

Project #:



**COMMONWEALTH OF MASSACHUSETTS
STANDARD ENERGY SERVICES AGREEMENT
For
Design and Installation of New Equipment/Systems**
(for projects subject to M.G.L. c. 25A, § 11C)



AWARDING AUTHORITY/CLIENT	Division of Capital Asset Management and Maintenance/
AGENCY:	
PROJECT NUMBER:	
PROJECT TITLE:	
FACILITY:	
PROJECT ADDRESS:	

CONTRACTOR NAME:	
CONTRACTOR ADDRESS:	
CONTRACTOR TELEPHONE:	
CONTRACTOR FEDERAL EMPLOYERS IDENTIFICATION NUMBER:	

Effective Date: _____

Date of Completion: _____

Total Contract Value: \$ _____

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ENERGY SERVICES AGREEMENT

This Energy Services Agreement (ESA or the Contract) is entered into as of the date of last execution hereof (Effective Date) by and between:

_____, a _____ licensed to conduct business in the Commonwealth of Massachusetts whose principal place of business is located at _____ (CONTRACTOR) and the Commonwealth of Massachusetts through its Division of Capital Asset Management and Maintenance (DCAMM) and its client _____ (FACILITY) located in _____, Massachusetts (DCAMM and FACILITY at times collectively called CUSTOMER) (CONTRACTOR, DCAMM, and FACILITY are each a Party and collectively the Parties). The purpose of the Contract is to provide for the design, construction, installation, and commissioning by CONTRACTOR of New Equipment/Systems (as hereinafter defined) and the rendering of other services by CONTRACTOR designed to reduce utility consumption and cost at CUSTOMER's facility located at _____ (Premises) which is more precisely described in **Schedule B-1: Scope of Services Summary** attached hereto and incorporated herein by reference.

RECITALS

WHEREAS, CUSTOMER owns and operates the Premises and desires to install energy saving New Equipment/Systems and Services, each as hereafter defined, to save energy and water and associated costs at said Premises;

WHEREAS, CONTRACTOR provides a service for reducing energy and water consumption and costs through the Installation Services, as hereinafter defined, on the Premises;

WHEREAS, in accordance with the provisions of M.G.L. c. 25A, §11C, CUSTOMER solicited proposals from qualified firms through the issuance of a request for proposals (RFP) dated _____;

WHEREAS, CONTRACTOR submitted a proposal dated _____ (the Proposal) in response to the RFP;

WHEREAS, CUSTOMER is authorized pursuant to M.G.L. c. 25A, §11C, to retain CONTRACTOR to design, acquire, install, and commission the New Equipment/Systems as set forth in this Contract, all as more fully set forth herein, subject to all the terms and conditions of this Contract (the Project);

[If applicable: WHEREAS, FACILITY and CONTRACTOR are entering into a separate agreement (the Post-Installation Services Agreement) for the provision of certain post-installation services related to all or a portion of the New Equipment/Systems following the installation and commissioning of the New Equipment/Systems by CONTRACTOR and acceptance of the New Equipment/Systems by CUSTOMER under this Contract;**]** and

WHEREAS, CUSTOMER shall compensate CONTRACTOR for all Services pursuant to Section 4 and **Schedule B-3: Payment Terms** of this Contract.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is mutually acknowledged, it is agreed as follows:

Section 1 Definition of Terms

Capitalized terms as used in this Contract shall have the meanings set forth below:

<u>As-Built Drawings</u>	All drawings, specifications, approved shop drawings, catalogue cuts and other items bearing markings or containing information to indicate construction details and changes made during the construction.
<u>BOD</u>	Documents provided as part of the RFP to assist proposers in developing their proposals. The BOD contains varying levels of detail for the ECMs and may include schematic design and performance specifications, but in no case constitute final design documents for any ECM.
<u>Builder's Warranty</u>	Shall have the meaning set forth in Section 32 of the Contract.
<u>Change Order</u>	Shall have the meaning set forth in Section 23 of the Contract.
<u>Confidential Information</u>	Shall have the meaning set forth in Section 65 of the Contract.
<u>Construction Schedule</u>	A critical path devised schedule of Services provided by CONTRACTOR and accepted by CUSTOMER in accordance with Section 5.2 .
<u>Contract Documents</u>	Shall have the meaning set forth in Section 2 of the Contract.
<u>Contract Term</u>	Shall have the meaning set forth in Section 2 of the Contract.
<u>Date of Completion</u>	The date upon which the CONTRACTOR shall have completed the Installation Services and the Contract Term shall end. The Date of Completion is identified on the cover page of the Contract and occurs on the date that is 45 days after the completion of the Installation Services (as set forth in Schedule B-1: Scope of Services Summary) to allow for payment of the final Request for Payment for the Installation Services in accordance with Section 4.
<u>Design</u>	The 100% design documents for the Project provided by CONTRACTOR and accepted by CUSTOMER in accordance with Section 6.
<u>Design Deliverable(s)</u>	Work product of the Contractor (or, if applicable, CONTRACTOR's Designer) related to the completion of the Project Design that is required to be delivered or submitted to CUSTOMER in accordance with this Contract.
<u>Designer</u>	The architect(s) or professional engineers (licensed and registered in the Commonwealth of Massachusetts) employed by or retained by CONTRACTOR for the Project.

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<u>ECM</u>	Energy Conservation Measure.
<u>Effective Date</u>	Shall have the meaning set forth in the introductory paragraph to this Contract.
<u>Energy Savings</u>	The estimated energy and water savings (both cost and unit) to be achieved by the installation of New Equipment/Systems, as outlined in Schedule D: ENERGY SAVINGS . These savings are not guaranteed savings.
<u>Existing Equipment/Systems</u>	All equipment and related systems existing at the Premises at the time of the Effective Date, and prior to the commencement of the Installation Services set forth in SCHEDULE B: INSTALLATION SERVICES .
<u>Final ECM/Equipment Acceptance Notice</u>	Written notice from CUSTOMER to CONTRACTOR indicating that CUSTOMER accepts the installation of a particular ECM(s) as 100% complete in accordance with Section 28 of the Contract.
<u>Final ECM/Equipment Completion Notice</u>	Written notice from CONTRACTOR to CUSTOMER requesting acceptance from CUSTOMER of a particular ECM(s)/Equipment as 100% complete in accordance with Section 28.
<u>Final Project Notice</u>	Written notice from CONTRACTOR to CUSTOMER certifying that CONTRACTOR has met all of the requirements for the closeout of the Project and all New Equipment/Systems have been installed and the operations are 100% complete.
<u>Final Project Notification Approval</u>	Written notice from the CUSTOMER to CONTRACTOR indicating that CUSTOMER accepts all of the New Equipment/Systems installed by CONTRACTOR as 100% complete and that all other requirements of the Contract have been met to the satisfaction of CUSTOMER, in accordance with Section 28.
<u>Final Project Notification Approval Date</u>	The date of the Final Project Notification Approval issued by CUSTOMER in accordance with Section 28.
<u>Installation Costs</u>	All costs associated with the Installation Services.
<u>Installation Services</u>	The delivery, installation, and operation of the New Equipment/Systems to be performed by CONTRACTOR, as required hereunder, including, without limitation, those set forth in SCHEDULE B: INSTALLATION SERVICES .
<u>Laws</u>	All applicable laws, including but not limited to applicable statutes, regulations, ordinances, codes, laws, orders, decrees, approvals, certificates and requirements of governmental and quasi-governmental authorities.
<u>M/WBE</u>	Minority and/or Women Business Enterprises as defined by Executive Orders 526 and 565.

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<u>New Equipment/Systems</u>	The New Equipment/Systems and related systems to be furnished and installed by CONTRACTOR as set forth in Schedule B-1: Scope of Services Summary .
<u>Post-Installation Services Agreement</u>	Shall have the meaning set forth in the Recitals on Page 1 of this Contract.
<u>Premises</u>	The land and, if any, building(s) or space within any such building(s) on which or in which CONTRACTOR is to perform the Services, as more specifically provided in the introductory paragraph and Schedule B-1: Scope of Services Summary .
<u>Product Data</u>	Illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by CONTRACTOR or its Subcontractors and suppliers to illustrate materials or equipment for some portion of the New Equipment/Systems. Product data also include any such information or instructions produced by the manufacture or distributor of such materials or equipment and made readily available by said manufacturer or distributor.
<u>Project Change Request</u>	CONTRACTOR's written request for a change order submitted in accordance with the requirements Section 23: Changes in Scope of Services and Schedule B-9: Instructions/Model Forms for Submission of Project Change Requests .
<u>Project Engineer</u>	DCAMM's representative reporting to the Project Manager.
<u>Project Manager</u>	DCAMM's representative responsible for overseeing the planning, design and construction of the Project.
<u>Resident Engineer</u>	DCAMM's on-site representative.
<u>Schedule of Values</u>	Shall have the meaning set forth in Section 4 of the Contract.
<u>Services</u>	All work to be performed by CONTRACTOR on the Project, including but not limited to completion of Design and Installation Services.
<u>Shop Drawings</u>	Drawings, diagrams, details, schedules and other data specially prepared for the Services to illustrate a portion of the Services.
<u>Subcontractor(s)</u>	Any person or entity retained by CONTRACTOR to provide any Services required by CONTRACTOR under this Contract including but not limited to the provision of professional services (such as engineering or design services), labor and materials or labor only.
<u>Substantial Completion</u>	Occurs for each ECM only upon CUSTOMER's acceptance of CONTRACTOR's Substantial Completion Notice confirming the successful operation of each individual ECM for thirty (30)

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consecutive days and issuance of a Substantial Completion Approval Notice in compliance with Section 28.

Substantial Completion Approval Notice

CUSTOMER's written notice to CONTRACTOR that CUSTOMER accepts an ECM(s) as substantially complete as of the Substantial Completion Date, in accordance with Section 28.

Substantial Completion Approval Request

Written notice from CONTRACTOR to CUSTOMER certifying that CONTRACTOR has completed all closeout procedures for a particular ECM(s) and requesting that CUSTOMER accept CONTRACTOR's proposed Substantial Completion Date in accordance with Section 28.

Substantial Completion Date

The date upon which CUSTOMER accepts an ECM(s) as substantially complete, in accordance with Section 28.

Termination Payment

The payment to be made by CUSTOMER to CONTRACTOR in the event of a termination of the Contract pursuant to Section 41 and calculated in accordance with **Schedule B-3: Payment Terms**.

Total Contract Value

The total cost of the contract for delivery and installation of all ECMs and provision of all Services as set forth in Section 3, **SCHEDULE B: INSTALLATION SERVICES**, and **Schedule B-3: Payment Terms**.

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Section 2 The Contract and Contract Documents

Sections 1 through 69 of this document, together with the Schedules and Exhibits attached hereto, constitute the entire Contract. Other documents, when accepted by the Parties, shall be incorporated by reference and shall constitute "Contract Documents". Such documents shall include:

- The Schedule of Values (incorporated at **Schedule B-3: Payment Terms**)
- The Construction Schedule (incorporated at **Schedule B-1: Scope of Services Summary**)
- Approved and Completed M/WBE Schedules of Participation and Letters of Intent (**Schedule B-7: Goals for Participation by M/WBE Enterprises/Equal Employment Opportunity, Anti-Discrimination, and Affirmative Action Program**) (Executive Orders No. 526 and No. 565)
- Change Order Forms (referenced at **Schedule B-9: Instructions/Model Forms for Submission of Project Change Requests**, included on CD)
- Closeout Forms (referenced at **Schedule B-10: Closeout Procedures and Forms**, included on CD)
- Prevailing Wage Rate Forms (referenced at **Schedule B-8: Prevailing Wage Rates**, included on CD)
- Reference Documents (set forth at **APPENDIX A: REFERENCE DOCUMENTS**)

Failure to set forth a Schedule, Exhibit, or Appendix in the Table of Contents shall not exclude said Schedule, Exhibit, or Appendix from the Contract. The document shall speak for itself.

- 2.1 Entire Agreement.** The provisions of this Contract and any documents incorporated by reference herein, along with any agreed upon amendments hereto, shall constitute the entire agreement between the parties.
- 2.2 Priority.** To the extent that there is a conflict or ambiguity and any documents attached hereto and/or incorporated by reference herein, the following order of precedence shall control: this Contract, the Design, the Proposal, the reference documents contained in **Appendix A: REFERENCE DOCUMENTS**, BOD, ***if applicable: DCAMM to insert any additional contract documents here as necessary for each Contract***.
- 2.3 Days.** Unless otherwise indicated herein, all references to "days" shall mean calendar days.
- 2.4 Contract Term.** The Contract Term shall commence on the Effective Date and run continuously through the Date of Completion.

Section 3 Total Contract Value

The Total Contract Value is the total amount paid to CONTRACTOR by the CUSTOMER over the Contract Term, as determined by **Schedule B-3: Payment Terms**.

Section 4 Payment

- 4.1 CONTRACTOR Compensation and Fees.** Provided CONTRACTOR is not in default of its obligations hereunder, CUSTOMER shall pay CONTRACTOR the Total Contract Value in accordance with the payment schedule set forth in **Schedule B-3: Payment Terms**, as the same may be amended in accordance with the terms hereof.
- 4.2 Schedule of Values.** Within thirty (30) days of the Effective Date, CONTRACTOR shall submit to DCAMM a Schedule of Values setting forth the costs for the various portions of the Installation Services, including quantities and stating design fee attributable to each ECM, aggregating the Installation Costs and divided so as to facilitate progress of work and evaluation of Project changes. The Schedule of Values shall detail the Services performed by either Minority-Owned Business Enterprises (MBE), Women-Owned Business Enterprises (WBE), or Service-Disabled Veteran-Owned Business Enterprises (SDVOBE's), as set forth in **SCHEDULE B: INSTALLATION SERVICES**. The Schedule of Values shall be prepared using the form included in **Appendix A** or in such format as DCAMM may approve, and shall include data to substantiate its accuracy. When approved by DCAMM, it shall constitute the Schedule of Values and be included in **Schedule B-3: Payment Terms** to this Contract.
- 4.3 Request for Payment.** CONTRACTOR shall submit monthly to DCAMM Requests for Payment in accordance with the terms provided for in **Schedule B-3: Payment Terms**.
- 4.4 Late Payments.** Payment due either party hereunder shall be due and payable within forty-five (45) days of the invoice date. Interest shall accrue on any past due balance owed to either party hereunder at the rate established by the Comptroller in accordance with M.G.L., c. 29, § 29C. This remedy shall be in addition to, and not exclusive of, any other remedy available under this Contract or applicable law.
- 4.5 Certification by CONTRACTOR.** If CUSTOMER so requests in writing, CONTRACTOR shall certify to DCAMM on a monthly basis, that payments owed by CONTRACTOR to Subcontractors and not under dispute have been paid in a timely fashion and that CONTRACTOR has satisfied its current payment obligations regarding the New Equipment/Systems.

Section 5 Scope of Services Summary

- 5.1 Standards of Service.** CONTRACTOR shall perform all Services in such a manner that is in accordance with sound engineering and safety practices, achieves the Energy Savings, and is in compliance with this Contract and any amendments hereto. Without limiting the foregoing, CONTRACTOR shall perform all Services in such a manner so as not to harm the structural integrity of the buildings or their operating systems and so as to conform to the standards set forth in this Contract and

standards in the industry. CONTRACTOR shall be responsible to pay for all labor, materials, equipment, tools, construction equipment and machinery, transportation and other facilities and work necessary for the proper execution and completion of the Services.

5.2 Phases of Services. The Services for the Project shall consist of the following and shall be performed within the Contract Term:

- a. *Design Services.* CONTRACTOR agrees to perform the design of the New Equipment/Systems, as set forth in the Contract at **PART A – DESIGN** and **SCHEDULE A: DESIGN**.
- b. *Installation Services.* CONTRACTOR shall construct and install the New Equipment/Systems into the Premises pursuant to the specifications in **SCHEDULE B: INSTALLATION SERVICES**. The Installation Services shall proceed in accordance with the Construction Schedule. The Construction Schedule shall be submitted by the CONTRACTOR no more than 5 days following the Effective Date. Upon approval by CUSTOMER, the Construction Schedule shall be incorporated by reference into this CONTRACT at **Schedule B-1: Scope of Services Summary**.
- c. *Other Services.* CONTRACTOR shall be responsible for all other work associated with this the Project, as set forth in **Schedule B-1: Scope of Services Summary**. [Take out Sentence if not Applicable]

5.3 CONTRACTOR's Use of Subcontractors.

- a. CONTRACTOR may use Subcontractors in meeting its obligations hereunder provided that in each case CONTRACTOR shall remain fully liable for all work under the Contract. CONTRACTOR shall supervise and direct the Services and shall be solely responsible for all design, construction means, methods, techniques, sequences, and procedures and for coordinating all portions of the Services under this Contract.
- b. CONTRACTOR shall coordinate the activities of CONTRACTOR's employees, Subcontractors, agents or suppliers with those of the FACILITY, its employees, and agents. CONTRACTOR shall not commit or permit any act which will interfere with the performance of the normal activities conducted by FACILITY or its employees, agents, visitors, licensees, and/or invitees on the Premises without prior written approval of CUSTOMER.
- c. CONTRACTOR shall pay or cause payments to be made for all labor performed or furnished and for all materials used or employed in carrying out this Contract.
- d. CUSTOMER reserves the right to reject any Subcontractors, such right not to be unreasonably exercised. In the event that CONTRACTOR retains Subcontractors to perform any design, engineering, installation or other Services required under the Contract, CONTRACTOR shall provide CUSTOMER with a written description of the qualifications of each

- Subcontractor for CUSTOMER's approval prior to proceeding with any Services, such approval not to be unreasonably withheld.
- e. CUSTOMER has the right to demand in writing that CONTRACTOR remove an employee or Subcontractor from the Project for reasons stated in writing.

PART A – DESIGN

Section 6 Design Requirements and Approvals

- 6.1 CONTRACTOR's Duty of Proper Design.** CONTRACTOR is solely responsible for the design of Project. All Design Services called for by this Contract shall be performed by properly qualified and licensed professionals employed by CONTRACTOR and shall be performed in accordance with all Laws. CONTRACTOR shall perform all Design Services in accordance with the standards set forth herein, including with limitation, those set forth in Section 5.1, , and **Schedule A: DESIGN**.
- 6.2 Materials Provided to CONTRACTOR.** All items made available to the CONTRACTOR in the RFP, including, without limitation the BOD, and otherwise provided by CUSTOMER to CONTRACTOR may be used for the purpose of this Contract and shall be handled in accordance with Sections and 67. CUSTOMER does not guarantee, nor does it make any expressed or implied warranties concerning the accuracy of any such information. All such information is provided solely for the purpose of a setting forth the Project's design intent, performance specifications, and in certain cases a preliminary design of the Project and shall not serve as a substitute for CONTRACTOR's Design Services obligations hereunder.
- 6.3 Energy Savings.** The Energy Savings are a performance specification for this Contract. As such, CONTRACTOR represents to CUSTOMER the following:
- a. New Equipment/Systems provided in the Design meet or exceed the published catalog ratings.
 - b. The Design allows each ECM to meet or exceed the associated Energy Savings shown in **Schedule D: ENERGY SAVINGS**.
- 6.4 Design Deliverables and Submittals.**
- a. *General Requirements.*
 - (i) Prior to the installation of the applicable ECMs, CONTRACTOR shall submit all required Design Deliverables (including 50%, and 90% and 100% designs for ECMs as outlined in **Schedule A-1: Level of Design Services**, unless otherwise noted in **Schedule A-1: Level of Design Services**, and submittals, as applicable).
 - (ii) Design Deliverables shall follow guidelines established in **Schedule A: DESIGN** and shall meet the performance specifications included in the BOD.

