

MASSACHUSETTS DEPARTMENT OF TRANSPORTATION



CONTRACT FOR  
HOUSE DOCTOR SERVICES

**MassDOT Contract No.:** \_\_\_\_\_

**Project No. (as shown on DSB advertisement):** \_\_\_\_\_

**Not To Exceed Maximum Contract  
Amount (“Contract Amount”):** \_\_\_\_\_

**Project Title:  
(as shown on DSB advertisement):** \_\_\_\_\_

**Project Location:** \_\_\_\_\_

**MassDOT Authorized  
Representative:** \_\_\_\_\_  
[insert name, title], Address, City, Town Zip, Email

**House Doctor:** \_\_\_\_\_  
Architect/Engineer Name, Address, City, Town Zip

**House Doctor Designated  
Representative (Principal-in-Charge):** \_\_\_\_\_

**Federal Employer Identification No.:** \_\_\_\_\_

This Contract for House Doctor Services (the “Contract”) is made as of the \_\_\_\_\_ day of \_\_\_\_\_,  
20\_\_\_\_ (“Effective Date”), by and between the Massachusetts Department of Transportation (“MassDOT” or  
“Awarding Authority”), with a principal place of business at 10 Park Plaza, Suite 4160, Boston, MA 02116,, and  
\_\_\_\_\_,  
a \_\_\_\_\_ with a principal place of business at,  
\_\_\_\_\_,  
 (“House Doctor”).

**\*\*\*\*ATTENTION DESIGNERS\*\*\*\***

**Please be advised that the MassDOT Designer Guidelines and Procedures (Vertical Construction) dated August 2025 will be applicable to this Contract. The MassDOT Designer Guidelines and Procedures (Vertical Construction) document dated August 2025 is referred to in this Contract as “MassDOT DGP.” The MassDOT DGP is an adapted version of the DCAMM Designer Guidelines and Procedures.**

**Designers can access the MassDOT Designer Guidelines and Procedures document at [INSERT]**

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## ARTICLE 1: INTRODUCTION

### **1.1 Multi-Phase Contract.**

This Contract addresses the services required by a House Doctor, whether it is for the Study Phase, the Design Phase, and/or a third-party review of the Project. The House Doctor understands that its services are limited to those set forth in ARTICLE 3: ROLE OF HOUSE DOCTOR and that such services shall be performed in accordance with Exhibit A: House Doctor Study Services, Exhibit B: House Doctor Design Services, Exhibit C: House Doctor Commissioning Services, and/or Exhibit D: Other House Doctor Services, to the extent applicable.

### **1.2 Term.**

This Contract shall have an initial duration of six (6) years from the Effective Date. Notwithstanding any other provision to the contrary, all obligations pursuant to an Approved Scope of Services incorporated into the Contract during the Contract term shall not expire until all terms within the Approved Scope of Services are satisfied unless otherwise terminated. This Contract term may be extended by a written letter agreement, to allow for the completion of all Approved Scope of Services, as appropriate.

## ARTICLE 2: DEFINITIONS

Capitalized terms used in this House Doctor Contract shall have the following meanings unless the context clearly otherwise requires.

**Additional Service(s):** Any work performed pursuant to this Contract that is not a Basic Service for which the House Doctor shall be entitled to compensation in accordance with Section 6.2 (Additional Services).

**Approval:** A signed written communication from an Authorized Representative of Awarding Authority to the House Doctor expressing Awarding Authority's acceptance of services or documents prepared by the House Doctor, which acceptance shall not relieve the House Doctor from any of its professional responsibilities under this Contract for such services or documents.

**Approved:** An item or items for which Approval has been given.

**As-Built Drawings:** All drawings, specifications, Approved shop drawings, catalogue cuts, and other items bearing markings or containing information provided by the General Contractor to indicate construction details and changes made during the construction period.

**Authorized Representative:** The person named as such on the cover page of this Contract (or such other person(s) designated in writing by the person named on the cover page), who has the authority to grant Approval on behalf of Awarding Authority as required under this Contract.

**Basic Fee:** The amount owed to the House Doctor for Basic Services performed pursuant to the Approved Scope of Services.

**Basic Services:** All services required to be performed by the House Doctor pursuant to the Approved Scope of Services except for those services specified in Section 6.2 (Additional Services).

**Building Information Model ("BIM"):** A digital representation of the physical and functional characteristics of a facility, which provides a reliable source of information upon which Awarding Authority may rely to make decisions regarding the facility during and after the Project, to be developed and delivered by the House Doctor, as specified in the Approved Scope of Services and in accordance with model requirements, including, but not limited to, derived

documentation, data standards, model set-up, and other prescriptive information and model requirements provided herein.

**BIM Execution Plan:** A strategic and tactical tool to plan the interactions of the BIM team from the initiation of the Study Phase until the completion of construction and delivery by the House Doctor of the As-Built Drawings and associated BIM Deliverables, including, without limitation, integration of data, records, and models, and which meets the requirements set forth in the Approved Scope of Services.

**BIM Manager:** House Doctor's representative responsible for coordinating the performance and execution of BIM-related services and Deliverables on the Project in accordance with the BIM Execution Plan among the House Doctor, Consultants, General Contractor, Owner's Project Manager (if any), and appropriate personnel participating in the Project from Awarding Authority.

**Commissioning Specifications:** Specifications for commissioning services to be provided by the House Doctor. DCAMM Standard Specification REV8 Section 019100 Commissioning to be used as a general reference.

**Confidential Information:** Shall have the meaning ascribed to it in Section 7.8.

**Construction Contract:** One or more contracts between Awarding Authority and a General Contractor or a Construction Manager for the construction of a Project.

**Construction Contract Documents:** The Construction Contract and any documents incorporated by reference into the Construction Contract.

**Construction Cost:** The cost of constructing the Project inclusive of all designed construction, demolition, and renovation work, all supportive and preparatory construction work required for the Project, all general contractors, subcontractors, suppliers, materials, equipment, general conditions, insurance, overhead and profit and all other allowances. The Construction Cost includes change orders during the construction administration phase of the Project.

**Construction Cost Estimate:** A submittal consisting of a written calculation of the estimated Construction Cost prepared by the House Doctor, (if applicable) House Doctor's professional cost estimator and (if applicable) the independent cost estimator appointed by Awarding Authority, at various points during the Study Phase and Design Phase on the basis of the *Uniformat II Elemental Classification for Building Specifications, Cost Estimating, and Cost Analysis* dated October 1999 published by the U.S. Department of Commerce NIST to the level of detail specified in the Approved Scope of Services, as well as the final cost estimate that the House Doctor is required by its Approved Scope of Services to prepare in *MasterFormat* (2004 edition, as updated 2010 and 2012) published by the Construction Specifications Institute. The Construction Cost Estimate includes contingencies for estimating, phasing and temporary work, and escalation.

**Construction Manager:** A sole proprietorship, partnership, corporation or other legal entity that provides construction management at risk services as defined M.G.L. c. 149A et seq. and procured by Awarding Authority pursuant to the aforementioned statute.

**Construction Phase:** The Phase of a Project that commences with the execution of a Construction Contract or commencement of construction services and concludes upon the completion of Project closeout in accordance with the terms of the Construction Contract Documents.

**Consultant:** A subcontractor of the House Doctor.

**Contract:** This Contract for House Doctor Service.

**Contract Amount:** Not to exceed amount referenced on the cover page of this Contract.

**Contract Schedule:** A critical path management or Gantt Schedule for the activities of the House Doctor and its Consultants, if any, as required by this Contract.

**Days:** Days shall mean calendar days, which include Monday through Friday excluding any U.S. holidays or any other holidays mutually recognized between the House Doctor and Awarding Authority, unless otherwise specified.

**DCAMM:** The Division of Capital Asset Management and Maintenance within the Executive Office for Administration and Finance of the Commonwealth of Massachusetts.

**Deliverable:** Work product that is required to be delivered or submitted to Awarding Authority pursuant to the terms of this Contract.

**Design Phase:** The portion of the Project that commences after the Study is approved and Awarding Authority authorizes a House Doctor to perform Design Phase Services, during which the final design of the Project and the administration of the Construction Contract will occur. The Design Phase includes Design Development Phase, Construction Documents Phase, Construction Administration Phase, and the Facility Performance Evaluation Phase.

**DCAMM Designer Guidelines and Procedures (“DGP”):** The document which replaces the DCAMM Designer Procedures Manual. The DGP provides direction and guidance to Designers who work on DCAMM Projects. The DGP is intended to set clear expectations, improve productivity, enhance communication, and ensure consistency to help Designers translate DCAMM requirements more efficiently into successful design solutions.

**Designated Representative:** The Designated Representative shall have the meaning prescribed to it in Section 4.22 of this Contract.

**Effective Date:** The latest date of the original execution of this Contract.

**Fixed Limit Construction Cost:** The maximum allowable Construction Cost established by Awarding Authority; unless otherwise communicated in writing by an Authorized Representative of Awarding Authority, during the Study Phase, this amount shall be the ECC stated in the Designer Selection Board Advertisement for the Project and during the Design Phase, this amount shall be the Estimated Construction Cost forth in the Approved Study.

**General Contractor:** A person or entity contracting with MassDOT for construction of a Project pursuant to a Construction Contract procured under M.G.L. c. 149 §44 A-F or M.G.L. c. 30 §39M.

**Gross Floor Area:** The total floor area of the Project buildings measured using the perimeter dimensions of the building shells and calculated in accordance with the *ASTM International Standard Classification for Building Floor Area Measurements for Facility Management – E-1236M-09e1*.

**House Doctor:** The architect or engineer identified on the cover page of this Contract that performs a Study, Design, Commissioning and/or Project Management services for a Project as set forth herein.

**Laws:** Applicable statutes, acts, rules, regulations, codes, requirements, orders, directions, ordinances, judgements, decrees, and injunctions of or by the United States of America, the Commonwealth of Massachusetts, and any political subdivisions of either.

**MassDOT:** The Massachusetts Department of Transportation, a body politic and corporate, as well as public instrumentality, within the executive office of the governor of the Commonwealth of Massachusetts.

**MassDOT Designer Guidelines and Procedures (Vertical Construction) dated August 2025 (“MassDOT DGP”):** The document which is an adaptation of the DCAMM Designer Guidelines and Procedures. The MassDOT DGP provides direction and guidance to Designers who work on MassDOT building projects. The MassDOT DGP is intended to set clear expectations, improve productivity, enhance communication, and ensure consistency to help Designers translate MassDOT requirements more efficiently into successful design solutions.

**Notice to Proceed:** A written communication from an Authorized Representative of Awarding Authority directing the House Doctor to perform services in the Contract or proceed to the next phase of services as required in an

Approved Scope of Services. The House Doctor may not proceed with any services pursuant to this Contract absent receipt of a Notice to Proceed.

**Owner's Project Manager:** A professional consultant or professional construction manager hired by Awarding Authority pursuant to M.G.L. c. 149 s. 44A1/2 or otherwise to work with the House Doctor as the owner's representative on the Project to ensure an optimum project including, without limitation, construction quality, cost control, and schedule control.

**Permits:** Governmental, quasi-governmental and other necessary permits and approvals, including the filing of notices or information with governmental or quasi-governmental entities and authorities, that are necessary for the implementation of the Project at the site. The term "Permits" shall include permits and approvals from utility companies and also include permissions, approvals and consents by private parties necessary for the design and construction of the Project, such as an approval by a landlord or other holder of an interest in the Project site.

**Phase:** Phases shall include the Study Phase, the Design Phase, or Construction Phase.

**Program:** A document prepared in accordance with the provisions of M.G.L. c. 7C ss. 1 and 59, which define a "capital facility project" in terms of its content, time, and cost so that it provides a clear and detailed frame of reference for the design and implementation process." It is important to note that the Project is not a "capital facility project" as defined in M.G.L. c. 7C, s. 1, as the definition of "capital facility" in M.G.L. c. 7C, s. 1 does not include "a ... structure or building integral to the operation of the state highway system." Regardless, the Program for the Project must be prepared in accordance with the provisions of M.G.L. c. 7C, ss. 1 and 59.

**Project:** The Project identified on the cover page of this Contract, and more specifically detailed in each Approved Scope of Services.

**Public Entity:** The Commonwealth of Massachusetts of which Awarding Authority is an agency or instrumentality.

**Record Drawings:** The drawings prepared by the House Doctor and its Consultants pursuant to this Contract which incorporates the changes made during the construction period and which incorporate information from the marked-up prints, As-Built Drawings, and other data furnished by the General Contractor and subcontractor(s) (if any).

**Reference Documents:** The guidelines, standards, specifications, templates, and other materials listed in Section 4.1 and incorporated by reference into this Contract, with which House Doctor services provided hereunder shall comply.

**Resident Engineer:** The on-site representative of Awarding Authority for the Project.

**Scope of Services:** A document describing the services to be performed by the House Doctor for a particular Project, which, when authorized by a Notice to Proceed, shall be incorporated by reference into this Contract.

**Study:** A document that meets the requirements of M.G.L. c. 7C, s. 1 and the requirements of this Contract, including the Approved Scope of Services to be incorporated into this Contract, that defines and quantifies MassDOT's space needs, develops alternative architectural and/or engineering solutions to meet those needs, and contains a) a space program statement including spatial and relationship requirements, b) a recommended physical solution selected from several alternatives based on a determination of existing conditions and the feasibility of construction, c) a Construction Cost Estimate, d) schematic design meeting the requirements of M.G.L. c. 7C s. 59, and e) if applicable, a proposed construction schedule. The term "Study" as used in this Contract contains and includes a Program as defined herein. A Study may reveal that the Project is not warranted, or that the need can be satisfied without the construction of new, or the renovation of existing, facilities. This definition may be modified if the Approved Scope of Services clearly indicates that aspects of this definition are not intended to be included.

**Study Manager:** The person appointed by Awarding Authority to provide administration of the Study Phase of this Contract.

**Study Phase:** The portion of this Project that commences upon the receipt of a Notice to Proceed for an Approved Scope of Services that includes Study services and concludes upon the decision by Awarding Authority regarding approval of Study. The Study Phase includes the Schematic Design Phase.

**Subcontractor:** The subcontractors to the General Contractor or Construction Manager of a Project who provide and install building components and systems.

**Substantial Completion:** “Substantial Completion” occurs when MassDOT takes possession of the Project for occupancy.

**Surveys and Data:** Any existing and available surveys of the Project's building site or sites, showing the grades and lines of streets, pavements and adjoining properties; the rights, restrictions, easements, boundaries and contours of the site or sites; reports from any borings, test pits; chemical, mechanical or other tests; photographs and information as to water, sewer, electricity, steam, gas, telephone and other services; and data and drawings regarding existing buildings.

## ARTICLE 3: ROLE OF HOUSE DOCTOR

### 3.1 **Service Requirements.**

The House Doctor shall render the following services, as applicable. **applicable Exhibit(s) to be indicated below in each contract.** As such, the parties agree that the following checked Exhibits are binding:

- EXHIBIT A: House Doctor Study Services
- EXHIBIT B: House Doctor Design Services
- EXHIBIT C: House Doctor Commissioning Services
- EXHIBIT D: Other House Doctor Services

### 3.2 **Amendments.**

The parties agree that if, at any time, the role of the House Doctor is changed or altered such that the nature of the services performed must be characterized differently, the Contract shall be amended in accordance with Section 7.23 (Amendments, Severability, Waivers).

## ARTICLE 4: GENERAL PROVISIONS

### 4.1 **Reference Documents.**

The following documents and all reasonable updates as DCAMM or Awarding Authority, as applicable, may make from time to time are incorporated by reference into the Contract and shall be provided to the House Doctor in electronic format on the Effective Date of the Contract:

- (a) *Guidelines for the Preparation of Studies for Building Projects* (Publication No. 1381-66-250-4-83-CR, Interim Revision October 1998, Current Revision October 2000);
- (b) *MassDOT DGP*;
- (c) *Commonwealth of Massachusetts Department of Transportation Standard Specifications for Highways and Bridges 2025 Edition, including Supplemental Specifications*;

- (d) *DCAMM Standard Specification Rev. 8*;
- (e) *Building Information Modeling (BIM) List of Design and Preconstruction Services* (Revised February 27, 2016);
- (f) *BIM Guidelines for Design and Construction* (dated 2015);
- (g) *Template BIM Execution Plan*.

## **4.2 Priority of Documents.**

In the event that an Approved Scope of Services includes terms that conflict with any portion of Articles 1 through 7 of this Contract, the terms of this Contract shall prevail unless otherwise specifically agreed to by an Authorized Representative of the Awarding Authority in writing. In the case of any other conflict between the terms of this Contract and any of the provisions incorporated herein by reference, the House Doctor shall make a written request for clarification to Awarding Authority and Awarding Authority's written response shall be conclusive.

## **4.3 Scope of Services.**

### ***4.3.1 Approval of Scopes of Services***

Awarding Authority may send House Doctor a proposed Scope of Services for a Project at any time with a request for the following: (a) proposed contract schedule; (b) proposed Basic Fee for the requested services; (c) proposed billing rates in the form of Exhibit I: Certified Billing Rates of Designer's and Designer's Consultant's Personnel (to be used for calculation of Additional Services on an hourly basis, if elected by Awarding Authority) along with a Truth in Negotiations certificate in accordance with M.G.L. c. 7C, s. 51; and (d) any suggested modifications to the proposed Scope of Services. House Doctor shall respond to such a request within ten (10) days of receipt of the proposed Scope of Services from Awarding Authority. House Doctor shall include in the proposed Scope of Services only information necessary to set forth the scope of work to be performed for a particular Project and shall not include any additional contractual terms which conflict with the terms of this Contract. The Awarding Authority reserves the right to propose changes to the House Doctor's proposal. If the House Doctor agrees to such changes, the House Doctor will resubmit an updated proposal reflecting such changes in a timely manner and, unless otherwise agreed by the parties, in no event later than three (3) business days from the parties' agreement on such changes. The Awarding Authority may Approve a Scope of Services by issuing a Notice to Proceed as set forth below or by a separate written Approval.

### ***4.3.2 Notice to Proceed***

House Doctor shall commence services for a particular Project upon receipt of a Notice to Proceed from Awarding Authority, which shall include the Approved Scope of Services, the Basic Fee for the services to be performed along with a payment schedule for such Basic Fee, and Certificates of Insurances, if applicable.

### ***4.3.3 Incorporation of Scope of Services.***

Several Approved Scopes of Services may be incorporated into the Contract provided the aggregate amount of the proposed fees in connection with the Scopes of Services shall not exceed the Contract Amount.

## **4.4 Study and Design Phase Services.**

In the event the Approved Scope of Services includes Study and Design Phase Services, Awarding Authority's Approval of the Scope of Services in no way obligates Awarding Authority to select the House Doctor to perform Design Phase Services. Following the conclusion of the Study Phase, the Study must be approved and an appropriation of sufficient funds must be secured in order for the Project to proceed to the

Design Phase. If and only if these requirements are satisfied, Awarding Authority may, in its sole discretion, select the House Doctor to proceed with the Design Phase of the Project. The House Doctor shall not incur any costs associated with the Design Phase Scope of Services prior to the receipt of applicable Notice to Proceed.

