whole or in part) the application for payment by delivering to Contractor a "Notice of Approval or Rejection of Application for Payment" in the form to be provided by Owner's Designated Representative prior to the commencement of the Work.
- .2 An application for payment that is neither approved nor rejected (in whole or in part) by Owner within fifteen (15) days after submission thereof shall be deemed to be approved (a "Deemed Payment Approval") unless it is rejected (in whole or in part) by Owner before payment with respect thereto is due under the terms hereof. Any rejection of any application for payment by Owner (in whole or in part), whether made within fifteen (15) days after submission of the application for payment or prior to the date when payment is due, shall include an explanation of the factual and contractual basis for rejection and shall be certified by Owner as made in good faith.

**5.5 Decisions to Withhold Certification.** Owner may withhold payment in whole or in part or, because of subsequently discovered evidence, or may rescind payment previously released, to the extent reasonably necessary to protect itself from the losses set forth in Section 5.5.1 below.

**5.5.1** The A/E shall withhold a certificate for payment in whole or in part or, because of subsequently discovered evidence, may nullify the whole or a part of a prior

certificate for payment previously issued, if in the A/E's opinion the representations required by Section 5.4.2 cannot be made, or as may be necessary to protect Owner from:

- .1 Loss due to Defective Work not remedied;
- .2 Losses for which Owner is entitled to indemnity from Contractor under the Contract Documents;
- .3 Reasonable evidence that the Work will not be completed within the Project Time, or that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay;
- .4 Uninsured loss due to personal injury or damage to the Work or the work of Separate Contractors to the extent of the responsibility of Contractor or those for whom it is responsible;
- .5 Failure of Contractor to make timely payments properly to Subcontractors or for labor, materials or equipment;
- .6 Reasonable evidence that the Work cannot be completed for the unpaid balance of the Stipulated Sum or GMP;
- .7 Failure to carry out the Work in accordance with the Contract Documents; or
- .8 Claims by Subcontractors for applications for payment or requests for Change Orders deemed approved under the Prompt Pay Act which otherwise should not have been approved by Contractor pursuant to the terms of the Contract Documents.

**5.6 Progress Payments.** Owner shall pay Contractor in the manner provided in the Contract Documents within 45 days after (a) Owner's approval of Contractor's application for payment; or (b) for Projects to which the Prompt Pay Act applies, the date of Deemed Payment Approval (as set forth in Section 5.4.3.2), provided that Owner may reject a Deemed Payment Approval in whole or in part and in accordance with the Contract Documents.

**5.6.1** Unless otherwise provided in the Contract Documents, payments shall be made on account of materials and equipment properly delivered and suitably stored at the Project Site for subsequent incorporation into the Project. If approved in advance by Owner, payment may be made for materials and equipment suitably stored off the Project Site at a location agreed upon in writing by Owner. Payment for materials and equipment stored on or off the Project Site shall be conditioned upon compliance by Contractor with procedures satisfactory to Owner to establish Owner's title to such materials and equipment or otherwise protect Owner's interest, and shall include the costs of applicable insurance, storage and transportation to the site for such materials and equipment stored off the Project Site.

**5.6.2** Title to all Work covered by an application for payment shall pass to Owner no later than the time Contractor receives payment for same.

**5.6.3** A certificate for payment, a progress payment, or partial or entire use or occupancy of the Project by Owner shall not constitute acceptance of Defective Work.

**5.6.4** Contractor shall promptly pay each Subcontractor, but in no event later than seven (7) days after receipt of payment from Owner, the amount to which the Subcontractor is entitled, reflecting percentages actually retained from payments to Contractor on account of the Subcontractor's portion of the Work. Contractor shall incorporate similar requirements as to prompt payment, lien waivers and other supporting documentation required by the Contract Documents into its contracts with Subcontractors and Consultants of all tiers.

**5.7 Final Payment.** Within forty-five (45) days after fully satisfying the requirements of Section 4.4.10, Owner will make final payment, constituting the entire unpaid balance of the Stipulated Sum or GMP (including Retainage), to Contractor.

**5.8 Joint Checks.** In Owner's sole discretion, whether or not upon default by Contractor or its Subcontractor or Consultant on a Project or any other project of Owner's, Owner may make payment by joint check to a Subcontractor or Consultant, and such payments shall be deemed to have been made on account of the payee and all tiers between the payee and Owner. Any payment made by Owner by joint check shall not be construed as a promise to assume the debt of any joint payee, nor as a continuing obligation to make joint payments, nor as an assumption or establishment of a direct contractual relationship with the payee unless expressly stated in a separate written agreement with such Subcontractor or Consultant.

**5.9 Failure of Payment.** If Owner fails to pay Contractor amounts to which it is entitled hereunder within the time limits contained herein, Contractor may, upon thirty (30) additional days' written notice to Owner and A/E, suspend Work until payment of the amount owing has been received. The Project Time shall be extended appropriately and the Stipulated Sum or GMP shall be increased by the amount of Contractor's reasonable costs of shut-down, delay and start-up, plus interest as provided for in the Contract Documents.

**5.9.1** Pending resolution of a change in the Work or a Claim, and subject to Contractor's limited right to suspend above, Contractor shall proceed diligently with the performance of its obligations and all changes directed by Owner hereunder. Contractor shall not stop, suspend, or delay any portion of the Work, and will be responsible for all expenses, costs and fees arising from any such stop, suspension or delay.

**5.10 Taxes.** Owner is an institution of higher education and is tax exempt under Internal Revenue Code. Contractor shall familiarize itself with applicable tax statutes, regulations and procedures. Contractor shall not include as part of the price for any Work performed or include in an application for payment any tax on the sale of such materials or supplies that is available for exemption by such statutes and regulations. Owner will provide a tax exemption certificate for purchases pertaining to the Project.

**5.10.1** As to any taxes for which Owner or the Work is not exempt, Contractor shall pay applicable sales, consumer, use and similar taxes that are legally enacted when bids are received or negotiations concluded, whether or not yet effective or merely scheduled to go into effect.

**5.11 Audit.** Contractor shall permit Owner and its designee(s), upon forty-eight (48) hours' notice, full access during normal business hours to inspect and copy all documents, records and data, electronic and otherwise, relating to the Project, including any information that Owner in its reasonable judgment considers necessary to confirm any amount for which Contractor seeks payment or reimbursement from Owner in accordance with the provisions set forth herein and with Owner's audit provisions set forth in Exhibit B attached hereto. Contractor shall promptly respond to any inquiries of Owner or its designee arising out of any such inspection or audit.

**5.11.1** The obligation to allow audit of books and records excludes portions of the Services or Work performed on the basis of an agreed fixed fee or lump sum, except as Owner may require to verify proposed changes in the Work or Claims.

**5.11.2** The records to be made available by Contractor hereunder shall include accounting records (hard copy, as well as computer readable data if it can be made available); written policies and procedures; subcontract files (including proposals of successful and unsuccessful bidders, bid recaps, etc.); original estimates; estimating worksheets; correspondence; change order files (including documentation covering negotiated settlements); back charge logs and supporting documentation; general ledger entries detailing cash and trade discounts earned, insurance rebates, dividends, and any other supporting evidence deemed necessary by Owner to substantiate charges related to Project, to adequately permit evaluation and verification of the Cost of Work, changes in the Work, and any invoices, Change

Orders, payments or Claims submitted by Contractor or any of his payees pursuant to the execution of the contract.

- 5.11.3** Such audits may require inspection and copying from time to time and at reasonable times and places of any and all information, materials and data of every kind and character, including without limitation, records, books, papers, documents, subscriptions, recordings, agreements, purchase orders, leases, contracts, commitments, arrangements, notes, daily diaries, superintendent's reports, drawings, receipts, vouchers and memoranda, and any and all other agreements, sources of information and matters that in Owner's judgment have any bearing on or pertain to any matters, rights, duties or obligations under or covered by any Contract Document. Such records subject to audit shall also include those records necessary to evaluate and verify direct and indirect costs (including overhead allocations) as they may apply to costs associated with this contract.
- 5.11.4** Owner or its designee shall be allowed to interview any of Contractor's employees, pursuant to the provisions of this Section, throughout the term of the Project and for a period of three (3) years after final payment, or longer if required by Applicable Law.
- 5.11.5** Contractor shall incorporate the audit provisions of this Section in substantially the same form in agreements with its Subcontractors and Consultants of all tiers.
- 5.11.6** For Projects that are not subject to the Prompt Pay Act, if Owner's audit reveals an overcharge in excess of one percent (1%) of the total contract billings, Contractor shall promptly return such overcharge and reimburse Owner's costs and administrative expenses in connection with such audit.
- 5.11.7** Contractor shall retain all records that may be subject to audit pursuant to the terms of this Agreement for a period of seven (7) years from final payment to Contractor for the Project.

**5.12 Limitation on Payment.** Contractor acknowledges that time is of the essence in the submission of proper invoices to Owner in order to avoid reconciliation problems associated with outdated invoices. Owner's obligation to pay any properly submitted and undisputed invoice shall be subject to Contractor's submission to Owner of such invoice in a timely fashion, but in no event later than ninety (90) days after Final Completion. Notwithstanding anything to the contrary set forth in any of the Contract Documents, Owner shall have no responsibility (financial or otherwise) with respect to any invoices or expenses incurred by Contractor in connection with a Project if such invoices or expenses are submitted to Owner after the expiration of the 90-day time period set forth above.

**ARTICLE 6. Procurement Services.** Contractor shall provide the following procurement services as part of the Preconstruction Work or the Work, if specified in a Release, as applicable. Owner may add to and deduct from such procurement services in the applicable Release and as otherwise allowed herein. Upon the full execution of a Release, Contractor shall commence and proceed expeditiously with the bidding services. For purposes of this Section 4.1 only, the term "**Work**" shall also refer to the Preconstruction Work, if applicable.

**6.1 Early Release Packages.** Contractor shall identify the scope of Work, if any, which must be released prior to the issuance of a Release in order to meet the construction Schedule, for review and approval by Owner. Contractor may not award or commence any portion of the Work prior to the Parties' execution of a Release except by issuance of Release setting forth a Limited Scope of Work. Contractor shall separately identify all approved early release packages in the schedule of values for the Work.

**6.2 Prequalification.** Contractor shall develop potential Subcontractors' interest in each Project. Contractor shall submit a list of recommended Subcontractors for principal portions of the Work and suppliers of specially manufactured materials and equipment to Owner and A/E for review. Owner may in

its sole discretion add and/or remove potential bidders from Contractor's list. Contractor may not self-perform any trade work without Owner's prior, express consent.

**6.2.1** Contractor shall disclose to Owner any familial or business relationship, direct or indirect ownership or control interest or other financial interest it may have with any of potential Subcontractors that are Related Parties.