- (iii) CONTRACTOR must have all drawings, submittals and design documents stamped by a Massachusetts registered professional engineer for each corresponding discipline, if applicable.
 - (iv) CONTRACTOR shall prepare drawings based upon and in accordance with DCAMM's *CAD Standards Manual* revised February 2013 and DCAMM's *Building Information Modeling (BIM) List of Design and Preconstruction Services*, dated April 13, 2015 which are available on the DCAMM website (www.mass.gov/dcamm), and any reasonable and necessary updates incorporated therein after the Effective Date. DCAMM and the CONTRACTOR shall cooperate in the coordination of BIM/Revit standards with DCAMM CAD standards and make reasonable efforts to avoid incompatibilities and conflicts where possible between the two documentation systems.
 - (v) If applicable, CONTRACTOR shall include with any Design Deliverable a clear explanation of any material deviations from the BOD and/or Energy Savings. CONTRACTOR shall provide any back-up documentation, including, without limitation, Energy Savings calculations, requested by CUSTOMER to facilitate review of Design Deliverable.
- b. *Design Deliverables.* CONTRACTOR shall provide the following documentation as part of the submission of Design Deliverables:
 - (i) One electronic copy readily downloadable of the drawings and at least two (2) paper copies of the same; or, where applicable, two (2) CDs (in electronic spreadsheet format) containing a detailed inventory of repairs of, for example, lighting, steam traps, and/or water fixtures and a minimum of two (2) paper copies of the same;
 - (ii) one electronic copy readily downloadable of the required specifications and two (2) paper copies of the same; and
 - (iii) if applicable, documentation of utility rebate and/or incentive application submittal and pre-approval, either as a PDF or at least two (2) paper copies, as requested by CUSTOMER.
- c. *Submittal Requirements.*
 - (i) In addition to Design Deliverables, CONTRACTOR shall provide the following submittals prior to the start of any Installation Services for a particular ECM: coordinated Shop Drawings, Product Data, shop details, setting diagrams, samples, and similar submittals required by the Design and/or Contract. CONTRACTOR shall provide a minimum of one electronic copy readily downloadable and two (2) paper copies of all such submittals.
 - (ii) For the final submittal for any piece of New Equipment/System, CONTRACTOR shall provide one electronic copy readily downloadable and two (2) paper copies of the following relating to the New Equipment/Systems, all in documentation and format as may be determined by DCAMM: descriptive literature, specifications, location

key, manufacturer cut sheets, Shop Drawings and, if requested, sample products, related warranties and maintenance agreements.

- (iii) CONTRACTOR shall prepare and keep current a schedule of submittals which is coordinated with the progress schedule required under Section 12 and allows CUSTOMER reasonable time to review submittals.
- (iv) By submitting Shop Drawings, Product Data, samples and similar submittals, CONTRACTOR represents that CONTRACTOR has determined and verified materials, field measurements, and field construction criteria related thereto and has checked and coordinated the information contained within such submittals with the requirements of the Design and Contract.
- (v) CONTRACTOR shall perform the Installation Services in accordance with all Shop Drawings, Product Data, samples and similar submittals. Materials furnished, used, or employed under the Contract must be equal in quality to the samples furnished.

d. *Commissioning and M&V Plan.*

- (i) DCAMM's third party commissioning agent will create a commissioning plan to be provided to CONTRACTOR by DCAMM prior to the acceptance of the final design. CONTRACTOR shall provide to DCAMM any comments on the commissioning plan within thirty (30) days of receipt of the plan or as part of final Design Deliverable, whichever is earlier. The commissioning plan shall: describe how performance testing is to be conducted for each element and total system of the installed New Equipment/Systems; be created in accordance with the procedures outlined in **Schedule B-5: Commissioning/M&V**; designate the commissioning team and their roles and responsibilities, the pre-functional and functional performance test forms, and commissioning schedule, as it relates to the overall Construction Schedule; and provide a description of how system deficiencies will be recorded and corrected before project closeout.
- (ii) The CONTRACTOR shall create a separate Measurement and Verification (M&V) plan describing how CONTRACTOR will verify the Energy Savings for the Project. This M&V plan shall: be created in accordance with the procedures outlined in **Schedule B-5: Commissioning/M&V**; describe the pre-installation measurement or data logging of energy consumption for each piece of equipment being installed, the recommended permanent metering equipment to be installed, and the approach for post-installation measurement of energy consumption of New Equipment/Systems; and include the calculation methodology for Energy Savings based on measured and stipulated variables. The draft M&V plan shall be submitted by CONTRACTOR with 50% design submittals. CONTRACTOR must have CUSTOMER acceptance of the M&V plan prior to submission of any 90% design submission. Design Deliverables shall not be

considered completed and CONTRACTOR may not commence Installation Services for any New Equipment/Systems without an M&V plan accepted by CUSTOMER, unless otherwise specifically authorized by DCAMM in writing. This M&V plan accepted by CUSTOMER will be used by the CONTRACTOR and the Project Manager to ensure verification of Energy Savings in a transparent manner.

- 6.5 CUSTOMER Review.** DCAMM shall review all Design Deliverables for compliance with **SCHEDULE A: DESIGN** and CONTRACTOR submittals and notify CONTRACTOR within a maximum of thirty (30) days if the Design Deliverable is acceptable or to respond with objections, changes, or requests for clarification.
- 6.6 No Installation Service prior to CUSTOMER Review.** CONTRACTOR shall not commence Installation Services for any New Equipment/Systems until all required Design Deliverables and the final required submittal for such New Equipment/System have been reviewed by CUSTOMER in accordance with this Contract and CONTRACTOR has obtained CUSTOMER's written authorization to proceed with the applicable Installation Services, such authorization not to be unreasonably withheld or delayed. CUSTOMER's authorization to proceed with Installation Services hereunder shall in no way relieve CONTRACTOR from its professional responsibility for all Services and documents furnished by CONTRACTOR and its Subcontractors (including, if applicable, CONTRACTOR's Designer), including, without, limitation all Design Deliverables and submittals.
- 6.7 Compliance with Life-Cycle Cost Estimate [M.G.L. c. 7C s. 29 and M.G.L. c. 149 s.44M].** CONTRACTOR shall comply with all of the life-cycle cost estimate and analysis requirements set forth in M.G.L. c. 7C s.29 and c. 149 s.44M and this Contract. The CONTRACTOR 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 CONTRACTOR 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.
- 6.8 Notice of Deficiencies in Existing Equipment/Systems.** If CONTRACTOR is aware or becomes aware of any deficiencies in the Existing Equipment/Systems that were not noted in the Proposal that may prevent CONTRACTOR from proper completion of the Design, Installation, or its obligations under the Post-Installation Services Agreement, then CONTRACTOR shall provide immediate written notice to CUSTOMER of such deficiencies.

Upon receipt of notice of deficiencies, CONTRACTOR and CUSTOMER shall determine what, if any, potential modifications to the Design, New Equipment/Systems and/or Installation Services may be required to meet these contractual requirements prior to the commencement of the Installation Services. If the parties are unable to reach agreement on the changes or potential changes required and the responsibility of cost, the dispute shall be resolved in accordance with Section 43

- 6.9 Permits and Approvals.** All required permits, approvals and licenses required by Laws for the Services, including without limitation, all federal, state and local building,

plumbing and electrical permits and utility interconnection agreements, shall be secured and paid for by CONTRACTOR prior to commencement of Installation Services (for the particular portion of Installation Services for which the permit, approval or license is required) or, issuance of the Final ECM/Equipment Acceptance Notice, as appropriate for the respective permits, approvals and licenses. CUSTOMER shall use reasonable efforts to assist CONTRACTOR in obtaining such necessary permits and approvals for installation of the New Equipment/Systems. In no event shall CUSTOMER, however, be responsible for payment of any permit or license fees. Before commencing any Services requiring a permit or license, CONTRACTOR shall furnish copies of each such required permit or license to CUSTOMER. FACILITY shall be responsible for obtaining any permits for operation of the New Equipment/Systems after the Final Project Notification Approval Date.

- 6.10 Test Installations.** If requested by CUSTOMER, CONTRACTOR and CUSTOMER shall cooperatively identify areas suitable for test installation. At a minimum of two (2) weeks prior to CONTRACTOR's submittal of final Design Deliverable or submittal in accordance with Section 6, as requested by CUSTOMER, or prior to acceptance of New Equipment/Systems submittals pursuant to Section 28, CONTRACTOR shall perform test installations of mutually agreed upon New Equipment/Systems for selected ECMs in specified locations on the Premises. CUSTOMER shall inspect each test installation to determine the adequacy of the proposed ECMs. Upon approval of test installations, if applicable, the final Design Deliverable and/or submittal shall be submitted for DCAMM review in accordance with Section 6.
- 6.11 Review of As-Built Drawings; Record Drawings.** CONTRACTOR shall, or, if applicable, shall cause its Designer to do the following:
- a. Review As-Built Drawings and incorporate changes made during the Installation Services, including but not limited to changes authorized by Change Orders and information from the marked-up prints and As-Built Drawings into a reproducible record drawings and electronic media drawings and, if applicable, BIM;
 - b. Submit to CUSTOMER three (3) sets of printed record drawings with three (3) electronic copies.

PART B – INSTALLATION SERVICES

Section 7 Working Relationships

- 7.1 CUSTOMER Authorization/Approval.** DCAMM shall retain ultimate approvals over the scope of Services, the qualifications of CONTRACTOR's consultants and Subcontractors, New Equipment/Systems installed, and end use conditions. No Services shall proceed without written consent of DCAMM; however, such consent shall not be unreasonably withheld or delayed. For purposes of this Contract, the Commissioner of DCAMM or his/her designee, in consultation with the FACILITY, shall be authorized to provide approvals, consent, acceptance, or any other procedural authorization related to the installation of the New Equipment/Systems required to be provided to CONTRACTOR hereunder.

7.2 CONTRACTOR Responsibility. All Installation Services called for by this Contract shall be performed by properly qualified and licensed professionals employed by CONTRACTOR and shall be performed in accordance with all Laws.

7.3 CONTRACTOR's Superintendent and Supervision. CONTRACTOR shall provide, during the progress of the Installation Services, a competent Massachusetts- licensed construction superintendent in accordance with applicable Laws and a project manager with experience managing a similar construction project of size and scope and any necessary assistants. Appointment, removal and substitution of the Contractor's project manager and superintendent shall be subject to the written approval of DCAMM. The superintendent shall represent CONTRACTOR and all directions or notices given to the superintendent shall be deemed received by and binding on CONTRACTOR.

The superintendent shall give efficient supervision to the work, using his or her best skill and attention. The superintendent shall see that the work is of high quality and is carried out in accordance with this Contract. The superintendent shall establish all lines, level, and marks, if any, necessary to facilitate the operations of all concerned in such installation.

CONTRACTOR shall establish an emergency telephone number by which CUSTOMER or respective agents may contact the superintendent during non-working hours. CUSTOMER shall have the right to halt the Installation Services without liability for any delays incurred while the required superintendent is not present on the Premises, while work is being performed by CONTRACTOR or its Subcontractors.

7.4 CORI Checks for Contractor's and Subcontractors' Employees. If requested by DCAMM, CONTRACTOR shall submit information proving acceptable criminal background for all employees, agents and Subcontractors' employees and agents.

7.5 Tool Inventory and Other Entry Procedures. If set forth in **SCHEDULE B: INSTALLATION SERVICES**, CONTRACTOR shall follow all tool inventory and other procedures for entry and/or exit of the Premises. Any delays due to application of such procedures shall not entitle the CONTRACTOR to an equitable adjustment of the Total Contract Value and/or extension of time in accordance with the Contract.

Section 8 Location and Access

8.1 CONTRACTOR Access. CONTRACTOR acknowledges that there exists sufficient space on the Premises for the installation and operation of the New Equipment/Systems. CUSTOMER shall take reasonable steps to protect such New Equipment/Systems from harm, theft and misuse during the Contract Term. With reasonable notice, CUSTOMER shall provide access to the Premises for CONTRACTOR to perform any Services related to this Contract during regular business hours, or such other reasonable hours as may be requested by CONTRACTOR and acceptable to CUSTOMER. CONTRACTOR shall be granted immediate access to make emergency repairs or corrections pursuant to Section 16

8.2 CUSTOMER Access and Document Access.

- a. CUSTOMER shall have access to inspect the work conducted on the Premises at all times during the Contract Term.
- b. CUSTOMER shall have reasonable access to the books, records, and other compilations of data which pertain to the performance of the Services. Records shall be kept in accordance with generally accepted accounting principles, and calculations kept on file in legible form. CUSTOMER shall provide CONTRACTOR with reasonable notice prior to exercising its rights under this subparagraph and CONTRACTOR shall be afforded a reasonable opportunity to make books, records and data available.
- c. Pursuant to Executive Order 195, the Governor or his designee, the Secretary of Administration and Finance, and the State Auditor or his designee shall have the right at reasonable times and upon reasonable notice to examine the books, records, and other compilations of data of CONTRACTOR and all Subcontractors which pertain to the performance and requirements of this Contract.

8.3 Utility and Other Third Party Access. Upon request by any utility company providing FACILITY with services and/or providing incentives, interconnection of renewable energy generators, or other funding or work for the Project, FACILITY shall agree to allow such utility company (or other approved agent or third parties) to interview FACILITY and to enter the Premises at reasonable times throughout the life of the installed New Equipment/Systems to install metering equipment, perform energy and water audits or inspect the Premises and any New Equipment/Systems installed. CONTRACTOR also agrees to cooperate with such utility company (or its agent or third party) upon request and with prior consent of FACILITY (such consent not to be unreasonably withheld), in conducting such activities and/or in analyzing energy and water savings. At all times, a representative of FACILITY (or its agent) shall be present during such inspections.

8.4 CONTRACTOR Site Office. FACILITY shall provide adequate space on the Premises for CONTRACTOR's office trailer together with lay down space and necessary storage as detailed in **Schedule B-4: Requirements for Resident Engineer and Field Offices**. CONTRACTOR shall be responsible for any connections and payment of temporary utilities, including but not limited to telephone, internet, and electric. Upon completion of construction, the Premises shall be restored by CONTRACTOR to its original condition.

8.5 CUSTOMER Field Office. An office shall be provided for DCAMM as detailed in **Schedule B-4: Requirements for Resident Engineer and Field Offices**. CONTRACTOR shall be responsible for any connections and payment of temporary utilities including, but not limited to, telephone and electric. Upon completion of construction, the Premises shall be restored by CONTRACTOR to its original condition.

Section 9 Salvage Value

CUSTOMER reserves the right to salvage any Existing Equipment/Systems or materials replaced by CONTRACTOR, provided that no utility incentive program prohibits said salvage. If CUSTOMER does not notify CONTRACTOR in writing five days prior to the commencement of Installation Services of its intent to salvage such Existing Equipment/Systems, then CONTRACTOR shall have the rights to salvage.

Section 10 Temporary Utilities

CONTRACTOR must maintain Standards of Comfort at the Premises at all times, unless otherwise approved by CUSTOMER. CONTRACTOR shall provide for proper notification, temporary utilities, and other measures to ensure that the Standards of Comfort outlined in Section 36 are maintained at the Premises.

Section 11 Damages Caused by CONTRACTOR

CONTRACTOR shall repair and restore to its original condition any area of damage caused by CONTRACTOR's performance under this Contract. CUSTOMER reserves the right to review the work performed by CONTRACTOR and to direct CONTRACTOR to take certain corrective action if, in the opinion of CUSTOMER, the structural integrity of the Premises or its operating system is or will be harmed. All costs associated with such corrective action caused by CONTRACTOR's breach of its obligations under this Contract shall be borne by CONTRACTOR. All construction and installation by CONTRACTOR shall be in compliance with applicable building, fire and other codes in existence as of the date of this Contract.

Section 12 Installation Commencement and Progress

12.1 Commencement of the Installation Services. CONTRACTOR shall commence Installation Services in accordance with the Construction Schedule submitted by CONTRACTOR and approved by CUSTOMER. Any change to the Construction Schedule that impacts the projected Final Project Notification Approval Date must be followed by a submission in accordance with Section 23. Such submission may set forth a change to time only with no change to the Total Contract Value.

12.2 Schedule in accordance with Work Hour Restrictions. CONTRACTOR's approved Construction Schedule shall be submitted with any and all entry/inventory requirements (**Schedule B-1: Scope of Services Summary**) and work hour restrictions (**Schedule B-2: Permitted Work Hours for Facility**) considered. No Change Order or extension of the Contract Term shall be granted due to delays caused by CONTRACTOR's failure to adhere to entry/inventory requirements or work hour restrictions. If second or third shift or other off-hour work is required, such work shall be included in the Total Contract Value and CONTRACTOR shall not be granted an equitable adjustment to the Total Contract Value due to off-hour work unless not contemplated by work hour restrictions or entry/inventory procedures.

12.3 Sequence and Scheduling. The sequence and scheduling of the Installation Services is subject at all times to CUSTOMER approval, such approval not to be unreasonably withheld. CUSTOMER may interrupt or postpone work whenever concerns for safety or operations require it. Otherwise, the Installation Services shall proceed in accordance with the Construction Schedule. Security shall be provided by

CUSTOMER as needed at CUSTOMER's cost if shifts requiring security are upon the request of CUSTOMER. Additional security costs required by CONTRACTOR's schedule shall be borne by CONTRACTOR.

12.4 Project Meetings. CONTRACTOR shall schedule weekly meetings of CONTRACTOR and CUSTOMER to review progress on each ECM, agree on any redirection, ensure that good workmanship is maintained, coordinate any CUSTOMER activity with the Construction Schedule, and otherwise maintain quality control. CONTRACTOR shall take minutes of each meeting in a manner acceptable to CUSTOMER and shall distribute such minutes to CUSTOMER and all attendees and any other persons agreed upon by the parties no later than five (5) calendar days prior to the next scheduled meeting. CUSTOMER shall have at least five (5) calendar days to make corrections to minutes. Such corrections shall be deemed accepted by CONTRACTOR unless objections are provided to CUSTOMER in writing within three (3) calendar days of CUSTOMER's distribution of corrections.

12.5 Reporting Progress of the Installation Services.

- a. *Construction/Installation Schedule.* CONTRACTOR shall perform the Installation Services in accordance with **SCHEDULE B: INSTALLATION SERVICES**, unless otherwise agreed to by CUSTOMER.
- b. *Periodic Estimates/Schedule Updates.*
 - (i) CONTRACTOR shall, on a monthly basis, submit to DCAMM (on forms and in the manner prescribed by DCAMM) an estimate showing the total amount of New Equipment/Systems installed to the time of such estimate and the value thereof as approved by DCAMM. It shall be the sole responsibility of CONTRACTOR to deliver or cause to be delivered to DCAMM said periodic estimate in proper form, approved as provided above and mathematically correct. All periodic estimates shall contain such certifications and other evidence supporting CONTRACTOR's progress with the Installation Services. DCAMM's review of the periodic estimate is intended to be for verification of the status of the Installation Services and does not constitute acceptance of the Installation Services or any payment or other obligations of CUSTOMER, unless otherwise provided for in **Schedule B-3: Payment Terms**.
 - (ii) Each periodic estimate shall constitute CONTRACTOR's representation that the materials, supplies and New Equipment/Systems have been installed and are insured in accordance with the provisions of this Contract.
 - (iii) DCAMM may make reasonable changes in any required periodic estimate submitted by CONTRACTOR.
 - (iv) DCAMM shall not be obligated to make progress payments for the amount of Services included in the periodic estimates.
 - (v) CONTRACTOR's failure to provide the periodic estimates required in this Section may constitute a Material Event of Default by CONTRACTOR as defined in Section 41.

- c. *Certified Payroll.* CONTRACTOR shall furnish weekly certified payroll reports to DCAMM electronically via DCAMM's electronic workforce reporting system at no additional expense to DCAMM. CONTRACTOR further agrees to include a provision in all of its subcontracts for the Services that require all Subcontractors furnishing labor during the Contract Term to also electronically provide certified payroll reports at DCAMM's request at no additional expense to DCAMM. DCAMM may at all reasonable times audit such reports.

12.6 Commonwealth Asset Management Information System (CAMIS).

As the project progresses, CONTRACTOR shall submit information for installed or removed equipment, including, but not limited to, equipment data and preventive maintenance schedules, for each building system, and any updates thereto, in a format acceptable to DCAMM for entry into CAMIS.

Section 13 Notice of Deficiencies in Existing Equipment/Systems Subsequent to Commencement of Installation Services

- 13.1** If prior to or during the performance of the Installation Services, either party is aware or becomes aware of any deficiencies in the Existing Equipment/Systems that were not previously noted in **APPENDIX A: REFERENCE DOCUMENTS** or **SCHEDULE B: INSTALLATION SERVICES**, and not identified pursuant to Section 6.8 herein, that will cause a material change in the Design and/or Installation Services, that may: (1) prevent CONTRACTOR from completing the Installation Services as set forth in **SCHEDULE B: INSTALLATION SERVICES**; (2) prevent the New Equipment/Systems from meeting the Standards of Comfort specified in Section 34 ; (3) prevent the New Equipment/Systems from meeting the estimated Energy Savings in **Schedule D: ENERGY SAVINGS**; and/or (4) may prevent CONTRACTOR from meeting any other requirements under this Contract, then the party that became aware of such deficiencies shall provide immediate written notice to the other of such deficiencies.
- 13.2** The notice of such deficiencies in the Existing Equipment/Systems shall include specific detail regarding the nature of the deficiencies and recommendations for the correction thereof in order to meet the contractual requirements. Upon receipt of notice of deficiencies, CONTRACTOR and CUSTOMER shall determine what, if any, deficiencies to the Existing Equipment/Systems are caused by the New Equipment/Systems installed by CONTRACTOR. To the extent that it is determined and agreed by the Parties that such deficiencies in the Existing Equipment/Systems are caused by New Equipment/Systems installed by CONTRACTOR under the Contract, and that the CUSTOMER was not notified of such deficiencies pursuant to Section 6.8, then CONTRACTOR shall replace, modify, alter or repair such New Equipment/Systems to CUSTOMER's satisfaction at no additional cost to CUSTOMER, subject to Section 23. To the extent that the Parties cannot reach an agreement on the impact of any such deficiencies in accordance with Section 23, then the dispute shall be resolved in accordance with Section 23 and Section 43.