**4.5 Standard of Care.**

The House Doctor agrees that the services provided hereunder shall conform to the standard of care and the practice exercised by other professionals engaged in performing comparable services. The House Doctor further agrees that the personnel furnishing said services shall be qualified and competent to perform adequately the services assigned to them. The House Doctor further agrees that the recommendations, guidance, and performance of such personnel shall reflect such standards of care and practice.

**4.6 Time of Essence.**

The parties agree that time is of the essence for the completion of all services required by this Contract. The parties further confirm and agree that any and all Approved Contract Schedules shall reflect a reasonable period of time for completing the required services, obtaining required Approvals, obtaining all necessary Permits, addressing any and all issues, and performing the Basic Services in accordance with this Contract.

**4.7 Sequential Order.**

The sequential order of the House Doctor's services as set forth in this Contract and all documents incorporated by reference is of the essence. Awarding Authority shall have no obligation to Approve or pay the House Doctor for Deliverables prepared other than in the order required by the Approved Scope of Services, as applicable.

**4.8 Staffing.**

The House Doctor agrees that the House Doctor's personnel who shall provide services under this Contract are those listed in its application to the Designer Selection Board, attached as Exhibit E: Designer Selection Board Advertisement and House Doctor Application. No changes or additions may be made to this list without Approval by Awarding Authority, which Approval shall be granted after a showing that the substitution complies with applicable Laws and provides Awarding Authority with a level of skill, qualification, and experience equal to or better than the personnel listed in or outlined in the Approved Scope of Services. The House Doctor shall provide sufficient personnel to complete the services required by this Contract in a continuous and timely manner in accordance with an Approved plan and, when applicable, in accordance with the Approved Contract Schedule.

**4.9 Project Management Software.**

The House Doctor and its Consultants shall provide Project management software for Project correspondence, documentation, Project budgeting, and scheduling. The House Doctor and its Consultants may be required to utilize MassDOT SharePoint sites for Project correspondence, documentation, on an assignment by assignment basis.

**4.10 BIM Manager.**

If required by an Approved Scope of Services, the House Doctor shall appoint an Approved BIM Manager as part of the performance of each Approved Scope of Services, unless otherwise agreed by the Awarding Authority in writing.

**4.11 House Doctor Duties Generally.**

The House Doctor shall be responsible for the professional accuracy and coordination of all Deliverables, including, without limitation, designs, drawings, specifications, digital files, cost estimates, and other services and submittals furnished by House Doctor and by its Consultants in accordance with the standard of care set forth in Section 4.5 (Standard of Care). The Basic Fee shall compensate House Doctor for all of House Doctor's obligations specified in this Contract except as otherwise provided herein.

**4.12 Quality Assurance.**

The House Doctor is responsible for Quality Assurance/Quality Control (QA/QC) in performance of all services required by the House Doctor under this Contract. The House Doctor shall be responsible for the completeness, accuracy, and coordination of all data and information relating to the Phase(s) for which House Doctor provides services hereunder, as the case may be.

**4.13 Calculations.**

Whenever calculating the Building Gross Area, Departmental Gross Area, or Net Assignable Area, as hereinafter defined, the House Doctor shall rigorously and exclusively adhere to the following specific methods of area calculation:

***4.13.1. Building Gross Area.***

The Building Gross Area shall be the floor area of a building for all levels that are totally enclosed within the building envelope, including basements, mezzanines, or penthouses. To compute the Building Gross Area, measure to the outside face of exterior walls, disregarding cornices, pilasters, and buttresses, that extend beyond the wall face. The Building Gross Area of basement space includes the area measured to the outside face of basement foundation walls.

***4.13.2. Departmental Gross Area.***

The Departmental Gross shall be the net assignable areas and required secondary circulation assigned to an occupant group or department. To compute the Departmental Gross Area, measure to the outside finished surface of the exterior building walls, to the finished surface of the walls surrounding major vertical penetrations and building core and service areas, and to the center of the walls dividing the space from adjoining Departmental Gross Areas.

***4.13.3. Net Assignable Area.***

The Net Assignable Area is the area required to accommodate a function, equipment, occupant, or occupant group. Net Assignable Area includes interior walls, building columns, and projections. Net Assignable Area excludes exterior walls, major vertical penetrations, building core and service areas, primary circulation, and secondary circulation. To compute the Net Assignable Area, measure to the inside surface of the exterior building walls, to the finished surface of the walls surrounding major vertical penetrations, building core areas, and service areas, and to the center of partitions separating the Net Assignable Area from adjoining Net Assignable Areas and from secondary circulation space.

**4.14 House Doctor to Evaluate Information.**

The House Doctor shall analyze and evaluate the Surveys and Data furnished by Awarding Authority. If the Surveys and Data to be provided by Awarding Authority are not available or are, in the reasonable opinion of the House Doctor, insufficient to permit the House Doctor to properly perform its services hereunder, the House Doctor shall submit a written request to Awarding Authority for permission to obtain the services of one or more Consultants to perform the necessary services. If such services are not included in the Approved Scope of Services the House Doctor shall be reimbursed for performance of such services in accordance with Section 5.2 (Consultants), or if the services are performed by the House Doctor's own employees, the House Doctor shall be compensated in accordance with Section 6.2 (Additional Services). In no case shall the

House Doctor commence or authorize a Consultant to commence such services without the prior Approval of Awarding Authority. In the event that any Surveys and Data are updated, corrected, supplemented, or otherwise modified in accordance with this Section, House Doctor shall provide such information and documents to Awarding Authority and, if requested by Awarding Authority, shall provide such information and documents in a form compatible with CAMIS integration.

#### **4.15 Cost Estimates.**

If Awarding Authority has appointed a construction manager or an independent cost estimator for the Project during any Phase, the House Doctor shall validate its Construction Cost Estimates with such person prior to submitting its Construction Cost Estimates to Awarding Authority for Approval. This coordination includes, but is not limited to, working in good faith and in cooperation and coordination with the Awarding Authority and Awarding Authority's consultant(s), contractor(s), and/or construction manager to reconcile any differences between cost estimates prepared by the various parties, to clarify assumptions upon which cost estimates are based, and otherwise to address any concerns or questions with respect to such cost estimates raised by the Awarding Authority or its consultant(s), contractor(s) and/or construction manager. Awarding Authority's decision in matters pertaining to the Construction Cost Estimates and changes thereto shall be final but the House Doctor shall not be responsible for any decision by Awarding Authority that is inconsistent with generally accepted standards of professional practice provided that the House Doctor shall have advised Awarding Authority in writing of the inconsistency at the time of the Approval.

#### **4.16 Corrections by Awarding Authority.**

The House Doctor shall furnish appropriate competent professional services to the point where Awarding Authority's detail checking or reviewing shall be incorporated into the Project's design unless the House Doctor makes specific written objections and such objections are agreed to by Awarding Authority. Awarding Authority's decision in matters pertaining to this section shall be final, but the House Doctor shall not be responsible for any such decision by Awarding Authority that is inconsistent with generally accepted standards of professional practice provided that the House Doctor advised Awarding Authority in writing of the inconsistency at the time the decision was made.

#### **4.17 Approvals.**

##### ***4.17.1. Awarding Authority's Approval Responsibilities.***

Awarding Authority, through an Authorized Representative, shall, without unreasonable delay, either grant any Approval required by this Contract or notify the House Doctor why such Approval is being withheld, provided that Awarding Authority shall not unreasonably withhold any Approval. If necessary, Awarding Authority shall attend meetings with the House Doctor to achieve the Approval of a Deliverable. Approval by Awarding Authority shall not, in any way, relieve the House Doctor from its professional responsibility for all services and duties hereunder.

##### ***4.17.2. House Doctor's Approval Responsibilities.***

The House Doctor shall not work on any task or Deliverable without first receiving all required Approvals. The House Doctor shall make all changes in Deliverables required by comments made by Awarding Authority before the Deliverable will be Approved, unless such changes are in the House Doctor's professional opinion not suitable, in which case the House Doctor shall communicate, in writing, the reasons why they are not suitable. When necessary, the House Doctor shall meet with Awarding Authority, the Owner's Project Manager (if applicable) and any appropriate Consultants to develop a mutually satisfactory Deliverable. Within thirty (30) days after the Approval of Deliverables, the House Doctor shall provide Awarding Authority with clearly identified hard or electronic copies, as specified by Awarding Authority, of the Approved Deliverables.

##### ***4.17.3. General Approval Procedures.***

In the case of any action requiring the Approval of Awarding Authority pursuant to the terms of this Contract the House Doctor shall, in a timely manner, make a written recommendation to Awarding Authority of the action which, in the House Doctor's judgement, should be taken. This recommendation shall be accompanied by all reasonably necessary supporting documentation as may be required by Awarding Authority. Awarding Authority shall be deemed to have relied on such recommendation and/or supporting information when granting any Approval or disapproval under this Contract. Without limiting the foregoing, in no event shall the House Doctor, on behalf of MassDOT, grant any Approval or disapproval, waive any legal right or provision of any legal agreement, or impose any contractual sanctions.

**4.18 Materials Provided to the House Doctor**

All items provided to the House Doctor by Awarding Authority hereunder shall remain the property of Awarding Authority or the Public Entity. The House Doctor may use items provided by Awarding Authority only for the purposes of this Contract and in accordance with Section 7.8 (Security and Confidentiality; Publication), unless otherwise agreed to in writing by Awarding Authority. Awarding Authority does not guarantee, nor does it make any express or implied warranties concerning, the accuracy of any such information furnished to the House Doctor.

**4.19 Right to Offset.**

If Awarding Authority finds that any services previously paid for by Awarding Authority contained deficiencies, errors or omissions, then Awarding Authority may withhold from any future payment due to the House Doctor under this Contract an amount reasonably calculated by Awarding Authority to cover the cost of correcting the deficiency, error or omission until the services have been corrected. Awarding Authority may also offset against any payment due to the House Doctor the amount of any costs incurred by Awarding Authority arising from the deficiencies, errors, omissions, or the House Doctor's failure to provide required services. If Awarding Authority shall discover that the charge for any previously paid-for services was calculated based upon incorrect information, Awarding Authority may offset any overcharges against any future payment due to the House Doctor under this Contract. Any disputes related to offsets taken by Awarding Authority shall be subject to resolution pursuant to Section 7.27 (Mediation) of this Contract. Nothing in this paragraph shall limit any legal remedies of Awarding Authority against the House Doctor for default, errors, omissions, erroneous claims, false claims, tort claims, or any breach by the House Doctor of the terms of this Contract or applicable Laws.

**4.20 Independent Contractor.**

The House Doctor is an independent contractor with respect to its duties under this Contract. No act or direction of the Awarding Authority shall be deemed to be the exercise of supervision or control of the House Doctor's performance hereunder. Under no circumstances shall the House Doctor be deemed a "state employee" or a "special state employee" for the purposes of receiving protection from liability under the provisions of M.G.L. c. 258.

**4.21 House Doctor's Responsibility and Relationship of MassDOT and Other Parties.**

The House Doctor shall not be relieved of any responsibility for the House Doctor's recommendations and duties pursuant to this Contract by virtue of any Approval or disapproval which MassDOT shall issue; by the activities or duties of House Doctor or MassDOT; or by any inspections, tests, or approvals that MassDOT, or other agency of the Commonwealth shall perform or cause to be performed. The House Doctor shall maintain a good working relationship with MassDOT, and other parties hired by the Commonwealth, if any, who may perform services with respect to this Project.

**4.22 Designated Representative.**

***4.22.1. Appointment of Designated Representative.***

The Designated Representative of the House Doctor shall report directly to the MassDOT Authorized Representative in the performance of the House Doctor's duties pursuant to this Contract.

**4.22.2. *Removal of Designated Representative.***

The House Doctor shall not remove the Designated Representative absent (i) his/her physical or mental incapacity to perform the services required of him/her hereunder, (ii) his/her malfeasance, misfeasance, or nonfeasance with respect to his/her obligations to the House Doctor or MassDOT, or (iii) MassDOT's request that the House Doctor change the Designated Representative. In the case of such removal, the House Doctor shall forthwith provide a qualified replacement for such individual which replacement must be acceptable to the Authorized Representative in his/her reasonable discretion. MassDOT has the right to demand removal and replacement of the Designated Representative if, in its sole discretion, the Designated Representative is not a suitable match for the Project. Failure to remove this Designated Representative in response to such demand shall constitute a breach of this Contract.

**ARTICLE 5: EMPLOYMENT OF CONSULTANTS**

**5.1 Generally.**

Subject to the provisions of this Contract, the House Doctor shall employ the services of Consultants as needed and be responsible for their work, compensation, and the coordination and supervision thereof. Consultants so employed shall be Approved and registered in Massachusetts in their respective disciplines if registration is required by the applicable Laws. House Doctor shall provide Awarding Authority with complete copies of its contracts with each of its Consultants within fourteen (14) calendar days of the execution of such contracts.

**5.2 Retention of Special Consultants.**

**5.2.1. *Approval.***

If the services of a Consultant not included in the Approved Scope of Services are required, the House Doctor shall submit a written request with a detailed description of the proposed services to Awarding Authority for the Approval of the solicitation of such a Consultant. Upon Approval of such request to solicit, the House Doctor shall obtain proposals from at least three (3) such consultants (including at least one MBE or WBE if available), to the extent feasible, and shall submit them to Awarding Authority together with the House Doctor's recommendation for selection before any work may be Approved. Awarding Authority may waive the requirement for three (3) proposals for good cause provided that such waiver shall be in writing. To the extent applicable, House Doctor shall comply with the requirements of the Massachusetts Prevailing Wage Law, M.G.L. c. 149, ss. 26-27D, in the employment of such special Consultants. Each such Consultant whose fee for such services exceeds \$25,000 shall demonstrate professional liability insurance coverage in an amount not less than its fee, unless specifically waived or modified by Awarding Authority.

**5.2.2. *Compensation.***

The actual cost to the House Doctor for services of any Approved special Consultant shall be reimbursed by Awarding Authority, provided that Awarding Authority previously Approved such costs. The compensation for an Approved special Consultant may be a lump sum fee. For solicitation, inspection, analysis, coordination, and evaluation of such special Consultants' services, and for assuming liability therefore, the House Doctor shall be paid by Awarding Authority (i) 10% of the actual expense, if the cost of the specific services is estimated not to exceed \$100,000 or (ii) a lesser equitable percentage to be agreed upon by the House Doctor and Awarding Authority, if the not-to-exceed cost is projected to exceed \$100,000.

### **5.3 Approval of Consultants.**

To obtain Approval of Consultants, the House Doctor must submit the items required by M.G.L. c. 7C, s. 51 and a statement of the proposed Consultant's qualifications, accompanied by resumes and experience of relevant Consultant personnel, and any other documentation reasonably requested by Awarding Authority. The House Doctor may not request Approval for the hiring of a substitute for any Consultant that was part of the team presented to the Designer Selection Board unless such Consultant has, in the House Doctor's opinion, become unable or unwilling to perform its services in a satisfactory manner or unless the Consultant has voluntarily requested in writing to be relieved of its duties as a team member. The House Doctor shall make the request for substitution in writing and the request shall state with specificity the reasons why the House Doctor believes that the Consultant has become unable or unwilling to perform its services in a satisfactory manner, or if the Consultant has voluntarily requested to be relieved of its duties as a team member, the House Doctor shall include with the request a copy of the Consultant's written request for such relief.

### **5.4 Right to Rescind Approval of Consultants.**

At Awarding Authority's sole reasonable discretion, Awarding Authority may rescind prior consent to a Consultant of the House Doctor if the Consultant is or becomes incompetent, irresponsible, or otherwise unsatisfactory, and the House Doctor shall promptly remove such Consultant from the work. Any failure to remove such Consultant shall constitute a material breach of this Contract. If a Consultant is so removed, the House Doctor shall provide another Consultant with similar, or superior, credentials and qualifications (including, without limitation, MBE/WBE) that meets the standard required for Approval by Awarding Authority. The removal of such Consultant shall not relieve the House Doctor from its responsibilities for services of its Consultants under this Contract.

### **5.5 Consultants Barred.**

The House Doctor shall not employ in any element of services under this Contract any person or firm that may create a Conflict of Interest set forth in Section 7.4 or otherwise, including, without limitation, any person or firm that expects to be a bidder, subcontractor, or supplier for other aspects of the Project. The House Doctor shall obtain from every Consultant a written representation that such Consultant is aware that it is prohibited from serving as a bidder, subcontractor, or supplier for any aspect of the Project thereafter. In addition, the House Doctor acknowledges that the services provided under this Contract require trustworthiness, confidentiality, and an absence of conflicts of interest. The House Doctor shall not perform planning, study, or similar services for any agency or officer of the Commonwealth other than Awarding Authority, for any other federal, local or state public agency, or for any for-profit or nonprofit entity if those services are in any way related to the Project.

### **5.6 Awarding Authority's Right to Assignment of Consultant Contracts.**

Subcontracts entered into by the House Doctor shall contain provisions permitting assignment of such contracts to Awarding Authority or its nominee in connection with the termination of this Contract should Awarding Authority elect to require such assignment. The House Doctor shall assign one or more subcontracts to Awarding Authority in connection with the termination of this Contract should Awarding Authority so require.

### **5.7 Prompt Payments to Consultants.**

The House Doctor shall, within fourteen (14) calendar days after receiving payment from Awarding Authority, either make payment to each Consultant whose work was included in the services for which such payment was received or notify Awarding Authority in writing of the reason why such payment is not being made within such time period.

## **ARTICLE 6: PAYMENTS TO HOUSE DOCTOR**

### **6.1 Basic Fee.**

The Awarding Authority shall set forth the House Doctor's Basic Fee in the Notice to Proceed for each Approved Scope of Services. The total of all Basic Fees paid to the House Doctor under this Contract shall not exceed the Contract Amount. Any adjustment to this maximum fee amount shall be set forth in an amendment to this Contract. Any Notice to Proceed for an Approved Scope of Services may divide the Basic Fee for House Doctor Services for specific portions of a Project. In no event shall the House Doctor be entitled to any payment for the performance of any services for any Phase of a Project without first receiving a Notice to Proceed with Basic Services (with the Additional Services included therein, as applicable) for that Phase of a Project.

### **6.2 Additional Services.**

With Approval, the House Doctor shall perform services in addition to those described as Basic Services in the applicable Approved Scope of Services. All services included in Exhibits A, B, C, D, or E shall be included as Basic Services in any Scope of Services unless otherwise expressly indicated by the Awarding Authority. For Additional Services, the House Doctor shall be compensated as determined by the Awarding Authority as follows:

- a) by a lump sum fee agreed upon in advance in writing by the House Doctor and Awarding Authority, provided that the House Doctor shall submit a Truth in Negotiations certificate in accordance with M.G.L. c. 7C, s. 51 in connection with the negotiation of such lump fee and House Doctor agrees that the lump sum fee may be adjusted within one year of the completion of the applicable Approved Scope of Services if Awarding Authority determines that the lump sum fee was increased due to inaccurate information provided to Awarding Authority in the negotiation of the lump sum fee; or
- b) on an hourly basis at the rates submitted by House Doctor in the form of Exhibit J: Certified Billing Rates of Designer's and Designer's Consultant's Personnel, as part of its proposed Scope of Services and Approved by Awarding Authority pursuant to Section 4.3, for the Additional Services performed by the principal(s)-in-charge, prime consultant, management, design and production personnel employed by the House Doctor and, if applicable, by the Consultant(s); provided, however, that such personnel must be included in Exhibit E: Designer Selection Board Advertisement and House Doctor Application in order to be compensated hereunder for Additional Services. Clerical/support staff of the Designer and Consultants shall not be compensated and is considered part of office overhead.