**6.3 Bid Packages.** The Project Team shall confer and agree upon groupings of Drawings and Specifications that will facilitate the development of bid packages for each Project. With Owner's consent, Alternates may be included in the bid packages. The A/E will prepare and deliver to Contractor, integrated Bid Documents that are complete and ready for bid in accordance with the latest accepted Schedule. Contractor shall separate the Bid Documents into various categories of the Work in a manner calculated to minimize scope gaps and jurisdictional disputes among trades, incorporate them into bid packages and distribute the bid packages to prospective bidders.

**6.3.1** Contractor shall require that bidders of all tiers submit, in a form acceptable to Owner, wage rate breakdowns showing base rates, fringe benefits (not to exceed applicable collective bargaining agreements), FICA, FUTA, SUTA and workers' compensation insurance.

**6.3.2** In all Projects where demolition or deconstruction work is to be performed, Contractor shall require bidders to include estimated quantities and value of salvaged materials in their bid.

**6.3.3** Contractor shall establish bidding procedures and archiving protocols compatible with Owner's requirements.

**6.4 Pre-Bid Conference.** If requested by Owner, Contractor shall coordinate and preside over a pre-bid conference to familiarize prospective bidders with local conditions affecting the Work, safety requirements, Schedules, Project procedures and policies, any special systems, materials or methods, and other agenda items required by the Drawings and/or Specifications.

**6.5 Bid Analysis.** After the opening of the bids, Contractor shall provide Owner and A/E with a written analysis of the bids, which shall contain a written recommendation concerning all Alternates and any Substitutions. Contractor shall coordinate and preside over mandatory scope review meeting(s) with bidders selected by Owner. Following such meeting(s), Contractor shall provide Owner and A/E with any amended analysis, including any collective bargaining agreements applicable to the bids and a list of recommended bidders.

**ARTICLE 7. General Terms and Conditions.** The following terms and conditions shall apply to any work performed by Contractor in connection with the Contract Documents, including but not limited to Preconstruction Work and the Work.

**7.1 Safety.** Contractor shall be solely responsible for the safety of all persons on the Project Site and shall take every reasonable precaution to guard against injuries to persons or damage to property. Prior to the commencement of the Preconstruction Work or the Work, Contractor shall prepare a safety plan and shall conduct itself at all times in conformance with Owner's requirements and Applicable Law. Contractor shall comply with, and shall be responsible for instituting and enforcing procedures and precautions at each Project Site necessary to comply with, Contractor's safety plan.

**7.1.1** For each Project, Contractor shall include qualified and responsible on-site safety personnel in accordance with the safety plan, who shall be responsible for the prevention of accidents and compliance with and enforcement of the safety plan and safety requirements of the Contract Documents.

**7.1.2** In the event of an emergency affecting safety of persons or property, and only until such emergency ceases to exist, Contractor will immediately take such action without authority or instruction from Owner as may be reasonable and necessary under the circumstances to prevent threatened damage, injury or loss.

- 7.2.3** Contractor will notify Owner of any accident resulting in bodily injury at the Project Site or damage to any property at the Project Site regardless of cause or extent of any bodily injury or damage to property, as promptly as is practicable under the circumstances, but in no event more than 24 hours after such accident. Contractor shall immediately investigate the circumstances and response to the accident and prepare a report documenting its findings.

**7.2 Hazardous Materials.** In the event that Contractor identifies that Hazardous Materials are present at the Site, or should have reasonably identified that Hazardous Materials are present in the Site, Contractor shall immediately stop all Work in the affected area and inform Owner of the presence of such Hazardous Materials. Owner may arrange for testing in the affected area and, if necessary, may direct Contractor to undertake the removal or safe containment of such material or substance. Contractor's removal or containment, including the procurement of such insurance as Owner may require, shall be performed in compliance with Applicable Law and shall be compensable to Contractor as a change, except to the extent such Hazardous Materials were introduced into the Site by Contractor or by third parties directly under the control of Contractor. After the removal or safe containment of any Hazardous Material or substance, Contractor shall resume its services hereunder and the Project Time, GMP or Stipulated Sum (as applicable) shall be adjusted by Change Order.

- 7.2.1** If Contractor or those working directly or indirectly for Contractor are responsible for the presence of Hazardous Materials or substances at the Project Site, then Contractor shall be responsible for all costs associated with such material's maintenance, removal, clean up, disposal and /or containment, all to be performed in compliance with Applicable Law and Owner's requirements.

- 7.2.2** Contractor shall hold harmless and indemnify Owner for any and all costs, losses and claims related to Contractor's breach of the provisions of this Section 10(B). Contractor acknowledges that Contractor's failure to fully and promptly comply with the terms of this Section 10(B) shall be considered a default under this Agreement, subject to Owner's remedies outlined in this Agreement.

**7.3 Tests, Inspections and Correction.** If testing or inspection of the Work is required by Applicable Law, by request of Owner or A/E, by the Contract Documents or by industry custom and practice, then Contractor shall, at its own expense, retain, schedule and coordinate such testing and inspection. Owner shall approve all such testing and inspection companies in advance. Contractor shall give Owner and A/E timely written notice when such portions of the Work are ready for testing or inspection and the date fixed for any third-party testing or inspection of such portions of the Work. If Work for which testing or inspection was required or requested is covered before such testing or inspection is performed, costs associated with uncovering and re-covering the Work for the purpose of performing such testing or inspection shall be borne by Contractor and all other parties responsible for covering the Work prior to inspection.

- 7.3.1** Contractor will, at its own cost, repair or replace, as Owner directs, Defective Work and any damage to the Work or to the work of a Separate Contractor to the extent caused by Contractor or those for whom it is responsible. If Contractor fails to act promptly to rectify any Defective Work or potential impacts to the Schedule, Owner may, in its sole discretion, at the expense of Contractor and/or any person or entity responsible for such nonconformity:

- (a) by written order, direct Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated;
- (b) furnish or cause to be furnished such labor, services, materials or equipment to correct, remove, replace and/or repair, as Owner deems the most expedient remedy;
- (c) withhold payment as permitted under the Contract Documents; and/or
- (d) take such action as is necessary to regain and/or maintain the Schedule.

**7.4 Standard of Care.** Contractor shall perform the Preconstruction Work and Work expeditiously in accordance with the expertise, care and skill exercised by first class contractors that have successfully completed projects of comparable size and complexity in the Greater Boston and Cambridge region and shall at all times advance the orderly progress of each Project.

**7.5 Personnel; Contractor's Designated Representatives.**

**7.5.1** In carrying out its responsibilities hereunder, Contractor shall use only skilled employees with proven experience in projects of comparable size and complexity. Any individual or entity authorized by Contractor and its Subcontractors and Consultants of any tier to perform the Preconstruction Work or the Work (or any portion thereof) shall hold valid licenses or registrations that are required by Governmental Authorities for the performance of the Preconstruction Work or the Work. If licensed architects or engineers are required by Applicable Law or the Contract Documents, Contractor shall cause such services or Work to be performed by Massachusetts-licensed professionals acceptable to Owner.

**7.5.2** Contractor shall employ a fully licensed and competent project manager, superintendent and necessary assistants who shall be in attendance at the Project site during performance of the Work (collectively, the "**Contractor's Designated Representatives**"). Contractor's Designated Representatives assigned to a Project shall be set forth in the applicable Release; provided, however, that if the Contractor's Designated Representatives are not identified on a Release, Owner shall have the right to approve the Contractor's Designated Representatives prior to commencement of the Work.

.1 No change shall be made in the Contractor's Designated Representatives without Owner's prior approval, and Owner may require the replacement of the Contractor's Designated Representatives with or without cause.

.2 Both the project manager and the superintendent shall have full authority to act on behalf of the Contractor. The project manager and, in his/her absence, the superintendent shall represent the Contractor, and communications given to the project manager or the superintendent shall be as binding as if given to the Contractor directly. Important communications shall be confirmed in writing. Other communications shall be similarly confirmed on written request in each case.

.3 The superintendent and necessary assistants shall be in attendance at the Site at all times during the progress of the Work until Final Completion of the Work.

**7.5.3** Contractor's Designated Representative shall have full authority to accept instructions, make decisions, communicate for and act on behalf of Contractor at all times. Any communication from Contractor's Designated Representative shall be binding on Contractor.

**7.5.4** Contractor will not change the Contractor's Designated Representatives or their responsibilities without Owner's prior, written consent. If, at any time, any of the Contractor's Designated Personnel are not satisfactory to Owner, in its sole discretion, Contractor shall, upon written request by Owner, promptly remove and replace such personnel with another person acceptable to Owner. In the event that one or more of Contractor's Designated Personnel leave the service of Contractor or must be replaced for any reason, such replacement personnel shall be subject to Owner's interview and acceptance, such acceptance being at the sole discretion of Owner.

**7.5.5** In the event there is a material change in the corporate officers of Contractor having supervisory responsibility over Contractor's Designated Personnel, Owner may terminate this Agreement pursuant to Article 14.

**7.6 Subcontractors.** Contractor shall supervise, be responsible for, coordinate and control all activities of its Subcontractors.

- 7.6.1** Nothing herein shall be construed as an intent to create a contractual or third-party beneficiary relationship between Owner and any of Contractor's Subcontractors or Consultants or any other entity.
- 7.6.2** Contractor shall require its Subcontractors and Consultants to be bound by the terms of the Contract Documents insofar as applicable to their Work (including but not limited to the insurance requirements), and to assume toward Contractor all the contractual obligations and responsibilities that Contractor has assumed toward Owner.
- 7.6.3** Contractor shall not limit or waive rights or remedies that Contractor or Owner may have against any of Contractor's Subcontractors or Consultants, unless such limitation or waiver is expressly authorized in advance, either in a writing signed by Owner or in the Contract Documents.
- 7.6.4** Each Subcontract for a portion of Work will, at Owner's election, be assigned by Contractor to Owner, provided that the assignment is effective only after termination of the Agreement or a Project by Owner and only for those subcontracts that Owner accepts by notifying the Subcontractor and Contractor in writing. Upon Owner's election and acceptance, this provision shall be self-executing and nothing further shall be required of Contractor in order to effectuate the requirements of this provision. Contractor shall include a similar provision in all of its Subcontracts.
- 7.6.5** All Subcontracts or other agreements shall be pursuant to a written stipulated sum, shall conform to the applicable provisions of the Contract Documents, and shall not be awarded on the basis of cost plus a fee without the prior written consent of Owner. If, with Owner's consent, a Subcontract is awarded on a cost-plus a fee basis, such Subcontract shall contain a provision giving Owner the right to audit such Subcontract costs in accordance with Owner's audit provisions set forth in Exhibit B attached hereto.
- 7.6.6** In the event a Subcontractor defaults under the terms of its Subcontract, voluntarily files for bankruptcy protection under the United States Bankruptcy Code or voluntarily becomes subject to any reorganization, receivership, insolvency proceeding or other similar proceeding pursuant to any other federal or state law affecting debtor and creditor rights, or an involuntary case is commenced against the Subcontractor pursuant to the United States Bankruptcy Code or other federal or state law affecting debtor and creditor rights, Contractor shall, at the direction of Owner, promptly take such action as may be necessary to minimize disruption to the progress of the Work and mitigate any added expense resulting from the default or bankruptcy.