Section 14 Delays in the Installation Services

- 14.1** Notwithstanding any provision of this Contract to the contrary, except as otherwise provided by law, CONTRACTOR shall not be entitled to additional compensation hereunder or to receive damages on account of any hindrances or delays, avoidable or unavoidable; but if any delay is excusable in the reasonable opinion of CUSTOMER, CONTRACTOR shall be entitled to an extension of time for the Contract Term and the Construction Schedule. The length of the extension shall be sufficient in the opinion of CUSTOMER, for CONTRACTOR to complete the Installation Services. Although no delay shall increase the Total Contract Value, DCAMM may require that any change in the date by which CONTRACTOR must complete all or any part of the Installation Services be processed on a DCAMM standard Change Order form as set forth in Section 23 and in **Schedule B-9: Instructions/Model Forms for Submission of Project Change Requests**.
- 14.2** DCAMM may order CONTRACTOR in writing to suspend, delay, or interrupt all or any part of the Services for such period of time as it may determine to be appropriate for the convenience of CUSTOMER, provided, however, that if there is a suspension, delay or interruption for fifteen (15) calendar days or more or due to a failure of CUSTOMER to act within the time specified in the Contract, CUSTOMER shall make an adjustment in the Total Contract Value for any increase in the cost of performance of this Contract and for any documented "open-book" increase in the financing costs (as provided in the Total Contract Value spreadsheet in **Schedule B-3: Payment Terms**) incurred by CONTRACTOR in the performance of this Contract, but said adjustment shall not include any profit to CONTRACTOR on such increase; and provided further, that DCAMM shall not make any adjustment in the Total Contract Value under this provision for any suspension, delay, interruption or failure to act to the extent that such is due to any cause for which this Contract provides for an equitable adjustment of the Total Contract Value under any other provisions hereof. CUSTOMER may require that any agreed upon adjustment in compensation due to CONTRACTOR under the terms of this Contract be processed in accordance with the DCAMM standard Change Order forms as set forth in Section 23 and in **Schedule B-9: Instructions/Model Forms for Submission of Project Change Requests**.
- 14.3** For any compensation sought by CONTRACTOR pursuant to this Section, CONTRACTOR shall submit the amount of a claim under Section 43 to CUSTOMER, in writing, as soon as practicable after the end of the suspension, delay, interruption or failure to act and, in any event, not later than the date of CONTRACTOR's request for Final Project Notification Approval and, except for costs due to a suspension order, CUSTOMER shall not approve any costs in the claim incurred more than thirty (30) calendar days before CONTRACTOR notified CUSTOMER in writing of the act or failure to act involved in the claim.

Section 15 Modification/Alteration of New Equipment/Systems and Interference with Existing Equipment/Systems

- 15.1 Accessory New Equipment/Systems.** During the Contract Term, CUSTOMER shall not, without the prior written consent of CONTRACTOR, which shall not be unreasonably withheld, affix or install any accessory equipment or device on any of the New Equipment/Systems installed by CONTRACTOR if such addition will change

or impair the originally intended functions, value or use of the New Equipment/Systems.

15.2 New Equipment/Systems Installed By CONTRACTOR.

- a. During the Contract Term, CUSTOMER shall not significantly move, remove, modify, alter, or change in any way the New Equipment/Systems or any part thereof, without the prior written approval of CONTRACTOR. Notwithstanding the foregoing, CUSTOMER may take reasonable steps to protect the New Equipment/Systems if, due to an emergency, it is not possible or reasonable to notify CONTRACTOR before taking any such actions. In the event of such an emergency, CUSTOMER shall take reasonable steps to protect the New Equipment/Systems from damage or injury.
- b. CONTRACTOR shall at all times during the Contract Term have the right, subject to DCAMM's prior written approval, which approval shall not be unreasonably withheld, to change the New Equipment/Systems, revise any procedures for the operation of the New Equipment/Systems or implement changes in the Design, provided that:
 - (i) CONTRACTOR complies with the Standards of Comfort and services set forth in Section 34;
 - (ii) such modifications or additions to, or replacement of the New Equipment/Systems, and any operational changes, or new procedures shall not reduce the Energy Savings, increase the cost of operations or be considered of lesser quality or compromise any ECM or Existing Equipment/Systems associated with this Project or the Premises;
 - (iii) such modifications or additions to or replacement of the New Equipment/Systems and operation changes or new procedures do not adversely affect the warranties on such New Equipment/Systems; and
 - (iv) any cost incurred relative to such modifications, additions or replacement of the New Equipment/Systems, or operational changes or new procedures shall be the responsibility of CONTRACTOR.

All modifications, additions or replacements of the New Equipment/Systems or revisions to operating or other procedures shall be described in a supplemental schedule(s) to be provided to CUSTOMER for approval, which shall not be unreasonably withheld, provided that any replacement of the New Equipment/Systems shall be new and have equal or better potential to reduce energy or water consumption at the Premises than the New Equipment/Systems being replaced. CONTRACTOR shall update any and all software to be used in connection with the New Equipment/Systems in accordance with the Contract and **Schedule A-1: Level of Design Services**. All replacements of and alterations or additions to the New Equipment/Systems shall become part the New Equipment/Systems described in **SCHEDULE B: INSTALLATION SERVICES** and shall be covered by the provisions and terms of this Contract.

- 15.3 Existing Equipment/Systems Not Installed By CONTRACTOR.** Any modification to, or any damage, destruction, failure or replacement of, any energy or water related Existing Equipment/Systems owned by CUSTOMER, exclusive of New Equipment/Systems installed under this Contract and used at the Premises, shall be the sole responsibility of CUSTOMER, except that where such damage, destruction, modification, failure or replacement is the result of an act or acts of CONTRACTOR, its contractors, Subcontractors or suppliers. CONTRACTOR shall correct such damage, destruction, modification, failure or replacement at CONTRACTOR's expense.

Section 16 Health, Safety, and Accident Prevention

- 16.1 Performance of Services.** In the performance of the Installation Services, CONTRACTOR shall:

- a. Ensure that no laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to his/her health and/or safety as determined under construction safety and health standards promulgated by the U.S. Secretary of Labor by regulation;
- b. Protect the lives, health, and safety of other persons; and
- c. Prevent damage to property, materials, supplies, and New Equipment/Systems.

16.2 OSHA.

- a. *Compliance.* For the purposes of the Contract, CONTRACTOR shall:
 - (i) Comply with 84 Stat. 1590, the "Occupational Safety and Health Act of 1970" (OSHA) and with regulations and standards issued by the U.S. Secretary of Labor at 29 CFR Part 1926;
 - (ii) Include the terms of this Section in every subcontract so that such terms shall be binding on each Subcontractor;
 - (iii) Designate by notice to CUSTOMER a responsible member of its organization at the Premises whose duties shall include ensuring safety, implementation of CONTRACTOR's Safety Plan referenced below in Section 16.616.6 and preventing accidents.
- b. *OSHA 10 Hour Training Requirement.* Pursuant to M.G.L. c. 30 § 39S, CONTRACTOR shall certify and ensure that all employees of CONTRACTOR to be employed at the worksite will have successfully completed a course in construction safety and health approved by the United States Occupational Safety and Health administration that is at least 10 hours in duration at the time the employee begins work and shall furnish this documentation to the CUSTOMER prior to the start of any Installation Services. Subcontractors and others working at the Premises on behalf of CONTRACTOR shall furnish documentation of successful completion of said course to the CONTRACTOR for submittal to CUSTOMER prior to the start of any Installation Services.

- 16.3 Records.** CONTRACTOR shall maintain an accurate record of exposure data on all accidents incident to the Services resulting in death, traumatic injury, occupational disease, or damage to property, materials, supplies, or New Equipment/Systems, and shall report this data in the manner prescribed by 29 CFR Part 1904. Without limiting the foregoing, CONTRACTOR shall submit to CUSTOMER without delay verbal and written reports of all accidents involving bodily injury or property damage arising in connection with the Services.
- 16.4 Emergency.** In any emergency affecting the health and/or safety of persons or property CONTRACTOR shall immediately act in the exercise of reasonable judgment to prevent threatened damage, injury, or loss. CONTRACTOR shall immediately notify CUSTOMER of such emergency. CONTRACTOR shall provide a written record of all service work performed. This record shall indicate the reason for the service, description of the problem and the corrective action performed.
- 16.5 Subcontractor Compliance.** CONTRACTOR shall be responsible for its Subcontractors' compliance with the provisions of this Section.
- 16.6 Safety Plan.** Before commencing any portion of the Services, CONTRACTOR shall submit a written Project-specific plan for implementing this Section. The plan shall include an analysis of the significant hazards to life, limb and property inherent in the performance of the Services and a plan for controlling these hazards.
- 16.7 Health and Safety Laws.** Without limiting the foregoing provisions of this Section, CONTRACTOR shall comply with all health and safety Laws applicable to the Services. Without limitation:
- a. If CONTRACTOR uses, stores or encounters toxic or hazardous substances it shall comply with M.G.L. c. 111F, s. 2, the "Right to Know" law and regulations promulgated by the Department of Public Health, 105 CMR 670, the Department of Environmental Protection, 310 CMR 33, and the Department of Labor and Workforce Development, 441 CMR 21; and shall post a Workplace Notice obtainable from the Department of Labor and Workforce Development.
 - b. CONTRACTOR shall comply with the Federal Resource Conservation and Recovery Act, the Federal Comprehensive Environmental Response, Compensation and Liability Act, M.G.L. c. 21C, M.G. L. c. 21E, and any other Laws affecting toxic or hazardous materials, solid, special or hazardous waste (collectively "Hazardous Materials Laws"). Should CONTRACTOR discover unforeseen materials subject to Hazardous Materials Laws at the Premises, CONTRACTOR shall immediately comply with any and all requirements for dealing with such materials and shall notify all required governmental authorities and CUSTOMER of such discovery.
 - c. CONTRACTOR shall be responsible for the location of all utilities in connection with the Services. Without limiting the foregoing, CONTRACTOR shall comply with Dig-Safe Laws. Dig-Safe System Inc., may be contacted at 331 Montvale Road, Woburn, MA, 01801, 1-888-344-7233. CONTRACTOR shall notify Dig-Safe of contemplated excavation, demolition, or explosive work in public or private ways, and in any utility company right of way or easement, by certified mail, with a copy to DCAMM and the Department of

Environmental Protection (DEP). This notice shall be given at least 72 hours prior to the work, but not more than sixty (60) calendar days before the work is to be done. Such notice shall state the name of the street or the route number of the way and shall include an accurate description of the location and nature of the proposed work. Dig-Safe is required to respond to the notice within 72 hours of receipt by designating the location of pipes, mains, wires or conduits at the Premises. CONTRACTOR shall not commence work until Dig-Safe has responded.

The Services shall be performed in such manner and with reasonable precautions taken to avoid damage to utilities under the surface at the work location. CONTRACTOR shall provide the Resident Engineer a copy of the Dig-Safe permit including the applicable permit number. Any costs related to the services performed by Dig-Safe shall be borne by CONTRACTOR.

- d. CONTRACTOR shall comply with M.G.L. c. 149, § 129A, relative to shoring and bracing of trenches.

16.8 Prevention. Without limiting CONTRACTOR's responsibilities described above, CONTRACTOR shall take all reasonable precautions for the safety of, and the prevention of injury or damage to: (1) all Subcontractors, agents and employees of CONTRACTOR performing work on the Premises or related to the Services and all other persons who may be affected thereby, including the general public, (2) all the Services and all materials and equipment to be incorporated therein, whether in storage on or off the Premises, under the care custody or control of CONTRACTOR or any of its Subcontractors or any contractors directly or indirectly contracting through any of them, and (3) other property at the Premises or adjacent thereto, including but not limited to trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of the Services. CONTRACTOR shall promptly remedy all damage or loss to any such property caused in whole or in part by CONTRACTOR, any Subcontractors, or anyone directly or indirectly contracted or employed by any of them or by anyone for whose acts any of them may be liable. Without limiting the foregoing, CONTRACTOR shall:

- a. post and maintain adequate danger signs and other warnings against hazards;
- b. promulgate safety regulations and give appropriate notices to CUSTOMER and users of adjacent utilities and property;
- c. insure the adequate strength and safety of all scaffolding, staging and hoisting equipment, temporary shoring, bracing and tying;
- d. protect adjoining private or public property;
- e. provide barricades, temporary fences, and covered walkways required by prudent construction practices, Laws and/or the Contract Documents

- f. furnish approved hard hats and other personal protective equipment furnish approved first aid supplies, furnish the name of the first aid attendant, and maintain a posted list of emergency facilities;
- g. provide proper means of access to property where the existing access is cut off by CONTRACTOR;
- h. maintain from the beginning of any darkness or twilight through the whole of every night sufficient lights on or near any obstruction so as to guard and protect travelers from injury from such obstruction;
- i. maintain adequate security at the Premises so as not to expose the Services and surrounding property to vandalism or malicious mischief;
- j. provide adequate fire protection procedures during the use of cutting torches, welding equipment, plumbers' torches and other flame and spark producing apparatus;
- k. take prompt action to correct any dangerous or hazardous conditions.

16.9 Explosives. CONTRACTOR shall not use or store explosives in the performance of the Services unless CONTRACTOR first obtains CUSTOMER's prior written specific approval. If CUSTOMER approves the use or storage of explosives during the performance of the Services, CONTRACTOR shall first comply with all Laws and obtain all permits, approvals, and certificates required in connection with the same and shall exercise best efforts, including but not limited to the employment and supervision of properly qualified personnel, to prevent damage, injuries, and accidents involving said explosives.

16.10 Cutting and Welding. CONTRACTOR shall not permit cutting or welding in or immediately adjacent to existing property of CUSTOMER or property owned by anyone else without CUSTOMER's prior approval in each instance.

Section 17 Waste Management

17.1 Construction and Demolition Waste Management.

- a. CONTRACTOR shall be responsible for proper and legal disposal of construction demolition debris in connection with the Services provided under this Contract. These wastes are all uncontaminated waste building materials and rubble resulting from the demolition of buildings, pavements, roads or other structures. Construction and demolition wastes (C&D Waste) include, but are not limited to, concrete, bricks, lumber masonry, rebar, and plaster. FACILITY shall make reasonable provisions at the Premises to accommodate the placement of CONTRACTOR's construction demolition debris container(s).
- b. CONTRACTOR is encouraged to salvage or recycle at least 50% by weight of C&D Waste including brick, concrete, masonry, wood and scrap metal which are free from asbestos and/or hazardous materials. CONTRACTOR shall

transport salvaged items from the Premises as they are removed. Under no circumstances shall salvaged items be stored or sold on-site.

- c. If requested by CUSTOMER, CONTRACTOR shall submit to CUSTOMER a C&D Waste management plan within twenty-one (21) calendar days of such request.

17.2 Hazardous Waste Management. Unless specifically excluded by DCAMM in writing, CONTRACTOR shall be responsible for proper disposal or storage of all known hazardous wastes which were either documented in the RFP or Proposal. Such services shall include all necessary air quality monitoring, testing, specification writing and other requirements per all applicable Laws. CONTRACTOR shall provide appropriate documentation relating to the disposal and/or storage, and transportation in compliance with all Laws. If extensive testing and removal is required for hazardous materials other than those listed in the RFP, Proposal or Design, CONTRACTOR shall submit a Change Order request in accordance with Section 23.

- a. *Hazardous Waste Removal.* Hazardous waste can only be disposed of at a DEP/EPA licensed hazardous waste treatment, storage and disposal facility.
- b. *Special Waste Removal.* "Special Waste," as defined by DEP, such as asbestos, shall only be disposed of at a DEP and City/Town Board of Health licensed landfill or DEP/EPA licensed recycling facility which is permitted to receive the particular type of special waste involved. The license should reflect the types of wastes which can be received for disposal at the landfill.
- c. *PCB Ballast and Lamp Removal.*
 - (i) CONTRACTOR represents and warrants that, if applicable, CONTRACTOR shall enter into an agreement with an approved polychlorinated biphenyl (PCB) ballast disposal contractor who shall provide an informational packet, packing receptacles and instructions, labels and shipping materials, transportation, recycling, and incineration services for PCB ballasts. All PCB containing materials removed from CUSTOMER's PCB ballasts shall be disposed of in a federally approved facility. A Certificate of Destruction shall be provided to CUSTOMER. CONTRACTOR's responsibility shall be for the proper and legal management of any PCB ballasts generated as a result of the installation of the New Equipment/Systems only until they are loaded onto an approved PCB ballast disposal vehicle for transportation.
 - (ii) CONTRACTOR warrants that, if applicable, CONTRACTOR shall enter into an agreement with an approved DEP lamp disposal contractor who shall provide approved containers, materials required to label, transportation, recycling in accordance with EPA requirements, and a copy of the manifest.
 - (iii) FACILITY agrees to sign manifests of ownership for all PCB ballasts and mercury lamps removed from the Premises. CONTRACTOR shall deliver to CUSTOMER copies of all manifest, permits, and other

documents pertaining to proper disposal of hazardous waste and compliance with all Laws.

- 17.3 Mercury Containing Materials.** CONTRACTOR shall install only mercury-free thermostats. In addition, CONTRACTOR shall install mechanical and electrical New Equipment/Systems and appliances that have switches and/or gauges that do not contain mercury. If mercury free items are not available, CONTRACTOR must ensure that all mercury containing parts are clearly labeled with durable labels as to the mercury content.

Section 18 Materials and Equipment

- 18.1 Materials Generally.** CONTRACTOR shall provide and pay for materials, equipment, tools construction equipment and machinery, water, heat, utilities, transportation and other facilities and services necessary for proper execution and completion of the Installation Services, whether temporary or permanent and whether or not incorporated or to be incorporated in the Installation Services.

- 18.2 Storage of Materials and Equipment at Premises.** FACILITY shall make reasonable provisions at the Premises to accommodate the placement of CONTRACTOR's storage container(s).

18.3 Off-Site Storage of Materials and Equipment.

- a. CONTRACTOR shall obtain prior written approval from DCAMM for permission to store materials or equipment to be incorporated in the Installation Services at off-site locations, for which progress payments will be requested (where authorized under Section 4 and **Schedule B-3: Payment Terms** of the Contract).
- b. Any and all charges for storage, inspection and verification by CONTRACTOR and DCAMM, including insurance, shall be borne solely by CONTRACTOR. Before approval, DCAMM may require, without limitation (i) evidence that the off-site location is properly secure, (ii) proper proof of insurance that identifies the material and shows DCAMM as an additional insured against fire and theft in an amount sufficient to provide full replacement cost and proof of satisfactory contractual arrangements for transportation to the storage location, (iii) a dated signed, receipted paid invoice for the materials made out to CONTRACTOR or, if the invoice is in the name of CONTRACTOR or Subcontractor's supplier, then a certification of payment (signed by an authorized company officer and notarized) from CONTRACTOR or the appropriate Subcontractor, and (iv) a notarized certificate from the CONTRACTOR stating:
 - (i) The name of the signatory of CONTRACTOR or Subcontractor that owns the materials and/or equipment to be stored;
 - (ii) The location of such storage facility, including the storage space (i.e. the entire premises or certain areas of a warehouse giving the number of floors or portions thereof), and a certification that CONTRACTOR has visited such location, verified the storage of such material or

- equipment therein or thereon (including confirmation that the materials verified payment of all current storage charges);
 - (iii) The date(s) on which the material or equipment is first stored at such facility; and
 - (iv) A description of the materials or equipment stored, including quantities, types, manufacturers and other identification information, such as serial numbers, and a certification that the materials and/or equipment meet the requirements of the Contract Documents.
- c. CONTRACTOR shall furnish to DCAMM, not less often than once per month, a current inventory of all materials or equipment being stored at any off-site location. CONTRACTOR shall mark each sealed carton or other item with the name of the Project and DCAMM, and all materials or equipment stored off-site shall be segregated to the extent required by DCAMM or CONTRACTOR.
 - d. Payment for materials or equipment stored off-site shall be at the reasonable discretion of DCAMM, taking into account the schedule requirements of the Installation Services.
 - e. Title to materials or equipment stored off-site shall be transferred at the time at which DCAMM pays for them, free of any lien or other interest of the supplier or any other lien or encumbrance. Notwithstanding such transfer of title, the CONTRACTOR shall retain sole care, custody and control of, and shall have complete responsibility for the security and protection of, all materials or equipment included in any requisition for payment which are stored at locations other than the Premises. Should any damage be incurred to any such materials or equipment:
 - (i) CONTRACTOR assumes all risk of loss or damage; and
 - (ii) CONTRACTOR shall hold harmless DCAMM from and against all liabilities arising out of or resulting from loss or damage, from any cause, including liens, security interests or other claims of any kind by suppliers or other third parties relating to such materials or equipment.