No authorization by Awarding Authority for the performance by the House Doctor of Additional Services shall be valid unless it is set forth in writing and contains a "not to exceed" fee for such Additional Services. Cost proposals for Additional Services shall also include a similar "not to exceed amount" for any associated reimbursable expenses as set forth in Section 6.3 below. Time expended by the House Doctor in assisting Awarding Authority or the Attorney General's Office in analyzing or providing testimony related to any claim associated with the Project shall be compensable under this Article.

### **6.3 Reimbursable Expenses.**

Awarding Authority shall not reimburse the House Doctor for any out-of-pocket expenses, including, without limitation, telephone or travel expenses, unless Approved by Awarding Authority in advance. If Approved, such reimbursable expenses must be set forth in a Scope of Services or a written request of the House Doctor. Awarding Authority will not pay for and House Doctor shall not include in its request for payment amounts for sales tax applied to any Approved reimbursable expenses.

Awarding Authority shall not reimburse the House Doctor for travel expenses except for out-of-state travel specifically authorized by the Authorized Representative; provided, however, that if such reimbursement is

pre-Approved, Awarding Authority shall reimburse such travel at the current travel reimbursement rates established for MassDOT designers providing architectural and engineering services as of the date of Contract execution, as follows: private mileage: [for each House Doc contract, the MassDOT Division or enterprise office must obtain the current private mileage rate per mile from Mike Fitzgerald, Highway, and insert it here]; meals: limited to \$5.00 maximum for breakfast, \$10.00 maximum for lunch, and \$20.00 maximum for dinner except that the cost of meals related to trips made in the course of a normal work day will not be reimbursed; and lodging: actual costs, but not to exceed \$125.00 per day only when the work performed is greater than 50 miles from the Consultant's or a subconsultant's local office and only when overnight lodging is required..

The House Doctor shall be reimbursed by Awarding Authority for: (i) the Approved actual cost to the House Doctor of special consultants hired by the House Doctor, when such consultants' services are beyond what is described in the Approved Scope of Services, plus an additional percentage determined in accordance with Section 5.2 (Retention of Special Consultants); (ii) any other Approved reimbursement, including special printing, computer, and postage services beyond the scope of services described as Basic Services in the Approved Scope of Services.

#### **6.4 Requests for Payment.**

All invoices from the House Doctor shall be submitted to Awarding Authority accompanied by justification for full or partial payment in the form of breakdown of hours and salaries by task at a minimum, and any other forms as Awarding Authority may require. All invoices will be promptly processed by Awarding Authority if they are in conformity with this Contract and properly documented; if they are not in conformity with this Contract or properly documented, the invoice(s) will be returned to the House Doctor who will be given the opportunity to cure the defects.

#### **6.5 Method of Payment.**

For performance of all the services required under this Contract, the House Doctor shall be paid in accordance with the following procedures:

- a) The House Doctor shall submit monthly payment requisitions, in arrears, based upon the payment schedule included in the Approved Scope of Services. The House Doctor and Awarding Authority may mutually agree, in writing, to revise the payment schedule provided in the Approved Scope of Services if the Authorized Representative determines that the payment schedule does not adequately compensate the House Doctor for the level of services actually rendered for that particular period. All payments made to the House Doctor are conditioned upon the satisfactory performance of its obligations hereunder.
- b) Awarding Authority shall have the right to retain an appropriate portion of any contract payment up to 5 percent of the total contract fees for an Approved Scope of Services if it reasonably determines that the House Doctor has failed to acceptably fulfill its obligations hereunder.
- c) House Doctor shall submit an invoice for final payment in accordance with this Contract within 45 days of completion of an Approved Scope of Services.
- d) Awarding Authority may require that House Doctor receive payments via electronic funds transfer (EFT).
- e) House Doctor may elect to participate in prompt pay discounts as evidenced by execution of Exhibit N: Prompt Payment Discount Form, in which case Awarding Authority may deduct prompt payment discounts as set forth in Exhibit N: Prompt Payment Discount Form.

#### **6.6 Errors in Bid Documents Prepared by the House Doctor [M.G.L. c. 7C s. 51(i)].**

To the extent that the House Doctor prepares any bid documents, neither the House Doctor nor its Consultants may be compensated for services involving preparing or reviewing changes that should have been anticipated by the House Doctor in the preparation of the bid documents as reasonably determined by the Awarding Authority.

**6.7 Equitable Adjustments to Basic Fee.**

If there is a substantial change in the services provided in the Approved Scope of Services as determined by Awarding Authority, the parties will agree to an equitable adjustment in the Basic Fee. For the purposes of this Contract, a “substantial change” in services shall include: (a) a substantial change in the scope of the House Doctor’s services that is not the fault of the House Doctor; or (b) a significant increase in the duration of a Project as provided in the approved Study (if House Doctor is provided Design Phase Services), or as otherwise agreed upon in the Approved Scope of Services and/or Notice to Proceed, that is not the fault of the House Doctor.

**ARTICLE 7: LEGAL PROVISIONS**

**7.1 No Waiver.**

Awarding Authority’s review, Approval, acceptance of, or payment for, any of the services furnished by the House Doctor hereunder shall not be construed as a waiver of any rights under this Contract or of any cause of action arising out of the performance of this Contract. Awarding Authority’s Approval shall not, in any way, relieve the House Doctor from performing all work required under this Contract in accordance with the standard of care set forth in Section 4.5 (Standard of Care).

**7.2 Compliance with Executive Order 594 [Leading By Example: Decarbonizing and Minimizing Environmental Impacts of State Government].**

As part of the Basic Services of the Contract, the House Doctor is required to provide professional services necessary to meet the requirements of Executive Order 594, provided, however, that the fees for the submission of the necessary documentation to the U.S. Green Building Council or other certifying entity to demonstrate compliance with such Executive Order shall be considered a reimbursable expense under Section 6.3 (Reimbursable Expenses). The House Doctor understands that, pursuant to Executive Order 594, all new construction and renovation projects exceeding 20,000 square feet must meet a Massachusetts LEED Plus 2.0 building standard, and that projects less than 20,000 square feet shall meet the requirements set forth above, excluding the Paragraph 1 LEED or Passive House certification requirements. Such projects shall strive to meet the certification requirements set forth in Paragraph 1 above whenever possible. Furthermore, House Doctor understands that the Massachusetts LEED Plus 2.0 standard applies to all projects overseen by DCAMM as well as all projects built on state land for use by state agencies. All cost estimates and Deliverables required by this Contract shall reflect any particular work necessary for the Project to meet the requirements of such standards.

**7.3 Compliance with Life-Cycle Cost Estimate Requirements [M.G.L. c. 7C s.29 and M.G.L. c. 149 s.44M].**

The House Doctor shall comply with all of the life-cycle cost estimate and analysis requirements set forth in M.G.L. c. 149 s.44M and this Contract. The House Doctor acknowledges that failure to obtain life-cycle cost estimates as required hereunder may result in the Director of the Office of Consumer Affairs and Business Regulation prohibiting the House Doctor from contracting, directly or indirectly, with the Commonwealth or any political subdivision thereof for similar Services for a period of one year, pursuant to M.G.L. c. 149 s.44M.

**7.4 Conflicts of Interest.**

***7.4.1. Compliance with M.G.L. c. 268A and 231 C.M.R. 4.00.***

The House Doctor shall familiarize itself with and at all times comply with the conflict of interest law, M.G.L. c. 268A and with the Rules of Professional Conduct, 231 C.M.R. 4.00. The House Doctor certifies compliance with both the conflict of interest law (M.G.L. c.268A), specifically Section 5(f), and Executive Order 346 which includes limitations regarding the hiring of state employees. If this is a privatization contract then the House Doctor shall be prohibited from hiring at any time during the term of the Contract, and for any position in the House Doctor's company, any state management employee who is, was, or will be involved in the preparation of the solicitation for this contract, the negotiations leading to the awarding of the Contract, the decision to award this Contract, and/or the supervision or oversight of performance under this Contract.

#### **7.4.2. *Prompt Disclosure of Conflicts of Interest.***

The House Doctor shall promptly disclose to Awarding Authority any matters which, although they may not violate M.G.L. c. 268A, may give rise to a potential conflict of interest on the part of the House Doctor or its personnel in its performance of its duties hereunder.

### **7.5 Proprietary Items.**

Without limitation, the House Doctor, the House Doctor's employees and Consultants shall adhere to the provision of M.G.L. c. 30 s. 39M, which provides in part:

*"Specifications for such contracts, and specifications for contracts awarded pursuant to the provisions of said sections forty-four A to forty-four L of said chapter one hundred and forty-nine, shall be written to provide for full competition for each item of material to be furnished under the contract; except, however, that said specifications may be otherwise written for sound reasons in the public interest stated in writing in the public records of the awarding authority or promptly given in writing by the awarding authority to anyone making a written request therefor, in either instance such writing to be prepared after reasonable investigation. Every such contract shall provide that an item equal to that named or described in the said specifications may be furnished; and an item shall be considered equal to the item so named or described if, in the opinion of the awarding authority: (1) it is at least equal in quality, durability, appearance, strength and design, (2) it will perform at least equally the function imposed by the general design for the public work being contracted for or the material being purchased, and (3) it conforms substantially, even with deviations, to the detailed requirements for the item in the said specifications. For each item of material the specifications shall provide for either a minimum of three named brands of material or a description of material which can be met by a minimum of three manufacturers or producers, and for the equal of any one of said name or described materials."*

The House Doctor shall refer to the law and consult with Awarding Authority for procedures regarding proprietary items. Awarding Authority may waive the provisions of this law for "sound reasons in the public interest." No such waiver shall bind Awarding Authority unless made in writing and executed by Awarding Authority. Awarding Authority may require that House Doctor provide documentation that any proprietary item can be maintained by at least two firms prior to waiving the provisions of this law.

### **7.6 Accessibility and Non-Discrimination Laws.**

The House Doctor shall perform its services under this Contract in strict compliance with all Laws relating to architectural and program accessibility for persons with disabilities, including without limitation, the applicable sections of the Americans with Disabilities Act of 1990 amended by ADA Amendments Act of 2008 ("ADA", 42 U.S.C. sections 12101 *et. seq.*; 47 U.S.C. sections 225, 611), the 2010 ADA Standards for Accessible Design ("2010 ADA Standards"), and the Rules and Regulations of the Massachusetts Architectural Access Board ("MAAB"), codified at Section 521 of the Code of Massachusetts Regulations 521 CMR 1.00 *et. seq.*, latest edition. To the extent related to its services under this Contract, the House Doctor hereby assumes the Public Entities' obligations, including those that exist under the MAAB's Rules, and/or the 2010 ADA Standards to design a facility accessible to and usable by persons with disabilities.

## **7.7 Copyrights, Patents, and Intellectual Property Rights.**

The House Doctor hereby grants to Awarding Authority and the Public Entity an irrevocable royalty-free license to use for any lawful public purpose, including, without limitation, the right to share with other public agencies for their use on projects, the following items developed or made part of the work or services performed under this Contract: all Deliverables, drawings, designs, specifications, photographs, images, notes, materials and other work and ideas of the House Doctor and its Consultants related to the performance of this Contract which are, or may be, covered by copyright, patent, or other intellectual property Laws or as to which the House Doctor and its Consultants may assert any rights or establish any claims under any such Laws. The House Doctor shall incorporate by reference this provision into all contracts with its Consultants on this Project including, without limitation, architects, engineers, estimators, designers, and photographers. The House Doctor and its Consultants, if any, shall not be responsible for changes made in the documents without the House Doctor's authorization, nor for Awarding Authority's or other public entities' use of the documents on projects other than the Project. Awarding Authority assumes the risk resulting from any such changes made in the documents without the House Doctor's authorization, or for Awarding Authority's or other public entities' use of the documents on projects other than the Project.

## **7.8 Security and Confidentiality; Publication.**

Except as required for the discharge of its duties to Awarding Authority under this Contract, or required by subpoena or court order, the House Doctor (and any Consultants) agrees to hold all information, documents, and materials obtained or developed in connection with its services under this Contract (including, without limitation, all prints, plans, policies, procedures, studies, specifications and drawings, which relate to internal layout and structural elements, electrical and mechanical systems, security measures, emergency preparedness, threat or vulnerability assessments, and any other records relating to the security or safety of persons or buildings, structures, facilities, utilities, transportation or other infrastructure located within the Commonwealth) that the House Doctor should reasonably know to be of a confidential or sensitive nature ("Confidential Information") in the strictest confidence, and shall not communicate, release, or disclose Confidential Information in any to any third party without the prior written Approval by Awarding Authority. The House Doctor shall not use any Confidential Information other than for the performance of services under this Contract. The House Doctor shall inform all persons to whom any such Confidential Information has been or will be communicated, released or disclosed of the privileged and confidential nature of Confidential Information, and shall ensure that all necessary steps are taken so that such Confidential Information is treated confidentially. Without limiting the foregoing, if the Project is a designated "Security Sensitive Information" project, the House Doctor shall execute separate Security Sensitive Information Procedures and Confidentiality Agreements and shall comply with such document protection requirements as may be referenced in said agreement.

## **7.9 Confidentiality; Personal Data [M.G.L. c. 66A].**

### ***7.9.1. Certifications.***

For all contracts involving House Doctor's access to personal information, as defined in M.G.L. c. 93H, and personal data, as defined in M.G.L. c. 66A or access to agency systems containing such information or data, House Doctor certifies under the pains and penalties of perjury that House Doctor:

- (a) has read M.G.L. c. 93H and c. 66A and agrees to protect any and all personal information and personal data; and
- (b) has reviewed all of the "Enterprise Information Security Policies and Standards" published by the Executive Office for Technology Services and Security ("TSS"), or stricter standards prescribed by DCAMM.

### ***7.9.2. Obligations.***

Notwithstanding any contractual provision to the contrary, in connection with House Doctor's performance under this Contract, for all state agencies in the Executive Department, including all offices, boards, commissions, agencies, departments, divisions, councils, bureaus, and offices, now existing and hereafter established, the House Doctor shall:

- (a) obtain a copy, review, and comply with the pertinent security guidelines, standards and policies;
- (b) comply with the "Enterprise Information Security Policies and Standards" published by TSS, or a comparable set of policies and standards ("Information Security Policy") as prescribed by the Commonwealth;
- (c) communicate and enforce such security guidelines, standards, policies and the applicable Information Security Policy among all employees (whether such employees are direct or contracted) and Consultants;
- (d) implement and maintain any other reasonable appropriate security procedures and practices necessary to protect personal information and data to which House Doctor is given access by Awarding Authority from the unauthorized access, destruction, use, modification, disclosure or loss;
- (e) be responsible for the full or partial breach of any of these terms by its employees (whether such employees are direct or contracted) or Consultants during or after the term of this Contract, and any breach of these terms may be regarded as a material breach of this Contract;
- (f) in the event of any unauthorized access, destruction, use, modification, disclosure or loss of the personal information or personal data (collectively referred to as the "unauthorized use"): (i) immediately notify Awarding Authority if the House Doctor becomes aware of the unauthorized use; (ii) provide full cooperation and access to information necessary for Awarding Authority to determine the scope of the unauthorized use; and (iii) provide full cooperation and access to information necessary for Awarding Authority and House Doctor to fulfill any notification requirements.

### **7.9.3. Breach.**

Breach of these terms may be regarded as a material breach of this Contract, such that the Commonwealth may exercise any and all contractual rights and remedies, including without limitation indemnification, withholding of payments, Contract suspension, or termination. In addition, the House Doctor may be subject to applicable statutory or regulatory penalties, including and without limitation, those imposed pursuant to M.G.L. c. 93H and under M.G.L. c. 214, § 3B for violations under M.G.L. c. 66A.

## **7.10 Records, Disclosure Statements, Accounting Controls, Audits.**

### **7.10.1. Records To Be Kept for Six Years.**

The House Doctor shall make, and keep for at least six (6) years after final payment has been made, books, records, and accounts which, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the House Doctor. [M.G.L. c. 30, s. 39R(b)(1)-(2)]

### **7.10.2. Records Open to Inspection.**

Until the expiration of six (6) years after final payment has been made, pursuant to Section 7.10.1 of this Contract, the Governor or his designee, the Secretary of Administration and Finance, the State Auditor, the Office of the Inspector General, the Commissioner of DCAMM, Awarding Authority, and any other public official authorized by law, shall have the right to examine any books, documents, papers, or records of the

House Doctor or of its Consultants, if applicable, that directly pertain to, and involve transactions relating to, the House Doctor or its Consultants. [M.G.L. c. 30, s. 39R(b)(1)-(2); Executive Order 195]

**7.10.3. *Changes in Method of Accounting.***

If this Contract is a contract for an amount exceeding \$30,000 or is a contract for the design of a Project with an Estimated Construction Cost exceeding \$300,000, and if the House Doctor shall make any change in its method of maintaining records that would materially affect any statements filed by the House Doctor with Awarding Authority, the House Doctor shall forthwith deliver to Awarding Authority a written description of such change, the effective date thereof, and the reasons therefor. The House Doctor shall submit with such description a letter from the House Doctor's independent certified public accountant approving or otherwise commenting on the change. [M.G.L. c. 30, s. 39R(b)(3)] The House Doctor hereby represents that there have been no such changes to date that have not been so reported to Awarding Authority.