**7.7 Labor.**

- 7.7.1** In performing its services hereunder, Contractor shall account for, enter into and comply with all Project labor agreements and other Owner policies regarding labor relations that are applicable to each Project. Owner shall review and approve any project labor agreements for use on each Project.
- 7.7.2** Contractor shall procure materials from such sources and manage all labor forces so as to maintain harmonious relations at the Project Site.
- 7.7.3** Contractor shall make reasonable inquiry prior to employing laborers and service-providers as to whether their trade affiliations may cause strikes or work stoppages on any Project.
- 7.7.4** Contractor shall maintain separate entrances to the Project Site for union and non-union workers.

Contractor shall give to Owner prompt notice of every labor dispute that may affect the execution or progress of the Work, take immediate steps to resolve such disputes, and minimize disruptions from such labor dispute, which may include replacing Subcontractors with substitutes acceptable to Owner.

**7.8 Affirmative Action.** Contractor and its Consultants and Subcontractors of all tiers will not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, disability, veteran status, marital status, civil union status or sexual orientation. They will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex or national origin. Such action shall include the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

**7.8.1** To the extent required in a Release, Contractor shall comply with Owner's Equal Opportunity Policy, attached hereto as Exhibit C.

**7.9 Required Information.** At the earliest possible date, Contractor will provide the Project Team with a list of information or documentation required from the other members of the Project Team that is necessary for the performance of its obligations hereunder, including any surveys, probes or tests which are required to obtain additional information or verify critical information that is not verifiable by visual inspection and measurement.

**7.10 Communications Protocol.** Owner encourages direct communication between and among Contractor, A/E and Owner through their Designated Representatives in order to timely share Project data and information. Written communications between Contractor, A/E or Owner shall be copied to each of them, unless Owner in its discretion determines otherwise with respect to specific communications. Communications with Consultants and Subcontractors shall be through the Designated Representatives of the Project Team member that retained such Consultant or Subcontractor.

**7.11 Corrections.** Contractor will re-perform, revise, or cause to be re-performed or revised, at no cost to Owner and without delay to the Project, any services or Deliverables prepared hereunder by it or on its behalf, in which a material error, omission, deficiency or noncompliance with the Contract Documents or Applicable Law is at any time discovered.

**7.12 Staffing Plan.** Contractor shall develop for Owner's written approval, a Staffing Plan which shall include a good faith estimate by task, of the anticipated number of hours for each of Contractor's Designated Personnel for each Project.

**7.13 BIM.** Owner may require the use of building information modeling (BIM) processes and technologies, in whole or in part, in the design and construction of a Project as indicated in a Release. If a BIM is required, in the Conceptual Design Phase, Contractor shall assist A/E in developing a BIM Execution Plan based on Owner's current BIM Execution Plan template, in consultation with Owner and others as required by Owner. Contractor shall perform the Services in accordance with the accepted BIM Execution Plan and Owner's CAD & BIM Guidelines.

**7.14 E-Builder.** Owner may direct Contractor to use E-Builder (or such other software as Owner may choose) in the performance of the Services, subject to additional terms, conditions and instructions that Owner shall provide to Contractor. Contractor shall cause its personnel and those of its Consultants to take any training courses required by Owner, at no additional cost to Owner. If Owner does not provide a license for E-Builder, Contractor and its Consultants shall purchase and maintain license(s) as necessary to furnish the Services.

**7.15 Facility Grid.** Owner may direct Contractor to use Facility Grid (or such other software as Owner may choose) in the performance of the Services related to commissioning, subject to additional terms, conditions and instructions that Owner shall provide to Contractor. Contractor shall cause its personnel and those of its Consultants to take any training courses required by Owner, at no additional cost to Owner.

**ARTICLE 8. INTENTIONALLY DELETED**

**ARTICLE 9. INSURANCE**

**9.1 Contractor's Insurance Limits and Coverages.**

**9.1.1 Commercial General Liability.** Contractor shall maintain Commercial General Liability insurance covering all operations by or on behalf of Contractor on an occurrence basis against claims for bodily injury (including death), personal injury, and property damage (including loss of use). Such insurance shall provide limits and coverage as follows:

**.1 Limits:**

- (a) BI/PD combined single limit per occurrence with limits in applicable Release.
- (b) Products and completed operations aggregate with limits in applicable Release.
- (c) Annual general aggregate with limits in applicable Release.

**.2 Coverages:**

- (a) 2001 (or later) ISO Commercial General Liability Form (Occurrence Form)
- (b) Products and completed operations coverage maintained for at least three (3) years after Substantial Completion of the Work
- (c) Blanket contractual liability (included in 2001 ISO Form)
- (d) Broad form property damage (included in 2001 ISO Form)
- (e) Severability of interest (included in 2001 ISO Form)
- (f) Underground, explosion and collapse coverage (included in 1986 ISO Form)
- (g) Personal injury
- (h) Blanket waiver of subrogation
- (i) Additional insured endorsement
- (j) Pollution liability
- (k) Joint venture as named insured, if applicable

**9.1.2 Workers' Compensation.** Contractor shall maintain workers compensation and employer's liability insurance as follows:

**.1 Limits:** Workers' compensation and disability benefits required by law, including coverage and/or endorsement for:

- (a) Statutory Unlimited
- (b) Employer's Liability:
  - Bodily injury for each accident with limits in applicable Release.
  - Bodily injury by disease for each employee with limits in applicable Release.
  - Bodily injury disease aggregate with limits in applicable Release.

**9.1.3 Automobile Liability.** Contractor shall maintain business auto liability insurance covering liability arising out of any auto (including owned, hired and non-owned autos) as follows:

**.1 Limits:** Combined single limit each accident with limits in applicable Release.

**.2 Coverages:**

- (a) Additional insured endorsement
- (b) Blanket waiver of subrogation
- (c) Contractual liability

**9.1.4 Umbrella/Excess Liability.** Contractor shall maintain umbrella/excess liability insurance on an occurrence basis in excess of the underlying insurance described herein which shall be at least as broad as each and every coverage area of the underlying policies. The amounts of insurance required herein may be satisfied by combination of underlying and umbrella limits, so long as the total amount of insurance is not less than the limits specified in this Article, and provided that the underlying insurance limits (exclusive of umbrella/excess) shall not be less than the amount specified in the applicable Release.

.1 **Limits:** Each combined single limit and aggregate with limits in applicable Release.

.2 **Coverages:**

- (a) Additional insured endorsement
- (b) Pay on behalf of wording
- (c) Concurrence of effective dates with primary
- (d) Blanket contractual liability
- (e) Punitive damages coverage (where applicable by law)
- (f) Aggregates: apply where applicable in primary
- (g) Care, custody & control: follow form in primary
- (h) Drop down feature

**9.1.5 Contractor's Pollution Liability Insurance.** In the event that any disruption, handling, abatement, remediation, encapsulation, removal, transport, or disposal of hazardous materials is required, Contractor shall secure, or cause to be secured, pollution liability insurance as follows, in addition to the other coverages contained herein. The policy shall be valid for the duration of the Work and shall be maintained by the Remediation Subcontractor for a period of 5 years thereafter. The insurance shall be occurrence-based and Project specific.

.1 **Limits:**

- (a) Each Occurrence with limits in applicable Release.
- (b) Each Person with limits in applicable Release.

.2 **Coverages:**

- (a) Bodily injury, sickness, disease, mental anguish, shock, and death
- (b) Property damage, including physical injury to or destruction of tangible property including the resulting loss of use thereof, clean-up costs, and the loss of use of tangible property that has not been physically injured or destroyed
- (c) Blanket waiver of subrogation rights against the owner, and its officers, employees and agents
- (d) Contractual Liability
- (e) Additional Insured Endorsement

**9.1.6 Professional Liability Insurance.** Contractor, any Subcontractor, and any sub-subcontractor that has professional liability exposure, shall provide professional liability insurance covering their operations.

**9.2 Subrogation Waiver.** Owner and Contractor waive all rights against each other, their agents, officers, directors, employees and those for whom they are liable, for property damage caused by fire or other perils to the extent covered by property insurance, and to the extent of actual recovery of insurance proceeds, excluding any applicable deductible. Contractor shall require equivalent waivers of subrogation contracts with its Subcontractors and Consultants of all tiers. A waiver of subrogation is effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity has an insurable interest in the property damaged.

**9.3 Bonding.** Owner may require, in the Release or thereafter, that Contractor and/or specific Subcontractors furnish payment, performance and/or lien prevention bonds. Such bonds, when required, shall be in the full amount of the bonded contract, and in a form acceptable to Owner. Owner shall be

named as a dual obligee on all bonds furnished for a Project. The required bonds must be provided by a surety company or companies acceptable to Owner, authorized to transact business within the Commonwealth of Massachusetts, and named in the then-current listing by the Department of the Treasury of approved sureties (Department Circular 570).

**9.3.1** Within ten (10) days of the award of a contract for which bonding is required under the Contract Documents, Contractor will deliver to Owner the original bonds.

**9.3.2** Contractor may, at its own cost, submit a proposal to purchase a subcontractor default insurance program for the Project in lieu of the bonding requirements herein, which Owner may accept, negotiate or reject as Owner sees fit.

## **ARTICLE 10. OWNER**

**10.1 Fiduciary Relationship.** Contractor acknowledges that its relationship with Owner is one of a fiduciary inasmuch as the relationship requires, among other important responsibilities, that Contractor manage certain of Owner's funds. Contractor accepts the fiduciary relationship of trust and confidence hereby established with Owner, including the obligation to deal with Owner in good faith, and with the undivided loyalty and candor that such relationship requires. Contractor acknowledges that Owner is relying on the expertise and integrity of Contractor for all services hereunder. Contractor shall furnish efficient business administration and superintendence and use its professional efforts to complete Owner's programmatic objectives for each Project in the most expeditious and economical manner consistent with the interest and goals of Owner. Contractor agrees to cooperate with Owner, the A/E and other persons or entities employed by Owner in connection with each Project.

**10.2 Design Professionals.** Owner may retain an A/E to design and to prepare Drawings and Specifications for each Project, who shall be identified in the applicable Release. Owner may retain other Consultants in its sole discretion.

**10.3 Owner's Right to Carry Out the Work.** If Contractor defaults or neglects to carry out the Work of any Project in accordance with the Contract Documents and fails within a seven (7) day period after receipt of written notice from Owner to commence and continue correction of such default or neglect with diligence and promptness, Owner may, without prejudice to any other remedy it may have, correct such deficiencies. In such case, Owner may deduct from payments then or thereafter due Contractor, the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the A/E's additional services made necessary by such default, neglect or failure. If payments then or thereafter due Contractor are not sufficient to cover such amounts, Contractor shall immediately upon demand pay the difference to Owner.