18.4 Delivery and Storage of Materials; Inspection.

- a. Materials and equipment shall be progressively delivered to the Site so that there will be neither delay in the progress of the Installation Services nor an undue accumulation of materials that are not to be used within a reasonable time and so that their security, quality, and fitness for the Installation Services is preserved.
- b. Materials stored off-site shall be insured and stored in accordance with Section 18.3 so as to guarantee the preservation of their security, quality and fitness for the Installation Services. Without derogating from CONTRACTOR's responsibilities in the previous sentence, when necessary to avoid deterioration or damage, material (on or off Premises) shall be placed on wooden platforms or other hard clean surfaces and not on the ground and shall be properly protected. DCAMM will not make payment for material

stored outside of Massachusetts, unless CONTRACTOR receives written approval from DCAMM.

- c. Stored materials either at the Premises or at some other location agreed upon in writing shall be so located as to facilitate prompt inspection and even though approved before storage, may again be inspected prior to their use in the Project.
- d. All storage areas at the Premises shall be restored to their original condition by CONTRACTOR at CONTRACTOR's expense.
- e. CONTRACTOR shall take charge of and be liable for any loss of or injury to the materials for its use delivered to or in the vicinity of the place where the Installation Services are being performed, whether furnished by the CUSTOMER or otherwise; CONTRACTOR shall notify DCAMM as soon as any such materials are so delivered, allow them to be examined by DCAMM, and furnish workers to assist therewith.
- f. Expenses for inspection of material by CONTRACTOR and/or DCAMM personnel including travel, quarters, and subsistence shall be borne by CONTRACTOR requesting the inspection of material stored outside the Commonwealth of Massachusetts as part of the Total Contract Value. If CONTRACTOR requests an inspection of material stored outside of Massachusetts, DCAMM will initially pay for all expenses of inspecting the material incurred by CONTRACTOR and/or DCAMM's personnel including travel, quarters, and subsistence. DCAMM will then invoice CONTRACTOR for such costs and the CONTRACTOR shall submit a credit Change Order for the amount of those expenses in accordance with Section 23.

18.5 Defective, Damaged, or Deteriorated Materials and Rejection Thereof.

DCAMM may reject materials if DCAMM reasonably determines that such materials do not conform to the requirements of the Contract in any manner, including but not limited to materials that have become damaged or deteriorated from improper storage whether or not such materials have previously been accepted. CONTRACTOR at its own expense shall remove rejected materials from the Premises. No rejected material, the defects of which have been subsequently corrected, shall be used except with the written permission of CUSTOMER. Should CONTRACTOR fail to remove rejected material within a reasonable time, DCAMM may, in addition to any other available remedies, remove and/or replace the rejected material, and deduct the cost of such removal and/or replacement from any monies due or to become due CONTRACTOR. No extra time shall be allowed for completion of Installation Services by reason of such rejection. The inspection of the Installation Services shall not relieve CONTRACTOR of any of its obligations herein prescribed, and any defective Installation Services shall be corrected. Installation Services not conforming to this Contract may be rejected notwithstanding that such Installation Services and materials have been previously overlooked or misjudged by DCAMM and accepted for payment. If the Installation Services or any part thereof shall be found defective at any time before Final Project Notification Approval, CONTRACTOR shall forthwith correct such defect in a manner satisfactory to DCAMM. Nothing in this Contract shall be construed as vesting in CONTRACTOR any property rights in the materials used after they have been attached or

affixed to the Premises; but all such materials shall upon being so attached or affixed become property of the FACILITY.

Section 19 Equal Employment Opportunity, Non-Discrimination in Hiring, and Employment and Affirmative Action Program [Executive Order Nos. 526 and 565]

CONTRACTOR and its Subcontractors may not engage in discriminatory employment practices; and CONTRACTOR certifies that they are in compliance with all applicable federal and state Laws, rules, and regulations governing fair labor and employment practices. These provisions shall be enforced by CUSTOMER and/or the Massachusetts Commission Against Discrimination. Any breach shall be regarded as a material breach of this Contract and may subject CONTRACTOR to appropriate sanctions.

During the performance of this Contract, CONTRACTOR and all of its Subcontractor shall comply with all applicable equal employment opportunity, non-discrimination and affirmative action requirements, including but not limited to the requirements set forth in **Schedule B-7: Goals for Participation by M/WBE Enterprises/Equal Employment Opportunity, Anti-Discrimination, and Affirmative Action Program (Executive Orders No. 526 and No. 565)**. In addition, CONTRACTOR shall commit to purchasing supplies and services from certified minority or women-owned businesses, small businesses or businesses owned by socially or economically disadvantaged persons or persons with disabilities, including but not limited to the requirements set forth in **Schedule B-7: Goals for Participation by M/WBE Enterprises/Equal Employment Opportunity, Anti-Discrimination, and Affirmative Action Program (Executive Orders No. 526 and No. 565)**.

For purpose of the Contract, "minority" refers to Asians, Blacks, Western Hemisphere Hispanics, Native Americans, and Cape Verdeans; "Commission" refers to the Massachusetts Commission Against Discrimination.

Section 20 Minority/Women Participation Goals and Anti-Discrimination Programs

CONTRACTOR shall comply with the goals as set forth in **Schedule B-7: Goals for Participation by M/WBE Enterprises/Equal Employment Opportunity, Anti-Discrimination, and Affirmative Action Program (Executive Orders No. 526 and No. 565)**. The MBE/WBE participation goals shall be applied to the Total Contract Value.

Section 21 Veteran Owned Business Participation [Chapter 108 of the Acts of 2012; Executive Order 565]

DCAMM encourages the participation of Service-Disabled Veteran-Owned Business Enterprises ("SDVOBE") and Veteran-Owned Business ("VBE") in its construction and design projects pursuant to Chapter 108 of the Acts of 2012 and Executive Order 565. The benchmark for SDVOBE and VBE participation on the Project is 3% of the Contract Price. CONTRACTOR shall report on the amount of SDVOBE and VBE participation on the Project on a regular basis, in the form, format, and frequency requested by DCAMM, including, but not limited to, by electronic reporting.

Section 22 Prevailing Wages

All workers employed under this Contract shall not be paid less than the minimum wage rate for the area as attached in **Schedule B-8: Prevailing Wage Rates**. Each CONTRACTOR must issue a statement of compliance to be incorporated into this CONTRACT. This statement, as attached in **Schedule B-8: Prevailing Wage Rates**, must be submitted within fifteen (15) days after completion of the Installation Services, and shall be executed by CONTRACTOR, Subcontractor, or public body or by any authorized officer or employee of CONTRACTOR, Subcontractor or public body who supervises the payment of wages. CUSTOMER is not responsible for any errors, omissions, or misprints in the said **Schedule B-8: Prevailing Wage Rates**. **Schedule B-8: Prevailing Wage Rates** shall continue to be the minimum rate wages payable to workers employed in the Services throughout Contract Term, subject to the exceptions provided in M.G.L c.149, §§ 26-27H. CONTRACTOR shall not have any claim for extra compensation from CUSTOMER if the actual wages paid to workers employed in the Installation Services exceeds the rates listed on **Schedule B-8: Prevailing Wage Rates** or as otherwise provided by Laws. CONTRACTOR shall cause a copy of said **Schedule B-8: Prevailing Wage Rates** to be kept in a conspicuous place at the Premises during the Contract Term. If reserve police officers are employed by CONTRACTOR, they shall be paid the prevailing wage of regular police officers. (See M.G.L c.149, s.34B). M.G.L. c. 149, § 27 as amended on August 8, 2008 requires annual updates to prevailing wage schedules for all public construction projects lasting longer than one year. CONTRACTOR is required to obtain the wage schedules from awarding authorities, and to pay no less than these rates to covered workers. CONTRACTOR and all Subcontractors are required to anticipate such annual updated prevailing wage schedules and neither CONTRACTOR nor any Subcontractors shall be entitled to claim additional compensation for Installation Services due to any increased rates shown on updated prevailing wage schedules.

Section 23 Changes in Scope of Services

Either CUSTOMER or CONTRACTOR may propose changes to the Services, provided that such changes must be submitted in writing and in accordance with this Section 23. All requests for Change Orders related to the scope of an ECM must be submitted during the Contract Term and prior to the issuance of the Final Project Notification Approval.

23.1 Changes by Contract Amendment.

DCAMM may, in its sole discretion, chose to treat any request for a change to the Services as a Change Order or amendment, depending on the nature of the requested change and its overall impact on the Total Contract Value or this scope of Services.

23.2 Change Orders Generally.

- a. The term "Change Order" shall mean a directive issued by CUSTOMER for a change in work as described in this Section 23. CONTRACTOR shall perform any Change Order work that is ordered by CUSTOMER. Whenever a Change Order is issued and said Change Order will cause a change in the Total Contract Value or the Energy Savings required under the Contract, CONTRACTOR or CUSTOMER may request an equitable adjustment in the Total Contract Value (as described in **Schedule B-3: Payment Terms**)

and/or the Energy Savings (as described in **Schedule D: ENERGY SAVINGS**)

- b. A Change Order or written directive may be issued by CUSTOMER for changes in Installation Services, including but not limited to, changes in: (i) the Design; (ii) New Equipment/Systems, materials, services, or Premises; (iii) the schedule for performance of the Services; or (iv) any other changes to this Contract.
- c. A request for a change in the provisions of this Contract shall be submitted in writing to CUSTOMER by CONTRACTOR or by CUSTOMER to CONTRACTOR before commencement of the pertinent work. The request must be made in writing and in accordance with the provisions of this Contract and the instructions and forms set forth in **Schedule B-9: Instructions/Model Forms for Submission of Project Change Requests**. CONTRACTOR shall consult with DCAMM prior to the submission of any proposed Change Order to ensure proper submission.

23.3 Documentation and Submission of Change Order Requests.

- a. During the negotiation of an equitable adjustment in the Total Contract Value, the CONTRACTOR shall provide CUSTOMER with all cost, pricing data and any other information or documentation used by it in computing the amount of the equitable adjustment, and the CONTRACTOR shall certify that the pricing data used was accurate, complete, and current. If CUSTOMER subsequently determines that the data submitted by the CONTRACTOR was inaccurate, incomplete, or not current, CUSTOMER may exclude such data from consideration under the equitable adjustment request.
- b. Whenever the CONTRACTOR is entitled or believes it is entitled to a Change Order adjusting the Total Contract Value or Construction Schedule, the CONTRACTOR shall maintain separate accounts (by job order or other suitable accounting procedure) of all costs and schedule impacts incurred and attributable to such work. The CONTRACTOR shall maintain a computerized accounting system, acceptable to CUSTOMER, in which current information as to the status of all such work is maintained. The CONTRACTOR shall maintain such contemporaneous records as are necessary to provide a clear distinction between the costs of all Change Order Work and proposed Change Order Work, and the costs of other work and any schedule impacts.
- c. Notwithstanding any provisions in the Contract to the contrary, no additional general conditions cost shall be due for any Change Order or portion of a Change Order resulting from or attributable to:
 - (i) increases in the cost of allowance items;
 - (ii) substitutions of equipment or materials which are functionally similar to equipment or materials specified in the Contract Documents; or
 - (iii) sales and use taxes.

- d. The CONTRACTOR shall investigate the validity of subcontractor and supplier change order requests before agreeing to pass them through to CUSTOMER. For all change order requests submitted, the CONTRACTOR shall certify that: the change request is made in good faith; the validity of the CONTRACTOR's and any subcontractor and supplier change requests have been verified; the supporting data is accurate and complete to the best of the CONTRACTOR's knowledge and belief; and the CONTRACTOR actually believes CUSTOMER to be liable for the add amount, or entitled to the deduct amount of the change request, whichever is applicable.
- e. The CONTRACTOR shall be required to calculate and submit revised Energy Savings data prior to the approval of any Change Order or amendment to the Contract by DCAMM. This includes any updates to the baseline schedule as shown in **Schedule D: ENERGY SAVINGS**. The CONTRACTOR shall also convey any anticipated adjustment in the value of incentives to be received as required by Section 37 prior to the approval of any Change Order or amendment to the Contract. If the Change Order or amendment does not result in any change to the Energy Savings or anticipated utility incentives, CONTRACTOR shall submit a written representation.

23.4 Change Orders Due to Differing Site Conditions. Upon receipt of such a request for a Change Order due to a differing site condition from CONTRACTOR, or upon DCAMM's own initiative, DCAMM shall make an investigation of such conditions. If latent or actual subsurface conditions differ substantially or materially from those which were documented in **APPENDIX A: REFERENCE DOCUMENTS**, could not have been discovered during the preparation of the Proposal, and are of such a nature as to cause an increase or decrease in the cost of performance of the work or a change in the construction methods required for the performance of the work, which results in an increase or decrease in the cost of the work, DCAMM shall make an equitable adjustment in the Total Contract Value and this Contract shall be modified in writing accordingly.

23.5 Methods of Computing Equitable Adjustments.

- a. Equitable adjustments in the Total Contract Value shall be determined according to one of the following methods, or a combination thereof, as determined by CUSTOMER:
 - (i) fixed price basis, provided that the fixed price shall be inclusive of items (a) through (g) below and shall be computed in accordance with those provisions and as detailed in **Schedule B-9: Instructions/Model Forms for Submission of Project Change Requests**;
 - (ii) estimated lump sum basis to be adjusted in accordance with Contract unit prices or other agreed upon unit prices provided that the unit prices shall be inclusive of all costs related to such equitable adjustment;
 - (iii) time and materials basis to be subsequently adjusted on the basis of actual costs (but subject to a predetermined "not to exceed limit") calculated as follows:

- (a) the direct cost (or credit) for labor at the minimum wage rates established for this Contract pursuant to M.G.L. c. 149, §§ 26-27H;
 - (b) plus (or minus) the cost of Workmen's Compensation Insurance, Liability Insurance, Federal Social Security and Massachusetts Unemployment Compensation are to be calculated using an allowance equal to 40% applied to said rate. The rate of (40) percent is inclusive of all insurances, taxes, general conditions, overhead, superintendence, fee, and profit. No other expenses are allowed, for example, sick time, vacation time, etc. are included in the all-inclusive rate. Documentation must be provided if a higher percentage is requested and will only be accepted for Workmen's Compensation over 12.5%. For any change that involves a credit of labor a value of 85% of the approved rate is to be credited.
 - (c) plus (or minus) the actual direct additional premium costs and expenses incurred as a result of collective bargaining agreements or other agreements between organized labor. No allowance for markups is allowed on these costs;
 - (d) plus the direct cost of materials and use of equipment; an allowance equal to 15% of the amount of materials and equipment for general conditions, overhead, superintendence, fee, and profit can be applied;
 - (e) certain miscellaneous services provided and approved by CUSTOMER (e.g. police details, utilities, etc.) may be included and are subject to a 5% markup;
 - (f) plus (or minus), if applicable and approved by the customer, costs associated with engineering, training, and warranty may be included. No allowance for markups is allowed on these costs;
 - (g) plus (or minus) the actual direct premium cost of payment and performance bonds required of the CONTRACTOR and certain subcontractors for this Contract.
 - (h) The CONTRACTOR shall receive an allowance equal to 5% of the sum of items (a) through (e) above for overhead, superintendence, fee, and profit when the work is performed by subcontractors. Subcontractors can also apply an allowance equal to 5% of the sum of the items (a) through (e) above for overhead, superintendence, fee, and profit when the work is performed by sub-tier Subcontractors.
- (iv) CONTRACTOR and its Subcontractors are required to anticipate annual updated prevailing wage schedules in accordance with M.G.L. c. 149, § 27 and shall not be entitled to claim additional compensation for base bid contract work due to updated prevailing wage schedules.
- b. If the net change is an addition to the Total Contract Value it shall include the CONTRACTOR's overhead, superintendence, fee and profit. On any change that involves a net credit, no allowance for overhead, superintendence and profits shall be included. Charges for small tools known as "tools of the trade" are not to be computed in the amount of any change in the Total Contract Value.

- c. The CONTRACTOR and all Subcontractors shall utilize DCAMM Form 15 when submitting Change Orders.

23.6 Disputed Changes. CUSTOMER and CONTRACTOR shall negotiate in good faith an agreement on an equitable adjustment in the Total Contract Value, and/or time if appropriate. In the absence of an agreement for an equitable adjustment, CUSTOMER shall unilaterally determine the costs attributable to the requested Change Order and provide CONTRACTOR with a written notice to that effect. CONTRACTOR may dispute such cost determination in accordance with Section 43 and have the right to such further appeal as is provided in M.G.L. c.30, § 39Q only after exhausting the remedies provided for in Section 43. If the CONTRACTOR shall exercise its rights to appeal the decision of CUSTOMER as aforesaid, the CONTRACTOR shall be required to engage in the mandatory mediation procedures set forth in Section 41 of this Contract.

23.7 Work Performed Under Protest. CONTRACTOR agrees to perform all Change Order work as directed by CUSTOMER in accordance with the terms of this Contract. If CUSTOMER determines that certain work that CONTRACTOR believes to warrant a Change Order does not represent a change in the Services, CONTRACTOR shall perform said work and CONTRACTOR shall be deemed to have concurred with CUSTOMER's aforesaid determination unless CONTRACTOR performs such work under protest in compliance with the following sub-paragraphs a and b:

- a. If CONTRACTOR claims compensation for a change in the work that is not deemed by CUSTOMER to be a change or to warrant additional compensation as claimed by CONTRACTOR, CONTRACTOR shall on or before the first working day following the commencement of any such work or the sustaining of any such alleged damage submit to the Resident Engineer a written statement of the nature of such work or claim. CONTRACTOR shall not be entitled to additional compensation for any work performed or damage sustained for which written notice is not given within the time limit specified in the preceding sentence, even if similar in character to work or damage with respect to which notice is timely given. Disputes shall be resolved pursuant Section 43 hereof.
- b. On or before the second business day after the commencement of such work or the sustaining of such damage, for each day upon which work occurs or damage is sustained, CONTRACTOR shall file to the extent possible with the Resident Engineer and CUSTOMER, itemized statements of the details and costs of such work performed or damage sustained. CONTRACTOR shall use the DCAMM Daily Time and Materials Report found in **APPENDIX A: REFERENCE DOCUMENTS** to record all labor and material used and request CUSTOMER's written acknowledgement that such time and materials were expended. If CONTRACTOR shall fail to make such statements to the extent possible, then CONTRACTOR shall not be entitled to additional compensation for any such work or damages. Disputes shall be resolved pursuant Section 43.

23.8 Open-Book Pricing. Open-book pricing may be required, such that CONTRACTOR shall fully disclose all costs. CONTRACTOR shall maintain cost accounting records on authorized work performed documenting actual costs for labor and material, or

other basis agreed to by CUSTOMER. CONTRACTOR shall afford CUSTOMER access to these records and preserve them for a period of three (3) years after the Final Project Notification Approval Date. Costs shall be evaluated through price analysis to compare costs with reasonable criteria such as established catalog and market prices or historical prices. The pricing methodology and individual cost mark-ups shall be as provided for in **Schedule B-9: Instructions/Model Forms for Submission of Project Change Requests**.

23.9 False Claims, Statutory Provisions Regarding Changes. The following statutory requirements are included in this Contract by operation of law and repeated here. In the case of any conflicts by change to the statutes or otherwise, the statute in operation on the Effective Date shall control. For the purpose of this Contract, the Commissioner of DCAMM shall be considered to be the "Chief Executive Official of the State Agency", and "Awarding Authority" shall mean "CUSTOMER" as those terms are used in the statutory references below and more specifically in M.G.L. c. 30, § 39Q.

- a. **Criminal Penalties.** CONTRACTOR's attention is directed to M.G.L. c. 266, § 67B which provides criminal penalties for false claims by CONTRACTOR and states, in part, as follows:

Whoever makes or presents to any employee, department, agency or public instrumentality of the commonwealth, or of any political subdivision thereof, any claim upon or against any department, agency, or public instrumentality of the commonwealth, or any political subdivision thereof, knowing such claim to be false, fictitious, or fraudulent, shall be punished by a fine of not more than ten thousand dollars or by imprisonment in the state prison for not more than five years, or in the house of correction for not more than two and one-half years, or both.