**7.10.4. *Warranty by House Doctor.***

If this is a Contract for an amount exceeding \$30,000 or is for the design of a Project with an Estimated Construction Cost exceeding \$300,000, the House Doctor warrants and represents that the House Doctor has filed a statement of management on internal accounting controls as set forth in Section 7.10.5 (Filing of Statement of Management on Internal Accounting Controls) below prior to the execution hereof. [M.G.L. c. 7C, s. 51]

**7.10.5. *Filing of Statement of Management on Internal Accounting Controls.***

If this is a Contract for an amount exceeding \$30,000 or is for the design of a Project with an estimated Construction Cost exceeding \$300,000, the House Doctor shall file with Awarding Authority a statement of management as to whether the system of internal accounting controls of the House Doctor and its subsidiaries reasonably assures that: (1) transactions are executed in accordance with management's general and specific authorization; (2) transactions are recorded in a standard accounting format (i) to permit preparation of financial statements in conformity with generally accepted accounting principles, and (ii) to maintain accountability for assets; (3) access to assets is permitted only in accordance with management's general or specific authorization; and (4) the recorded accountability for assets is compared with the existing assets at reasonable intervals and appropriate action was taken with respect to any difference. The House Doctor shall also file with Awarding Authority a statement prepared and signed by an independent certified public accountant, stating that the accountant has examined the statement of management on internal accounting controls, and expressing an opinion as to (1) whether the representations of management in response to this section and sections 1 and 2 above are consistent with the result of management's evaluation of the system of internal accounting controls; and (2) whether such representations of management are, in addition, reasonable with respect to transactions and assets in amounts which would be material when measured in relation to the applicant's financial statements. [M.G.L. c. 7C, s. 51 M.G.L. c. 30, s. 39R(c)]

**7.10.6. *Representation Regarding Audited Financial Statement.***

If this is a contract for an amount exceeding \$10,000 or is for the design of a Project having an estimated Construction Cost exceeding \$100,000, the House Doctor represents that it has filed prior to the execution hereof and will continue to file annually, an audited financial statement for the most recent completed fiscal year as set forth in Section 7.10.7 (Filing of Annual Statement Required) below. [M.G.L. c. 7C, s. 51 M.G.L. c. 30, s. 39R(d)]

**7.10.7. *Filing of Annual Statement Required.***

The House Doctor shall annually file with the Commissioner of DCAMM during the term of this Contract a financial statement prepared by an independent certified public accountant on the basis of an audit by such accountant. The final statement filed shall include the date of final payment. All statements shall be

accompanied by an accountant's report. Such statements shall be made available to Awarding Authority upon request. [M.G.L. c. 7C, s. 51 M.G.L. c. 30, s. 39R(d)]

**7.10.8. Records Not Public.**

Records and statements required to be made, kept, or filed under the provisions of Section 7.10 shall not be public records as defined in M.G.L. c. 4, s. 7 and shall not be open to public inspection; provided, however, that such records and statements shall be made available pursuant to the provisions of Section 7.10.2 (Records Open to Inspection) above.

**7.11 Insurance.**

**7.11.1. General Requirements [M.G.L. c. 7C s. 51]**

- (a) Generally. The House Doctor shall purchase and maintain insurance of the type and limits listed in this Section with respect to the services to be performed under this Contract. This insurance shall be provided at the House Doctor's expense and shall be in force and effect for the full term of the Contract or for such longer period as this Section requires. The limits and coverage required by this Section shall in no way limit the liability of the House Doctor under this Contract.
- (b) Insurance company rating. All policies shall be issued by companies lawfully authorized to write that type of insurance under the Laws of the Commonwealth with a financial strength rating of "A-" or better as assigned by A.M. Best Company, or an equivalent rating assigned by a similar rating agency acceptable to Awarding Authority, or otherwise acceptable to Awarding Authority.
- (c) Certificates of insurance. The House Doctor shall submit a certificate of insurance acceptable to Awarding Authority simultaneously with the execution of this Contract. Certificates shall show each type of insurance, insurance company, policy number, amount of insurance, deductibles/self-insured retentions, additional insured status, and policy effective and expiration dates. The House Doctor shall submit updated certificates prior to the expiration of any of the policies referenced in the certificates so that Awarding Authority shall, at all times, possess certificates indicating current coverage. Failure by the House Doctor to obtain all policy renewals and to provide the respective insurance certificates as required by this section shall constitute just cause for termination of House Doctor's services under this Contract.
- (d) Termination, cancellation, or modification to policy. Termination, cancellation, or material modification of any insurance required by this Contract, whether by the insurer or the insured, shall not be valid unless written notice thereof is given to Awarding Authority at least thirty (30) days prior to the effective date thereof, which shall be expressed in said notice. Awarding Authority, at its sole discretion may waive this obligation, provided that such waiver is in writing.
- (e) Deductible. The House Doctor is responsible for the payment of any and all deductibles under all of the insurance required. Awarding Authority shall not be responsible for the payment of deductibles, self-insured retentions or any portion thereof.
- (f) Excess coverage. The House Doctor or any Consultant, if applicable, may elect to carry any other type of insurance coverage or higher limits over the required insurance coverage. Any excess coverage(s) shall be at the sole expense of the House Doctor or Consultant obtaining such coverage.

**7.11.2. Worker's Compensation, Commercial General Liability, Automobile Liability, Valuable Papers, and Hazardous Materials.**

The House Doctor shall purchase and maintain, at its own expense during the life of this Contract, the following insurance:

- (a) Worker's Compensation Insurance in accordance with Mass. Gen. Laws Chapter 152. Employers Liability shall be carried in limits not less than:
- \$500,000 each accident
  - \$500,000 by disease-policy limit
  - \$500,000 by disease-each employee
- (b) Commercial General Liability Insurance written on an occurrence basis with coverage no less broad than the most recent version of ISO CG 00 01. No amending or exclusionary endorsements material to obligations in this Contract may be attached. Limits shall not be less than \$1,000,000 each occurrence. The Public Entity and Awarding Authority shall each be listed as an additional insured on a form no less broad than CG 20 38.
- (c) Automobile Liability Insurance covering all owned, non-owned and hired automobiles at a limit of not less than \$1,000,000 each accident or loss. Limits may be provided through a combination of primary and umbrella policies.
- (d) Valuable Papers insurance in an amount sufficient to assure the restoration of any plans, drawings, computations, field notes, or other similar data relating to the work covered by this Contract in the event of loss or destruction while in the custody of the House Doctor until the final fee payment is made or all data is turned over to Awarding Authority, and this coverage shall include coverage for relevant electronic media.
- (e) To the extent the Contract or Approved Scope of Services requires hazardous material consulting services, the House Doctor, its Consultant and/or subconsultant shall purchase and maintain, or cause to be purchased and maintained pollution liability coverage for bodily injury and property damage, including loss of use of owned and non-owned damaged or stigmatized property, resulting from liability arising out of pollution related exposures such as asbestos abatement, lead paint abatement, tank removal, removal of contaminated soil, etc. The insurance policy shall cover the liability of House Doctor, its Consultant, or subconsultant, as applicable, during the process of removal, storage, transport and disposal of hazardous waste and contaminated soil and/or asbestos abatement. The policy shall include coverage for on-site and off-site bodily injury and loss of, damage to, or loss of use of property, directly or indirectly arising out of the discharge, dispersal, release or escape of smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, liquids or gas, waste materials or other irritants, contaminants or pollutants into or upon the land, the atmosphere or any water course or body of water, whether it be gradual or sudden and accidental. The policy shall also include legal defense, investigation and on and off-site clean-up costs. If coverage is written on a claims-made basis, any retroactive date shall be no later than the effective date of this Contract or date of a Notice to Proceed of an Approved scope of services, whichever is later; and continuous coverage will be maintained or an extended discovery period exercised to ensure that coverage is maintained for six (6) years beginning from the time that work under the Approved Scope of Services is complete. House Doctor shall submit either (i) renewal insurance certificates to evidence coverage is being maintained throughout the six (6) year period; or (ii) a six (6) year extended reporting period endorsement. The amount of coverage shall be not less than the following unless a higher amount is specified in writing by Awarding Authority, in which case House Doctor shall provide the additional coverage:

Limit of liability \$1,000,000 per occurrence  
 \$3,000,000 aggregate

**7.11.3. Professional Liability.**

The House Doctor shall maintain professional liability insurance covering errors and omissions and negligent acts of the House Doctor, and of any person or entity for whose performance the House Doctor is legally liable. Unless alternate requirements are otherwise specified in the documents incorporated by reference into Section A.5 (Study Phase Governing Documents), Section B.4 (Design Phase Governing Documents), or

Section C.4 (Commissioning Services and Responsibilities) of this Contract, House Doctor’s professional liability insurance shall meet the following requirements:

- a) the minimum amount of such insurance shall equal the lesser of \$5,000,000 or 10% of the Project’s Fixed Limit Construction Cost/Estimated Construction Cost, but, in no event less than \$250,000 per claim; and
- b) be either on an “occurrence” basis or on a “claims made” format, provided that a “claims made” policy shall include a retroactive date that is no later than the effective date of this Contract, and the House Doctor shall continue to provide such coverage for a period of at least six (6) years after the earlier of (1) the date of official acceptance of the completed Project by Awarding Authority; (2) the date of the opening of the Project to public use; (3) the date of acceptance by the General Contractor or Construction Manager, as applicable, of a final pay estimate prepared by Awarding Authority pursuant to M.G.L. c. 30; or (4) the date of substantial completion of the Construction Contract and the taking of possession of the Project for occupancy by Awarding Authority, which requirement can be met by providing renewal certificates of professional liability insurance to Awarding Authority as evidence that this coverage is being maintained; provided, however, that if the House Doctor is not selected to perform services in the Design Phase or if this Contract is terminated prior to that Phase, such extended coverage for “claim made” professional liability policy shall extend for at least six (6) years after the earlier of Approval of the Study or the termination of the Contract.

**7.11.4. Liability of House Doctor.**

Insufficient insurance shall not release the House Doctor from any liability for breach of its obligations under this Contract. Without limitation, the House Doctor shall bear the risk of any loss if its valuable papers insurance coverage is insufficient to cover the loss of any work covered by this Contract.

**7.12 Indemnification.**

To the fullest extent permitted by law, the House Doctor shall indemnify, defend, and hold harmless the Public Entity, Awarding Authority, and all of their agents, employees, successors and assigns from and against all claims, damages, losses, and expenses, including, but not limited to court costs, reasonable attorneys’ fees, interest, and costs to the extent caused by or resulting from the willful misconduct and/or negligent acts, errors, or omission of the House Doctor in performance of the services covered by this Contract, whether by the House Doctor or its employees or Consultants, provided that Awarding Authority shall notify the House Doctor of such suits and claims within a reasonable time after Awarding Authority becomes aware of them. The House Doctor shall be afforded an opportunity to participate in the defense and/or settlement of all such suits and claims. The House Doctor shall not be bound by the amount of damages suffered in any litigation or settlement unless the House Doctor is given the reasonable opportunity to participate in negotiations for settlement and/or defense of such litigation or claim. As used in this paragraph, the term “agent” shall specifically exclude any construction-related personnel.

**7.13 Non-Resident Processing; Signatures.**

Every House Doctor that is a nonresident of the Commonwealth hereby appoints the Secretary of the Commonwealth of Massachusetts to be his true and lawful attorney in and for Massachusetts, upon whom all lawful processes in any action or proceeding arising out of this Contract may be served. When legal process against any such person is served upon the Secretary of State, a copy of such process shall forthwith be sent by registered mail with a return receipt requested by Awarding Authority or its lawful attorney to be said House Doctor at the address set forth in this Contract. Said House Doctor hereby stipulates and agrees that any lawful process against it which is served on said attorney shall be of the same legal force and validity as if served on said House Doctor. Such authority shall continue in force so long as any liability remains outstanding against said House Doctor.

**7.14 Anti-Boycott Covenant [Executive Order 130].**

The House Doctor warrants, represents, and agrees that, during the time this Contract is in effect, neither it, nor any affiliated company, as hereafter defined, will participate in, or cooperate with, an international boycott, as defined in Section 999(b)(3) and Section 999(b)(4) of the Internal Revenue Code of 1954, as amended from time to time, or engage in conduct declared to be unlawful by M.G.L. c.151E, ss. 2-3. If there shall be a breach in the warranty, representation, and Contract contained in this Section, then, without limiting such other rights as it may have, MassDOT shall be entitled to rescind this Contract. As used herein, an affiliated company shall be any business entity of which at least 51% of the ownership interests are directly or indirectly owned by the contractor or by a person or persons or business entity or entities directly or indirectly owning at least 51% of the ownership interests of the contractor, or which directly or indirectly owns at least 51% of the ownership interests of the contractor.

**7.15 Truth-In Negotiation Certificate [M.G.L. c.7C s. 51].**

The House Doctor shall provide a truth-in negotiations certificate in accordance with M.G.L. c. 7C s. 51 and in the form attached hereto as Exhibit H: Truth-In Negotiation Certificate, with each proposed Scope of Services for a Project prior to the issuance of a Notice to Proceed.

**7.16 Employment Eligibility Verification Requirements [8 U.S.C. s.1324a, 1324b; M.G.L. c.149 s.19C; Executive Order 481].**

The House Doctor certifies, under the pains and penalties of perjury, that they shall not knowingly use undocumented workers in connection with the performance of the Contract; that, pursuant to federal requirements, they shall verify the immigration status of all workers assigned to the Contract without engaging in unlawful discrimination; and that they shall not knowingly or recklessly alter, falsify, or accept altered or falsified documents from any such worker. The House Doctor understands and agrees that breach of any of these terms during the period of a Contract may be regarded as a material breach, subjecting the House Doctor to sanctions, including, but not limited to, monetary penalties, withholding of payments, contract suspension, or termination.

**7.17 Northern Ireland [M.G.L. c.7 s.22C].**

Pursuant to M.G.L. c. 7 s. 22C, the House Doctor certifies that it does not employ ten or more employees in an office or other facility in Northern Ireland and if the House Doctor does employ ten or more employees in an office or other facility located in Northern Ireland, then the House Doctor certifies that it does not discriminate in employment, compensation, or the terms, conditions, and privileges of employment on account of religious or political belief; and it promotes religious tolerance within the workplace, and the eradication of any manifestation of religious and other illegal discrimination; and the House Doctor is not engaged in the manufacture, distribution or sale of firearms, munitions, including rubber or plastic bullets, tear gas, armored vehicles, or military aircraft for use or deployment in any activity in Northern Ireland.

**7.18 Veteran and Other Preference [Executive Order 599].**

Awarding Authority encourages the participation of Service-Disabled Veteran-Owned Business Enterprises (“SDVOBE”) and Veteran-Owned Business (“VBE”) in its construction and design projects pursuant to Executive Order 599. A VBE or SDVOBE is a firm so certified directly by the Massachusetts Supplier Diversity Office (“SDO”) [www.mass.gov/sdo](http://www.mass.gov/sdo) or is: 1) certified by a certifying agency that’s certification is accepted by the SDO; 2) the firm has submitted its existing certification credentials directly to the SDO by submitting an application for verification of certification to the SDO; 3) the SDO has reviewed and granted the application for verification; and 4) the SDO has certified the firm as a VBE or SDVOBE for purposes of the Commonwealth’s program as evidenced by a letter issued by the SDO to the firm. The Commonwealth also encourages the participation of Lesbian, Gay, Bisexual, and Transgender Business Enterprises (LGBTBE); and Disability-Owned Business Enterprises (DOBE) on its contracts.

**7.19 Minority Business Enterprise & Women Business Enterprise (MBE/WBE) Participation.**

House Doctor shall comply with the MBE and WBE participation provisions attached hereto as Exhibit F: MBE and WBE Participation Provisions and incorporated herein by reference.

**7.20 Non-Discrimination in Employment and Affirmative Action.**

***7.20.1. Compliance.***

The House Doctor shall comply with all Laws promoting fair employment practices or prohibiting employment discrimination and unfair labor practices and shall not discriminate against any qualified employee or applicant for employment because of race, color, national origin, ancestry, age, sex, religion, disability, or sexual orientation, or for exercising any right afforded by Law. The House Doctor shall comply with all applicable Laws prohibiting discrimination in employment including, but not limited to: Title VII of the Civil Rights Act of 1964; the Age Discrimination in Employment Act of 1967; American with Disabilities Act Title I: Employment, 42 U.S.C. s. 12111 *et seq.*; M.G.L. c. 151B s. 4(1); and all relevant administrative orders and executive orders, including Executive Order592. If a complaint or claim alleging violation of such statutes, rules, or regulations is presented to the Massachusetts Commission Against Discrimination (“MCAD”), the House Doctor and its agents agree to cooperate fully with MCAD in the investigation and disposition of such complaint or claim. In the event of the House Doctor’s noncompliance with the provisions of this section, Awarding Authority shall impose such sanctions as it deems appropriate, including, but not limited to, withholding of payments due the House Doctor under this Contract until the House Doctor complies, and termination or suspension of this Contract.

***7.20.2. Nondiscrimination, Diversity, Equal Opportunity, and Affirmative Action [Executive Order592].***

The House Doctor shall not engage in any discriminatory employment practices. By signing this Contract, the House Doctor hereby certifies, under the pains and penalties of perjury, that the House Doctor currently complies with, and will continue to comply with, all federal and state laws, rules, and regulations promoting fair employment practices or prohibiting employment discrimination and unfair labor practices and shall not discriminate in the hiring of any applicant for employment nor shall any qualified employee be demoted, discharged, or otherwise subject to discrimination in the tenure, position, promotional opportunities, wages, benefits, or terms and conditions of their employment because of race, color, national origin, ancestry, age, sex, religion, disability, sexual orientation, or for exercising any rights afforded by law. The Hose Doctor commits to purchasing supplies and services from certified minority or women-owned business, small businesses, or businesses owned by socially or economically disadvantaged persons or persons with disabilities.

***7.20.3. Affirmative Action Plan [Executive Order592].***

Any Contract with a maximum obligation of fifty thousand dollars (\$50,000) or more must include an Affirmative Action Plan. If this Contract has a maximum obligation of \$50,000 or more, then the Affirmative Action Plan attached hereto as Exhibit K: Affirmative Action Plan is incorporated herein by reference.

***7.20.4. Minority and Women Workforce Participation and Reporting [M.G.L. c. 149 s. 44A(2)(G)].***

If the Awarding Authority is a state agency, then pursuant to M.G.L. c. 149, s. 44A(2)(G) the House Doctor shall make every effort with a goal of increasing opportunities for minority and women design professionals to provide services under this contract. The House Doctor shall provide monthly reports of the gender and race/ethnicity of employees engaged in work under this contract in the form and format required by DCAMM, including, but not limited to electronic reporting.

***7.20.5. Material Breach.***

Any breach of this Section shall be regarded as a material breach and shall be subject to all other sections of this Contract. Awarding Authority shall have access to all records which are necessary to document compliance with this Section.

**7.21 Sexual Harassment and Workplace Violence Prevention.**

MassDOT does not tolerate sexual harassment, workplace violence or a hostile work environment. It is the goal of the Commonwealth of Massachusetts to promote a workplace where people treat each other with dignity and respect. This applies to all Commonwealth employees, consultants, contractors and subcontractors regardless of tier, and covers actions within, by, among and across these groups as they interact with each other. As part of this contract, the House Doctor agrees to promote a workplace that is free from sexual harassment and workplace violence, and to require all of its subcontractors to agree to the same. Without limiting its other rights and remedies of removal and/or termination, the Awarding Authority reserves the right to remove or terminate individuals and/or contractors whose conduct violates any of the provisions of this paragraph.

**7.22 Choice of Law.**

This Contract shall be construed under and governed by the Laws of the Commonwealth of Massachusetts. The House Doctor, and the agents thereof, agree to bring any federal or state legal proceedings arising under this Contract, in which Awarding Authority is a party, in a court of competent jurisdiction within the Commonwealth of Massachusetts. This section shall not be construed to limit any rights a party may have to intervene in any action, in any court or wherever, pending, in which the other is a party.