**10.4 Performance by Owner or Separate Contractors.** Owner reserves the right to perform construction or operations related to a Project with Owner's own forces, and to award separate contracts to other contractors ("**Separate Contractors**") in connection with other portions of the Project or other construction or operations at the Project Site.

**10.5 Contractor Financial Condition.** Contractor warrants that its financial condition is sound and that Contractor is capable of obtaining any bonds now or hereafter required pursuant to the Contract Documents. Upon request by Owner, Contractor shall make available to Owner such audited and unaudited financial statements of Contractor as Owner may reasonably request. Contractor shall promptly advise Owner of any occurrence, event, fact, or other matter that has had, will have, or might reasonably be predicted to have a material adverse effect upon the financial condition of Contractor.

## **ARTICLE 11. CHANGES IN THE WORK**

**11.1 Owner Changes.** Owner may add, delete, modify or alter the Work within the general scope of the Contract Documents. Changes in the Work may be accomplished by Change Order, Construction Change Directive or an order for a minor change in the Work in accordance with this Article. Where a portion of the Work is modified, the balance shall remain as indicated in the Contract Documents. Except for emergencies as set forth in Section 7.1, Contractor will not undertake any addition, deletion,

modification or alteration in the Work without written authorization from Owner as provided for in this Article.

**11.1.1** The A/E has no authority to order any changes, extra-contractual work or services; to contractually bind Owner; or to alter Owner's rights and obligations under any contract.

**11.2 Change Orders.** A "Change Order" is a written instrument signed by Owner and Contractor stating their agreement upon all of the following: (a) the change in the scope of the Work; (b) the amount of the adjustment, if any, in the GMP or Stipulated Sum; and (c) the extent of the adjustment, if any, in the Project Time. Agreement on a Change Order shall constitute a final settlement of all matters relating to the change in the Work that is the subject of the Change Order, including all direct, indirect, cumulative cost and time impacts associated with such change and prior changes.

**11.3 Construction Change Directives.** A "Construction Change Directive" is a type of Bulletin signed by Owner directing Contractor to proceed with a change in the Work, which may result in a change in the GMP, Stipulated Sum or Project Time. The pricing impact, if any, of a Construction Change Directive will be determined in accordance with this Article 11. A Construction Change Directive signed by Contractor indicates Contractor's agreement therewith, including adjustment in GMP, Stipulated Sum and/or Project Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.

**11.3.1** Contractor may include Work completed pursuant to executed Change Orders in an application for payment. Pending final determination of the actual cost of a Construction Change Directive to Owner, Contractor may include undisputed amounts for such completed Work in an application for payment.

**11.4 Change Pricing.** In the absence of agreement, the final cost of a change will consist of:

**11.4.1** Reimbursement of the net cost of the change, consisting of:

- .1 the net additional costs to Contractor of all necessary materials, including transportation to the Project Site;
- .2 cost of all necessary labor, in accordance with established wage rates, as evidenced by payroll records;
- .3 State taxes for unemployment insurance and Federal taxes for Social Security required to be paid and directly required by reason of such changes;
- .4 costs, not exceeding fair market rental rates, for rental of equipment (other than small tools and equipment) employed directly in the change; and
- .5 payments due to Subcontractors on account of the change, subject to the limitations on overhead and profit set forth below.

**11.4.2** For trade work self-performed by Contractor's own trade labor forces as part of the change with Owner's prior, express consent, Contractor may apply overhead and profit, to a maximum of 15%, to the net cost of the change, which on GMP Projects shall be in lieu of the Construction Fee in Section 11.4.4 and Contractor's markup in Section 11.4.5.

**11.4.3** For Work performed by a Subcontractor of any tier, a maximum allowance for the overhead and profit of 15% for the performing Subcontractors, as applied to the net cost of the change, with a maximum cumulative allowance of 20% for Work performed by Subcontractors of all tiers.

**11.4.4** For GMP Projects, an adjustment in Contractor's Construction Fee applied to any net increase or decrease in the GMP on account of the change.

**11.4.5** For Stipulated Sum Projects, a maximum allowance for the overhead and profit of 5% for Contractor, as applied to the net cost of the change.

**11.5 Support for Changes.** Contractor shall maintain and present, in such form as Owner may require, an itemized accounting together with appropriate supporting data. For changes based on lump sum pricing, Contractor shall itemize the various components of Work and segregate services, labor, material and equipment in a detailed format. Contractor shall include in its pricing a material and labor quantity take-off and related pricing information and extensions. For changes based on time and material pricing, Contractor shall provide all records supporting the costs of the Work performed, including accurate material tickets, time sheets itemizing worker's names and hours worked for all actual labor costs, verified in writing by Contractor on a daily basis, and such other evidence as Owner may reasonably request.

**11.6 Requests for Change Orders.** The provisions of this Section 11.6 shall apply only if the Prompt Pay Act is applicable to a Project, and shall be null and void and of no force or effect for Projects to which the Prompt Pay Act does not apply.

**11.6.1** If Contractor believes that it is entitled to an increase in the Stipulated Sum or the GMP for reasons including: (i) a written interpretation from the A/E, (ii) a written order for a minor change in the Work issued by the A/E, (iii) termination by Owner, or (iv) other reasonable grounds, then Contractor shall submit a written request for a for a Change Order seeking an increase to the Stipulated Sum or GMP to Owner and the A/E in the form to be provided by Owner prior to the commencement of the Work hereunder executed by Contractor's Designated Representative, which satisfies all of the following requirements:

- .1** The request for a Change Order shall be accompanied by a written report by Contractor setting forth the facts and reasons for proceeding under this Section, including, without limitation, reasonable supporting backup documentation from all affected Subcontractors.
- .2** The request for a Change Order shall include a clear and precise description of any proposed change in the Work, together with a detailed breakdown of the cost of labor and materials for all trades involved, including, without limitations, rates and unit prices (if applicable), and the impact on the Schedule relating to any proposed change in the Work.

**11.6.2** No request for a Change Order shall be valid or considered to have been "submitted" unless the same has been delivered to Owner in accordance with the provisions of Section 16.2, with simultaneous delivery to the A/E. The date of "submission" of any request for a Change Order shall be determined in accordance with the provisions of Section 16.2.

**11.6.3** Owner will, within thirty (30) days after the later of: (i) the date of commencement of performance of the Work on which the request for a Change Order is based; or (ii) the date of submission of any request for a Change Order; either approve or reject (in whole or in part) the request for a Change Order by delivering to Contractor a written notice of approval or rejection of the request for a Change Order. A request for a Change Order which is neither approved nor rejected (in whole or in part) by Owner within such thirty (30) day period shall be deemed to be approved and may be submitted for payment within the next application for payment, unless it is rejected (in whole or in part) by Owner before payment with respect thereto is due under the terms of the Agreement. Any rejection of any request for a Change Order by Owner (in whole or in part), whether made within such thirty (30) day period or prior to the date when payment is due, shall include an explanation of the factual and contractual basis for rejection and shall be certified by Owner as made in good faith.

**11.6.4** Nothing contained in this Section 11.6 shall entitle Contractor to any increase in the Stipulated Sum or the GMP if Contractor is precluded from making a claim therefor pursuant to any other provision of the Contract Documents.

**11.7 Unit Prices and Allowances.** Promptly after the quantities of unit price items have been determined and the actual costs of Allowances have been fixed, Contractor shall submit to Owner documentation of such actual quantities and costs, along with a proposed Change Order.

**11.8 Concealed or Unknown Conditions.** No change shall be permitted in connection with a concealed or unknown condition that does not differ materially from those conditions that were disclosed to or that reasonably should have been known to Contractor in the proper exercise of its obligations hereunder. If Contractor encounters such conditions at the Project Site, Contractor shall promptly (but in no event later than seven (7) days after first observance of the conditions) notify Owner and A/E in writing before conditions. Owner and A/E will promptly investigate such conditions, and the A/E shall promptly (but in no event later than thirty (30) days) advise the Project Team in writing whether the conditions at the Project Site are materially different from those indicated in the Contract Documents.

## **ARTICLE 12. TIME**

**12.1 TIME IS OF THE ESSENCE.** The time frames stated in the Contract Documents, including but not limited to this Agreement, a Release, or a GMP Amendment, for the performance of the obligations of Contractor are of the essence to Owner. By executing any of such documents, Contractor confirms that the time frames set forth therein are reasonable time periods for the performance and completion of its obligations thereunder.

**12.2 Owner's Calendar.** Owner will provide Contractor with a calendar of Owner's activities and events that must be accommodated by the Preconstruction Work and in each Project Schedule. Owner's activities and events are subject to change and Contractor will adjust its Schedule and the Work to accommodate any such changes. Owner's internal approvals may be delayed from time to time, and such delays that are less than ninety (90) days shall not provide a basis for an adjustment of Contractor's compensation for Preconstruction Work.

### **12.3 Delays.**

**12.3.1** If Contractor is delayed at any time in achieving Substantial Completion by concealed or unknown conditions identified in Section 11.8 or by a *force majeure* event identified in Section 16.11, provided that Contractor has complied all of its obligations in the Contract Documents, Contractor shall be entitled to an extension of the Project Time equal to the delay caused by such event. For delays caused by *force majeure* events identified in Section 16.11, such extension shall be Contractor's sole and exclusive remedy for such delay. For delays caused by concealed or unknown conditions identified in Section 11.8, Contractor shall be entitled to an equitable adjustment in the Stipulated Sum or GMP in the amount of the actual field costs for the period of extended duration. Contractor expressly waives and release Owner from any claims for home office overhead damages for such delays and any allocated portions of indirect or general overhead expenses incurred by them or anyone claiming through them.

.1 Requests for an extension of the Project Time shall set forth in detail the circumstances of such claim, the dates upon which claimed delay began and ended, and the number of days' extension of time requested. Contractor shall provide supporting documentation as the A/E and Owner may require, including a revised critical path method construction schedule indicating the effect of the circumstances that form the basis for the claim. Contractor shall not be entitled to an extension of time for each and every one of a number of causes which have a concurrent and interrelated effect on the progress of the Work.

**12.3.2** Contractor will not be entitled to an extension of the Project Time or an adjustment in the Stipulated Sum or GMP for delays: (a) that do not extend the Substantial Completion

date required herein; or (b) that Contractor and those for whom it is responsible could have avoided or mitigated using professional efforts.

**12.3.3** If permissible and impermissible delays occur concurrently, the period of concurrency will be deemed a concurrent delay, and Contractor will be entitled to an adjustment of the Project Time for such period, but will not be entitled to additional compensation.

**12.4 Early Completion.** Contractor shall not be entitled to any costs for delays to any period between an early completion elected by Contractor and the date of Substantial Completion required by the Contract Documents.