- b. **Statutory Provisions Regarding Appeal of Change Orders.** Pursuant to M.G.L. c. 30, § 39Q, every contract awarded by any state agency as defined by M.G.L. c. 7C, § 1 (which includes "energy conservation projects"), requires the inclusion of the following statutory provisions from M.G.L. c. 30, § 39Q(a) through (d) as follows:

- (i) *Disputes regarding changes in and interpretations of the terms or scope of the contract and denials of or failures to act upon claims for payment for extra work or materials shall be resolved according to the following procedures, which shall constitute the exclusive method for resolving such disputes. Written notice of the matter in dispute shall be submitted promptly by the claimant to the chief executive official of the state agency which awarded the contract or his designee. No person or business entity having a contract with a state agency shall delay, suspend, or curtail performance under that contract as a result of any dispute subject to this section. Any disputed order, decision or action by the agency or its authorized representative shall be fully performed or complied with pending resolution of the dispute. [See M.G.L. c. 30, § 39Q(a)].*

- (ii) *Within thirty days of submission of the dispute to the chief executive official of the state agency or his designee, he shall issue a written decision stating the reasons therefore, and shall notify the parties of their right of appeal under this section. If the official or his designee is unable to issue a decision within thirty days, he shall notify the parties to the dispute in writing of the reasons why a decision cannot be issued within thirty days and of the date by which the decision shall issue. Failure to issue a decision within the thirty-day period or within the additional time period specified in such written notice shall be deemed to constitute a denial of the claim and shall authorize resort to the appeal procedure described below. The decision of the chief executive official or his/her designee shall be final and conclusive unless an appeal is taken as provided below. [See M.G.L. c. 30, § 39Q(b)].*
- (iii) *Within twenty-one calendar days of the receipt of a written decision or of the failure to issue a decision as stated in the preceding subparagraph, any aggrieved party may file a notice of claim for an adjudicatory hearing with the division of hearing officers or the aggrieved party may file an action directly in a court of competent jurisdiction and shall serve copies thereof upon all other parties in the form and manner prescribed by the rules governing the conduct of adjudicatory proceedings of the division of hearing officers. In the event an aggrieved party exercises his option to file an action directly in court as provided in the previous sentence, the twenty-one day period shall not apply to such filing and the period of filing such action shall be the same period otherwise applicable for filing a civil action in superior court. The appeal shall be referred to a hearing officer experienced in construction law and shall be prosecuted in accordance with the formal rules of procedure for the conduct of adjudicatory hearings of the division of hearing officers, except as provided below. The hearing officer shall issue a final decision as expeditiously as possible, but in no event more than one hundred and twenty calendar days after conclusion of the adjudicatory hearing, unless the decision is delayed by a request for extension of time for filing post-hearing briefs or other submissions assented to by all parties. Whenever, because an extension of time has been granted, the hearing officer is unable to issue a decision within one hundred and twenty days, s/he shall notify all parties of the reasons for the delay and the date when the decision will issue. Failure to issue a decision within the one hundred and twenty-day period or within the additional period specified in such written notice shall give the petitioner the right to pursue any legal remedies available to him without further delay. [See M.G.L. c. 30, § 39Q(b)].*
- (iv) *When the amount in dispute is less than ten thousand dollars, a contractor who is party to the dispute may elect to submit the appeal to a hearing officer experienced in construction law for expedited hearing in accordance with the informal rules of practice and procedure of the division of hearing officers. An expedited hearing under this subparagraph shall be available at the sole option of the contractor. The hearing officer shall issue a decision no later than sixty days*

following the conclusion of any hearing conducted pursuant to this subparagraph. The hearing officer's decision shall be final and conclusive, and shall not be set aside except in cases of fraud. [See M.G.L. c. 30, § 39Q(d)].

Section 24 As-Built Drawings

- 24.1** CONTRACTOR shall provide CUSTOMER with duplicate paper copies of all As-Built Drawings of all modified conditions, excluding repair of Existing Equipment/Systems and installation of lighting and plumbing fixtures, associated with the Project conforming to typical engineering standards. All As-Built Drawings shall be stamped by a Massachusetts registered professional engineer for each corresponding trade if applicable, and shall be on bond paper, full size (30" x 42").
- 24.2** CONTRACTOR shall provide CUSTOMER with one electronic copy readily downloadable or, if so requested by DCAMM, with a CD, of the following documents: the As-Built Drawings in both "TIFF" and AutoCAD format; PDF files of specifications; and a detailed inventory of repairs and lighting, steam traps, and/or water fixtures in electronic spreadsheet format.

Section 25 Commissioning

- 25.1 Systems Startup and New Equipment/Systems Commissioning.** In support of DCAMM's third-party commissioning agent, the CONTRACTOR shall conduct performance testing of each element and total system of the installed New Equipment/Systems in accordance with the procedures specified in the commissioning plan prior to Final ECM/Equipment Acceptance of each ECM. Testing shall be designed to determine if the New Equipment/Systems are functioning in accordance with both its published specifications and the requirements of the Contract.
- 25.2 Correction of Deficiencies.** CONTRACTOR shall be responsible for correcting and/or adjusting all deficiencies in New Equipment/Systems that may be observed by any party to the Contract during system commissioning, measurement and verification, and testing procedures. Prior to Final ECM/Equipment Acceptance Notice CONTRACTOR shall also provide CUSTOMER with satisfactory documentary evidence that the New Equipment/Systems installed are the New Equipment/Systems specified in **SCHEDULE B: INSTALLATION SERVICES**.

Section 26 Training

- 26.1** CONTRACTOR shall conduct the training program described in **Schedule B-6: Training**, which shall include the appropriate training required for Substantial Completion and issuance of the Final ECM/Equipment Acceptance Notice. Throughout the Contract Term, CONTRACTOR shall provide ongoing training as provided for in **Schedule B-6: Training** with respect to updated or altered New Equipment/Systems, including upgraded software. Such training is included in the Total Contract Value. Training shall always include videotaping or otherwise live audio and visual recordings of such training in order to maximize its usefulness to DCAMM.

- 26.2** The training provided by CONTRACTOR shall include training necessary to allow the FACILITY to operate the New Equipment/Systems and associated Existing Equipment/Systems independently following the expiration of any service, maintenance, or warranty requirements of CONTRACTOR and to allow FACILITY to gain expertise in the New Equipment/Systems such to allow the FACILITY to gain the benefit of the Energy Savings for the expected useful life of the New Equipment/Systems. This section shall not impose any additional liability for failures of the New Equipment/Systems after the Contract Term and any related service and/or warranty periods have expired that does not exist elsewhere in this Contract.
- 26.3** CONTRACTOR shall provide notice to CUSTOMER of any scheduled test(s) and training(s) and CUSTOMER and/or its designees shall have the right to be present at any or all such tests and trainings conducted by CONTRACTOR and/or manufacturers of the New Equipment/Systems.

Section 27 Metering

Metering requirements for this Contract are set forth in BOD.

Section 28 Substantial Completion/Final Acceptance

- 28.1 Substantial Completion of the Installation Services.** CONTRACTOR shall substantially complete all of the Services required by this Contract for all ECMs in accordance with the Construction Schedule. Unless specifically provided for in **Schedule B-3: Payment Terms**, Substantial Completion shall not entitle CONTRACTOR to any payment under this Contract.
- a. During the regularly scheduled Project meeting (as set forth in Section 12.4) immediately following completion of the required Installation Services for each individual ECM, CONTRACTOR shall inform DCAMM that the required Installation Services for such ECM are complete and request from DCAMM the date on which CONTRACTOR shall begin the required thirty (30) calendar days of consecutive operation for all New Equipment/Systems installed or associated with such ECM. Upon receipt of DCAMM's approval as set forth in the relevant project meeting minutes, CONTRACTOR shall commence the thirty (30) day period of continuous operation for all New Equipment/Systems installed or associated with such ECM.
 - b. Following the thirty (30) calendar days of consecutive operation of each ECM, CONTRACTOR shall submit to DCAMM a Substantial Completion Approval Request in the form attached hereto in **Schedule B-10: Closeout Procedures and Forms** along with all necessary back-up documentation, certifying that the ECM has operated successfully for thirty (30) consecutive calendar days and that CONTRACTOR has completed all closeout procedures specified in such Substantial Completion Approval Request form, including any applicable technical specifications, and all testing (if required) and training has been completed. In the Substantial Completion Approval Request submitted by CONTRACTOR, CONTRACTOR shall indicate the Substantial Completion Date upon which it is seeking Substantial Completion to be effective.

- c. Within fifteen (15) calendar days of receipt of the Substantial Completion Approval Request, DCAMM shall either:
 - (i) Provide written approval of CONTRACTOR's Substantial Completion Approval Request by sending CONTRACTOR a Substantial Completion Approval Notice; or
 - (ii) Notify CONTRACTOR in writing that it does not accept the Substantial Completion Approval Request and state the reasons for non-acceptance, which shall not be unreasonably withheld.
- d. The Substantial Completion Date shall be the date requested by CONTRACTOR, in the Substantial Completion Approval Request, unless otherwise stated on Substantial Completion Approval Notice. The Builder's Warranty obligations set forth in Section 32 and any extended warranty obligations set forth in **Schedule C: EXTENDED WARRANTY AND REPLENISHABLE STOCK**, shall commence upon the Substantial Completion Date of each ECM.
- e. Notwithstanding the foregoing, the Parties agree that CONTRACTOR may request a partial Substantial Completion for work that has been completed with respect to a particular building, ECM, or New Equipment/System, provided that CONTRACTOR complies with all of the requirements for the issuance of a Substantial Completion Approval Notice with respect to that building, ECM, or New Equipment/System. This partial approval shall have the effect of commencing the Builder's Warranty and any extended warranty obligations set forth in in accordance with Section 32 and **Schedule C: EXTENDED WARRANTY AND REPLENISHABLE STOCK** with respect to the New Equipment/System, ECM, or building covered by such partial Substantial Completion.

28.2 Final ECM/Equipment Acceptance.

- a. A Final ECM/Equipment Acceptance Notice shall be issued for each individual ECM when all requirements in this Section, **Schedule B-10: Closeout Procedures and Forms** and any requirements noted by DCAMM in the Substantial Completion Approval Notice have been completed to the satisfaction of DCAMM. Upon completion of all such requirements, CONTRACTOR shall send to CUSTOMER a Final ECM/Equipment Completion Notice requesting Final ECM/Equipment Acceptance by CUSTOMER. The Final ECM/Equipment Acceptance Notice shall be in the form prescribed by DCAMM, as set forth in **Schedule B-10: Closeout Procedures and Forms**.
- b. Within fifteen (15) calendar days of receipt of the Final ECM/Equipment Completion Notice, CUSTOMER shall:
 - (i) Provide written approval of CONTRACTOR's Final ECM/Equipment Completion Notice by sending CONTRACTOR a Final ECM/Equipment Acceptance Notice, or

- (ii) Notify CONTRACTOR in writing that it does not approve Final ECM/Equipment Completion Notice and state the reasons for non-acceptance, which shall not be unreasonably withheld.
- c. The date on which CUSTOMER issues the Final ECM/Equipment Acceptance Notice shall be the Final ECM/Equipment Acceptance Date for each ECM and shall determine the date of the transfer of ownership pursuant to Section 29.4. Prior to the Final ECM/Equipment Acceptance Date, all savings calculations set forth in **Schedule D: ENERGY SAVINGS** shall be adjusted according to as-built conditions.

28.3 Final Project Notice.

- a. Prior to submission of a Final Project Notice as set forth below, CONTRACTOR shall provide to CUSTOMER a completed Final Completion Log in the form set forth in **Schedule B-10: Closeout Procedures and Forms**, for review at a regularly scheduled Project meeting (as set forth in Section 12.4). CONTRACTOR shall incorporate any necessary corrections and/or updates to the Final Completion Log as agreed during the Project meeting. Upon receipt of DCAMM's approval as set forth in the relevant project meeting minutes, which shall include a copy of the final form of the Final Completion Log, CONTRACTOR shall submit a Final Project Notice.
- b. CONTRACTOR shall send a Final Project Notice to CUSTOMER, in the form prescribed by DCAMM as set forth in **Schedule B-10: Closeout Procedures and Forms**, after CONTRACTOR meets all of the requirements set forth in this Section, **Schedule B-10: Closeout Procedures and Forms** and after all the New Equipment/Systems have been installed and the operations are 100% complete.
- c. Within fifteen (15) calendar days of receipt of the Final Project Notice, CUSTOMER shall either:
 - (i) Approve the Final Project Notice in writing by sending CONTRACTOR a Final Project Notification Approval in the form prescribed by DCAMM and set forth in **Schedule B-10: Closeout Procedures and Forms**; or
 - (ii) Notify CONTRACTOR in writing that it does not accept the Final Project Notice and state the reasons for such non-acceptance, which shall not be unreasonably withheld. To the extent that there are disputed items between the Parties subject to resolution under Section 43 of the Contract, DCAMM may agree to issue a conditional Final Project Notification Approval subject to the final resolution of all such disputed items.
- d. The date on which DCAMM notifies CONTRACTOR in writing that it accepts all the Installation Services and their operation as 100% complete shall be the Final Project Notification Approval Date unless otherwise noted in the Final Project Notification Approval.

- e. DCAMM shall not be required to accept the Project as 100% complete until CONTRACTOR has complied with all of the closeout procedures in **Schedule B-10: Closeout Procedures and Forms**, for all Installation Services required under this Contract and CONTRACTOR has completed all other obligations under this Contract.

Section 29 Ownership of Property

- 29.1 Ownership of Certain Proprietary Property Rights.** CUSTOMER shall not, by virtue of this Contract, acquire any ownership rights in any formulas, patterns, devices, secret inventions or processes, copyrights, patents or other intellectual property rights, or similar items of property which may be used in connection with the New Equipment/Systems. CUSTOMER shall, however, have a nonexclusive license to utilize all such intellectual or proprietary rights in connection with the use of the New Equipment/Systems under this Contract. CONTRACTOR hereby grants to CUSTOMER a perpetual, irrevocable, royalty-free license to any and all software or other intellectual property or proprietary rights necessary for CUSTOMER to continue to operate, maintain, and repair the New Equipment/Systems in a manner that shall yield maximal energy and water consumption reductions. This license shall continue subsequent to any termination or expiration of this Contract other than termination due to breach by CUSTOMER.
- 29.2 Ownership of Documents.** All drawings, reports and materials prepared by CONTRACTOR specifically for this Project or in performance of this Contract, including but not limited to the Design, As-Built Drawings, and record drawings, shall become the property of CUSTOMER.
- 29.3 Ownership of Existing Equipment/Systems.** Ownership of the Existing Equipment/Systems and materials existing at the Premises at the time of the Effective Date shall remain the property of CUSTOMER.
- 29.4 Title to Installed New Equipment/Systems.** Upon issuance of the Final Project Notification Approval, title to all New Equipment/Systems installed by Contractor pursuant to this Contract shall vest in FACILITY, or its designee, upon payment in full to CONTRACTOR in accordance with Section 4 and **Schedule B-3: Payment Terms**, free and clear of any liens, encumbrances or claims as is, where is without any warranties either express or implied, except as provided in **Schedule C-1: Extended Warranty**, and at no additional cost or charge to CUSTOMER.

Section 30 Savings

All Installation Services shall be conducted to ensure that the Energy Savings are achieved. Savings estimates, tied to performance specifications of the New Equipment/Systems, are set forth at **Schedule D: ENERGY SAVINGS**. CONTRACTOR shall submit updated calculations of the Energy Savings no less than quarterly throughout the Project. CONTRACTOR, at no cost to CUSTOMER, shall be responsible for investigating and recommending any necessary updates and/or modifications to the Design and/or Installation Services to compensate for any reduction in the Energy Savings shown in updated calculations.

Section 31 Replenishable Stock

CONTRACTOR shall provide replenishable stock of all New Equipment/Systems as set forth in **Schedule C-2: Stock and Replacement Parts**.

Section 32 Warranties

32.1 Builder's Warranty.

- a. CONTRACTOR warrants that all New Equipment/Systems sold and installed as part of this Contract is new, shall be free from defects in materials or workmanship, conform to applicable Laws, shall be installed properly in a good and workmanlike manner, and shall function properly for its stated purpose for a period of one (1) year from the Substantial Completion Date for each ECM, unless otherwise agreed to by DCAMM and the CONTRACTOR (Builder's Warranty).
- b. No later than thirty (30) calendar days prior to the expiration of the Builder's Warranty, CONTRACTOR shall schedule an appointment with CUSTOMER for a re-inspection of the work with CUSTOMER, and shall thereafter inspect the work at the time scheduled. Based on this inspection and on prior inspections, CUSTOMER shall issue a "Warranty Repair List" of items to be corrected by CONTRACTOR. CONTRACTOR shall make the repairs and/or replacements listed within thirty (30) calendar days of the issuance of the Warranty Repair List unless otherwise agreed by CUSTOMER in writing.
- c. After the conclusion of the Builder's Warranty, CONTRACTOR shall have no responsibility under this Contract for performing repairs, or making manufacturer warranty claims relating to the New Equipment/Systems, except as provided in CONTRACTOR's extended warranty services set forth in **Schedule C-1: Extended Warranty**.

32.2 Manufacturers' Warranties.

- a. All manufacturers' warranties shall be transferable and extended to CUSTOMER. The warranties shall specify that only new, not reconditioned, parts may be used and installed when repair is necessitated by malfunction.
- b. CONTRACTOR further agrees to assign and deliver to CUSTOMER all manufacturers' warranties relating to the New Equipment/Systems and to deliver such written warranties and which shall be attached and set forth in **Schedule C-1: Extended Warranty**. From the Substantial Completion of a particular ECM through the expiration of Builder's Warranty or the transfer of the manufacturers' warranties to DCAMM, whichever is later, CONTRACTOR shall pursue rights and remedies against the manufacturer of the New Equipment/Systems under the applicable warranties.
- c. CONTRACTOR shall notify DCAMM regarding any rights and/or remedies CONTRACTOR pursues on CUSTOMER's behalf pursuant to this section.

- d. The cost of any risk of damage or damage to the New Equipment/Systems and its performance, including damage to property and New Equipment/Systems of CUSTOMER or the Premises, due to CONTRACTOR's failure to exercise its warranty rights shall be borne solely by CONTRACTOR.

32.3 Extended Warranty Obligations. CONTRACTOR shall provide all service, repairs, and adjustments to the New Equipment/Systems installed as set forth in **Schedule C: EXTENDED WARRANTY**. CONTRACTOR is not required to perform any warranty related services beyond the Builder's Warranty and responsibilities stated above related to manufacturer's warranties unless extended warranty services are included in **Schedule C-1: Extended Warranty**.

Section 33 O&M Manuals.

Prior to the Substantial Completion Date CONTRACTOR shall provide CUSTOMER with the Operation and Maintenance (O&M) manuals, including but not limited to preventative maintenance schedules for all New Equipment/Systems installed for this project. Once so provided, the O&M manuals shall become the property of the CUSTOMER. The O&M manuals shall detail the maintenance requirements for the New Equipment/Systems for each ECM. Four (4) copies each of the O&M manuals shall be provided, two (2) printed copies and two (2) in electronic spreadsheet format. CONTRACTOR shall, where reasonably practicable, coordinate its efforts in this area with CUSTOMER's staff involved with administering any state-wide preventive maintenance programs.

Section 34 New Equipment/Systems Inventory

CONTRACTOR shall provide for each building a list of all major New Equipment/Systems installed, including the manufacturer, brand name, model (if applicable), New Equipment/Systems components, and recommended maintenance procedures for each piece of New Equipment/Systems. Two (2) printed copies and two (2) CDs in electronic spreadsheet format shall be provided to CUSTOMER.

Section 35 CONTRACTOR's Extended Maintenance Obligations

The Parties acknowledge and agree that any obligations for CONTRACTOR to provide service, repairs, and adjustments to the New Equipment/Systems installed following the Substantial Completion Date, if any, shall be addressed in the Post-Installation Services Agreement. The Total Contract Value of this Contract does not include the costs of such extended maintenance services.

Section 36 Standards of Comfort

CONTRACTOR shall perform the Services in a manner that shall provide the standards of heating, cooling, hot water, lighting and other systems as set forth in the BOD (Standards of Comfort). Unless otherwise specified in the BOD, the Standards of Comfort shall include the provision of heat of not less than 55 degrees Fahrenheit nor more than 75 degrees Fahrenheit. If at any time during the Contract Term the Standards of Comfort are not being met by the New Equipment/Systems, CONTRACTOR shall commence the correction of such deficiencies within seven (7) calendar days of receipt of CUSTOMER's written request to do so and shall complete the correction work within thirty (30) calendar days from the date of

receipt of such notice, unless it is an emergency under Section 16.4, in which case the terms of Section 16.4 shall control.

If changes in the operation of the New Equipment/Systems are warranted to achieve the required Standards of Comfort then adjustments shall be reflected in the M&V calculations set forth in **Schedule B-5: Commissioning/M&V**. Failure to make the corrections required to achieve the Standards of Comfort or give written notice to CUSTOMER regarding the cause of the deficiencies in accordance with the time provided herein may constitute an event of default hereunder.

To the extent that CONTRACTOR claims that such change in the Standards of Comfort is the result of the acts or omissions of CUSTOMER or other third party, CONTRACTOR shall give written notice to CUSTOMER within the seven (7) calendar days provided above. Disputes related to deviations from the required Standards of Comfort shall be resolved in accordance with Section 43 of the Contract.