**7.23 Amendments, Severability, Waivers.**

No amendment to this Contract shall be effective unless it is in writing and is executed by authorized representatives of both parties. If any provision of this Contract is declared or found illegal, unenforceable, or void, then both parties shall be relieved of all obligations under that provision. The remainder of this Contract shall be enforced to the fullest extent permitted by Law. Awarding Authority reserves the right to waive any provision or requirement of this Contract if it, Awarding Authority, determines that such waiver is justified and is in the public interest. No waiver shall be effective unless in writing and signed by an Authorized Representative. No other action or inaction by Awarding Authority shall be construed as a waiver of any provision of this section.

**7.24 Personal Services – No Assignment.**

In execution of this Contract MassDOT is relying upon the financial condition and skill of the House Doctor and the particular individuals employed by the House Doctor. This is an agreement for personal services. In no event may the House Doctor's duties hereunder be assigned to any other person or entity except in the case of a merger or reorganization of the House Doctor where the staff assigned to perform the House Doctor's duties hereunder does not change, where the merger or reorganization does not have any adverse impact on the salaries or performance of such staff, and where MassDOT Approves such assignment. The Awarding Authority shall be entitled to its sole and absolute discretion in granting or withholding such Approval.

**7.25 Non-Appropriation.**

Payments are subject to appropriation and shall be made only for work performed in accordance with the terms of this Contract. The House Doctor shall not be obligated to perform, and may not perform, services outside the duration and scope of this Contract without an appropriate amendment to this Contract, and a sufficient appropriation to support such additional services. MassDOT may immediately terminate or suspend this Contract in the event that the appropriation(s) funding this Contract is eliminated or reduced to an amount which will be insufficient to support anticipated future obligations under this Contract.

**7.26 Notices, Approvals, Invoices.**

Notices to the House Doctor shall be deemed given when hand-delivered to the House Doctor at the Project site, or when deposited in the U.S. mail addressed to the House Doctor at the House Doctor's address specified in this Contract, when delivered by courier to said address, or when delivered via email. Unless otherwise specified in writing by Awarding Authority, notices and deliveries to Awarding Authority shall be effective only when delivered at the address specified in this Contract and date-stamped at the reception desk or for which a receipt has been signed by the agent or employee designated by Awarding Authority to receive official notices, or sent to the email address of the agent or employee designated by the Awarding Authority to receive official notices.

**7.27 Mediation.**

Prior to the initiation of any legal proceedings, the parties to this Contract agree to submit all claims, disputes or controversies arising out of or in relation to the interpretation, application or enforcement of this Contract to non-binding mediation. Such mediation shall be conducted under the auspices of the American Arbitration Association or such other mediation service or mediator upon which the parties agree. The party seeking to initiate mediation shall do so by submitting a formal, written request to the other party to this Agreement. This section shall survive completion or termination of this Contract, but under no circumstances shall either party call for mediation of any claim or dispute arising out of this Contract after such period of time as would normally bar the initiation of legal proceedings to litigate such claim or dispute under the laws of the Commonwealth of Massachusetts.

**7.28 Certifications of House Doctor Made under Pains and Penalties of Perjury.**

***7.28.1. House Doctor's Beneficial Owners.***

By signing this Contract, the House Doctor certifies that, under the pains and penalties of perjury, the entities and individuals named in Exhibit L: Beneficial Owners, Professional Registrants, Existing Government Contracts are the legal and beneficial owners of the House Doctor as of the date of the execution hereof. [M.G.L. c. 7C, ss. 48, 51]

***7.28.2. Professional Registrants.***

By signing this Contract, the individual executing this Contract on behalf of the House Doctor certifies under the penalties of perjury that the individuals named in Exhibit L: Beneficial Owners, Professional Registrants, Existing Government Contracts are registered by the Commonwealth as architects, landscape architects, or engineers pursuant to the provisions of General Laws Chapter 112, ss. 60A - 60O and further that (a) if the House Doctor is an individual the House Doctor is the individual named below, (b) if the House Doctor is a partnership, the majority of all the partners are persons who are registered architects, landscape architects, or engineers, (c) if the House Doctor is a corporation, sole proprietorship or joint stock company or other entity, the majority of the directors or a majority of the stock ownership and the chief executive officer, are persons who are registered architects, landscape architects, or engineers and the person to have the Project in his or her charge is registered in the discipline required for the Project, or (d) if the House Doctor is a joint venture, each joint venturer satisfies the requirements of the preceding clauses (a) – (c) as the case may be [M.G.L. c. 7C, s. 48]

***7.28.3. Resume on File with Designer Selection Board.***

By signing this Contract, the House Doctor certifies under the penalties of perjury that in accordance with the provisions of M.G.L. c. 29, s. 29A a resume of the House Doctor has been filed with the Designer Selection Board.

***7.28.4. No Inducements.***

By signing this Contract, the House Doctor certifies that, under the pains and penalties of perjury, the House Doctor has not given, offered, or agreed to give any person, corporation, or other entity any gift, contribution, or offer of employment as an inducement for, or in connection with, the award of this Contract. No Consultant of the House Doctor has given, offered, or agreed to give any gift, contribution, or offer of employment to the House Doctor, or to any other person, corporation, or entity as an inducement for, or in connection with, the award to the Consultant of a contract by the House Doctor. Lastly, no person, corporation, or other entity, other than a bona fide full-time employee of the House Doctor has been retained or hired by the House Doctor to solicit for, or, in any way, assist the House Doctor in obtaining this Contract upon a contract or understanding that such person, corporation, or other entity be paid a fee or other consideration contingent upon the award of the Contract to the House Doctor.

**7.28.5. Tax Returns.**

By signing this Contract, the House Doctor certifies that, under the pains and penalties of perjury, pursuant to M.G.L. c 62C s. 49A, the House Doctor has filed all state tax returns, paid all taxes, and complied with all Laws of the Commonwealth relating to taxes; and that, pursuant to M.G.L. c. 151A s. 19A, the House Doctor has complied with all Laws of the Commonwealth relating to contributions and payment in lieu of contributions to the Employment Security System.

**7.28.6. Existing Government Contracts.**

By signing this Contract, the House Doctor certifies under the pains and penalties of perjury that the list in Exhibit L: Beneficial Owners, Professional Registrants, Existing Government Contracts is a listing of all other existing contracts or income derived by the House Doctor from the Commonwealth or any political subdivision thereof, or public authority therein, from the Federal Government or any agency thereof, and from Awarding Authority or any governmental source for services rendered [M.G.L. c. 7C s. 48].

**7.28.7. Annual Reports; Corporate Filings.**

By signing this Contract, the House Doctor certifies that, under the pains and penalties of perjury, if the House Doctor is a corporation, the Corporation has filed with the Secretary of State all certificates and annual reports required by M.G.L. c. 156B, s. 109 (Business Corporation), by M.G.L. c. 156D (Foreign Corporation), or by M.G.L. c. 180 s. 26A (Non-Profit Corporation).

**7.28.8. Dependent Care Assistance Program.**

By signing this Contract, the House Doctor certifies that, under the pains and penalties of perjury, at the time of execution, the House Doctor is in compliance with the provisions of Section 7 of Chapter 521 of the Acts of 1990 as amended by Chapter 329 of the Acts of 1991, and 102 C.M.R. 12.00 and the Contractor is either a “qualified employer” because it has fifty (50) or more full-time employees and has established a dependent care assistance program, child care tuition assistance, or on-site or near-site child care placements, or is an “exempt employer.”

**7.28.9. Debarment; Suspension.**

By signing this Contract, the House Doctor certifies that, under the pains and penalties of perjury, the House Doctor is not currently debarred or suspended by the Commonwealth of Massachusetts, or any of its entities or subdivisions under any Commonwealth Law or regulation, including, but not limited to M.G.L. c. 29, s. 29F and M.G.L. c. 152 s. 25C, or any other state and that it is not currently debarred or suspended by the Federal Government under any federal law or regulation.

**7.29 Events of Default**

**7.29.1. Default by the House Doctor.**

If the House Doctor fails to cure within thirty (30) days after receipt of a written notice of default, the following shall constitute events of default by the House Doctor which shall entitle Awarding Authority to terminate this Contract for cause:

- (a) Failure of any representation or warranty made in this Contract or in the performance of the House Doctor's duties hereunder;
- (b) Violation of any law by the House Doctor in the performance of its duties hereunder
- (c) Failure to perform any material duty hereunder, including but not limited to the failure to remove and replace the Designated Representative upon Awarding Authority's request as set forth in Section 4.22.2 (Removal of Designated Representative);
- (d) Any bankruptcy proceeding voluntarily or involuntarily entered into by the House Doctor.

***7.29.2. Default by Awarding Authority.***

A breach by Awarding Authority of its obligations to the House Doctor hereunder shall not be considered an event of default unless the House Doctor shall first give Awarding Authority written notice of the specific matters as to which Awarding Authority is in breach of this Contract and Awarding Authority fails to cure within thirty (30) days after receipt of such notice.

**7.30 Termination**

***7.30.1. Termination by Awarding Authority for Convenience.***

Awarding Authority may terminate this Contract in whole or in part without regard to any fault or failure to perform by the House Doctor and solely for Awarding Authority's convenience at any time by written notice to the House Doctor. In the event of such termination, the Awarding Authority shall incur no liability, except for the obligation to make payments to House Doctor in accordance with this Contract up to and including the date of termination, including progress payments due under this Contract, proportionate payment for partially completed work, and (if applicable) reimbursable expenses plus reasonable costs incurred in connection with the termination as approved by Awarding Authority. The payments to the House Doctor shall not exceed the limits established for the services when Approved or the fair value of the House Doctor's work, as Awarding Authority shall determine. No amount shall be allowed for anticipated profit on unperformed services. Termination of this Contract for convenience shall not impair the right of Awarding Authority to recover damages occasioned by the fault or default of the House Doctor in the performance of its duties under this Contract.

***7.30.2. Termination by Awarding Authority for Cause.***

By written notice to House Doctor, the Awarding Authority may terminate this Contract if House Doctor fails to remove a material default after thirty (30) days of written notice to House Doctor from the Awarding Authority of such default. If after thirty days, this Contract is so terminated, Awarding Authority may assume those outstanding obligations and/or enter into a contract with a replacement designer to complete the Project. In such case, House Doctor shall be liable to Awarding Authority for any damages, including without limitation the administrative costs and attorneys' fees and costs, incurred by Awarding Authority thereby to the extent resulting from House Doctor's breach. These rights and remedies of Awarding Authority are in addition to any rights and remedies provided by law or under this Contract and shall not impair the right of Awarding Authority to recover damages occasioned by fault or default of the House Doctor in the performance of its duties under this Contract.

***7.30.3. Termination by House Doctor.***

By written notice to Awarding Authority, the House Doctor may terminate this Contract if Awarding Authority fails to remove a material default after one hundred twenty (120) days of written notice to Awarding Authority from the House Doctor of such default. Upon any such termination by the House Doctor, Awarding Authority shall pay to the House Doctor all compensation and reimbursement payable to the House Doctor in accordance with this Contract up to and including the date of termination, plus reasonable costs incurred in connection with the termination as approved by Awarding Authority. The payments to the House Doctor shall not exceed the limits established for the services when Approved or the fair value of the House Doctor's work, as Awarding Authority shall determine. No amount shall be allowed for anticipated profit on unperformed services.

***7.30.4. House Doctor's Duties upon Termination.***

Within thirty (30) days of any termination of this Contract the House Doctor shall deliver to Awarding Authority all data, drawings, specifications, digital files, reports, estimates, summaries, and such other information and materials, whether completed or in process, as may have been accumulated by the House Doctor in performing this Contract, all such documents, information, and materials being the property of Awarding Authority as set forth in Section 7.7 (Copyrights, Patents, and Intellectual Property Rights) and (b) assign any subcontracts to Awarding Authority or its nominee if so requested by Awarding Authority, as described in Section 5.6 (Awarding Authority's Right to Assignment of Consultant Contracts).

**7.31 Release and Discharge.**

The acceptance by the House Doctor of payment for services paid under the provisions of this Contract, shall in each instance operate as a release of the Public Entity, including but not limited to Awarding Authority, and every employee and agent thereof, from all claims of the House Doctor arising from this Contract, and from liability for any act or omission relating to or affecting the House Doctor's services hereunder, except for those written claims submitted by the House Doctor to Awarding Authority within the payment requisition; and except that such acceptance shall not operate as a release of claims not known to the House Doctor, which the House Doctor could not reasonably have known about at the time of such acceptance.

**7.32 Force Majeure.**

Neither party shall be liable to the other or be deemed to be in breach of this Contract for any failure or delay in rendering performance arising out of causes beyond its reasonable control and without its fault or negligence. Such causes may include, but are not limited to, acts of God or the public enemy, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, or unusually severe weather. Dates or times of performance shall be extended to the extent of delays caused by events described in this Exhibit, provided that the party whose performance is affected notifies the other promptly of the existence and nature of such delay.

*REMAINDER OF PAGE INTENTIONALLY BLANK. SIGNATURES ON FOLLOWING PAGE.*

**SIGNATURES**

IN WITNESS WHEREOF, the parties hereto have executed this Contract under seal as of the date of its execution by the Massachusetts Department of Transportation below, first written above and the individual executing this Contract on behalf of the House Doctor makes the representations and certifications set forth in this Contract under the pains and penalties of perjury.

**HOUSE DOCTOR:**

\_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_  
hereunto duly authorized

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

**MASSACHUSETTS DEPARTMENT OF TRANSPORTATION:**

\_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_  
hereunto duly authorized

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

## EXHIBIT A: House Doctor Study Services

- A.1. Introduction.** Unless subsequent exhibits otherwise prescribe the application this Exhibit, this Exhibit and the content herein applies only to the House Doctor if the House Doctor's Approved Scope of Services includes Study services. The terms and provisions of this Contract of which this Exhibit is a part are incorporated herein by reference.
- A.2. Definitions.** All terms previously defined are hereinafter incorporated into this Exhibit. ]
- A.3. Study Phase Term.** The Study Phase shall commence upon the issuance of a Notice to Proceed for an Approved Scope of Services that includes Study services and concludes upon the decision by Awarding Authority regarding Certification of Study.
- A.4. Purposes of the Study.** The purpose of this Study is to ensure that MassDOT does not expend resources on final design services for projects that are not necessary, not technically feasible, or for which sufficient funds are not available for construction. At a minimum, the Study shall allow MassDOT to assure compliance with Laws including, but not limited to, M.G.L. c. 7C s. 59, ADA Title II, and 521 CMR.
- A.5. Study Phase Governing Documents.** During the Study Phase, the House Doctor shall perform its duties in accordance with all applicable Laws, the provisions of this Contract and the Approved Scope of Services, which shall be incorporated herein by reference upon its Approval. In addition, the House Doctor shall comply with Designer Selection Board Project Criteria advertised by the Designer Selection Board for this Contract, and the guidelines and procedures set forth in the reference documents identified in Section 4.1 (Reference Documents). In the case of conflict between the terms of this Contract and any of the provisions incorporated herein by reference, the House Doctor shall make a written request for clarification to Awarding Authority and Awarding Authority shall provide a prompt written response, which shall be conclusive.
- A.6. Study Phase Materials.** At the commencement of the Study Phase, Awarding Authority shall deliver to the House Doctor relevant Surveys and Data related to the Project.
- A.7. Initial Meeting.** After receipt of a Notice to Proceed with Study services for a Project, the House Doctor, its key personnel, and such key Consultants as may be designated by Awarding Authority, shall attend an administrative conference at the Project location, unless agreed to otherwise, with the Study Manager for the purposes of making introductions, exchanging contact information, clarifying relationships, and reviewing billing procedures.
- A.8. Preparation of Scope of Services.** The House Doctor, working with the Study Manager, shall revise the Approved Scope of Services, as necessary, and shall submit the revised Scope of Services to Awarding Authority for Approval within two (2) weeks from the Notice to Proceed of this Contract. The Approved Scope of Services shall:
- (a) specify the sequences in which these tasks and Deliverables must be performed, prepared, and submitted; and
  - (b) contain a Contract Schedule, including any recommended adjustments to the schedule of payment for the Study Phase Basic Fee, and an estimated Basic Fee for Design Phase.
- A.9. Permits identified during the Study Phase.** During the Study Phase, the House Doctor shall identify and review all of the Permits required for the construction, use, and occupancy of the Project and shall provide a list of all the Permits required and an indication of when they must be applied for in the Design Phase of the Project. For each such permit, the House Doctor shall estimate, in detail, the cost of obtaining the Permit and the likely duration of the Permit issuing process. These costs and time requirements shall be accurately

reflected in any Construction Cost Estimates that the House Doctor is required to submit under this Contract, in any proposed Contract Schedule, and included in the Study.

**A.10. Schematic Design Phase Services.**

***A.10.1 Schematic design documentation.*** As part of the Study, House Doctor shall provide a schematic design in compliance with M.G.L. c. 7C s. 59 and shall provide the following schematic design level documentation which shall include and incorporate Awarding Authority comments:

- (a) Building Information Model with the Level of Development specified in the BIM Guidelines for Design and Construction, drawings, concept sketches, three dimensional representations, and specifications;
- (b) an analysis of the design's compliance with building code;
- (c) an environmental assessment;
- (d) a preliminary life cycle cost analysis evaluating the short-term and long-term costs and technical feasibility of using alternate technologies to provide, lighting, heat, water heating, air conditioning, refrigeration, gas or electricity. The House Doctor shall calculate the life-cycle costs in accordance with assumptions and requirements set forth in M.G.L. c. 149 s. 44M and the current MassDOT DGP and, if requested by Awarding Authority, shall coordinate with the Department of Energy Resources regarding the life cycle cost analysis;
- (e) a summary of applicable public utility incentive programs as determined by Awarding Authority and a plan for implementation or inclusion of incentives;
- (f) an analysis of the design's compliance with Massachusetts Architectural Access Board requirements and how it meets MassDOT's ADA Title II obligations;
- (g) a space measurement analysis for the design which shall verify that the sum of all program floor areas in the Project plus all other floor areas in the Project equal the Gross Floor Area of the Project;
- (h) a Construction Cost Estimate for the design with aggregated unit rates and quantities supporting each item and verified as accurate and complete by the cost estimator and/or Owner's Project Manager, if any, employed by Awarding Authority. If the Construction Cost Estimate (as may be updated as part of any reconciliation with estimates provided by Awarding Authority and/or Awarding Authority's consultant(s), contractor(s), and/or construction manager) exceeds the Fixed Limit Construction Cost, the House Doctor shall advise and cooperate with the Awarding Authority and Awarding Authority's consultant(s), contractor(s), and/or construction manager in identifying, specifying and recommending cost reduction alternatives. Implementation of any of the recommended cost reduction alternatives shall be subject to Approval and Awarding Authority shall have the right, in its sole discretion, to choose which of the cost reduction alternatives developed by the parties shall be implemented, provided that the House Doctor shall not be required to incorporate any cost reduction alternatives into the design of the Project if doing so would result in a violation of applicable Laws. The processes and responsibilities of the House Doctor described in this Section shall also apply to any separate cost limits within the Estimated Construction Cost that have been established in writing by an Authorized Representative of Awarding Authority for certain phases, components, or elements of the Project. The House Doctor shall not be paid additional compensation for such services;
- (i) a summary comparing the schematic plans, specifications and Estimated Construction Cost of the design to the Program and approved Study requirements and an explanation for any deviation therefrom.