**12.5 Acceleration.** Owner may direct Contractor to take such action, including adding, increasing or supplementing the workforce, the number of shifts, the days of Work and/or overtime operations, as necessary to minimize a potential delay, and Contractor will adjust the Schedule on account of such directives. The Stipulated Sum or GMP may be adjusted on account of such acceleration, except to the extent that the acceleration is due to a delay for which Contractor is not entitled to an extension of the Project Time, and provided that Contractor has complied with all of its obligations hereunder.

**12.6 Liquidated Damages.** Contractor acknowledges that the damages that Owner will sustain if Contractor fails to achieve Substantial Completion within the time required is difficult, if not impossible, to accurately ascertain. Accordingly, Contractor agrees that, in the event a Release sets forth an amount for liquidated damages, for each calendar day after the Project Time that Contractor has not achieved Substantial Completion of the Project(s), it shall pay to Owner liquidated damages as compensation in the amount and fashion designated in such Release. Owner may deduct such liquidated damages from amounts Owner may otherwise owe Contractor from an application for payment and/or any Retainage. Contractor expressly acknowledges that it has specifically discussed this provision with Owner and agrees that said amount is reasonable given the uncertainty surrounding the risk for late completion.

## **ARTICLE 13. INDEMNITY**

To the fullest extent permitted by Applicable Law, Contractor shall indemnify, defend and hold harmless Owner, its agents, officers, trustees, directors and employees from and against Claims, losses, liabilities, obligations, costs, fines, penalties, expenses, and damages (including reasonable fees and charges of engineers, architects, attorneys and other professionals and court and dispute resolution costs) arising out of or resulting from the performance of or lack of performance of the Preconstruction Work or Work, to the extent caused by (a) any violations of Applicable Law (including the Prompt Pay Act and Retainage Act), (b) breach of contract or negligent or intentional act or omission of Contractor or anyone for whose acts or omissions Contractor may be liable, regardless of whether or not it is caused in part by a party indemnified hereunder.

13.1 As to any and all claims against Owner, its agents, officers, directors or employees by any employee of Contractor or anyone for whose acts or omissions it may be liable, the indemnification obligations under this Section shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for Contractor under worker's or workman's compensation acts, disability benefit acts or other employee benefit acts.

13.2 Owner reserves the right to retain its own counsel and to charge any reasonable counsel fees to Contractor. Contractor expressly consents to Owner's selection of legal counsel and waives any waivable conflict.

## **ARTICLE 14. TERMINATION OR SUSPENSION**

**14.1 Suspension.** Owner may suspend or interrupt the Preconstruction Work, the Work, or a Project, in whole or in part, for its convenience and without cause, for such period as Owner may require, upon not less than five (5) days' written notice to Contractor specifying the extent, effective date, and, if known, duration of the suspension. The Stipulated Sum or GMP and the Project Time shall be equitably adjusted on account of such suspension or interruption, except to the extent that: (a) performance is, was or would have been so suspended, delayed or interrupted by another cause for which Contractor is responsible; (b)

an adjustment is denied elsewhere in the Contract Documents; or (c) Owner terminates the suspended or interrupted Work.

**14.2 Termination for Cause.** Owner may terminate the Agreement in whole or with respect to an individual Project upon seven (7) days' written notice in the event of a substantial failure to perform in accordance with the terms of the Contract Documents by Contractor through no fault of Owner, and provided such breach is not corrected within such seven (7) day notice period. Contractor may terminate the Agreement if Owner fails to make payment within thirty (30) days after such payment is due hereunder through no fault of Contractor, and if such failure is not cured by Owner within thirty (30) additional days after written by Contractor.

**14.2.1** In the event Owner terminates Contractor for cause, and such termination is ultimately deemed wrongful by an adjudicating body authorized under the Contract Documents to make such determination, such termination shall be conclusively deemed to be a termination for Owner's convenience, and Contractor's sole rights and remedies against Owner shall be as set forth in Section 14.5.1.

**14.3 Termination for Convenience.** Owner may terminate the Agreement, in whole or in part with respect to an individual Project, for its convenience and without cause upon not less than seven (7) days' written notice to Contractor specifying the extent of termination and the effective date.

**14.4 Obligations on Termination.** Upon receipt of a notice of termination, Contractor shall promptly, in accordance with instructions from Owner;

**14.4.1** Cease operations and terminate orders and agreements as specified in the notice, except as necessary to complete portions of the Work not terminated;

**14.4.2** Proceed as necessary to complete the portions of the Work not terminated;

**14.4.3** Prepare documents as necessary to complete the assignment of subcontracts and consulting agreements to Owner or such third party as Owner may direct;

**14.4.4** Provide Owner with a written status of its performance of the portions of the Work terminated, including an inventory of materials and equipment stored at the Project Site, those stored off-site that have been included in an application for payment, and those being specially fabricated off-site;

**14.4.5** Take all action that may be reasonably necessary, or that Owner may direct, for the protection and preservation of the portions of the Work or Services terminated; and

**14.4.6** Deliver to Owner all Drawings, Specifications, Contract Documents and other documentation concerning the terminated Work.

#### **14.5 Termination Expenses.**

**14.5.1** For a termination for convenience, Owner will compensate Contractor, as its sole and exclusive remedy, for the following:

- .1** If applicable, equitable compensation for Preconstruction Work properly performed through the effective date of termination;
- .2** For Stipulated Sum Projects, the unpaid value of Work properly completed in accordance with the Contract Documents through the effective date of termination, plus reasonable profit, as determined by Owner, on such Work; or
- .3** For GMP Projects, the unpaid Cost of Work properly completed in accordance with the Contract Documents through the effective date of termination, plus the Construction Fee on such Work at the percentage rate set forth in the applicable Release; or, if such Fee is fixed, at the same percentage that the completed Cost

of the Work bears to the scheduled value of such Work; such Cost of the Work and Fee shall not exceed the GMP.

**14.5.2** If Owner terminates the Agreement in whole for cause, then payment shall be withheld until the Work is completed on all Projects and Owner's costs of completion are liquidated and no longer contingent. If the unpaid balance of the Projects' GMPs exceeds Owner's costs of finishing the Work on the Projects and other damages incurred by Owner as a result of the termination, such excess shall be paid to Contractor. If such costs and damages exceed the unpaid balance of the Projects' GMPs, Contractor shall pay the difference to Owner.

**14.5.3** If Owner terminates an individual Project for cause, then payment shall be withheld until the Work is completed on that Project and Owner's costs of completion are liquidated and no longer contingent. If the unpaid balance of that Project's GMP exceeds Owner's costs of finishing the Work on that Project and other damages incurred by Owner as a result of the termination, such excess shall be paid to Contractor. If such costs and damages exceed the unpaid balance of that Project's GMP, Contractor shall pay the difference to Owner.

**14.5.4** Owner may withhold from termination expenses amounts incurred on account of liquidated damages, A/E fees due to delays for which Contractor is responsible, and Defective Work.

**14.5.5** Under no circumstances shall Contractor or anyone claiming through it be entitled to additional payment or damages, including anticipated Fee, overhead or profit on Work not performed, and any expectation of such payment or damages is hereby expressly waived.

**14.6 Work Completed.** In the event of a termination or suspension pursuant to this Article, Contractor shall not be relieved of any responsibilities for the completed portions of the Preconstruction Work or Work, nor shall such termination or suspension relieve any sureties of their obligations to ensure completion of the Work and to pay legitimate Claims arising out of the Work.

## **ARTICLE 15. CLAIMS AND DISPUTE RESOLUTION**

**15.1 Claims.** Unless otherwise specifically required herein, Claims by Contractor and its Subcontractors and Consultants of all tiers must be initiated by written notice within twenty-one (21) days after the occurrence of the event giving rise to such Claim or the claimant first recognizes the condition giving rise to the Claim, whichever is sooner, regardless of whether the full effect of the circumstances giving rise to the Claim are then known. It is understood that the failure to provide written notice within this time period will greatly prejudice Owner, and the failure to submit proper and timely notice shall constitute a waiver and abandonment of the Claim.

**15.1.1** Each Claim shall be submitted to Owner with a detailed statement of the basis for the Claim, including any change request(s) that included such Claim in whole or in part and any additional information or documentation requested by Owner in support of the Claim.

**15.2 Mediation.** As a condition precedent to arbitration or litigation, the parties shall submit disputes to non-binding mediation with a mutually acceptable dispute resolution administrator. A demand for mediation shall be made within a reasonable time after the Claim, dispute or other matter in question has arisen. Any such mediation shall be administered and conducted in accordance with the Construction Industry Mediation Rules of the American Arbitration Association currently in effect, unless the parties mutually agree otherwise. If the dispute is not resolved within thirty (30) days of submission, or such longer time as agreed by the parties, the dispute may proceed to arbitration or litigation as provided below.

**15.3 Arbitration.** Owner may, at its sole discretion and option, elect to have any or all Claims, disputes or other matters in question arising under the Contract Documents decided by arbitration

administered by a dispute resolution administrator acceptable to Owner. The Construction Industry Arbitration Rules of the American Arbitration Association shall govern. Any such arbitration may include, at Owner's sole discretion, by consolidation, joinder and in any other manner, third-parties whose interests relate to the matters in arbitration.

**15.3.1** If Owner elects arbitration, the demand for arbitration shall be made promptly after Owner informs Contractor of such election, and in no event later than the date when institution of legal or equitable proceedings based on such Claim, dispute or other matter in question would be barred by the applicable statute of limitation. The venue for arbitration shall be at a locale in the Cambridge, Massachusetts area acceptable to Owner.

**15.3.2** If Owner consents to arbitration, the award rendered by the arbitrator shall be final, and subject to appeal only as provided in Owner's Limitations on Submissions, and judgment may be entered upon in accordance with Applicable Law.

**15.3.3** The A/E and Contractor shall incorporate the dispute resolution provisions of this Article in substantially the same form in agreements with its Subcontractors and Consultants of all tiers.

**15.4 Litigation.** If Owner does not elect arbitration, all disputes shall be subject to adjudication by a court of competent jurisdiction, and the venue for such action shall be Suffolk County or Middlesex County, Massachusetts. Contractor hereby waives any and all rights to a jury trial with respect to disputes arising out of a Project and agree that any claim for a jury trial shall be stricken by consent if either party violates this provision. The Parties agree that this is a commercially reasonable term and that it shall be specifically enforced.

**15.5 Limitation on Damages.** Contractor expressly waives all rights, interest and Claims against Owner for indirect, incidental, special, punitive or consequential damages for Claims, disputes and other matters in question arising out of or relating to the Contract Documents or any Project, including home office personnel and overhead, loss of financing, business and reputation, loss of profits or revenue, cumulative impacts, interest, loss of productivity or business interruption. This waiver includes all consequential damages due to Owner's termination of the Agreement in whole or in part.