Section 37 Incentives

37.1 Utility Incentives. Any utility incentive payments expected to be achieved as set forth in the **Schedule B-3: Payment Terms** shall, at the sole and absolute discretion of DCAMM, be subject to withholding of retainage until satisfactory evidence is produced to DCAMM evidencing all available incentive amounts have been properly applied for and approved by the applicable utility company and assigned to DCAMM. In the event that CONTRACTOR guarantees the Utility Incentive amounts and fails to obtain them, the Total Contract Value will be reduced by the difference between the amount guaranteed by CONTRACTOR and the amount actually obtained.

37.2 Contractual energy payments from incentives and other programs. CONTRACTOR, in good faith, shall explore all available outside utility rebate programs not set forth in **Schedule B-3: Payment Terms**, federal government programs related to tax incentives and tax credits, emissions offsets and credits, ISO New England (ISO-NE) Forward Capacity Market programs that may be gained as a result of the Installation Services. CONTRACTOR shall provide CUSTOMER with immediate notification of the potential for such payments to be gained. All such payments shall accrue to DCAMM, if secured. In exchange, to the extent that such payments require additional labor, engineering, or other work by CONTRACTOR, CUSTOMER shall, in good faith, review any request for an equitable adjustment to the Total Contract Value as set forth in Section 23 and **Schedule B-9: Instructions/Model Forms for Submission of Project Change Requests**, including, but not limited to, a percentage of the amount actually obtained above and beyond the amounts set forth in the Total Contract Value Summary Sheet included in **Schedule B-3: Payment Terms**.

PART C – LEGAL/SPECIAL PROVISIONS

Section 38 Indemnification

To the fullest extent permitted by law, CONTRACTOR shall indemnify, defend (with counsel subject to the supervision of the Attorney General of the Commonwealth of Massachusetts

as required by M.G.L. c. 12, § 3) and hold harmless CUSTOMER and all of its agents and employees 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 omissions of CONTRACTOR in performance of this Contract, whether by CONTRACTOR or its employees, consultants or Subcontractors, provided that the CUSTOMER shall notify CONTRACTOR of such suits and claims within a reasonable time after the CUSTOMER becomes aware of them. The provisions of this Section are intended to survive Final Project Notification Approval and/or any termination of this Contract.

Section 39 Insurance Requirements

Certificates substantiating that required insurance coverage is in effect shall be filed with DCAMM. Any cancellation of insurance whether by the insurers or by the insured shall not be valid unless written notice thereof is given by the party proposing cancellation to the other party and to CUSTOMER at least thirty (30) calendar days prior to the intended effective date thereof, which date shall be expressed in said notice.

39.1 Insurance Generally.

- a. CONTRACTOR shall purchase and maintain the insurance of the type and limits listed in this Section with respect to the operations as well as the completed operations of the CONTRACTOR. This insurance shall be provided at CONTRACTOR's expense and shall be in full force and effect through the Contract Term or for such longer period as this Section requires. CONTRACTOR may offer insurance coverages that are structurally different than those outlined in this Section but that are acceptable to CUSTOMER at its sole discretion.
- b. All policies, except for Professional Liability insurance, shall be written on an occurrence basis. All policies shall be issued by companies lawfully authorized to write that type of insurance under the laws of the Commonwealth of Massachusetts with a financial strength rating of A- or better as assigned by A.M. Best Company, or otherwise acceptable to the CUSTOMER.
- c. CONTRACTOR shall submit an original of each certificate of insurance, acceptable to CUSTOMER, in advance of the execution of this Contract. Certificates shall show each type of insurance, insurance company, policy number, any endorsements, amount of insurance, deductibles and /or self-insured retentions, and policy effective and expiration dates. Certificates shall specifically note the following:
 - that the automobile liability, umbrella liability and pollution liability policies include the "Commonwealth of Massachusetts" as additional insureds.
 - that all policies include the coverage and endorsements in accordance with the terms and conditions as required by this Contract.
 - that the Builders' Risk or Installation Floater is on an "all risk" basis including earthquake and flood, and includes the "Commonwealth of

Massachusetts and CONTRACTOR as named insureds or joint loss payees as their interests may appear.

- that none of the coverages shall be cancelled, terminated, or materially modified unless and until 30 days prior notice is given in writing to the CUSTOMER.

CONTRACTOR shall submit updated certificates prior to the expiration of any of the policies referenced in the certificates so that CUSTOMER shall at all times possess certificates indicating current coverage.

- d. CUSTOMER reserves the right to request certified complete copies of all policies and endorsements at any time during this Contract Term. If CUSTOMER is damaged by CONTRACTOR's failure to maintain such insurance and to comply with the terms of this Section, then CONTRACTOR shall be responsible for all costs and damages to the CUSTOMER attributable thereto.
- e. CONTRACTOR is responsible for the payment of any and all deductibles under all of the insurance required below. CUSTOMER shall not in any instance be responsible for the payment of deductibles, self-insured retentions, or any portion thereof.

39.2 CONTRACTOR's Commercial General Liability.

- a. CONTRACTOR shall purchase and maintain general liability coverage on the ISO form CG 00 01 or equivalent, including products and completed operations, on an occurrence basis. The form must be amended to state that the aggregate limit applies on a per location/project basis. The policy shall provide the following minimum coverage to protect CONTRACTOR from claims with respect to the operations performed by CONTRACTOR and any employee, Subcontractor, or supplier, or by anyone for whose acts they may be liable unless a higher amount is specified in writing by CUSTOMER, in which case CONTRACTOR shall provide the additional coverage:

Bodily Injury & Property Damage	\$1,000,000 each occurrence, \$2,000,000 general aggregate per project
Products & Completed Operations	\$1,000,000 annual aggregate
Personal & Advertising Injury	\$1,000,000 each occurrence
Medical Expenses	\$5,000 any one person

- b. This policy shall include coverage relating to explosion, collapse, and underground property damage.
- c. This policy shall include contractual liability coverage.
- d. The completed operations coverage shall be maintained for a period of three (3) years after the termination of the Contract. CONTRACTOR shall provide renewal certificates of insurance to the CUSTOMER as evidence that this coverage is being maintained.

- e. If the New Equipment/Services installed includes work to be performed within 50 feet of a railroad, any exclusion for liability assumed under contract for work within 50 feet of a railroad shall be deleted.
- f. This policy shall include the "Commonwealth of Massachusetts" as additional insureds via endorsements CG 20 10 (or its equivalent) for ongoing operations and CG 20 37 (or its equivalent) for completed operations. This policy shall be primary and non-contributory with respect to any other insurance available to additional insureds.
- g. To the extent that a loss is covered by insurance in force, and recovery is made for such loss, CUSTOMER and CONTRACTOR, including their respective agents and employees, mutually waive their rights of subrogation under the Commercial General Liability insurance coverage set forth herein.

39.3 Automobile Liability.

- a. CONTRACTOR shall purchase and maintain the following minimum coverage with respect to the operations of any owned, non-owned, and hired vehicles including trailers used in the performance of the work, unless a higher amount is specified in writing by CUSTOMER, in which case CONTRACTOR shall provide the additional coverage:

Bodily Injury & Property Damage \$1,000,000 combined single limit

- b. The policy shall include a CA 99 48 Broadened Pollution Endorsement. If specified in writing by CUSTOMER, CONTRACTOR, if hauling contaminants and/or pollutants, must adhere to Sections 29 and 30 of the Motor Carrier Act of 1980, which shall include coverage Form MCS-90.
- c. The policy shall contain a Waiver of Subrogation in favor of the CUSTOMER.

39.4 Pollution Liability.

CONTRACTOR shall purchase and maintain coverage for bodily injury and property damage 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 CONTRACTOR 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 and clean-up costs. The coverage must be on an occurrence basis. The amount of coverage shall be as follows unless a higher amount is specified in writing by CUSTOMER, in which case CONTRACTOR shall provide the additional coverage:

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

39.5 Worker's Compensation.

- a. CONTRACTOR shall provide the following coverage in accordance with M.G.L. c.149 § 34A and c.152 as amended, unless a higher amount is specified in writing by CUSTOMER, in which case CONTRACTOR shall provide the higher coverage:

Worker's Compensation	Statutory limits
Employer's Liability	\$ 500,000 each accident
	\$ 500,000 disease per employee
	\$ 500,000 disease policy aggregate

- b. **[DCAMM OGC to remove if not applicable]** If specified herein, the policy must be endorsed to cover United States Longshoremen & Harborworkers Act (USL&HW) or Maritime Liability for \$1,000,000/\$1,000,000.
- c. To the extent that a loss is covered by Workers' Compensation insurance in force and recovery is made for such loss, CUSTOMER and CONTRACTOR, including their respective agents and employees, mutually waive their rights of subrogation under the Workers' Compensation insurance coverage set forth herein.

39.6 Builder's Risk/ Installation Floater/Stored Materials.

- a. CONTRACTOR shall purchase and maintain coverage against loss or damage to the Project in an amount equal to the Installation Costs as set forth in **B-3: Payment Terms**. Such coverage shall be written on an all risks basis or equivalent form and shall include, without limitation, insurance against perils of fire (with extended coverage) and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, terrorism ("certified" and "non-certified"), collapse, earthquake, flood (if the project is not in an "A" or a "V" flood zone), windstorm, falsework, testing and startup, temporary buildings and debris removal including demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for CONTRACTOR's services and expenses required as a result of such insured loss. This policy and/or installation floater shall include transportation and Stored Materials coverage in an amount equal to the value of the stored materials as required in Section 39.6(c) below.
- b. When Services required by this Contract are to be performed on existing buildings owned by CUSTOMER, CONTRACTOR shall provide an installation floater, in the full amount of the Installation Costs. Such coverage shall be written on an all risks basis or equivalent form and shall include, without limitation, insurance against perils of fire (with extended coverage) and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, earthquake, flood (if the project is not in an "A" or a "V" flood Zone), windstorm, falsework, testing and startup, temporary buildings and debris removal including demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for CONTRACTOR's services and expenses required as a result of such insured loss. This policy and/or installation floater shall include

transportation and Stored Materials coverage in an amount equal to the value of the stored materials as required in Section 39.6(c) below.

- c. CONTRACTOR shall maintain insurance on delivered and/or stored material designated to be incorporated in the Project against fire, theft or other hazards. Any loss or damage of whatever nature to such material while stored at an off-site location shall be forthwith replaced by CONTRACTOR at no expense to the CUSTOMER.
- d. The policy or policies shall specifically state that they are for the benefit of and payable to CUSTOMER, CONTRACTOR, and all persons furnishing labor or labor and materials for the installation of New Equipment/Services, as their interests may appear. The policy or policies shall list the "Commonwealth of Massachusetts and CONTRACTOR as named insureds.
- e. Coverage shall include any costs for work performed by CONTRACTOR's Designer or any consultant as the result of a loss experienced during the Contract Term.
- f. Coverage shall include permission for temporary occupancy and a Waiver of Subrogation in favor of the CUSTOMER.
- g. Coverage shall be maintained throughout the Contract Term until such time as the Final Project Notification Approval has been issued.

A loss under the property insurance shall be adjusted by CONTRACTOR as fiduciary and made payable to CONTRACTOR as fiduciary for the insureds. CONTRACTOR shall pay the Subcontractors their just shares of insurance proceeds received by CONTRACTOR and shall require Subcontractors to make payments to their sub-Subcontractors in similar manner.

39.7 Umbrella Coverage.

CONTRACTOR shall provide Umbrella Coverage in form at least as broad as primary coverages required by Sections 39.2, 39.3, and 39.5 in the following amount unless a higher amount is specified in the Contract, in which case CONTRACTOR shall provide the higher amount:

<u>Total Contract Value</u>	<u>Limit of liability:</u>
Under \$1,000,000	\$2,000,000 per occurrence
\$1,000,000 -- \$5,000,000	\$5,000,000 per occurrence
\$5,000,001-- \$10,000,000	\$10,000,000 per occurrence
\$10,000,001 and over	\$25,000,000 per occurrence

39.8 Professional Liability Insurance.

CONTRACTOR and its Designer shall maintain Professional Liability Insurance (PLI) covering negligent acts, errors, or omissions in professional services of CONTRACTOR, its Designer, and of any person or entity for whose performance CONTRACTOR or its Designer is legally liable in the following amount unless an alternate amount is specified in writing by CUSTOMER:

Liability limit \$5,000,000 per claim

If the policy is claims-made, it shall include a retroactive date which is no later than the effective date of this Contract, and be renewed or have an extended reporting period totaling at least six (6) years which requirement can be met by providing renewal certificates of insurance to CUSTOMER as evidence that the PLI coverage is being maintained.

If the installation of New Equipment/Services work involves the removal or remediation of Hazardous Materials and/or the CUSTOMER requires CONTRACTOR to provide services in connection with Hazardous Materials conditions, the PLI policy, and the PLI policy of any subconsultants employed on such Hazardous Material services, shall provide coverage for any and all claims and liability arising out of any negligent act, error or omission in the performance of any such Hazardous Material services.

39.9 Additional Types of Insurance.

CONTRACTOR shall provide such other types of insurance as may be required in writing by CUSTOMER in the performance of Services under this Contract.

Section 40 Bonding Requirements/Performance and Payment Bonds

CONTRACTOR shall furnish both a Performance Bond and a Labor and Material Payment Bond in the amount of the Installation Costs. Such bonds shall be in the form provided by the CUSTOMER and executed by a corporate surety licensed by the Commonwealth of Massachusetts Division of Insurance and whose name appears on United States Treasury Department Circular 570. The expense of these bonds shall be borne by CONTRACTOR and the bonds shall be submitted to CUSTOMER at the time of Contract execution. Such executed bonds are incorporated herein by reference as Exhibit II (Performance Bond) and Exhibit III (Labor and Material Payment Bond). If, at any time, a Surety on such a bond becomes irresponsible or loses its right to do business in the Commonwealth of Massachusetts, another Surety shall be required, and CONTRACTOR shall furnish new executed bonds to CUSTOMER within ten calendar (10) days of receipt of notice by CONTRACTOR of such event. Upon request, DCAMM will grant release of bonds following the completion of the Design and Installation Term.

Section 41 Default

41.1 Events of Default by CUSTOMER. Each of the following events or conditions shall constitute a "Customer Event of Default" by CUSTOMER:

- a. CUSTOMER fails to pay any undisputed amount required to be paid hereunder within ninety (90) calendar days of receipt of written notice from CONTRACTOR that such amount is delinquent, except as provided for in Section 4;
- b. CUSTOMER assigns the Contract to any person or entity without CONTRACTOR's consent, as described in Section 44;
- c. any representation or warranty furnished by CUSTOMER in this Contract that was false or misleading in any material respect when made;

- d. any other material failure by CUSTOMER to perform or comply with the terms and conditions of this Contract.

41.2 Notice of Alleged Event of Default to CUSTOMER and Right to Cure. If there is an alleged Customer Event of Default as provided above, then CUSTOMER shall have an opportunity to cure such Customer Event of Default as provided for herein.

- a. Within thirty (30) calendar days of the discovery of a Customer Event of Default, CONTRACTOR shall give written "Notice to Cure Event of Default" to CUSTOMER, specifying the alleged default;
- b. CUSTOMER shall then have thirty (30) calendar days from the receipt of the Notice to Cure Event of Default to cure, or
- c. if a cure for the Customer Event of Default cannot be completed in such thirty (30) calendar days, then CUSTOMER shall commence good faith efforts to cure in that period with diligent subsequent performance to cure such default. CUSTOMER shall, within thirty (30) days of receipt of the Notice to Cure, provide written response to the CONTRACTOR that states its actions to Cure the Event of Default and an estimated date upon which such default shall be cured.

41.3 Failure to Cure or Commence Reasonable Efforts. If CUSTOMER fails to cure the Customer Event of Default or commence good faith efforts to cure within thirty (30) days as provided herein, then CONTRACTOR shall issue a "Notice of Default" to CUSTOMER and CONTRACTOR may proceed in accordance with Section 41.4

41.4 Remedies Upon Default by CUSTOMER. If CUSTOMER is deemed to be in default of this Contract and has received a Notice of Default from CONTRACTOR as provided for in this Section, CONTRACTOR may, without a waiver of other remedies that exist in law or equity:

- a. exercise all remedies available at law or in equity or other appropriate proceedings including bringing an action or actions from time to time for recovery of amounts due and unpaid by CUSTOMER, and/or for damages which shall include all costs and expenses reasonably incurred, including reasonable attorney fees;
- b. terminate the Contract in accordance with Section 42.1.

41.5 Technical Events of Default by CONTRACTOR.

- a. *Technical Events of Default.* Each of the following events or conditions shall constitute a "Technical Event of Default" by CONTRACTOR:
 - (i) CONTRACTOR has filed a petition, or a petition has been filed against CONTRACTOR with its consent, under any federal or state law concerning bankruptcy, reorganization, insolvency or relief from creditors, or if such a petition is filed against CONTRACTOR without its consent and is not dismissed within sixty (60) calendar days; or if CONTRACTOR is generally not paying its debts as they become due;

or if CONTRACTOR becomes insolvent; or if CONTRACTOR consents to the appointment of a receiver, trustee, liquidate, custodian or the like of CONTRACTOR or of all or any substantial portion of its assets and such appointment or possession is not terminated within sixty (60) calendar days; or if CONTRACTOR makes an assignment for the benefit of creditors;

- (ii) CONTRACTOR has failed to comply with Laws;
- (iii) CONTRACTOR fails to maintain, or provide to CUSTOMER evidence of the insurance or bonds required hereby;
- (iv) Any other failure by CONTRACTOR to maintain CUSTOMER's legal protections against failure or nonperformance contained in Sections, 40, 41 and 42 of the Contract.

b. *Notice to CONTRACTOR and Right to Cure.*

- (i) If there is a Technical Event of Default by CONTRACTOR as provided in Section 41.5(a), CUSTOMER shall issue a "Notice of Technical Event of Default" to CONTRACTOR via electronic mail delivery, read receipt requested.
- (ii) CONTRACTOR shall immediately commence efforts to cure the Technical Event of Default and provide to DCAMM a notice of its intent to cure such Technical Event of Default within three (3) calendar days of such "Notice of Technical Event of Default."
- (iii) Should CONTRACTOR fail to cure a Technical Event of Default within five (5) calendar days or provide sufficient assurance, such sufficiency to be within the sole and exclusive discretion of DCAMM, that such Technical Event of Default shall be cured within an additional five (5) calendar days (or ten (10) calendar days from original Notice provided by DCAMM) CUSTOMER may immediately proceed with termination of this Contract in accordance with Section 42.

41.6 Material of Default by CONTRACTOR.

- a. *Material Events of Default.* Any failure by CONTRACTOR, other than a Technical Event of Default as provided for in Section 41.5 above, to comply with the terms and conditions of this Contract, including without limitation breach of any covenant contained herein, shall constitute a "Material Event of Default" by CONTRACTOR.
- b. *Notice to CONTRACTOR and Right to Cure.*
 - (i) If a Material Event of Default as provided for in Section 41.6(a) occurs, then within thirty (30) calendar days of discovery of the Material Event of Default, CUSTOMER shall issue to CONTRACTOR a written "Notice of Material Event of Default."
 - (ii) CONTRACTOR shall cure or remedy the subject Material Event of Default within thirty (30) days from the receipt of the Notice of Material

Event of Default, or if a cure for the Material Event of Default cannot be completed in such thirty (30) days, then CONTRACTOR shall commence good faith efforts to cure in that period with diligent subsequent performance to cure such Material Event of Default. CONTRACTOR shall respond via written notice within thirty (30) days of receipt of the Notice of Event of Material Default that such Material Event of Default has been cured or describe good faith efforts to cure.

- (iii) If CONTRACTOR fails to make reasonable efforts to cure the Material Event of Default or commence good faith efforts to cure within thirty (30) days of receipt of the Notice of Material Event of Default, then CUSTOMER may issue a "Notice of Default" to CONTRACTOR. If within seven (7) calendar days of receipt of such Notice of Default, CONTRACTOR still fails to cure the Event of Default then CUSTOMER may proceed in accordance with Section 41.7.

41.7 Remedies upon Default by CONTRACTOR. Where a "Technical Event of Default or Material Event of Default" (collectively, a "Contractor Event of Default" occurs in accordance with Sections 41.5 or 41.6 of the Contract and CONTRACTOR has failed to cure such Contractor's Event of Default, CUSTOMER may, without waiver of other remedies which exist in law or equity:

- a. exercise any and all remedies at law or equity, or institute other proceedings, including, without limitation, bringing an action or actions from time to time for specific performance, and/or for the recovery of damages, which shall include all costs and expenses reasonably incurred, including reasonable attorneys' fees incurred by CUSTOMER as a result of CONTRACTOR's default;
- b. withhold a portion of any payments that may be due to CONTRACTOR under the terms of this Contract until such time as the default is cured;
- c. terminate this Contract in accordance with Section 42.