***A.10.2 Approval of Schematic Design Phase Building Information Model and documents.*** Schematic Design Phase drawings, specifications, Building Information Model (with the Level of Development specified in the BIM Guidelines for Design and Construction), Construction Cost Estimates and other Deliverables shall be subject to the written Approval of Awarding Authority. Unless a lesser number is requested by Awarding Authority, the House Doctor shall submit to Awarding Authority for Approval two (2) paper and one (1) electronic copy of schematic design drawings, specifications, cost estimates, and other Deliverables.

**A.11. Evaluation of House Doctor [M.G.L. c.7C s.48].** Awarding Authority shall provide the House Doctor with a written preliminary evaluation of its performance at the completion of the analysis stage of the Study for informational purposes. Awarding Authority will also evaluate the House Doctor after the House Doctor has completed its Study Phase duties under this Contract in accordance with the Approved Scope of Services. A copy of this evaluation will be sent to the Designer Selection Board and may be viewed by state agencies, authorities, cities, and towns for future work. If the House Doctor disagrees with the evaluation given by Awarding Authority, the House Doctor may respond with a letter to the Study Manager and send a copy to the Designer Selection Board.

**A.12. Payment for Study Phase Basic Services.**

***A.12.1 Study Phase Basic Fee.***

- (a) For the satisfactory performance of all Study Phase Basic Services, the House Doctor's Study Phase Basic Fee shall not exceed the Contract Amount and the Approved amount set forth in the Notice to Proceed for the Study Phase, payable in accordance with the Approved Scope of Services.
- (b) If Approved in advance, Awarding Authority shall reimburse the House Doctor for the actual costs for specific items not included in the Study Phase Basic Fee, such as Permit filing fees and document copies in excess of numbers specified in the Contract if requested by Awarding Authority. Awarding Authority shall not reimburse the House Doctor for any out-of-pocket expenses, including without limitation telephone or travel expenses, unless Approved by the Authorized Representative in advance.

***A.12.2 Schedule for Payment of Study Phase Basic Fee.***

- (a) The Approved Scope of Services shall provide a schedule for payments of the Study Phase Basic Fee with a certain percentage of the Study Phase Basic Fee to be paid upon Approval of a certain Deliverable or group of Deliverables as agreed by Awarding Authority and the House Doctor.
- (b) Awarding Authority shall not be obliged to pay any claims received more than 45 days after the delivery of the Approved Study.

**A.13. Study Phase Additional Services.**

***A.13.1 Generally.*** With the prior Approval by Awarding Authority, during the Study Phase, the House Doctor shall perform as Study Phase Additional Services any work that is not included in or inferred by the Approved Scope of Services as being part of Study Phase Basic Services. Prior to performing any Study Phase Additional Services the House Doctor shall agree with Awarding Authority upon the fee for such services in accordance with Section 6.2 (Additional Services) of this Contract.

***A.13.2 Limitations on Study Phase Additional Services.*** Notwithstanding the foregoing, without limitations, the House Doctor, its Consultants, or subconsultants shall not be entitled to compensation and shall not claim as Study Phase Additional Services for:

- (a) work required to correct errors and omissions of the House Doctor, its Consultants, or its subconsultants during the Study Phase;
- (b) necessary additional work that, in Awarding Authority's reasonable opinion, should have been anticipated by the House Doctor in the preparation of the Study Phase Deliverables.

**A.14. Compensation for Study Phase Additional Services.** The House Doctor shall be paid, for Additional Services, pursuant to Section 6.2 (Additional Services) of this Contract.

**A.15. Accessibility and Non-Discrimination Laws.** The Study and all designs provided by the House Doctor shall reflect the requirements for a design in accordance with standards set forth in Section 7.6 (Accessibility and Non-Discrimination Laws), without waivers unless the seeking of such waivers is Approved by Awarding Authority. Without limiting the foregoing, the Study and all Construction Cost Estimates, and other cost estimates and Deliverables required by this Contract shall reflect specific ADA or MAAB work determined necessary for the Project, and any additional accessibility identified by the Awarding Authority.

**A.16. TRANSITION FROM STUDY PHASE TO DESIGN PHASE**

***A.16.1 Selection for Design Phase.*** If Awarding Authority selects an entity other than the House Doctor to perform the Design Phase Services, this Contract shall terminate upon House Doctor's receipt of notice of such selection by Awarding Authority and upon payment to the House Doctor for Study Phase Basic Services and, if applicable, Study Phase Additional Services. Regardless of whether the House Doctor is selected to perform the Design Phase Services, the House Doctor shall remain responsible for any of its continuing obligations arising during the Study Phase.

***A.16.2 Termination if Design Phase Prerequisites Not Satisfied.*** If the Approved Study is not approved or sufficient funds are not appropriated for the Design Phase of the Project, the Approved Scope of Services will terminate without liability to the Awarding Authority. Such termination shall be deemed a termination for convenience, in accordance with Section 7.30.1 (Termination by Awarding Authority for Convenience).

***A.16.3 Scope of Design Phase Services.*** If the House Doctor is selected to perform the Design Phase Services, the House Doctor and Awarding Authority shall work in good faith to revise the Approved Scope of Services, as necessary, related to the Design Phase Scope of Services.

***A.16.4 Requirements for Design Phase.*** If the Study is approved and the House Doctor is selected to proceed with Design Phase Services, the approved Study shall be incorporated by reference into the Contract and the House Doctor shall perform its services in accordance with this Contract.

*Remainder of page intentionally blank.*

## **EXHIBIT B: House Doctor Design Services**

- B.1. Introduction.** Unless subsequent exhibits otherwise prescribe the application this Exhibit, this Exhibit and the content herein applies only to the House Doctor if the House Doctor's Approved Scope of Services includes design services. The terms and provisions of this Contract of which this Exhibit is a part are incorporated herein by reference.
- B.2. Definitions.** All terms previously defined are hereinafter incorporated by reference into this Exhibit.
- B.3. Design Phase Term.** The Design Phase shall commence upon an issuance of a Notice to Proceed for the Design Phase and shall continue through the completion of the Approved Design Phase Scope of Services required hereunder, unless terminated earlier.
- B.4. Design Phase Governing Documents.** During the Design Phase, the House Doctor shall perform its duties in accordance with all applicable Laws, the provisions of this Contract, the approved Study (which is incorporated herein by reference), the Approved Scope of Services, the guidelines and procedures set forth in the Reference Documents, and the Approved BIM Execution Plan. In the case of conflict between the terms of this Contract and any of the provisions incorporated herein by reference, the House Doctor shall make a written request for clarification to Awarding Authority and Awarding Authority's written response shall be conclusive.
- B.5. Design Phase Basic Services, Generally.** Design Phase services provided by the House Doctor pursuant to this Contract shall include the administration of a Design Contract, so that: (i) the design results in a project that meets Awarding Authority's needs and conforms to the Study and the MassDOT DGP; (ii) the standards set forth in the Contract and other such guidelines and standards as may be supplied by Awarding Authority and applicable Laws; (iii) all Permits are obtained on schedule by the House Doctor; and (iv) that any contracts to be put out to bid are properly bid and reviewed and evaluated in accordance with applicable Laws. During the Construction Phase, the House Doctor shall continue to perform all of the duties described to the extent that they are necessitated by activities occurring or continuing to occur during the Construction Phase.
- B.6. Design Phase Materials.** If applicable, at the commencement of the Design Phase, and at any other time upon request of the House Doctor, Awarding Authority shall provide any additional or updated copies of Surveys and Data.
- B.7. Permits identified During Design Phase.** During the Design Phase, unless otherwise agreed to in writing, with the exception of the standard building Permits customarily obtained by the General Contractor or Construction Manager, as applicable, the House Doctor shall obtain all other Permits required to implement House Doctor's design. The House Doctor shall obtain the prior Approval of the Awarding Authority of all Permit applications, notices, and accompanying documentation before filing them with the appropriate governmental entity or other party. The House Doctor shall certify, in writing, at the time that construction documents (or changes thereto) are submitted Awarding Authority that the House Doctor has identified all Permits required to implement the Project and that those not identified in writing as being the responsibility of Awarding Authority have been identified in the specifications as being the general contractor's responsibility. Notwithstanding the foregoing, any required attendance by the House Doctor at any public hearing in connection with any Permit shall be considered an Additional Service to be compensated in accordance with Section 6.2 (Additional Services) of this Contract, and any Permit application fee shall be considered a reimbursable expense to be reimbursed in accordance with the provisions of Section 6.1 (Basic Fee).

**B.8. Design Development Phase Services.**

***B.8.1. Design Development Phase Documentation.*** If requested by Awarding Authority, House Doctor shall update and refine items submitted during the Study Phase, and shall submit, on or before the date specified in the Approved Contract Schedule, and on the basis of the approved Study and any other applicable Approved Study Phase documents and digital files, including the following:

- (a) an updated Contract Schedule;
- (b) a list of all Permits required to implement the design and a schedule of target dates for the procurement of such Permits, both of which shall be regularly updated during the remainder of the Design Phase;
- (c) if BIM services are included in the Approved Design Phase Scope of Services, an updated BIM Execution Plan and current Building Information Model and associated database(s), from which the drawings required below shall be generated;
- (d) information and documentation within the technical expertise of the House Doctor and its Consultants that is necessary for Awarding Authority to file Environmental Notification Forms, Environmental Impact Reports, and any other filings for Permits that must be filed during the Design Development Phase;
- (e) complete design development drawings, draft specifications indicating any filed sub-bid sections based on the cost of the work and other documents necessary to specify the size and character of the Project as to siting, landscape, architectural, structural, fire protection, plumbing, HVAC, electrical, ADA and MAAB compliance, product requirements, and other features;
- (f) quality control documentation demonstrating without limitation coordination of: ceiling clearances, mechanical room size, and shaft sizes; specifications and drawings; filed sub-bid work or sections; scheduling; equipment and power; existing and new construction; and phasing;
- (g) design development drawings for which the House Doctor shall submit for a "tentative approval" review to the public agency having jurisdiction over enforcement of the State Building Code with respect to the Project (the Division of Occupational Licensure Office of Public Safety and Inspections (OPSI));
- (h) an updated life cycle cost analysis to evaluating the short-term and long-term costs and technical feasibility of using alternate technologies to provide, lighting, heat, water heating, air conditioning, refrigeration, gas or electricity. The House Doctor shall calculate the life-cycle costs in accordance with assumptions and requirements set forth in M.G.L. c. 149 s. 44M and the current MassDOT DGP and, if requested by Awarding Authority, shall coordinate with the Department of Energy Resources regarding the life cycle cost analysis.;
- (i) a space measurement analysis for the design verifying that the sum of all program areas in the Project plus all other floor areas in the Project equals the Gross Floor Area of the Project;
- (j) site and building signage graphically coordinated with MassDOT and the general building requirements and in compliance with the 2010 ADA Guidelines and MAAB, including, without limitation:
  - (i) parking signs, including van-designated parking signs;
  - (ii) room designation signs;
  - (iii) directories;
  - (iv) directions signs, including exterior signs at inaccessible entrances to orient people to the nearest accessible entrance, exterior "you-are-here" maps, interior direction signs, etc.;
  - (v) informational signs, including cautionary signs, hours of operation, rules of conduct, etc.
  - (vi) signage related to loading and building areas; and

(vii) signage required by applicable building codes.

- (k) a summary or summaries comparing the design development drawings, specifications and cost estimates with the Program requirements, and explaining any deviations in writing.

***B.8.2. Cost Reconciliation and Value Engineering.*** If the Construction Cost Estimate (as may be updated as part of any reconciliation with estimates provided by Awarding Authority and/or Awarding Authority's consultant(s), contractor(s), and/or construction manager) exceeds the Fixed Limit Construction Cost, the House Doctor shall advise and cooperate with the Awarding Authority and Awarding Authority's consultant(s), contractor(s), and/or construction manager in identifying, specifying and recommending cost reduction alternatives. Implementation of any of the recommended cost reduction alternatives shall be subject to Approval and Awarding Authority shall have the right, in its sole discretion, to choose which of the cost reduction alternatives developed by the parties shall be implemented, provided that the House Doctor shall not be required to incorporate any cost reduction alternatives into the design of the Project if doing so would result in a violation of applicable Laws. The processes and responsibilities of the House Doctor described in this Section shall also apply to any separate cost limits within the Estimated Construction Cost that have been established in writing by an Authorized Representative of Awarding Authority for certain phases, components, or elements of the Project. The House Doctor shall not be paid additional compensation for such services.

***B.8.3. Approval of Design Development Phase Building Information Model and Documents.*** Such digital files, drawings, specifications, cost estimate, and other design development submittals shall be subject to the written Approval of Awarding Authority. Unless a lesser number is requested by Awarding Authority, the House Doctor shall submit to Awarding Authority, for approval, two (2) paper and one (1) electronic copy of design development drawings, specifications, cost estimates, and other submittals.

## **B.9. Construction Documents Phase Services.**

***B.9.1. Document Updates and Revisions.*** The House Doctor and its appropriate Consultants shall submit, on or before the date and time specified in the Approved Contract Schedule:

- (a) an updated Contract Schedule;
- (b) a Building Information Model with Level of Development required by the BIM Guidelines for Design and Construction, unless otherwise specified in the most recent Approved BIM Execution Plan, and associated data base(s) from which the drawings required below shall be generated;
- (c) summaries of the completed life-cycle cost estimates, which shall be filed with the building code commission and the director of the office of consumer affairs and business regulation prior to the advertising for bids for the Construction Contract, as required by M.G.L. c. 149 s. 44M;
- (d) complete construction drawings and specifications, certified by the House Doctor as having satisfied the applicable quality control review, Approved as required, in sufficient detail to permit fixed-price bids in open competition for construction of the Project;
- (e) an updated environmental assessment, building code analysis, ADA and MAAB compliance analysis, and structural and energy calculations;
- (f) a certified list of all required testing and all Permits required to implement the Project (including a certification that all Permits not identified in writing as being the responsibility of Awarding Authority have been identified in the specifications as being the general contractor's responsibility) as well as a certification that all applicable local, state and utility officials have been contacted by the House Doctor regarding each utility connection and that the persons responsible for Permits or connection approval has agreed to the systems' use;
- (g) site and building signage graphically coordinated with MassDOT and in compliance with general building requirements and the 2010 ADA Guidelines and MAAB, including, without limitation:
  - (i) parking signs, including van-designated parking signs;

- (ii) room designation signs;
- (iii) directories
- (iv) directions signs, including exterior signs at inaccessible entrances to orient people to the nearest accessible entrance, exterior “you-are-here” maps, interior direction signs, etc.;
- (v) informational signs, including cautionary signs, hours of operation, rules of conduct, etc.
- (vi) signage related to loading and building areas; and
- (vii) signage required by applicable building codes.

**B.9.2. Approval of Drawings and Other Construction Documents.** Two sets of the final drawings and specifications must be stamped "Approved" and signed by the appropriate state building inspector from the Division of Occupational Licensure Office of Public Safety and Inspections (“OPSI”). Two sets of Plumbing drawings and specifications shall be signed and stamped "Approved" by the Board of State Examiners of Plumbers and Gas Regulations Board. Two sets of the fire protection, HVAC, and electrical constructions documents shall be approved, stamped and signed by the local fire chief. Two sets of the electrical construction documents shall be approved, stamped and signed by the local electrical inspector.

**B.9.3. Cost Reconciliation; Value Engineering.** If the Construction Cost Estimate (as may be updated as part of any reconciliation with estimates provided by Awarding Authority and/or Awarding Authority's consultant(s), contractor(s), and/or construction manager) exceeds the Fixed Limit Construction Cost, the House Doctor shall advise and cooperate with the Awarding Authority and Awarding Authority's consultant(s), contractor(s), and/or construction manager in identifying, specifying and recommending cost reduction alternatives. Implementation of any of the recommended cost reduction alternatives shall be subject to Approval and Awarding Authority shall have the right, in its sole discretion, to choose which of the cost reduction alternatives developed by the parties shall be implemented, provided that the House Doctor shall not be required to incorporate any cost reduction alternatives into the design of the Project if doing so would result in a violation of applicable Laws. The processes and responsibilities of the House Doctor described in this Section shall also apply to any separate cost limits within the Estimated Construction Cost that have been established in writing by an Authorized Representative of Awarding Authority for certain phases, components, or elements of the Project. The House Doctor shall not be paid additional compensation for such services.

**B.9.4. Final Construction Cost Estimate.**

- (a) The House Doctor shall furnish a final Construction Cost Estimate, current to the date of the final bid document submission, in Construction Standards Institute Masterformat or Unifformat 2010, as specified by Awarding Authority. This estimate shall contain the same total and percentage allowances as the final Construction Cost Estimate for overhead and profit and for any further allowances for escalation and other contingencies.
- (b) The House Doctor shall also submit a summary comparing the final construction drawings and specifications and final Estimated Construction Cost with the Program requirements and submittals made during the Design Development Phase, explaining any significant deviations.

**B.9.5. Approval of Construction Documents Phase Documents.** All submittals shall be subject to the Approval of Awarding Authority. Unless a lesser number is requested by Awarding Authority or is provided below in Section B.9.6 (Copies of Approved Drawings and Specifications), the House Doctor shall furnish to Awarding Authority, for Approval, two (2) paper and one (1) electronic copy set of the drawings, specifications, Construction Cost Estimates, and other submittals. The House Doctor shall also furnish electronic media copies of the foregoing drawings and documents in such form as is required by the MassDOT DGP. All drawings and associated databases shall be generated from the latest Approved BIM(s).

**B.9.6. Copies of Approved Drawings and Specifications.** From the Approved construction drawings and specifications, with such changes as Awarding Authority requires, the House Doctor shall prepare and transmit to Awarding Authority a set of reproducible black and white drawings and original specifications,

both in electronic format and on high quality white bond paper, single-sided, properly packaged, suitable for reproduction, stand, and signed by all other disciplines, which documents shall become the property of Awarding Authority. Other suitable methods may be used with the prior Approval of Awarding Authority. Two (2) paper and one (1) electronic copy of the drawings and specifications shall be submitted with the reproducible drawings and specifications.

**B.9.7. Preparation of Construction Bid Documents.** Awarding Authority shall copy the construction bid documents, including advertisements, for receipt of proposals from construction contractors, and for execution of a Construction Contract(s). The House Doctor shall prepare all addenda (to include bidders' questions and House Doctor's responses), subject to the Approval of Awarding Authority. The House Doctor and its Consultants shall attend and chair the pre-bid conference if one is scheduled, taking note of all questions asked. Relevant questions submitted in writing shall be answered by means of written addenda to the bid documents, as required. The House Doctor shall attend the bid opening and conduct a review of the qualifications of the low filed sub-bidders and general bidder (and of other bidders, if necessary), and, shall, within three (3) working days of the respective bid opening dates, advise Awarding Authority, in writing, of the House Doctor's opinions as to the sub-bidders' bids and as to which general bidder is the responsible and eligible bidder that has submitted the lowest bid.