## **ARTICLE 16. MISCELLANEOUS**

**16.1 Ownership of Documents.** Upon request, Contractor shall return or suitably account for all copies of the designs, architectural works, Drawings, Specifications, and documentation in any form, including electronic, related to a Project upon completion of a Project. Contractor shall be liable for and shall indemnify and hold Owner harmless against any and all claims, losses, costs expenses or damages, including attorney's fees, arising from the unauthorized use of such documentation.

**16.2 Notices.** Written notices pursuant to the Contract Documents shall be in writing and delivered by hand, by registered or certified U.S. Mail, return receipt requested, or by nationally-recognized overnight delivery service providing evidence of receipt. Such notices shall be deemed to have been given on the earlier of actual receipt by the intended recipient or on the third business day after the date when deposited in the United States mail postage prepaid. Notice to Contractor shall be addressed to the Designated Representative at the address provided herein, and notice to Owner shall be addressed as follows:

Massachusetts Institute of Technology  
Office of the Executive Vice President  
77 Massachusetts Avenue  
Cambridge, Massachusetts 02139  
Attention: Israel Ruiz, Executive Vice President and Treasurer

With a copy to Owner's Designated Representative:

Massachusetts Institute of Technology

Department of Facilities  
77 Massachusetts Ave., Building NW23-100  
Cambridge, Massachusetts 02139  
Attention: Richard L. Amster, Jr., Director of Campus Construction

And with a copy to:

Massachusetts Institute of Technology  
Office of the General Counsel  
77 Massachusetts Avenue, Building 7-206  
Cambridge, Massachusetts 02139

**16.3 Confidentiality.** Contractor shall refer all inquiries from the press or public to Owner's Department of Facilities Communications Office and Owner's News Office and shall not speak publicly on behalf of Owner unless specifically permitted in writing by the Department of Facilities Senior Communications Officer or Director of Owner's News Office to do so on each occasion. Contractor shall keep the Contract Documents, all work product and all information, documents, photographic images, electronic materials, and other materials obtained in connection with performance of the Preconstruction Work or Work or provided by or on behalf of Owner as confidential and privileged, and shall not disclose any records or issue press releases without the prior written consent on each occasion of Owner's Designated Representative.

**16.4 Use of Owner's Name, Image, and Marks.** Contractor shall not use nor permit its Subcontractors or Consultants to use the name of "Massachusetts Institute of Technology," or any variation, adaptation, or abbreviation thereof, or the names or likeness of any of its trustees, officers, faculty, students, employees, or agents, or any trademark owned by Owner, or any terms of this Agreement in any promotional material or other public announcement or disclosure without the prior written consent of the Owner's Department of Facilities Senior Communications Officer or Owner's Technology Licensing Office Use of Name Officer and Owner's Designated Representative, such consent to be granted or withheld in Owner's sole discretion.

**16.5 Representations of Project.** Contractor may not include representations of the Project, including renderings or photographs of the interior and exterior, among Contractor's promotional and professional materials unless specifically permitted in writing by the Department of Facilities Senior Communications Officer and Owner's Technology Licensing Office Use of Name Officer. Contractor's materials shall not include (i) Owner's confidential or proprietary information, which shall include all information provided by Owner to Contractor or determined by Contractor in connection with the Project, including cost estimates, budgets and other financial information, unless Owner shall in writing specifically deem any such information not to be confidential or proprietary; (ii) Owner's name or trademark unless consent is obtained in accordance with Section 16.4; or (iii) publication in books or popular or professional journals, presentations to professional groups, and advertising, all of which must be submitted in advance to Owner's Department of Facilities Senior Communications Officer, Technology Licensing Office, and Owner's Designated Representative for approval. Contractor shall not release any promotional material including the Project without Owner's prior written consent. Contractor shall obtain assurances consistent with the foregoing from all persons or firms retained by Contractor pursuant to the Contract Documents. It is acknowledged and agreed that immediate, extensive and irreparable damage will result if the provisions of this Section are not specifically enforced. Therefore, in addition to, and not in limitation of, any other remedy available to Owner, Owner may enforce this Section in judicial proceedings by a decree of specific performance and appropriate injunctive relief as may be applied for and granted in connection with such enforcement, and the person or entity in violation of this provision shall pay all of Owner's legal fees and litigation expenses incurred in enforcing this provision.

**16.6 Non-Assignability.** Except as permitted herein, Contractor shall not assign the Contract Documents or the performance of any of its obligations thereunder without Owner's prior, written consent, which Owner may withhold in its sole discretion, and any unauthorized assignment shall be void.

**16.7 Liens.** In the event that a notice of contract, statement of account, mechanic's lien or other encumbrance (collectively, a "Lien") is recorded against a Project or Owner's property by a person or entity for whom Contractor is responsible on account of services, labor, material or equipment furnished to the Project, Contractor and its surety (if any) shall, to the extent permitted by Applicable Law: (i) protect, defend, indemnify and hold Owner harmless from such Lien; (ii) cause such Lien to be removed within ten (10) days following the filing of such Lien by posting an appropriate bond or other procedure; (iii) prosecute and defend all proceedings and suits brought by such lienors; and (iv) to the extent Owner has previously paid Contractor, pay amounts secured by such Lien. In the event the Lien is not so discharged, Owner shall have the right to discharge said Lien and recover from Contractor all costs associated therewith, including Owner's attorney's fees incurred in having the Lien discharged.

**16.8 Compliance with Laws.** Contractor shall ensure that the Preconstruction Work, the Work and any other work or obligation to be performed by Contractor or any Subcontractor in connection with this Agreement shall be performed in compliance with Applicable Law and any permit conditions as to which Contractor has or reasonably should have knowledge, as the same may be in effect as of the time of the performance of such work or obligation. If such work or obligation requires the receipt of a permit or approval by, or the giving of notice or the making of a filing to, any governmental authority, Contractor shall obtain such permit or approval, give such notice, or make such filing. Contractor shall provide drafts of all such notices and filings to Owner for its review prior to submitting them to any governmental authority. Contractor shall promptly pay all fines, penalties, damages and liens that may be imposed because of Contractor's failure to comply with the provisions of this Section 17.8.

**16.9 Continuing Duty.** Contractor shall not be relieved of obligations to perform in accordance with the Contract Documents by activities or duties of Owner or A/E in the administration of the Work or by tests, inspections or approvals required or performed by third parties.

**16.10 Non-Waiver.** Failure to insist upon strict compliance with any terms, covenants or conditions hereof will not be deemed a waiver of such terms, covenants or conditions, nor will any waiver or relinquishment of any right or power hereunder at any one or more times be deemed a waiver or relinquishment of such right or power at any other time.

**16.11 Force Majeure.** A Party's non-performance caused by unforeseeable conditions beyond its control and without its fault or negligence by reason of fire, severe flooding from water courses, unavoidable property casualty, riots, delays by Governmental Authorities, unusually severe meteorological or seismic activity, the loss of power, communications or utilities to the Project, epidemics, pandemics, quarantines, acts of war, acts or threats of terrorism or governmentally declared emergencies shall not result in a default by such entity during the period such forces are in effect at the Project Site and are having a specific impact on such entity's performance on the Project. The Parties acknowledge and agree that shortage of funds, inadequate capitalization, labor disputes covered by applicable project labor agreements, and industry-wide economic fluctuations impacting price, availability or delivery time shall not excuse non-performance as a *force majeure* event or otherwise.

**16.12 Severability.** Any provision of these Conditions later held to be unenforceable for any reason shall be deemed void, and all remaining provisions shall continue in full force and effect

**16.13 Third-Parties.** All duties and responsibilities undertaken by Contractor pursuant to the Contract Documents will be for the sole and exclusive benefit of Owner and Contractor and not for the benefit of any other entity. Nothing herein shall be construed to create, impose, or give rise to any duty owed by Owner to any other entity.

**16.14 Setoff and Recoupment.** Owner shall have the right to set off against the account of Contractor any damages that may accrue by virtue of Contractor's default under the Contract Documents, any Project hereunder, or any other agreement with Owner, without prejudice to any other remedy Owner may have. A default by Contractor under one agreement with Owner shall constitute a default under all agreements with Owner.

**16.15 Independent Contractor.** The relationship of Contractor to Owner will be that of an independent contractor, provided that Contractor shall retain all the obligations of a trusted professional as set forth in the Contract Documents.

**16.16 Interpretation.** All Parties acknowledge and agree that these Conditions have been freely negotiated and that in any dispute over the meaning, interpretation, validity or enforceability of these Conditions or any of its terms or conditions, there shall be no presumption whatsoever against either party by virtue of that party having drafted these Conditions or any portion thereof.

**16.17 Integration.** Subject to any applicable Release and GMP Amendment (if any), the Contract Documents contain the entire agreement between the Parties concerning its subject matter and supersede all oral or written agreements, negotiations, correspondence, documentation, and statements made before its acceptance and execution.

**16.18 Governing Law.** The law of the Commonwealth of Massachusetts (without giving effect to its conflicts of law principles) shall govern all matters arising under or related to the Contract Documents and any Project.

**16.19 Successors and Assigns.** Contractor binds itself, its partners, successors, assigns and legal representatives to Owner and its successors, assigns and legal representatives with respect to all its covenants herein.

**16.20 Multiple Counterparts.** The Contract Documents, including the Release(s), may be executed in counterparts, each of which shall be deemed an original, but all of which shall constitute the same instrument.

**ARTICLE 17. EXHIBITS INCORPORATED INTO AGREEMENT.** Contractor acknowledges that this Agreement is supplemented by the following Exhibits attached hereto:

Exhibit A	Form of Release
Exhibit B	Audit Provisions
Exhibit C	Equal Employment Opportunity Policy

Contractor agrees that all terms and conditions set forth in the Exhibits, including but not limited to the above-referenced Exhibits, shall be incorporated into this Agreement and that Contractor shall, and shall cause its employees, contractors, subcontractors and agents to, comply with and be bound by the terms and conditions (as applicable) of such Exhibits.

***[SIGNATURE PAGE FOLLOWS]***

IN WITNESS WHEREOF, Owner and Contractor hereby acknowledge and affirm their intent to be bound to the terms and conditions of this Agreement, notwithstanding the fact that certain other terms remain to be defined for each Project. This Agreement is entered into as of the Effective Date.

**OWNER**

MASSACHUSETTS INSTITUTE OF TECHNOLOGY

By: \_\_\_\_\_  
Name: Richard L. Amster, Jr.  
Title: Campus Construction

**CONTRACTOR**

[INSERT]

By: \_\_\_\_\_  
Name:  
Title:

Reviewed for form (only one approval is necessary)

Maya K. Plotkin  
Office of the General Counsel

Michael M. Lieberman  
Manager, CRSP & Contracts Administration

Reviewed for content:

Project Manager: \_\_\_\_\_  
Department of Facilities

**Exhibit A**

**Form of Release**

**RELEASE Number** \_\_\_\_\_

This Release (this “**Release**”) is entered into as of \_\_\_\_\_, \_\_\_\_\_, 20\_\_ by and between MASSACHUSETTS INSTITUTE OF TECHNOLOGY (“**Owner**”) and \_\_\_\_\_ (“**Contractor**”). Reference is hereby made to that certain Master Construction Agreement between Owner and Contractor dated \_\_\_\_\_, 20\_\_\_\_, [as amended by First Amendment to Master Construction Agreement dated \_\_\_\_\_ (as so amended,} the “**Agreement**”).