Section 42 Termination

42.1 Termination for Cause by CONTRACTOR. CONTRACTOR may, without prejudice to any other right or remedy, deem this Contract "terminated for cause" if any CUSTOMER Event of Default is not cured in accordance with Section 41. CONTRACTOR shall provide CUSTOMER notice of termination for cause at least ninety (90) calendar days prior to the effective date of the proposed termination.

Upon termination, pursuant to this Section 42, CONTRACTOR shall only be entitled to payment for Services performed prior to the effective date of the termination. The amount of such termination payment shall be calculated in accordance **Schedule B-3: Payment Terms**, less any reasonable damages and costs incurred by CUSTOMER related to a CONTRACTOR Event of Default.

42.2 Termination for Cause by CUSTOMER.

- a. CUSTOMER may, without prejudice to any other right or remedy, deem the Contract "terminated for cause" if any Contractor Event of Default is not cured

by CONTRACTOR in accordance with Section 41 (a "Termination for Cause"). Such termination for cause shall be deemed effective when written notice is given by CUSTOMER to CONTRACTOR (and any surety that has given bonds in connection with the Contract) and CONTRACTOR has failed to cure within five (5) calendar days of such notice of termination for cause.

- b. CUSTOMER shall give CONTRACTOR (and any surety) notice of such Termination for Cause, but the giving of notice of such termination shall not be a condition precedent or subsequent to the termination's effectiveness. In the event of such termination, and without limiting any other available remedies, CUSTOMER may, at its option:
 - (i) hold CONTRACTOR and its sureties liable in damages for breach of the Contract Documents;
 - (ii) notify CONTRACTOR to discontinue all Services, or any part thereof, and CONTRACTOR shall discontinue all Services, or any part thereof, as CUSTOMER may designate;
 - (iii) complete the Services, or any part thereof, and charge the expense of completing the Services or part thereof, to CONTRACTOR;
 - (iv) require the surety or sureties to complete the Services and perform all of CONTRACTOR's obligations under the Contract Documents.
- c. If CUSTOMER elects to complete all or any portion of the Services as specified in subparagraph (b) (iii) above, it may take possession of all materials, New Equipment/Systems, tools, machinery, implements at or near the Premises owned by CONTRACTOR and finish the Services at CONTRACTOR's expense by whatever means the CUSTOMER may deem expedient; and CONTRACTOR shall cooperate at its expense in the orderly transfer of the same to a new contractor or to CUSTOMER as directed by CUSTOMER. In such case CUSTOMER shall not be obligated to make any further payments to CONTRACTOR until the Services are completely finished. CUSTOMER shall not be liable for any depreciation, loss or damage to said materials, machinery, implements or tools during said use and CONTRACTOR shall be solely responsible for their removal from the Premises after CUSTOMER has no further use for them. Unless so removed within fifteen (15) calendar days after notice to CONTRACTOR to do so, they may be sold at public auction, after publication of notice thereof at least twice in any newspaper published in the county where the Services are being performed, and the proceeds credited to CONTRACTOR's account; or they may, at the option of CUSTOMER, be stored at CONTRACTOR's expense subject to a lien for the storage charges.
- d. Damages and expenses incurred under subparagraph (b) above shall include, but not be limited to, costs for any extra services required by the CUSTOMER or its consultants, in the opinion of the CUSTOMER, to successfully inspect and administer the Contract through final completion of the Services.
- e. Expenses charged under subparagraph (b) above may be deducted and paid by CUSTOMER out of any moneys then due or to become due CONTRACTOR hereunder.

- f. All sums, damages, and expenses incurred by CUSTOMER to complete the Services shall be charged to CONTRACTOR. In case the damages and expenses charged are less than the sum that would have been payable under this Contract if the same had been completed by CONTRACTOR, CONTRACTOR shall be entitled to receive the difference. In case such expenses shall exceed the said sum, CONTRACTOR shall pay the amount of the excess to CUSTOMER.
- g. In the event of a Termination for Cause by CUSTOMER, CONTRACTOR shall only be entitled to payment for Services performed prior to the effective date of the termination. The amount of such termination payment shall be calculated in accordance with **Schedule B-3: Payment Terms**, less any damages and costs incurred by CUSTOMER as set forth in this Section 42.2 subparagraphs (b) through (f) above.
- h. Any payment to CONTRACTOR provided for herein shall be considered to fully compensate CONTRACTOR for all claims and expenses and those of any consultants, Subcontractors, and suppliers, directly or indirectly attributable to the termination, including any claims for lost profits.

42.3 Termination for Convenience by CUSTOMER.

- a. CUSTOMER may terminate this Contract for convenience even where there has been no Material Event of Default or Technical Event of Default by giving written notice to CONTRACTOR specifying the effective date of termination.
- b. In the event of a termination for convenience, CONTRACTOR shall only be entitled to payment for Services performed prior to the effective date of the termination. The amount of such termination payment shall be calculated in accordance with **Schedule B-3: Payment Terms**, plus a reasonable sum to cover the expenses which CONTRACTOR would not have incurred “but for” the early termination of this Contract (such as demobilization of the work force, restocking charges, termination fees payable to Subcontractors) less any amount which the CUSTOMER determines is necessary to correct or complete Services performed prior to the effective date of termination.
- c. Any payment to CONTRACTOR provided for herein shall be considered to fully compensate CONTRACTOR for all claims and expenses and those of any consultants, Subcontractors, and suppliers, directly or indirectly attributable to the termination, including any claims for lost profits.
- d. Upon CUSTOMER’s termination of this Contract for convenience as provided herein, CONTRACTOR shall:
 - (i) Stop the Services;
 - (ii) stop placing orders and Subcontracts in connection with this Contract;
 - (iii) Cancel all existing orders and subcontracts;
 - (iv) Surrender the Premises to CUSTOMER in a safe condition;

- (v) Transfer to CUSTOMER all materials, supplies, work in process, appliances, New Equipment/Systems and machinery of the Contract, and all plans, Drawings, specifications and other information and documents used in connection with this Contract.

42.4 Repair and Replacements after Termination. In the event of termination under this Section 42 CONTRACTOR shall assign to FACILITY any and all warranties provided for in the Contract and **Schedule C-1: Extended Warranty**. If such termination occurs prior to the issuance of a Final ECM/Equipment Acceptance Notice (or Final Project Notification Approval) then, if requested by CUSTOMER, for a period of one year after termination, CONTRACTOR guarantees that it shall provide CUSTOMER with materials, equipment and skilled workers to repair or replace any of the New Equipment/Systems installed pursuant to this Contract, provided that CONTRACTOR and CUSTOMER shall mutually negotiate a reasonable cost for such materials, equipment, and labor required during such one year period. If termination occurs after the issuance of a Final ECM/Equipment Acceptance Notice (or Final Project Notification Approval) then, CONTRACTOR shall still be required to honor all warranty obligations provided for in Section 32 and **Schedule C-1: Extended Warranty**.

42.5 Survival of Rights. In the event that either party terminates the Contract pursuant to this Section 42, any claims arising out of the performance of the Contract prior to the effective date of the termination, shall survive termination.

42.6 Reservation of Rights upon Termination. In the event of termination, CONTRACTOR and CUSTOMER reserve the right to exercise all remedies available at law or at equity or other appropriate proceedings subject to the requirements of Section 43.

Section 43 Dispute Resolution

43.1 Notice of Claim. CONTRACTOR shall provide written notice of any claims against CUSTOMER, including an appeal of the denial of any Change Order request, within thirty (30) calendar days of notice of such claim or shall be deemed to have waived such claims.

43.2 Mandatory Mediation. Any and all disputes arising under this Contract, including but not limited to disputes arising under Section 23, Section 41, and Section 42 shall be subject to resolution pursuant to M.G.L. c.30, § 39Q. For the purpose of this Contract, the Commissioner of DCAMM shall be considered to be the "Chief Executive Official of the State Agency"; CUSTOMER shall be considered to be the "Awarding Authority" and CONTRACTOR shall be considered to be the "Contractor" as those terms are used in said Section 39Q. In the case of every dispute where the dollar amount in dispute (or the estimated dollar value of the extension of time in dispute) is \$50,000 or more and CONTRACTOR appeals the decision of the Commissioner of DCAMM (or his or her designee) as provided for in M.G.L. c. 30, § 39Q, CUSTOMER and CONTRACTOR shall engage in good faith in a non-binding mandatory mediation process, which process shall be concluded within sixty (60) calendar days from the date that CONTRACTOR files an appeal from said decision. In the case of such disputes where the dollar amount in dispute (or the estimated dollar value of the extension of time in dispute) is \$500,000 or more, the parties shall,

if the mediation process fails, submit the dispute to a third-party Neutral or Dispute Review Board which shall within sixty (60) calendar days render a non-binding advisory opinion. Unless the parties have previously agreed in writing to a process for submitting disputes to mediation or a Dispute Review Board, CUSTOMER shall determine in its reasonable discretion the procedures to be followed and shall give CONTRACTOR notice of the same in writing within thirty (30) calendar days of the date that CUSTOMER receives notice of CONTRACTOR's appeal from the decision of the Commissioner of DCAMM (or his or her designee). The cost of the services of any mediator selected by one party to this Contract shall be borne by the party making the selection. The cost of the services of any mediator selected jointly by the Parties or jointly by mediators selected by the Parties shall be borne equally by the Parties.

Section 44 Assignment

- 44.1** CUSTOMER shall not assign, transfer, or otherwise dispose of this Contract or any interest therein, without CONTRACTOR's prior written consent, which consent shall not be unreasonably withheld, delayed or conditioned.
- 44.2** CONTRACTOR may not assign, pledge or encumber its rights hereunder in whole or in part without the prior written consent of CUSTOMER except to an institutional lender, provided no such assignment shall affect CUSTOMER's rights or CONTRACTOR's obligations hereunder.
- 44.3** Assignment of CUSTOMER payments due herein to CONTRACTOR or to a third party is acceptable, but such assignment shall not impact CUSTOMER's right to withhold payments pursuant to Section 42 hereof.

Section 45 Representations and Warranties

- 45.1 Mutual Representations and Warranties.** Each Party represents and warrants represents to the other that as of the Effective Date and for the Contract Term:
 - a. it has all requisite power, authority, licenses, permits, and franchises, corporate or otherwise, to execute and deliver this Contract and perform its obligations hereunder;
 - b. its execution, delivery, and performance of this Contract have been duly authorized by, or are in accordance with, its organizational instruments, and this Contract has been duly executed and delivered by the signatories so authorized and it constitutes its legal, valid, and binding obligation;
 - c. its execution, delivery, and performance of this Contract does not, and shall not, result in a breach or violation of, or constitute a default under any agreement, lease or instrument to which it is a party or by which it or its properties may be bound or affected; or
 - d. it has not received any notice, nor to the best of its knowledge is there pending or threatened any notice, of any violation of any applicable Laws which would materially and adversely affect its ability to perform hereunder.

45.2 Additional Representations and Warranties by CUSTOMER. CUSTOMER hereby warrants, represents and promises that as of the Effective Date and for the Contract Term:

- a. CUSTOMER has not entered into any prior leases, contracts or agreements with other persons or entities regarding the leasing or acquisition of water or energy efficiency equipment or the provision of energy management services for the Premises, or with regard to servicing any of the energy related Existing Equipment/Systems located at the Premises that would encroach upon the scope of this Contract, unless specified in the Contract. CUSTOMER shall provide CONTRACTOR with copies of any successor or additional leases of energy efficiency equipment and contracts for management or servicing of preexisting Existing Equipment/Systems at Premises that may be executed from time to time hereafter if requested by CONTRACTOR.
- b. The authorization, approval and execution of this Contract and all other proceedings of CUSTOMER relating to the transactions contemplated hereby have been performed in accordance with all applicable Laws.

45.3 Additional Representations and Warranties by CONTRACTOR. CONTRACTOR hereby warrants, represents and promises that as of the Effective Date and for the Contract Term:

- a. Before commencing performance of the Contract:
 - (i) CONTRACTOR shall have become licensed or otherwise permitted to do business in the Commonwealth of Massachusetts;
 - (ii) CONTRACTOR shall have provided proof and documentation of all required insurance and bonds pursuant to this Contract.
 - (iii) CONTRACTOR shall warrant the accuracy of, and representations in, the Proposal except the agreed upon stipulated variables.
- b. CONTRACTOR shall make available, upon reasonable request, documents relating to its performance under this Contract, including contracts and subcontracts it shall enter into;
- c. CONTRACTOR shall use Subcontractors who are qualified, licensed and bonded in the Commonwealth of Massachusetts to perform the work so subcontracted pursuant to the terms hereof;
- d. CONTRACTOR has all requisite authority to license the use of proprietary property, both tangible and intangible, contemplated hereby;
- e. The New Equipment/Systems shall meet or exceed the systems startup and commissioning requirements in Section 25 and **Schedule B-5: Commissioning/M&V.**
- f. The New Equipment/Systems is or shall be compatible with all other mechanical and electrical systems, subsystems, or components with which

the New Equipment/Systems interacts at the Premises, and, as installed, neither the New Equipment/Systems nor such other systems, subsystems, or components shall materially adversely affect each other as a direct or indirect result of New Equipment/Systems installation or operation;

- g. That CONTRACTOR is financially solvent, able to pay its debts as they mature and is possessed of sufficient working capital to complete the Installation Services and perform its obligations under this Contract.

Section 46 Headings

Headings and subtitles used throughout this Contract are for the purpose of convenience only, and no heading or subtitle shall modify or be used to interpret the text of any section, hereof.

Section 47 No Waiver

The failure of CONTRACTOR or CUSTOMER to insist upon the strict performance of this terms and conditions hereof shall not constitute or be construed as a waiver or relinquishment of either party's right to thereafter enforce the same in accordance with the Contract in the event of a continuing or subsequent default on the part of CONTRACTOR or CUSTOMER.

Section 48 Complete Agreement/Severability

This Contract, when executed, together with all documents attached hereto or incorporated herein as provided for in Section 2 shall constitute the entire agreement between the parties and this Contract may not be amended, modified, or terminated except by a writing signed by the Parties.

In the event that any clause or provision of this Contract or any part thereof shall be declared invalid, void, or unenforceable by any court having jurisdiction, such invalidity shall not affect the validity or enforceability of the remaining portions of this Contract unless the result would be manifestly inequitable, unconscionable or unlawful.

Section 49 Amendments

No amendment hereto shall be effective unless evidenced in writing and signed by all Parties.

Section 50 Further Acts/Documents

The Parties shall execute and deliver all documents and perform all further acts that may be reasonably necessary to effectuate the provisions of this Contract.

Section 51 Notice and Consent

Any notice required or permitted hereunder shall be deemed sufficient if given in writing and delivered personally or sent by registered or certified mail, return receipt requested, postage prepaid, receipt obtained, to the address shown below or to such other persons or addresses

Project #:

as are specified by similar notice. Any consent required hereunder shall not be unreasonably withheld.

- a. In the case of a notice or other communication to CONTRACTOR:

CONTRACTOR
Address
Address

- b. In the case of a notice or other communication to CUSTOMER:

Division of Capital Asset Management and Maintenance
One Ashburton Place
Boston, MA 02108
Attention: Jayson D. Mitchell, Deputy Commissioner, ODC

And, with a copy to:

FACILITY
Address
Address

This Section shall not apply to reports, bills, or payments sent by one party to the other which may be sent by ordinary mail.

Section 52 Non-Appropriation

CUSTOMER certifies that at the time of the execution of this Contract, sufficient appropriations exist and shall be encumbered to fund the Total Contract Value. Payments are subject to appropriation and shall be made only for work performed in accordance with the terms of this Contract, provided that CUSTOMER shall make payment to CONTRACTOR for obligations incurred during the period for which funding was included in an annual or supplemental appropriation. CONTRACTOR shall not be obligated to perform, and shall not perform, work outside the scope of this Contract without an appropriate amendment to this Contract, and a sufficient appropriation(s) to support such additional work. CUSTOMER 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. Such termination shall be deemed a termination for convenience subject to the provisions of Section 42. Delay by the General Court in enacting an annual or supplemental appropriation bill shall not be grounds for termination of the Contract pursuant to this Section, unless such annual or supplemental appropriation bill as enacted and signed by the Governor contains insufficient funding for obligations pursuant to this Contract.

Section 53 Legal or Equitable Remedies; Complete Performance

No right or remedy conferred upon or reserved to the Parties by this Contract excludes any other rights or remedies provided by law or equity, nor restricts the Parties' rights to exercise any other such right or remedy.

Section 54 Application of Massachusetts Law/Compliance with Applicable Laws

All Services provided under this Contract shall comply with all Laws. This Contract shall be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts, without regard to its conflict of laws provisions.

Section 55 Force Majeure

If a Party shall be unable to reasonably perform any of its obligations under this Contract due to acts of God, insurrections or riots, materials or labor shortages, or similar events, this Contract shall at the other Party's option remain in effect but the obligations of both Parties shall be suspended until said events shall have ended.

Section 56 Independent Contractor

Except as specifically provided elsewhere in this Contract, nothing shall be construed as reserving to CUSTOMER any right to exercise any control over or to direct in any respect the conduct or management of business or operations of CONTRACTOR on the Premises. The entire control or direction of such business and operations shall be in and shall remain in CONTRACTOR, subject only to CONTRACTOR's performance of its obligations under this Contract. Neither CONTRACTOR nor any person performing any duties or engaged in any work on the Premises on behalf of CONTRACTOR shall be deemed an employee or agent of CUSTOMER.

Section 57 CONTRACTOR's Accounting Method Requirements (M.G.L. c. 30, § 39R)

57.1 The words defined herein shall have the meaning stated below whenever they appear in this Section 57:

- a. "Records" means books or original entries, accounts, checks, bank statements and all other banking documents, correspondence, memoranda, invoices, computer printouts, tapes, discs, papers and other documents or transcribed information of any type, whether expressed in ordinary or machine language.
- b. "Independent Certified Public Accountant" means a person duly registered in good standing and entitled to practice as a certified public accountant under the laws of the place of his/her residence or principal office and who is in fact independent. In determining whether an accountant is independent with respect to a particular person, appropriate consideration should be given to all relationships between the accountant and that person or any affiliate thereof. Determination of an accountant's independence shall not be confined to the relationships existing in connection with the filing of reports with CUSTOMER.
- c. "Audit", when used in regard to financial statements, means an examination of records by an independent certified public accountant in accordance with generally accepted accounting principles and auditing standards for the purpose of expressing a CERTIFIED opinion thereon, or, in the alternative, a qualified opinion or a declination to express an opinion for stated reasons.

- d. "Accountant's Report", when used in regard to financial statements, means a document in which an independent certified public accountant indicates the scope of the audit which s/he has made and sets forth his/her opinion regarding the financial statement for the most recent completed fiscal year as set forth in Paragraph (d) of M.G.L. c. 30, § 39R.
- e. "Management," when used herein, means the chief executive officers, partners, principals or other person or persons primarily responsible for the financial and operational policies and practices of CONTRACTOR.
- f. Accounting terms, unless otherwise defined herein, shall have a meaning in accordance with generally accepted accounting principles and auditing standards.

57.2 CONTRACTOR shall file with CUSTOMER, a statement of management as to whether the system of internal accounting controls of CONTRACTOR and its subsidiaries reasonably assures that:

- a. transactions are executed in accordance with management's general and specific authorization;
- b. transactions are recorded as necessary:
 - (i) To permit preparation of financial statements in conformity with generally accepted accounting principles, and
 - (ii) To maintain accountability for assets;
- c. access to assets is permitted only in accordance with management's general or specific authorization; and
- d. the recorded accountability for assets is compared with the existing assets at reasonable intervals and appropriate action was taken with respect to any difference.

57.3 CONTRACTOR shall also file with CUSTOMER a statement prepared and signed by an independent certified public accountant, stating that s/he has examined the statement of management on internal accounting controls, and is expressing an opinion as to:

- a. whether the representations of management in response to this paragraph are consistent with the result of management's evaluation of the system of internal accounting controls; and
- b. 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 CONTRACTOR's financial statements.

57.4 CONTRACTOR shall annually file with CUSTOMER during the Contract Term 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.

Section 58 Massachusetts and United States Manufacturers

Pursuant to M.G.L. c. 7, § 22, paragraph 17, CONTRACTOR is encouraged to give preference in the purchase of supplies and materials, other considerations being equal, in favor, first, of supplies and materials manufactured and sold within the Commonwealth, and second, of supplies and materials manufactured and sold elsewhere within the United States in performing the work under this Contract.

Section 59 Anti-Boycott Covenant (Executive Order No. 130)

CONTRACTOR warrants, represents and agrees that during the Contract Term, neither it nor any affiliated company, as hereafter defined, participates in or cooperates with an international boycott, as defined in Section 999 (b) (3) and (4) of the Internal Revenue Code of 1954, as amended, or engages in conduct declared to be unlawful by M.G.L. C. 151E, § 2. If there shall be a breach in the warranty, representation and agreement contained in this paragraph, then without limiting such other rights as it may have, CUSTOMER 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 CONTRACTOR or by a person or persons or business entity or entities directly or indirectly owning at least 51% of the ownership interests of CONTRACTOR.