**B.9.8. Fixed Limit Construction Cost Adjustments.** If within three (3) months after Approval of construction documents, in final form, the bids of the lowest responsible and eligible bidders exceed the Fixed Limit Construction Cost, the House Doctor shall, if so instructed, in writing, by Awarding Authority, provide such revised construction drawings and specifications and construction cost estimates as Awarding Authority shall require for the purpose of bringing the cost within the Fixed Limit Construction Cost; provided the House Doctor may, in connection with such revision, make reasonable adjustments in the scope of the Project subject to the written approval of the Authorized Representative, which approval shall not be unreasonably withheld. The House Doctor shall not be paid additional compensation for such services.

## **B.10. Construction Administration Phase Services.**

**B.10.1. Generally.** Upon the award of the Construction Contract, the House Doctor and its Consultants shall:

- (a) be charged with general administration of the Construction Contract to the extent set forth herein;
- (b) furnish the General Contractor or Construction Manager, as applicable, with information for establishing lines and grades and shall prepare a set of plans and specifications that incorporate all addenda and SK drawings issued during the bidding process;
- (c) promptly and in accordance with the requirements of the Construction Contract check, obtain testing where necessary, and approve samples, schedules, shop drawings and other submissions by the General Contractor or Construction Manager, as applicable;
- (d) prepare, maintain and update logs for all submittals and changes to the Construction Contract;
- (e) provide to Awarding Authority a written certification of all Permits required to implement change order work at the Project site when the House Doctor submits for Approval any change order request to Awarding Authority during the construction phase of the Project, whether the change order request was made by the House Doctor, Awarding Authority, the General Contractor or Construction Manager, as applicable;
- (f) visit the site at intervals appropriate to the stage of construction but not less than weekly, and observe the progress of the work, issue written progress reports, and conduct job meetings, and prepare and distribute meeting minutes to assure that the work is being built in conformance with Approved construction documents;
- (g) report to Awarding Authority weekly in writing on the progress of the work including whether or not the General Contractor or Construction Manager, as applicable, is keeping As-Built Drawings and BIM(s) updated;

- (h) on a weekly basis (or more often as may be necessary), make specific recommendations on rejection of all Project work observed by the House Doctor that fails to conform to the Construction Contract Documents, and review and inspect corrected work;
- (i) require each Consultant employed in accordance with ARTICLE 5: Employment of Consultants to make visits weekly during the progress of any work to which that Consultant's services relate and to report upon it in writing to the House Doctor;
- (j) conduct semi-final and final inspections of the Project and report the results of such inspections in writing to Awarding Authority;
- (k) observe the balancing of air and water circulation systems and report the results thereof;
- (l) observe the setting and adjustment of automatic controls and report thereon;
- (m) observe compliance with accessibility regulations and Project requirements and report discrepancies;
- (n) in a timely manner, decide all questions regarding interpretation of, or compliance with, the Construction Contract Documents, except as Awarding Authority may in writing otherwise determine;
- (o) furnish electronic versions of the Record Drawings, a final cost report, and other required documents; and
- (p) assist Awarding Authority in any bid protest hearings, change order appeal hearings requested under M.G.L. c. 6C, s. 40, and any other litigation, except as provided in Section B.14 (Design Phase Additional Services).

Except as otherwise specifically set forth in the Construction Contract Documents, the House Doctor shall neither have control over or charge of, nor be responsible for, the construction means, methods, techniques, sequences, or procedures, or for safety precautions and programs in connection with the general contractor's work, since these are solely the general contractor's rights and responsibilities under the Construction Contract Documents.

***B.10.2. General Contractor's Requisitions for Payment.*** The House Doctor shall submit to Awarding Authority, in a timely manner, all requisitions for payment submitted by the General Contractor or Construction Manager, as applicable, in the form required by Awarding Authority. With respect to each such requisition, the House Doctor shall certify, to the best of its knowledge, that the percentage of work included in the requisition is accurate and that the work performed conforms to the Construction Contract Documents. In the event the House Doctor does not approve the requisition exactly as submitted by the General Contractor or Construction Manager, as applicable, the House Doctor shall forward it for payment to Awarding Authority dated and signed with corrections with an accompanying letter of explanation setting forth the House Doctor's objections and recommended changes. The House Doctor shall coordinate the required visits to the construction site so as to enable it to submit to Awarding Authority the General Contractor's or Construction Manager's, as applicable, monthly requisition for payment bearing the Resident Engineer's approval or accompanied by the Resident Engineer's letter of exceptions. Timely payments to the contractor are required by M. G. L. Chapter 30 s.39K; therefore, the House Doctor shall establish procedures assuring either immediate mail (i.e., email) or messenger delivery of the requisition for payment to Awarding Authority, and shall process requisitions for payment within two (2) working days after receipt of the same.

***B.10.3. Project Close Out Obligations [M.G.L. c. 30 s. 39K].*** Within 10 days of General Contractor's request for Substantial Completion, House Doctor shall submit to Awarding Authority a complete and final list of all incomplete and unsatisfactory work items, including, for each item on the list, a good faith estimate of the fair and reasonable cost of completing such item. Awarding Authority may assign a specific portion of the Basic Fee to the performance of these obligations.

***B.10.4. Review of Close Out Documents.***

- (a) Before examining the requisition for final payment submitted to Awarding Authority by the General Contractor or Construction Manager and before making any certification in response thereto, the House Doctor shall obtain from the General Contractor or Construction Manager, as applicable:
  - (i) An As-Built Model File, as set forth in the BIM Guidelines for Design and Construction and consisting of a federated BIM showing the actual installation of the site utilities, plumbing, heating, ventilating, and electrical work as outlined in the Construction Contract, recording all changes, and containing descriptive or tabular data as required by Awarding Authority and associated with the BIM;
  - (ii) As-Built Drawings, including drawings showing the actual installation of the site utilities, plumbing, heating, ventilating, and electrical work as outlined in the Construction Contract, and recording all changes; and
  - (iii) All other documents required as part of the closeout process under the Construction Contract Documents, including, without limitation, operation and maintenance (O&M) manuals and manufacturer’s warranties for the Project.
- (b) The House Doctor shall ascertain that changes authorized by change orders are shown on the General Contractor’s or Construction Managers, as applicable, As-Built Drawings and the As-Built Model File required above. The House Doctor shall revise the original BIM, the applicable original reproducible drawings and electronic media drawings on the basis of the As-Built Drawings and the federated BIM and shall submit them as Record Drawings and a Record Model, respectively. The House Doctor shall provide Awarding Authority two sets of prints along with an electronic copy of Record Drawings. Record Drawings and the Record Model shall become the property of Awarding Authority, all as part of the Design Phase Basic Fee.

***B.10.5. Evaluation of General Contractor.*** At the conclusion of the Construction Contract, the House Doctor shall assist Awarding Authority’s Authorized Representative in the evaluation of the performance of the general contractor as required by M. G. L. c. 149 s.44D or any other applicable Law.

***B.10.6. Copies of Original Design and Calculations.*** Two suitably bound legible copies of all original design and quantity calculations, including those pertinent to change orders and shop drawings, if applicable, shall be furnished by the House Doctor to Awarding Authority at the conclusion of the Construction Contract.

**B.11. Facility Performance Evaluation Phase Services.** Awarding Authority, in consultation with the House Doctor, and its appropriate Consultants, may conduct a Facility Performance Evaluation (“FPE”) on all new buildings, renovations, and energy projects

**B.12. Change Orders.** Unless otherwise Approved by Awarding Authority, payments to the House Doctor for a modification or a change order shall be made when the modification or change order has been Approved by Awarding Authority and the House Doctor’s services with respect to the same, other than construction administration services, have been completed.

**B.13. Payment for Design Phase Basic Services.**

The House Doctor shall be compensated for services provided hereunder in accordance with Section 6.1 of this Contract unless otherwise agreed to between Awarding Authority and the House Doctor.

**B.14. Design Phase Additional Services.**

***B.14.1. Generally.*** With the prior Approval of Awarding Authority, and in accordance with the Approved Scope of Services, during the Design Phase the House Doctor shall perform all or any of the following services in addition to the Basic Services:

- (a) revise previously Approved drawings, specifications or other documents to accomplish changes authorized by Awarding Authority or required by changes in applicable Laws, and revisions not occasioned by the House Doctor's errors or omissions;
- (b) attend Permit or public hearings and prepare presentation renderings and presentation models in connection therewith that are authorized by Awarding Authority;
- (c) prepare documents for alternate bids requested by Awarding Authority except for alternates required to be prepared by the House Doctor to adjust the estimated Construction Cost to within the Fixed Limit Construction Cost;
- (d) provide consultation concerning replacement of any work damaged by fire or other cause during construction and furnishing professional services of the type set forth in this Exhibit as may be required in connection with the replacement of such work;
- (e) provide professional services necessary to evaluate substitutions proposed by the general contractor and prepare subsequent revisions to drawings and other documents resulting therefrom or furnish professional services made necessary by the default of the General Contractor or Construction Manager, as applicable, including, without limitation, an analysis of maintenance and life cycle cost implications of the proposed substitutions;
- (f) provide services after final payment to the General Contractor, except for services occasioned by the House Doctor's errors or omissions;
- (g) prepare special documents for or appearing as a witness in change order appeal hearings under M.G.L. c. 6C, s. 40 or in judicial litigation arising out of the Construction Contract, except for litigation arising from the House Doctor's negligent acts, errors or omissions;
- (h) prepare change orders and supporting data, except as set forth in Section;
- (i) revise construction drawings and specifications submitted in their final and complete form for which bids were not received within six months after submission;
- (j) make studies other than those normally required and prepare applications and reports to assist Awarding Authority in obtaining federal aid;
- (k) additional site visits requested by Awarding Authority in excess of the site visits required under this Contract, if the time spent by House Doctor at the site for the required site visits and for such additional site visits requested by Awarding Authority collectively exceed seven (7) hours in any given calendar week

***B.14.2. Limitations on Design Phase Additional Services.*** Notwithstanding the foregoing, without limitations, the House Doctor, its Consultants, and subconsultants shall not be entitled to compensation and shall not claim as Additional Services:

- (a) Work required to correct errors and omission of the House Doctor, its Consultants, or subconsultants during the Study Phase or the Design Phase;
- (b) Necessary additional work that, in Awarding Authority's reasonable opinion, should have been anticipated by the House Doctor in the preparation of the Study Phase or Design Phase Deliverables;
- (c) Preparation of changes required to make unit price adjustments due to existing conditions; or

- (d) Services involved in change orders for time extension only, provided that the time required for review and approval of said change may be included as an Additional Service upon Awarding Authority's Approval.

***B.14.3. Payment for Design Phase Additional Services.*** The House Doctor shall be compensated in accordance with Section 6.2 (Additional Services) of this Contract unless otherwise agreed to between Awarding Authority and the House Doctor.

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## EXHIBIT C: House Doctor Commissioning Services

- C.1. Introduction.** Unless subsequent exhibits otherwise prescribe the application of this Exhibit, this Exhibit and the content herein applies only to the House Doctor if the House Doctor's Approved Scope of Services includes commissioning services. The terms and provisions of this Contract of which this Exhibit is a part are incorporated herein by reference.
- C.2. Definitions.** All terms previously defined are hereinafter incorporated by reference into this EXHIBIT C.
- C.3. Schedule of House Doctor Services.** The House Doctor shall submit a Contract Schedule in accordance with the Commissioning Specifications for Approval within 3 days of receipt of a Notice to Proceed. During the Project, House Doctor shall establish the schedule for all commissioning activities, including periodic design reviews.
- C.4. Commissioning Services and Responsibilities.** Unless otherwise clearly stated in the Approved Scope of Services, the House Doctor shall consult with the Awarding Authority and perform the responsibilities of the "Commissioning Authority" set forth in the Commissioning Specifications during the Study Phase, Design Phase, and Construction Phase, as applicable, which include, but are not limited to the requirements of this Exhibit.
- C.5. Pre-Design Consultation.** House Doctor shall collaborate in the development and administration of a Project's "Owner's Project Requirements" and "Basis of Design" as required and defined by the Commissioning Specifications;
- C.6. Maintenance Staff Review.** House Doctor shall review the size and skill levels of Awarding Authority's maintenance staff in relation to the requirements of new building and/or systems in order to fill any deficiencies;
- C.7. Commissioning Plan.** The House Doctor shall prepare and update a "Commissioning Plan" as required and defined by the Commissioning Specifications.
- C.8. Commissioning Specifications.** The House Doctor shall review the Construction Contract Documents and recommend modifications necessary for coordination with the commissioning requirements and processes, which may include equipment submittal, operation and maintenance manuals, systems readiness tests, and personnel training. The House Doctor shall provide Project-specific commissioning specifications for inclusion in the Construction Contract Documents, which will define the contractor's responsibilities related to commissioning and will identify systems to be commissioned and may include detailed checklists, test procedures, and required test results and warranty requirements.
- C.9. Submittals.**
- C.9.1 Review.** The House Doctor shall review Project submittals required by the Commissioning Specifications as related to the services to be provided. During the Design Phase, the House Doctor shall review design calculations and performance criteria, identifying any operation and maintenance problems and providing written comments along with a checklist of required actions to be completed prior to design Approval by Awarding Authority and/or recommended alternatives where appropriate. During the Construction Phase, House Doctor shall review submittals from the General Contractor or Construction Manager, as applicable, as requested for the limited purpose of evaluating the system's ability to achieve the requirements of the Construction Contract Documents and shall update the "Commissioning Plan" (as defined in the Commissioning Specifications) as necessary. The House Doctor's review shall be made with such reasonable promptness as to cause no delay in the work or in the activities of Awarding Authority or the Public Entity or their consultants or contractors, while allowing sufficient time in the House Doctor's

professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the General Contractor or Construction Manager, as applicable, as required by the Construction Contract Documents. The House Doctor's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the House Doctor, of any construction means, methods, techniques, sequences or procedures.

**C.9.2 Completion of Review.** Upon completion of the review, the House Doctor shall issue written comments for those submittals that deviate from the requirements of the Construction Contract Documents. Awarding Authority may choose to accept the deviations, in which case the House Doctor shall revise the Construction Contract Documents and the related Commissioning Specifications as an Additional Service.

**C.10. Commissioning Meetings.** The House Doctor shall schedule, plan, and conduct commissioning meetings, which may occur simultaneous to other Project meetings as necessary and appropriate.

**C.11. Operations and Maintenance (O&M).**

**C.11.1 O&M Manual Review.** Prior to the start of operator training, the House Doctor shall review the O&M manuals and develop O&M training plans and videos as required by the Commissioning Specifications.

**C.11.2 Preventive Maintenance Schedules.** House Doctor shall submit warranty information and preventive maintenance schedules for all building systems in a comprehensive, five-year preventive maintenance plan in accordance with the Commissioning Specifications.

**C.12. Operator Training.** The House Doctor shall perform the following with respect to operator training:

**C.12.1 MassDOT Training.** Review and approve the content and adequacy of the training of MassDOT and personnel, including contractors' planning, scheduling, content, and documentation, as required by the Commissioning Specifications.

**C.12.2 Operator Systems Training.** Provide operator systems training covering the requirements of the Construction Contract Documents, special design features, operating sequences and limitations, procedures for the Functional Performance Test to be conducted pursuant to Section C.13, and maintenance cycles of the various systems.

**C.12.3 Observation and Training Log.** Observe any contractors' training and maintain a training log for inclusion into the final commissioning report as required and defined by the Commissioning Specifications. The training log will include the attendees' names, training dates, system or equipment on which training was performed, and the name, title, and contact information of the trainer.

**C.13. Functional Performance Test.** Following completion of operator training pursuant to Section C.12, House Doctor shall direct, observe, and document the functional performance test and provide field training to MassDOT as required in accordance with the Commissioning Specifications.

**C.14. Testing Procedures for Consultants.** The House Doctor shall develop procedures for each piece of equipment or system to be tested for the Subcontractors based on the specific functional testing requirements.

**C.15. Reporting.** The House Doctor shall prepare and provide reports to the Awarding Authority and the architect/engineer of record as required by the Commissioning Specifications and Contract Schedule, including, without limitation:

**C.15.1 Deficiency Correction.** The House Doctor shall generate a corrective action report for each deficiency identified during functional performance testing. The House Doctor shall maintain a log of the corrective action reports. The House Doctor, in consultation with the Awarding Authority, shall facilitate the resolution of each deficiency by the appropriate contractor and, after correction of the deficiency, the House Doctor shall direct, observe, and document re-testing to confirm that the deficiency has been corrected as an Additional Service.

**C.15.2 Final Commissioning Report.** The House Doctor will prepare a final commissioning report, including the commissioning plan, Construction Contract Documents, Project commissioning specification, blank functional performance test procedure forms, system readiness tests reports, functional performance test reports, corrective action reports and log, and operator training plans and log.

**C.16. Final Debriefing.** House Doctor shall convene and chair a final debriefing with the Project team (including appropriate representatives from the Awarding Authority, General Contractor or Construction Manager (as applicable), and any necessary subcontractors) to coordinate correction of any remaining deficiencies, completion of any re-testing and identification of any training deficiencies prior to building turnover.

**C.17. Post-Occupancy Review.** The House Doctor shall meet with the Awarding Authority prior to one year after the date of Substantial Completion to review the operations and performance of the commissioned systems and to make appropriate recommendations to the Awarding Authority, including, without limitation, providing a review of all system warranties prior to their one-year expiration date. If requested by Awarding Authority, House Doctor's post-occupancy services shall include performance of any and all off-season testing required to comply with LEED credit requirements for "enhanced commissioning".

**C.18. Measurement and Verification.** The House Doctor shall implement a measurement and verification plan consistent with the standard set forth in the Commissioning Specifications that covers at least one year of post-construction occupancy.

**C.19. CAMIS.** House Doctor shall submit O&M information (including, but not limited to, equipment data and preventive maintenance schedules) for each building system, and any updates thereto, in an approved format for entry into CAMIS.

**C.20. Access to Necessary Property and Personnel.** Awarding Authority shall provide access to the property, buildings, and personnel necessary for the House Doctor to provide the Commissioning services. The personnel shall conduct tours and walk-throughs and explain the facility's original, current, and anticipated future use.

**C.21. Access to Service Providers.** Awarding Authority shall furnish the services of design consultants, testing agencies, and contractors necessary to allow the House Doctor to provide the Commissioning Services.

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**EXHIBIT D: Other House Doctor Services**

*[to be inserted by Awarding Authority as applicable]*

**EXHIBIT E: Designer Selection Board Advertisement and House Doctor Application**

See attached sheets.

## **EXHIBIT F: MBE/WBE Participation Provisions**

### **THE FOLLOWING PROVISIONS APPLY TO DESIGNERS CONTRACTING WITH MASSDOT:**

The following provisions establish goals and procedures to ensure full participation by minority business enterprises (“MBEs”) and women businesses enterprises (“WBEs”) (collectively “MBE/WBEs”) on this Contract.