This Release is referred to in the Agreement and is subject to all terms and conditions of the Agreement. All capitalized terms not defined herein shall have the meaning set forth in the Agreement. In the event of a conflict between this Release (including the attachments hereto) and the Agreement, the terms and conditions of this Release shall govern.

This Release, together with the Agreement, represents the entire and integrated agreement between the parties and supersedes prior negotiations, representations, or agreements, either written or oral. This Release may only be amended by a written agreement signed by Owner and Contractor.

**A. DEFINED TERMS**

<b>Effective Date:</b>	
<b>Type of Release:</b>	<input type="checkbox"/> Preconstruction Release <input type="checkbox"/> Limited Scope Work Release <input type="checkbox"/> Construction Release
<b>Project:</b>	Project / Construction Release Number: [Number] Project Number: [Number] Contract Number: [Number]  Project Name: [Name] Project Description: [Insert]
<b>Contractor:</b>	[Name] [Address 1] [Address 2]
<b>Contractor’s Designated Representative:</b>	[Name and Title]
<b>A/E:</b>	[Name] [Address 1] [Address 2]
<b>A/E’s Designated Representative:</b>	[Name and Title]

<b>Owner's Designated Representative:</b>	Richard L. Amster, Jr. Director of Campus Construction
<b>Owner's Project Manager:</b>	[Name and Title]
<b>BIM</b>	<input type="checkbox"/> If box is checked, Owner requires the use of building information modeling (BIM) for this Project.
<b>Sustainability Certification</b>	[Insert level]
<b>Substantial Completion:</b>	[Date or Construction Duration]
<b>Final Completion:</b>	[Date or Construction Duration]
<b>Cap on General Conditions Items (if applicable):</b>	[\$ Amount]
<b>Payment Application Frequency:</b>	30 days
<b>Liquidated Damages:</b>	Not Applicable

**B. RELEASE SERVICES.**

(1) **Preconstruction Services:** This Section B(1) shall apply if "Preconstruction Release" is selected as the "Type of Release" above. For purposes hereof, "**Preconstruction Services**" shall collectively mean those services selected by checkmark in Section B(1)(a) and B(1)(b) below, as applicable.

(a) **Preconstruction Services.** For the Project, Contractor shall perform those preconstruction services selected below with an "x" in corresponding box as more fully set forth in the referenced paragraphs of the Agreement, in accordance with and pursuant to the Agreement.

- § 3.2.1 Meetings
- § 3.2.2 Reporting and recordkeeping
- § 3.2.3 Consultant selection
- § 3.2.4 Budget evaluation
- § 3.2.5 Estimating: submissions at:
  - Initial estimate by: **[Date]**
  - Conceptual Design Phase
  - Preliminary Design Phase
  - Design Development Phase
  - [80]%** Construction Documents Phase
- § 3.2.6 Constructability
- § 3.2.7 Value engineering
- § 3.2.8 Scheduling
  - Initial schedule by: **[Date]**
  - Schedule updates: **[Monthly]**
- § 3.2.9 Existing conditions review
- Other Preconstruction Services: **[Describe service]**
- Other Preconstruction Services: **[Describe service]**
- Require written notice to proceed with next phase

(b) Procurement. For the Project, Contractor shall perform those procurement services selected below with an "x" in corresponding box, as more fully set forth in the referenced paragraphs of the Agreement, in accordance with and pursuant to the Agreement.

- § 6.1 Early release packages
- § 6.2 Prequalification
- § 6.3 Bid packages
- § 6.4 Pre-bid conference
- § 6.5 Bid analysis
- Other: **[Describe service]**
- Other: **[Describe service]**
- Require written notice to proceed with next phase

**(2) Limited Scope Work Services:** This Section B(2) shall apply if "Limited Scope Work Release" is selected as the "Type of Release" above.

Contractor shall (1) perform the Limited Scope Work in accordance with the documents attached as Exhibits to this Release, and (2) perform the services set forth in this Release and the services set forth in the Agreement, including but not limited to Section 4.2.4, that are applicable to such services (collectively, the "**Limited Scope Work Services**") in accordance with and pursuant to the Agreement.

**(3) Construction Services:** This Section B(3) shall apply if "Construction Release" is selected as the "Type of Release" above.

Contractor shall (1) construct the Project in accordance with the Drawings and Specifications set forth at Exhibit A attached hereto and incorporated herein, and (2) perform the services set forth in this Release and the services set forth in the Agreement that are applicable to such services (collectively, the "**Construction Services**") in accordance with and pursuant to the Agreement.

**C. COMPENSATION.**

**(1) Preconstruction Compensation:** Contractor's compensation for the Preconstruction Services shall be as selected by checkmark below:

- Stipulated Sum: \$
- Time and Materials (based on the rates set forth in the Rate Schedule attached as Exhibit B)
  - Estimated Amount: \$
  - Not to Exceed: \$

In the event Owner and Contractor enter into a Release based on a Guaranteed Maximum Price ("**GMP**") in connection with the Project, then the Construction Fee set forth in such Release shall be based on a percentage of the Cost of the Work, as indicated as follows:

- Percentage of the Cost of the Work: \_\_\_\_\_%

If stated as a percentage of the Cost of the Work, then upon execution of Release based on a GMP, the Construction Fee shall be converted from such percentage to a fixed sum.

**(2) Limited Scope Work Compensation:** Contractor's compensation for the Limited Scope Work Services shall be \_\_\_\_\_.

**(3) Construction Compensation:** Contractor's compensation for the Construction Services shall be as selected by checkmark below and shall be consistent with the Schedule of Values attached hereto as Exhibit C:

- Stipulated Sum: Total Amount \$\_\_\_\_\_
- Guaranteed Maximum Price: Total Amount \$\_\_\_\_\_
- Includes Construction Fee Amount of \$\_\_\_\_\_, which is based on \_\_\_\_ Percentage of the Cost of the Work
- The General Conditions Items (as defined in the Agreement) are set forth on Exhibit D attached hereto.
- Time and Materials (based on the rates set forth in the Rate Schedule attached as Exhibit B)
- Estimated Amount: \$
- Not to Exceed: \$

**If any of the above are greater than \$3M, the Prompt Pay Act and Retainage Act shall apply to the Project.**

**D. INSURANCE LIMITS:**

- (1) Commercial General Liability  
\$ 1,000,000 Each Occurrence  
\$ 1,000,000 Bodily Injury and Property Damage, Each  
\$ 2,000,000 General Aggregate
- (2) Automobile  
\$ 1,000,000 Bodily Injury & Property Damage, Each
- (3) Workers' Compensation  
Statutory limits
- (4) Employer's Liability  
\$ 1,000,000 Bodily injury for each accident  
\$ 1,000,000 Bodily injury for disease for each employee
- (5) Umbrella  
\$15,000,000 each occurrence/aggregate
- (7) Pollution Liability  
\$ 1,000,000 Each occurrence/aggregate

If checked, Contractor and/or Subs shall furnish payment, performance and/or lien prevention bonds.

**E. EXHIBITS.** The following Exhibits are incorporated into and made fully a part of this Release:

Exhibit A Drawings and Specifications  
Exhibit B Rate Schedule, if applicable  
Exhibit C Schedule of Values

Exhibit D            General Conditions and General Requirements  
Exhibit E            Clarifications and Assumptions (as referenced in Section 4.2.2.1(f) of the Agreement)  
Exhibit F            Baseline Construction Schedule (as referenced in Section 2.1.45 of the Agreement)

IN WITNESS WHEREOF, the undersigned have executed this Release as of the date first set forth above. Contractor is hereby authorized and directed to proceed expeditiously to perform the Preconstruction Services or the Construction Services, as applicable, in accordance with the Agreement.

***[SIGNATURE PAGE FOLLOWS]***

**OWNER:**

Massachusetts Institute of Technology

By: \_\_\_\_\_  
Name: Richard L. Amster, Jr.  
Title: Director, Campus Construction

**CONTRACTOR:**

[Insert Contractor Entity]

By: \_\_\_\_\_  
Name:  
Title:

**Reviewed for form (only one approval is necessary):**

- Maya K. Plotkin  
Office of the General Counsel
- Michael M. Lieberman  
Manager – CRSP & Contracts Administration

**Reviewed for content:**

- Project Manager: \_\_\_\_\_  
Department of Facilities

**EXHIBIT A**

**DRAWINGS AND SPECIFICATIONS**

(See Attached)

**EXHIBIT B**  
**RATE SCHEDULE**

(See Attached)

**EXHIBIT C**

**SCHEDULE OF VALUES**

(See Attached)

Insert:

- Comprehensive detailed schedule of values
- List of Alternates
- List of Allowances
- List of unit prices

**EXHIBIT D**

**General Conditions Items**

(See Attached)

**Exhibit E**

**Clarifications and Assumptions**

(See Attached)

**EXHIBIT F**

**Baseline Construction Schedule, dated / /**

(See Attached)

## Exhibit B

### Audit Provisions

- 1) Records for all contracts related to the Project, specifically including but not limited to lump sum contracts (i.e. fixed price or stipulated sum contracts), unit price, cost plus or time and material contracts with or without not-to-exceed amounts), shall, upon reasonable notice to Contractor, be open to inspection and subject to audit, scanning, and/or reproduction during normal business working hours by Owner. Such audits may be performed by Owner or any of Owner's representative (internal or third-party). Owner (or its designee) may conduct such audits or inspections throughout the term of this Agreement and up to and including the later of (a) the date that is three (3) years after final payment or (b) as may be allowed pursuant to applicable law. Owner (or its designee) may conduct all types of verification examinations, such as counting employees at the Site, witnessing the distribution of payroll, and verifying information and amounts through interviews and written confirmations with Contractor's employees, field and agency labor, subcontractors, and vendors.
  
- 2) Contractor's "records" as referred to in this Exhibit shall include any and all information, materials and data of every kind and character, including, without limitation, records, books, papers, documents, subscriptions, recordings, agreements, purchase orders, leases, contracts, commitments, arrangements, notes, daily diaries, e-mails, superintendent reports, drawings, receipts, vouchers and memoranda, and any and all other agreements, sources of information and matters that may in Owner's judgment have any bearing on or pertain to any matters, rights, duties or obligations under or covered by any Contract Document. Such records shall include written policies and procedures; time sheets; payroll registers; payroll records; cancelled payroll checks; subcontract files (including proposals of successful and unsuccessful bidders, bid recaps, negotiation notes, etc.); original bid estimates; estimating work sheets; correspondence; change order files (including documentation covering negotiated settlements); backcharge logs and supporting documentation; invoices and related payment documentation; general ledger, information detailing cash and trade discounts earned, insurance rebates and dividends; and any other contractor records which may have a bearing on matters of interest to Owner in connection with the Contractor's dealings with the Owner to the extent necessary to adequately permit evaluation and verification of any or all of the following:
  - (a) Compliance with contract requirements for deliverables;
  - (b) Compliance with approved plans and specifications;
  - (c) Compliance with Owner's business ethics expectations;
  - (d) Compliance with contract provisions regarding the pricing of change orders;
  - (e) Accuracy of Contractor representations regarding the pricing of invoices; and/or
  - (f) Accuracy of Contractor representations related to claims submitted by the contractor or any of his payees.
  
- 3) Contractor shall require all payees receiving \$10,000 or more in connection with this Agreement (examples of such payees include but are not limited to subcontractors, material suppliers, insurance carriers, etc.) to comply with the provisions of this Exhibit B by including the requirements hereof in a written contract agreement between Contractor and such payee. Contractor will ensure that Contractor has the same right to audit provisions contained in this contract in its contracts with all such payees (including those entering into lump sum contracts).

- 4) Owner (or its designee) shall have reasonable access to Contractor's facilities, shall be allowed to interview all current or former employees of Contractor to discuss matters pertinent to the performance of this Agreement, and shall be provided with adequate and appropriate work space in Contractor's place of business to conduct audits in compliance with this Agreement.
- 5) If an audit inspection or examination in accordance with this Exhibit B discloses overpricing or overcharges to Owner (of any nature) by Contractor and/or Contractor's Subcontractors in excess of one percent (1%) of the total cost of such billings, then in addition to Contractor's immediate refund to Owner of such overcharges, the reasonable and actual cost of Owner's audit shall be reimbursed to Owner by Contractor. Any adjustments and/or payments required to be made as a result of any such audit or inspection of Contractor's invoices and/or records shall be made within a reasonable amount of time (not to exceed 90 days) from presentation of Owner's findings to Contractor.
- 6) In addition to the documentation Contractor is required to furnish to Owner in accordance with the Agreement, Contractor shall furnish (upon request from Owner) the following types of information in the specified computer (PC) readable file format(s):

<b><u>Type of Record</u></b>	<b><u>PC Readable File Format</u></b>
Monthly Job Cost Detail	.pdf and Excel
Detailed Job Cost History to Date	.pdf and Excel
Monthly Labor Distribution Detail (if not including in Job Cost Detail)	.pdf and Excel
Total Job to Date Labor Distribution Detail (in not included in Job Cost History to Date)	.pdf and Excel
Employee Timesheets – for all individuals charging reimbursable time to the Project	.pdf
Daily Foreman Reports listing names and hours and tasks of personnel who worked on the project	.pdf
Daily Superintendent Reports	.pdf
Detailed Subcontract Status Reports showing original subcontract value, approved subcontract change orders, subcontractor invoices, payment to subcontractors, etc.	.pdf and Excel
Copies of Executed Subcontracts with all Subcontractors	.pdf
Copies of all executed change orders issued to Subcontractors	.pdf
Copies of all documentation supporting all reimbursable job costs (such as but not limited to subcontractor payment applications, vendor invoices, internal cost charges)	.pdf

## Exhibit C

### Equal Employment Opportunity Policy

A. Equal Employment Opportunity. During the performance of this Master Agreement, Contractor agrees as follows:

1. Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin.
2. Contractor shall, in all solicitations or advertisements for employees placed by or on behalf of Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.
3. Contractor shall comply with all provisions of Executive Order 11246 and the rules, regulations, and orders of the Secretary of Labor.
4. Contractor shall furnish all information and reports required by Owner and by Executive Order No. 11246 and will permit access to its books, records, and accounts by Owner to ascertain compliance with such rules, regulations and orders and the terms of this Master Agreement.

In the event of Contractor's non-compliance with the provisions of this Exhibit C, or with any of the rules, regulations, or orders of the Secretary of Labor, Owner may serve written notice upon Contractor of its intention to terminate this Master Agreement in whole or in part, such notice to contain the reasons for such intention. Unless within ten days after the serving of such notice upon Contractor such non-compliance shall cease and satisfactory arrangement of correction shall be made, the Contract shall, upon the expiration of said ten days, be terminated in whole or in part at Owner's election and, in the event of termination, Owner may complete the work in accordance with the provisions set forth in this Master Agreement documents, to the same extent as authorized in the event of termination by Owner. Notwithstanding the foregoing, where deficiencies are found to exist in Contractor's compliance program, reasonable efforts will be made by both parties to secure compliance through conciliation and persuasion.

B. Employment of Minority and Female Workers.

1. Contractor shall make good faith efforts to achieve Minority and female employment in each trade in which it has employees working and training in this geographic area.
2. **"Minority"** as used above means:
  - (a) Black (all persons having origins in any of the Black African racial groups not of Hispanic origin).
  - (b) Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish Culture or origin, regardless of race);
  - (c) Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands).
  - (d) American Indian or Alaskan native (all persons having origins in any of the original people of North America).

C. Affirmative Action in Subcontracting and Procurement.

1. Utilization of Minority-Owned and Women-Owned Business Concerns.

- (a) It is the policy of Owner that minority-owned and women-owned business concerns have maximum practicable opportunity to participate in the performance of Owner's contracts.
- (b) Contractor shall adhere to this policy in the awarding of subcontracts and purchase orders under this Master Agreement to the fullest extent consistent with the efficient performance of this Master Agreement.

## EXHIBIT B

### AUDIT REQUIREMENTS

1. Architect's records which shall include but not be limited to accounting records (hard copy, as well as computer readable data if it can be made available); written policies and procedures; subcontract files (including proposals of successful and unsuccessful bidders, bid recaps, etc.); original estimates; estimating worksheets; correspondence; change order files (including documentation covering negotiated settlements); back charge logs and supporting documentation; general ledger entries detailing cash and trade discounts earned, insurance rebates, dividends, and any other supporting evidence deemed necessary by Owner to substantiate charges related to this contract (all foregoing hereinafter referred to as "records") shall be open to inspection and subject to audit and/or reproduction by Owner's agent or authorized representative to the extent necessary to adequately permit evaluation and verification of Cost of Work for the Contract or any changes in the Work, and any invoices, change orders, payments or claims submitted by Architect or any of his payees pursuant to the execution of the contract.
2. Such audits may require inspection and copying from time to time and at reasonable times and places of any and all information, materials and data of every kind and character, including without limitation, records, books, papers, documents, subscriptions, recordings, agreements, purchase orders, leases, contracts, commitments, arrangements, notes, daily diaries, superintendent's reports, drawings, receipts, vouchers and memoranda, and any and all other agreements, sources of information and matters that in Owner's judgment have any bearing on or pertain to any matters, rights, duties or obligations under or covered by any Contract Document. Such records subject to audit shall also include, but not be limited to, those records necessary to evaluate and verify direct and indirect costs (including overhead allocations) as they may apply to costs associated with this contract.
3. Owner or its designee shall be afforded access to all of Architect's records, and shall be allowed to interview any of Architect's employees, pursuant to the provisions of this article throughout the term of the contract and for a period of three years after final payment or longer if required by law.
4. Architect shall require all subconsultants, insurance agents, and materials suppliers (payees) to comply with the provisions of this article by insertion of the requirements hereof into a written contract agreement between Architect and payee. Such requirements will also apply to Subconsultants and Sub-subconsultants, etc. Architect will cooperate fully and will cause all related parties and all of Architect's subconsultants (not including those entering into lump sum subcontracts) to cooperate fully in furnishing or in making available to Owner from time to time whenever requested in an expeditious manner any and all such information, materials and data.
5. Owner's agent or its authorized representatives shall have access to Architect's facilities, shall have access to all necessary records, and shall be provided adequate and appropriate work space, in order to conduct audits in compliance with this article.
6. If an audit inspection or examination in accordance with this article, discloses overcharges (of

any nature) by Architect to Owner in excess of one percent (1%) of the total contract billings, the actual cost of Owner's audit shall be reimbursed to Owner by Architect. Any adjustments and/or payment which must be made as a result of any audit or inspection of Architect's invoices and/or records shall be made within reasonable amount of time (not to exceed 90 days) from presentation of Owner's findings to Architect.

## EXHIBIT C

### EQUAL EMPLOYMENT OPPORTUNITY REQUIREMENTS

A. Equal Employment Opportunity. During the performance of this Master Agreement, Architect agrees as follows:

1. Architect shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin.
2. Architect shall, in all solicitations or advertisements for employees placed by or on behalf of Architect, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.
3. Architect shall comply with all provisions of Executive Order 11246 and the rules, regulations, and orders of the Secretary of Labor.
4. Architect shall furnish all information and reports required by Owner and by Executive Order No. 11246 and will permit access to its books, records, and accounts by Owner to ascertain compliance with such rules, regulations and orders and the terms of this Master Agreement.

In the event of Architect's non-compliance with the provisions of this Exhibit C, or with any of the rules, regulations, or orders of the Secretary of Labor, Owner may serve written notice upon Architect of its intention to terminate this Master Agreement in whole or in part, such notice to contain the reasons for such intention. Unless within ten days after the serving of such notice upon Architect such non-compliance shall cease and satisfactory arrangement of correction shall be made, the Contract shall, upon the expiration of said ten days, be terminated in whole or in part at Owner's election and, in the event of termination, Owner may complete the work in accordance with the provisions set forth in this Master Agreement documents, to the same extent as authorized in the event of termination by Owner. Notwithstanding the foregoing, where deficiencies are found to exist in Architect's compliance program, reasonable efforts will be made by both parties to secure compliance through conciliation and persuasion.

B. Employment of Minority and Female Workers.

1. Architect shall make good faith efforts to achieve Minority and female employment in each trade in which it has employees working and training in this geographic area.
2. **"Minority"** as used above means:
  - (a) Black (all persons having origins in any of the Black African racial groups not of Hispanic origin).
  - (b) Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish Culture or origin, regardless of race);
  - (c) Asian and Pacific Islander ( all persons having origins in any of the original

peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands).

- (d) American Indian or Alaskan native (all persons having origins in any of the original people of North America).

C. Affirmative Action in Subcontracting and Procurement.

1. Utilization of Minority-Owned and Women-Owned Business Concerns.

- (a) It is the policy of Owner that minority-owned and women-owned business concerns have maximum practicable opportunity to participate in the performance of Owner's contracts.
- (b) Architect shall adhere to this policy in the awarding of subcontracts and purchase orders under this Master Agreement to the fullest extent consistent with the efficient performance of this Master Agreement.