#### **1. Goals**

- a. The separate Minority Business Enterprise and Women Business Enterprise (MBE & WBE) participation goals for this Contract are the following percentages of the Contract Amount (also set forth in the DSB advertisement for the Contract, included in Exhibit E to this Contract): \_\_\_\_\_% MBE and \_\_\_\_\_% WBE.
- b. The Designer shall comply with all of the terms and conditions of this Contract, which include the provisions pertaining to MBE/WBE participation set forth in the Designer Selection Board’s request for applications, incorporated herein by reference, in order to meet the MBE/WBE participation goal established for this Contract.
- c. MBE or WBE participation credit will be given for the value of the work under the Contract by Designer (only if Designer is itself a Supplier Diversity Office (SDO) certified MBE or WBE) and each MBE and WBE Consultant or subcontractor (hereafter “subcontractors”) to the Designer.

#### **2. MBE/WBE Status.**

- a. A minority owned business shall be considered an MBE only if it has been certified as a minority business enterprise by the Supplier Diversity Office (SDO).
- b. A woman owned business shall be considered a WBE only if it has been certified as a woman business enterprise by SDO.
- c. Certification as a disadvantaged business enterprise (“DBE”), certification as an MBE/WBE by any agency other than SDO, or submission of an application to SDO for certification as an MBE/WBE shall not confer MBE/WBE status on a firm for the purposes of this Contract. Please note that only firms SDO certified as MBE or WBEs can be credited toward meeting project MBE or WBE goals.

#### **3. Subcontracts With MBE/WBEs.**

- a. The parties acknowledge that the Designer has submitted to MassDOT for approval and that MassDOT has approved a Schedule of MBE/WBE Participation and Letters of Intent for each of the MBE/WBEs who will perform work under this Contract for MBE/WBE participation credit.
- b. Within seven (7) days after the notice to proceed is received by the Designer, the Designer shall (i) execute a subcontract with each MBE/WBE who has executed a Letter of Intent approved by MassDOT, and (ii) furnish MassDOT with a signed copy of each such subcontract.

#### **4. Performance of Contract Work by MBE/WBEs.**

- a. The Designer shall not perform with its own organization or subcontract or assign to any other firm work designated to be performed by any MBE/WBE in the Letters of Intent or Schedule of MBE/WBE Participation (“MBE/WBE Work”) without the prior written approval of MassDOT,

nor shall any MBE/WBE assign or subcontract to any other firm, or permit any other firm to perform any of its MBE/WBE Work without the prior written approval of MassDOT. Any such unapproved assignment, subcontracting, sub-subcontracting, or performances of MBE/WBE Work by others shall be a change in the MBE/WBE Work for the purposes of this Contract. MassDOT shall not apply to the MBE/WBE participation goal(s) any sums attributable to such unapproved assignments, sub-contracts, sub-subcontracts, or performance of MBE/WBE work by others.

- b. The Designer shall be responsible for monitoring the performance of MBE/WBE Work to ensure that each scheduled MBE/WBE performs its own MBE/WBE Work.
- c. The Designer shall periodically submit to MassDOT a completed and executed Designer's Certification of Payment to Minority and Women Business Enterprises in the form and by the method required by MassDOT. MassDOT shall establish the schedule for submitting such certifications.
- d. The Designer and each MBE/WBE shall provide MassDOT with all other information and documentation that MassDOT determines is necessary to ascertain whether or not an MBE/WBE has performed its own MBE/WBE Work as set forth in its Letter of Intent.
- e. At the discretion of MassDOT, the failure of the Designer to submit a required Designer's Certification of Payment to Minority and Women Business Enterprises or any other documentation that MassDOT has determined is necessary to ascertain whether or not an MBE/WBE has performed its own MBE/WBE Work as set forth in its Letter of Intent shall establish conclusively for the purpose of giving MBE/WBE participation credit under this Contract that such MBE/WBE did not perform such work.

5. **Notification of Changes in MBE/WBE Work.**

- a. If at any time during the performance of the Contract the Designer determines or has reason to believe that (i) a scheduled MBE/WBE is unable or unwilling to perform its MBE/WBE Work, or (ii) there has been or will be a change in the value or scope of any MBE/WBE Work, or that a party different from the scheduled MBE/WBE will perform all or part of such work, or (iii) the Designer will be unable to meet the MBE/WBE participation goal(s) for this Contract for any reason, the Designer shall immediately notify the MassDOT Office of Diversity and Civil Rights in writing of such circumstances.
- b. Any notice that there will be a change in the value or scope of MBE/WBE Work or that a party different from the scheduled MBE/WBE will be performing such work, that is given to MassDOT pursuant to subparagraph (a) above shall include a revised Schedule of MBE/WBE Participation and additional or amended Letters of Intent and subcontracts, as the case may be, all of which shall be subject to the approval of MassDOT.

6. **Actions Required if there is a Reduction in MBE/WBE Participation.**

- a. In the event there is a change or reduction in any MBE/WBE Work which will result in the Designer failing to meet the MBE/WBE participation goal(s) for this Contract, other than a reduction in MBE/WBE Work resulting from a change in the Contract work ordered by MassDOT, then the Designer shall make a diligent, good faith effort to make up the shortfall in MBE/WBE participation as follows:
  - i. The Designer shall identify all items of work remaining to be performed under the Contract that may be made available for subcontracting to MBE/WBEs and shall send a list of such items of work to MassDOT for its approval. The Designer shall also send MassDOT a list of the remaining contract work that may not be made available to

MBE/WBEs in the Designer's opinion, and a statement of the reason why each such item of work may not be made available for subcontracting to MBE/WBEs.

- ii. The Designer shall send written notices soliciting proposals to perform the items of work that may be made available for subcontracting to MBE/WBEs to all MBE/WBEs qualified to perform such work. The Designer shall advise MassDOT of (I) each MBE/WBE solicited, and (II) each MBE/WBE listed in the SDO directory under the applicable professional category who was not solicited and the reasons therefor. The Designer shall also advise MassDOT of the dates that notices were mailed and provide a copy of the written notice(s) sent.
- iii. The Designer shall make reasonable efforts to follow up the written notices sent to MBE/WBEs with telephone calls or personal visits in order to determine with certainty whether the MBE/WBEs were interested in performing the work. Phone logs or other documentation must be submitted to MassDOT evidencing this effort.
- iv. The Designer shall make reasonable efforts to assist MBE/WBEs that need assistance in obtaining insurance or lines of credit in order to perform work under the Contract, and shall provide MassDOT with evidence that such efforts were made.
- v. The Designer shall provide MassDOT with a statement of the response received from each MBE/WBE solicited, including the reason for rejecting any MBE/WBE who submitted a proposal.
- vi. The Designer shall take any additional measures reasonably requested by MassDOT to meet the MBE/WBE participation goal(s) established for this Contract.
- vii. The Designer shall submit to MassDOT all information or documentation that is necessary in the judgment of MassDOT to ascertain whether or not the Designer has complied with any of the provisions of this Article.

**7. Suspension of Payment and/or Performance for Noncompliance.**

- a. If at any time during the performance of the Contract, MassDOT determines or has reason to believe that (i) there has been a change or reduction in any MBE/WBE Work which will result in the Designer failing to meet the MBE/ WBE participation goal(s) for this Contract, other than a reduction in MBE/WBE Work resulting from a change in the Contract work ordered by MassDOT, and (ii) the Designer has failed to comply with all of the terms and conditions of paragraphs 1 through 6 above, MassDOT may:
  - i. suspend payment to the Designer of an amount equal to the value of the work which was to have been performed by a MBE/WBE pursuant to the Designer's Schedule of MBE/WBE Participation but which was not so performed, in order to ensure that sufficient contract funds will be available if liquidated damages are assessed pursuant to paragraph 8, and/or
  - ii. suspend the Designer's performance of this Contract in whole or in part.
- b. MassDOT shall give the Designer prompt written notice of any action taken pursuant to paragraph (a) above and shall give the Designer and any other interested party, including any MBE/WBEs, an opportunity to present evidence to MassDOT that the Designer is in compliance with the requirements of this Article or that there is some justifiable reason for waiving the requirements of this Article in whole or in part. MassDOT may invite SDO and the Massachusetts Commission Against Discrimination to participate in any proceedings undertaken pursuant to this paragraph.

- c. Upon a showing that the Designer is in full compliance with the requirements of this Article, or that the Designer has met or will meet the MBE/WBE participation goals for this Contract, MassDOT shall release any funds withheld pursuant to clause (i) and lift any suspension of the Designer's performance under clause (ii).

8. **Liquidated Damages; Termination.**

- a. If payment by MassDOT or performance by the Designer is suspended by MassDOT as provided in paragraph 7 above, MassDOT shall have the following rights and remedies if the Designer thereafter fails to take all action necessary to bring the Designer into full compliance with the requirements of this Article, or if full compliance is no longer possible because the default of the Designer is no longer susceptible to cure, or if the Designer fails to take such other action as may be required to meet the MBE/WBE participation goals set forth in Paragraph 1:
  - i. MassDOT may terminate this Contract, and/or
  - ii. MassDOT may retain from final payment to the Designer, as liquidated damages, an amount not to exceed the difference between the total of the MBE/WBE participation goals set forth in paragraph 1 of this Article, and any amounts paid or owing to MBE/WBE's for MBE/WBE Work actually performed by them under this Contract, the parties agreeing that the damages for failure to meet the MBE/WBE participation goals are difficult to determine and that the foregoing amount to be retained by MassDOT represents the parties' best estimate of such damages.
- b. Before exercising its rights and remedies hereunder, MassDOT may, but MassDOT shall not be obligated to, give the Designer and any other interested party another opportunity to present evidence to MassDOT that the Designer is in compliance with the requirements of this Article or that there is some justifiable reason for waiving the requirements of this Article in whole or in part. MassDOT may invite SDO and the Massachusetts Commission Against Discrimination to participate in any proceedings undertaken hereunder.

9. **MassDOT Right to Waive Provisions of this Article in Whole or In Part.**

- a. MassDOT reserves the right to waive any provision or requirement of this Article if MassDOT determines that such waiver is justified and in the public interest.
- b. No such waiver shall be effective unless in writing and signed by a representative of MassDOT Compliance Office or Office of the General Counsel. No other action or inaction by MassDOT shall be construed as a waiver of any provision of this Article.

*Remainder of page intentionally blank.*

## **EXHIBIT G: Awarding Authority's Design Procedures**

- 1. Designers are required to utilize the DCAMM Standard Specifications as a base document in part following industry practices and certain MassDOT Standard Specifications for Highways and Bridges 2025, including Supplemental Specifications, as stipulated by MassDOT Project Manager.**
- 2. Designer is required to follow the MassDOT Designer Guidelines and Procedures (Vertical Construction) dated August 2025.**
- 3. Specifications shall be prepared in CSI Format, Plan preparation shall follow industry and MassDOT CAD Standards when applicable.**

**EXHIBIT H: Truth-in Negotiation Certificate**

*[To be included with each proposed Scope of Services for a Project]*

The House Doctor hereby certifies and agrees to the following:

- (a) The House Doctor certifies that the wage rates and other costs, if any, used to support the House Doctor's compensation are accurate, complete, and current at the time of contracting; and
- (b) The House Doctor agrees that the Basic Fee, fees for Additional Services, and reimbursements for costs and expenses specified in this Contract, as it may be modified from time to time, may be adjusted within one (1) year of completion of this Contract to exclude any significant amounts if MassDOT determines that the fee was increased by such amounts due to inaccurate, incomplete, or noncurrent wage rates or other costs.

House Doctor: \_\_\_\_\_

By: \_\_\_\_\_  
(duly authorized)

Print Name: \_\_\_\_\_

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

**EXHIBIT I: Certified Billing Rates of Designer's and Designer's Consultant's Personnel**

*[To be included with each proposed Scope of Services for a Project]*

**(Use additional sheets if necessary. Do not list any support staff.)**

The following categories are to be completed for each Consultant Firm. Use additional sheets if necessary.

**Design Firm Principal:**

**Design Firm Associate:**

**Design Firm Project Manager:**

**Design Firm Project Architect:**

**Design Firm CAD Operator:**

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**Name of Consultant Firm:**

**Consultant Principal:**

**Consultant Associate:**

**Consultant Project Manager:**

**Consultant Project Engineer:**

**Consultant CAD Operator:**

---

**Name of Consultant Firm:**

**Consultant Principal:**

**Consultant Associate:**

**Consultant Project Manager:**

**Consultant Project Engineer:**

**Consultant CAD Operator:**

---

**Name of Consultant Firm:**

**Consultant Principal:**

**Consultant Associate:**

**Consultant Project Manager:**

**Consultant Project Engineer:**

**Consultant CAD Operator:**

---

**Name of Consultant Firm:**

**Consultant Principal:**

**Consultant Associate:**

**Consultant Project Manager:**

**Consultant Project Engineer:**

**Consultant CAD Operator:**

**EXHIBIT J: Affirmative Action Plan**

See attached page(s).

**EXHIBIT K: Intentionally Omitted**

**EXHIBIT L: Beneficial Owners, Professional Registrants, Existing Government Contracts**

*Attach additional sheets if necessary to complete any of the following information.*

**1) House Doctor’s Beneficial Owners**

CORPORATION: (Names of Officers and Shareholders of Corporation, including their titles)

_____	_____
_____	_____
_____	_____

PARTNERSHIP: (Names of all Partners):

_____	_____
_____	_____
_____	_____

INDIVIDUAL (Name of Owner):

\_\_\_\_\_

**2) Professional Registrants**

Name                      Title                      Mass. Registration

_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

NOTE: The above information must be completed to comply with the provisions of General Laws Chapter 7C, s. 44. Programmers and construction managers are not required to be registered under s. 44.

House Doctor warrants that the Massachusetts registered principal of the House Doctor responsible for the project is:

Name

\_\_\_\_\_

**3) Existing Government Contracts**

Contract Description & Awarding Authority	Present Status % Design/Construction	Fee Received	Total Fee Anticipated
--	---	-----------------	--------------------------

_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

By signing below, I certify on behalf of House Doctor, under the pains and penalties of perjury, that the information in this Exhibit is accurate, complete, and current:

House Doctor: \_\_\_\_\_

By: \_\_\_\_\_  
(duly authorized)

Print Name: \_\_\_\_\_

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

**EXHIBIT M – Corporate Vote or Other Evidence of Authority**

\_\_\_\_\_ 20 \_\_\_\_\_

I hereby certify that I am the \_\_\_\_\_ Secretary, \_\_\_\_\_, assistant Secretary, \_\_\_\_\_ managing partner of

\_\_\_\_\_  
(Name of Corporation/Partnership); (the “Corporation”) and that at a

duly authorized meeting of the Board of Directors of the Corporation/Partners held on \_\_\_\_\_  
(Date) in \_\_\_\_\_ (Location) at which a quorum was

present and voting it was voted to authorize \_\_\_\_\_  
(Name)  
\_\_\_\_\_ of the Corporation/Partnership to  
(Officer Title)

execute and deliver on behalf of the Corporation/Partnership the following contract and to act as principal to execute the contract and make Certifications in connection therewith, which contract and certifications were presented to and made a part of the records of said meeting:

Project No. (as shown on DSB advertisement): \_\_\_\_\_

MassDOT Contract No. \_\_\_\_\_

Project Title (as shown on DSB advertisement): \_\_\_\_\_

I further certify that \_\_\_\_\_ is the duly qualified and acting  
(Name of Corporate Officer/Partner)

\_\_\_\_\_ of the Corporation/Partnership and that said vote has not  
(Officer Title)  
been repealed, rescinded, or amended.

\_\_\_\_\_  
Name

\_\_\_\_\_  
Date

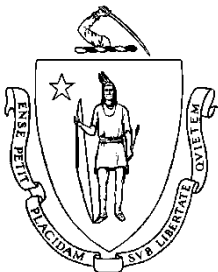
(CORPORATE SEAL)

SUBSCRIBED AND SWORN TO THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 20 \_\_\_\_\_ BEFORE ME

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_

## EXHIBIT N: Prompt Payment Discount Form



### **COMMONWEALTH OF MASSACHUSETTS** **Prompt Pay Discount Form** *(Invoice discounts for receiving fast payments)*

Revised 3/9/07

**Bidder Name:** \_\_\_\_\_  
**Vendor Code (VCUST):** \_\_\_\_\_  
**Contract/RFR Number(s):** \_\_\_\_\_

Prompt Payment Discounts (PPD). All contractors/vendors doing business with the Commonwealth must provide a Prompt Payment Discount (PPD) for receiving early payments unless the Contractor/vendor can provide compelling proof that providing a prompt pay discount would be unduly burdensome. Contractors benefit from PPD by increased, usable cash flow as a result of fast and efficient payments for commodities or services rendered. Contractors who agree to accept Electronic Funds Transfer (EFT) increase the prompt pay benefit by ensuring that funds are paid directly to their designated bank accounts, thus eliminating the delay of check clearance policies and traditional mail lead time. Payments processed through the state accounting system (MMARS) can be tracked and verified through the Comptroller's [Vendor Web](#) system using the Vendor/Customer Code assigned to you by a Commonwealth department.

The Commonwealth benefits because contractors reduce the cost of products and services through the applied discount. While Bidders/Contractors have flexibility in determining the actual % discount(s) offered to the Commonwealth, the discount(s) must be identified for 10, 15, 20 and/or 30 days for payment issuance in the column entitled "% Discount Off Proposed Price" below. The Commonwealth may use the prompt pay discounts submitted as a basis for selection and may negotiate discounts as deemed in the best interest of the Commonwealth. The requirement to offer PPD discounts may be waived by the Commonwealth on a case-by-case basis if participation in the program would be unduly burdensome, provided the specific reason for the hardship is outlined below.

All discounts offered will be taken in cases where the payment issue date is within the specified number of days listed below and in accordance with the Commonwealth's Bill Paying Policy. Payment days will be measured **from** the date goods are received and accepted / performance was completed OR the date an invoice is received by the Commonwealth, **whichever is later to** the date the payment is issued as an EFT (preferred method) or mailed by the State Treasurer. The date of payment "issue" is the date a payment is considered "paid" not the date a payment is "received" by a Contractor.

If internal Bidder/Contractor systems require an alternate method of measuring payment issue dates, the Bidder/Contractor must note the issues below or on an attached page if necessary to be considered by the PMT. In cases where the Bidder/Contractor considers that offering a Prompt Payment Discount would be a hardship, the Bidder must clearly define the issues and reasons for said hardship. *Providing volume discounts or other discounts on prices is not considered a hardship, since the PPD provides the additional benefit of early cash flow for the Contractor.*

Enter the Prompt Payment Discount percentage (%) off the invoice payment, for each of the payment issue dates listed, if the payment is issued within the specified Payment Issue days. For example:

- 5% - 10 Days**
- 4% - 15 Days**
- 3% - 20 Days**
- 2% - 30 Days**

If no discount is offered enter 0%

<b>Prompt Payment Discount %</b>	<b>Payment Issue Date w/in</b>
<b>%</b>	<b>10 Days</b>
<b>%</b>	<b>15 Days</b>
<b>%</b>	<b>20 Days</b>
<b>%</b>	<b>30 Days</b>

The Contractor is unable to provide a prompt payment discount due to the following hardship:

Contractor/Bidder Authorized Signature \_\_\_\_\_ Date: \_\_\_\_\_

Contractor/ Bidder Authorized Signatory Print Name and Title: \_\_\_\_\_