CONTRACTOR shall not purchase or rent any materials, equipment, machinery, vehicles, or supplies for or in connection with the Services from any person or entity who does not sign, under pains and penalties of perjury, a certificate that recites: "The undersigned warrants, represents and agrees that during the time its agreement with CONTRACTOR is in effect for materials, supplies or equipment to be used in connection with the Services, neither the undersigned or any affiliated company, as hereafter defined, participates in or cooperates with an international boycott, as defined in Section 999(b)(3) and (4) of the Internal Revenue Code of 1954, as amended, or engages in conduct declared to be unlawful by M.G.L. C. 151E, § 2. 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 undersigned or by a person or persons or business entity or entities directly or indirectly owning at least 51% of the ownership interests of the undersigned; or which directly or indirectly owns at least 51% of the ownership interests of the undersigned."

CUSTOMER shall not be obligated to pay CONTRACTOR for the cost of any materials, supplies, or equipment purchased or rented from any individual or entity from whom CONTRACTOR has not previously obtained and delivered to the CUSTOMER the certificate that the previous paragraph requires. CONTRACTOR will immediately terminate its contract with any supplier who breaches the warranty, representation and agreement contained in the previous paragraph.

CONTRACTOR shall include in CONTRACTOR's subcontracts or agreements with any person or entity from whom CONTRACTOR intends to purchase or rent any materials, equipment, machinery, vehicles or supplies for or in connection with the Work, (a) a notice that this Contract obligates CONTRACTOR to terminate the supply contract upon discovery of such breach of the sworn certificate delivered under subparagraph (1) and such termination shall be without liability to CONTRACTOR or CUSTOMER and (b) a provision

which states: "The Governor or his designee, the secretary of administration and finance, and the state auditor or his designee shall have the right at reasonable times and upon reasonable notice to examine the books, records and other compilations of the undersigned vendor which pertain to the performance and requirements of this CONTRACT to provide materials of any nature to CONTRACTOR in connection with the Services."

Section 60 Workforce Certification: Certification of Compliance with Workforce Related Legal Requirements [Executive Order 481]

60.1 Workforce Certification. CONTRACTOR shall comply with the following legal requirements for any and all employees to be employed in the Project who are required to be listed in the certified payroll reports for the Project: 1) Federal Department of Homeland Security Requirements in hiring such employees including, but not limited, to the faithful completion of the Federal Department of Homeland Security Form I-9 process by CONTRACTOR; 2) proper classification of individuals employed on the Project; 3) all Laws concerning Workers' Compensation insurance coverage, unemployment insurance, Social Security taxes, and Income Taxes; and 4) all Laws concerning hospitalization and medical benefits that meet the minimum requirements of the connector board established in chapter 176Q of the General Laws. CONTRACTOR shall execute a Workforce Certification form with the execution of its contract. CONTRACTOR shall require each of its Subcontractors and sub-subcontractors to execute and provide to CONTRACTOR such Workforce Certification form with the execution of each subcontract, and CONTRACTOR shall immediately provide a copy to CUSTOMER. CONTRACTOR acknowledges that with the weekly workforce reports that must be submitted electronically on a weekly basis, CONTRACTOR and all of its Subcontractors are required to certify that the Form I-9 process was faithfully completed and that all other legal requirements related to its workforce referenced above were followed for all employees listed on each certified payroll report when submitted. CONTRACTOR and all of its Subcontractors must: comply with the legal requirements of this section; must not knowingly use undocumented workers in connection with the performance of this Contract; pursuant to federal requirements must verify the immigration status of all workers assigned to the contract without engaging in unlawful discrimination; and must not knowingly or recklessly alter, falsify, or accept altered or falsified documents from any such worker. Breach of any of the terms of the Workforce Certification legal requirements during the period of this Contract may be regarded as a material breach, subjecting CONTRACTOR and its Subcontractors to sanctions, including but not limited to monetary penalties, withholding of payments, contract suspension or termination. CONTRACTOR must require each of its Subcontractors to execute and provide to CONTRACTOR a Workforce Certification form with the execution of each subcontract, and CONTRACTOR must require each Subcontractor to forward a copy of each such Workforce Certification to the CONTRACTOR for filing with CUSTOMER. DCAMM, at its sole election, may require CONTRACTOR and all Subcontractors to submit such reports and documentation in electronic format.

60.2 Veterans Preference. In the employment of mechanics and apprentices, teamsters, chauffeurs, and laborers in the performance of Services in the Commonwealth of Massachusetts, preference shall first be given to citizens of the Commonwealth of Massachusetts who have been residents of the Commonwealth of Massachusetts for at least six (6) months at the commencement of their employment and who are veterans as defined M.G.L. c.4, § 7(34), and who are qualified to perform the work to

which the employment relates and, within such preference, preference shall be given to service-disabled veterans; and secondly, to citizens of the Commonwealth of Massachusetts generally who have been residents of the Commonwealth of Massachusetts for at least six (6) months at the commencement of their employment, and if they cannot be obtained in sufficient numbers, then to citizens of the United States.

- 60.3 Payroll Records and Statement of Compliance.** CONTRACTOR shall comply and shall cause its Subcontractors to comply with Massachusetts General Law c. 149, s. 27B, which requires that a true and accurate record be kept of all persons employed on the Project for which the prevailing wage rates have been provided. CONTRACTOR and all Subcontractors shall keep these records and preserve them for a period of three years from the date of completion of this Contract. Such records shall be open to inspection by any authorized representative of CUSTOMER at any reasonable time, and as often as may be necessary. CONTRACTOR shall, and shall cause its Subcontractors to, submit weekly copies of their weekly payroll records to DCAMM. In addition, CONTRACTOR and each Subcontractor shall furnish to the Executive Department of Labor within fifteen (15) calendar days after completion of its portion of the Services a signed statement in the form required by DCAMM. DCAMM, at its sole election, may require CONTRACTOR and all Subcontractors to submit such reports and documentation in electronic format.
- 60.4 Vehicle operators.** If the Director of the Department of Labor and Workforce Development has established a schedule of wage rates to be paid to the operators of trucks, vehicles or equipment for the Services, CONTRACTOR shall be obligated to pay such operators at least the minimum wage rate contained on such schedule. (See M.G.L. c.149, §§ 26-27H).
- 60.5 Eight Hour Day.** CONTRACTOR shall comply with M.G.L. c. 149, §§ 30, 34 and 34A which provide that no laborer, workers, mechanic, foreman or inspector working within the Commonwealth in the employ of CONTRACTOR, Subcontractors or other person doing or contracting to do the whole or part of the Services shall be required or permitted to work more than eight (8) hours in any one day or more than forty-eight hours (48) in any one week, or more than six (6) calendar days in any one week, except in cases of extraordinary emergency.
- 60.6 Timely Payment of Wages.** CONTRACTOR shall comply with, and shall cause its Subcontractors to comply with M.G.L. c. 149, § 148 which requires the weekly or biweekly payment of employees within six (6) calendar days of the end of the pay period during which wages were earned if employed for five (5) or six (6) calendar days of a week, and within other periods of time under certain circumstances as set forth therein.
- 60.7 Lodging.** CONTRACTOR shall comply with, and shall cause its Subcontractors to comply with, M.G.L. c. 149, § 25 which provides that every employee under this Contract shall lodge, board and trade where and with whom s/he elects, and neither CONTRACTOR nor its agents or employees shall, either directly or indirectly, require as a condition of the employment of any person that the employee shall lodge, board or trade at a particular place or with a particular person.

60.8 Truck Rates. The use by CONTRACTOR of trucks or other motor vehicles hired from either common or contract motor carriers in the course of performance of this Contract is subject to such minimum rates and charges, and rules and regulations as may from time to time be promulgated by the Department of Public Utilities of the Commonwealth of Massachusetts or other agency of the state or federal government which may be authorized by law to set rates or otherwise regulate the use of such vehicles. CONTRACTOR expressly assumes the risk of any additional expense that may arise by reason of any change in such minimum rates and charges, and rules and regulations, and shall be entitled to no additional compensation or reimbursement by reason thereof.

Section 61 Hiring of State Employees By State Contractors [Executive Order No. 346]

CONTRACTOR certifies compliance with both the conflict of interest law set forth in chapter 268A of the General Laws, specifically M.G.L. c. 268A, § 5(f), and Executive Order 346; and includes limitations regarding the hiring of state employees by private companies contracting with the Commonwealth of Massachusetts. A privatization contract shall be deemed to include a specific prohibition against the hiring at any time during the Contract Term, and for any position in CONTRACTOR's company, any state management employee who is, was, or will be involved in the preparation of the RFP, the negotiations leading to the awarding of the Contract, the decision to award the Contract, and/or the supervision or oversight of performance under this Contract.

Section 62 Certification Regarding Northern Ireland [M.G.L. c. 7, § 22C]

CONTRACTOR certifies that it does not employ ten or more employees in an office or other facility in Northern Ireland and if CONTRACTOR employs ten or more employees in an office or other facility located in Northern Ireland CONTRACTOR 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 work place, and the eradication of any manifestations of religious and other illegal discrimination; and CONTRACTOR 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.

Section 63 Sales Tax Exemption

CUSTOMER is exempt from the assessment of Massachusetts sales and use taxes for purchases of New Equipment/Systems or related purchases. CUSTOMER shall issue CONTRACTOR a tax exemption certificate to use for the purchases of New Equipment/Systems for CUSTOMER's benefit to complete the Services under this Contract. CONTRACTOR shall not pay any sales or use taxes on any item exempt from Massachusetts sales and use taxes unless authorized by CUSTOMER, required by the Rules published by the Commissioner of Revenue or is ordered by an appropriate taxing authority to remit sales and use taxes. To the extent CONTRACTOR pays sales or use tax consistent with the requirement of this paragraph, CONTRACTOR shall be entitled to an equitable adjustment to the total compensation payable to CONTRACTOR under this Contract equal to the amount of such tax paid.

Section 64 Leading By Example – Clean Energy and Efficient Buildings [Executive Order 484]

CONTRACTOR understands that, pursuant to Executive Order No. 484, all new construction and “Significant” renovation building projects over 20,000 square feet must meet a Massachusetts LEED Plus building standard (as defined by DCAMM), and that smaller projects must meet the minimum energy performance standards established by the Commonwealth of Massachusetts Sustainable Design Roundtable. Furthermore, CONTRACTOR understands that the Massachusetts LEED Plus standard applies to all projects overseen by the Massachusetts Division of Capital Asset Management and Maintenance, as well as all projects built on land owned by the Commonwealth of Massachusetts for use by state agencies.

Section 65 Confidentiality; Personal Data [M.G.L. c. 66A, Executive Order 504]

CONTRACTOR shall comply with M.G.L. c. 66A if the CONTRACTOR becomes a "holder" of "personal data" as defined therein. CONTRACTOR shall comply with the provisions of Executive Order 504 and shall execute the Executive Order 504 Contractor Certification Form attached hereto as Exhibit IX.

Section 66 Copyrights, Patents, and Intellectual Property Rights

CONTRACTOR and its Subcontractor hereby grants to CUSTOMER 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 CONTRACTOR and its Subcontractor 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.

Section 67 Security and Confidentiality; Publication.

Except as required for the discharge of its duties to CUSTOMER under this Contract, or required by subpoena or court order, the CONTRACTOR and any of its Subcontractors agree 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 CONTRACTOR and any of its

Subcontractors 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 CUSTOMER. The CONTRACTOR shall not use any Confidential Information other than for the performance of Services under this Contract. The CONTRACTOR 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 CONTRACTOR 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.

Section 68 Accessibility and Non-Discrimination Laws

The CONTRACTOR 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 CONTRACTOR 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.

Section 69 Sexual Harassment and Workplace Violence Prevention

The CONTRACTOR shall promote a workplace that is free from sexual harassment and workplace violence, and to require all of its subcontractors to agree to the same. The Commonwealth 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. Without limiting its other rights and remedies of removal and/or termination, CUSTOMER reserves the right to remove or terminate individuals and/or contractors whose conduct violates any of the provisions of this paragraph.

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SIGNATURES ON FOLLOWING PAGE.*

Project #:

Signatures

This Contract may be executed by the parties hereto in separate counterparts, each of which when so executed shall constitute an original, but all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties have each caused the Contract to be executed on the dates set forth below (the last of which shall be considered the date of execution hereof) by their duly authorized representatives.

CONTRACTOR

Signature: _____

Printed Name: _____

Title: _____

Date: _____

COMMONWEALTH OF MASSACHUSETTS FACILITY

Signature: _____

Printed Name: _____

Title: _____

Date: _____

DIVISION OF CAPITAL ASSET MANAGEMENT AND MAINTENANCE

Signature: _____

Printed Name: _____

Title: _____

Date: _____

Approved as to Form:

Office of General Counsel

Project #:

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SCHEDULE A: DESIGN

A-1: Level of Design Services

NOTE: DCAMM to insert level of design services included in RFP in Table A-1 below for each Contract:

Table A-1: Level of Design Services

ECM #	Description	50% Design	90% Design or Schedule of Replacements	100% Design or Schedule of Replacements

The design level requirements (as applicable) for each individual ECM are set forth in Table A-1 as 50%, 90% or 100%. The specific requirements and procedures for each of the specified Design Document phases (50%, 90%, 100%) delineated in Table A-1 are set forth below.

Upon approval by DCAMM, variations in design assumptions, basis of design or Schematic Design detail provided in the RFP will be inserted here.

There will be a distinct DCAMM to insert design duration included in RFP for each Contract here month design period, commencing upon execution of the ESA, wherein all design documentation will be submitted by CONTRACTOR for CUSTOMER review in accordance to the level of design services outlined in Table A-1. This period for the completion of Design may only be extended by written approval from the Project Manager. All requests for payments related to Design services must be submitted during this design period unless approved by the Project Manager.

Design submittals must follow the requested format for each ECM and be accepted by DCAMM prior to implementation in accordance with Section 7: Design Requirements and Approvals. Once the 100% Design documents for a particular ECM have been accepted in accordance with Section 7: Design Requirements and Approvals, the New Equipment/Systems for that ECM shall commence in accordance with the Construction Schedule.

A-2: DCAMM Design Procedures

I. 50% Design Documents

Unless otherwise directed or approved in writing by DCAMM, for 50% Design Deliverables required herein, CONTRACTOR should provide 2 paper copies and 1 electronic copy readily downloadable of documents listed below.

A. General Drawing Requirements:

- 1) All drawings shall be 1/4" scale unless approved by the CUSTOMER
 - a. Provide a graphic scale and north arrow.
- 2) Submit all drawings on a standard DCAMM 30" x 42" sheet with a standard DCAMM title block and provide a standard Title Sheet. (Per direction of DCAMM). All draft drawings should be also submitted in electronic copy, per Section 6 of the Contract.
- 3) A small-scale, legible key plan adjacent to the title box on all drawings showing section, detail or partial plan locations, when the floor plan to which the sections, detail or partial plans apply are on another sheet. The key plan shall indicate the drawing number of the sheet where the section was taken.
- 4) Show legends of materials, symbols, and abbreviations for each classification of drawings.
- 5) Insert, in the title box of all 50% Design Document drawings, the date on which the drawings were submitted to the CUSTOMER.
- 6) Indicate general dimensions and notes.
- 7) A "Title" Sheet, with the list of drawings and consultant names.
- 8) All legends, symbols, abbreviations, and general notes.

B. Site Plans:

- 1) All legends, symbols, and general notes.
- 2) Existing conditions site plan.
- 3) Demolition plan.
- 4) Reflective ceiling plans of all floors. *(unlikely necessary, unless already provided by CUSTOMER)*.

C. HVAC:

- 1) HVAC legends, symbols and general notes.
- 2) Demolition plan/existing conditions.
- 3) HVAC floor plans.
- 4) HVAC roof plan.
- 5) HVAC piping plans.
- 6) HVAC sections.
- 7) HVAC controls.
- 8) HVAC schedules.

D. Electrical:

- 1) Electrical legends, symbols, and general notes.

Project #:

- 2) Demolition plan/existing conditions.
- 3) Electrical site plan.
- 4) Electrical lighting floor plans (*unlikely necessary, consider removing*).

E. Plumbing:

- 1) Plumbing legends, symbols, and general notes.
- 2) Demolition plan/existing conditions.
- 3) Plumbing floor plans.
- 4) Plumbing roof plan.
- 5) Plumbing schedules.
- 6) Plumbing risers.

F. Specifications:

Provide a draft specification of all the sections required. The specifications should include:

- 1) **Basis of Design:** The specifications shall consist of a general description of the Project and shall include a Basis of Design to satisfy the needs of the program. This shall include all the design parameters that affect the design of the building systems. For example: the hours of occupancy; the design and temperature for heating and cooling; the floor loading; the number of occupants; and the foot-candle design in various spaces.
- 2) **Detailed Specifications:** The specifications shall be as comprehensive and complete as the 50% Design Documents permit. They shall address all relevant components/sections of the work and, where required by the scope of the Project, include equipment, capacities, and descriptions of structural, mechanical, and electrical and other special systems that impact the Project.
- 3) **Section Numbers and Titles:** The section numbers and titles established at the 50% Document Phase shall be the same as the section numbers and titles for the 90% and 100% Design Documents.
- 4) **Specification Index:** *Provide an edited index of the standard specification.*
- 5) **For HVAC:** Provide Process flow Diagram.

G. Product Requirements:

Provide 2 copies of catalogs sheets, brochures, diagrams, schedules, performance charts, illustrations of materials, assemblies, systems specified, MSDS sheets (where applicable), and other standard descriptive data. Assemble in a loose-leaf binder with tabs for each specification section, and update when a change occurs. Physical material samples of specified materials shall be furnished to the CUSTOMER upon request.

H. 50% Design Quality Control Review

- 1) The following areas of coordination shall be demonstrated:
 - a) Ceiling plenum clearances
 - b) Specification/drawing coordination
 - c) Schedule coordination
 - d) Equipment and power coordination
 - e) Existing vs. new construction

f) Phasing

- 2) **CUSTOMER Comments.** CONTRACTOR shall review the comments prepared by CUSTOMER and incorporate them into this 50% Design Document phase. If CONTRACTOR takes exception to any comment install provide a response to CUSTOMER. CONTRACTOR shall also provide CUSTOMER with a report indicating the action taken on all comments and indicate where they were incorporated into this phase.

II. 90 % and 100% Design Documents

Unless otherwise directed or approved in writing by DCAMM, for all 90% and 100% Design Deliverables required herein, CONTRACTOR should provide the number and format of copies as set forth in Section 6.

A. Drawings

The 90% and 100% Design Document phase submission for new construction, renovation, or demolition projects shall include the following:

- 1) A "Title" sheet with all architectural and professional engineering (Registered in Massachusetts) consultant stamps (for the 100% Design Documents only).
- 2) All legends, symbols, and general notes.
- 3) Prior to submitting the 100% Design Documents (the construction documents for the Installation Services) to the CUSTOMER, the following steps shall be completed, as applicable:
 - a) Two sets of the 100% Design Documents shall be approved and signed by the state building official, the state Plumbing & Gas Inspector, the local Electrical Inspector, and the local Fire Chief in the same manner as indicated above.
 - b) All other approvals of local, state or federal agencies having jurisdiction shall also be obtained.
 - c) The sets containing the original approvals shall be retained by the CUSTOMER as the official approved sets.
 - d) All documents revised after being stamped shall be replaced and the procedure shall be repeated as described above.

B. Specifications:

- 1) Indicate a complete description of the work in the "Scope of Work" section of the specification.
- 2) Indicate related work in other sections.
- 3) Indicate items supplied and installed by others.
- 4) Include test reports.
- 5) Indicate utility back charges if required.
- 6) Indicate the extent of demolition; the standard is that abatement work occurs first, then utility disconnects, and then CONTRACTOR demolition.
- 7) Indicate if either the Subcontractor or CONTRACTOR supplies the staging or lifts, and which one supplies the temporary enclosure.
- 8) Determine if the cutting and patching is Subcontractor or CONTRACTOR responsibility".

Project #:

- 9) Type in the date on which the specifications were approved by the CUSTOMER in the lower right hand corner of the title sheet.
- 10) Describe the extent of the work, the materials and workmanship, and include the work under the proper section.
- 11) Use consistency throughout. Use the word "will" to designate what the CONTRACTOR can be expected to do and the word "shall" to designate what is mandatory for CONTRACTOR to do.
- 12) Use the same term throughout for the same subject, and the term shall be the same as that used on the drawings.
- 13) Specify that CONTRACTOR shall provide inventory information (in electronic spreadsheet format) for all major mechanical and HVAC, electrical, and special equipment, which includes the following: New Equipment/Systems type, New Equipment/Systems description, Manufacturer, Model Number, Serial Number, Building and Location of the New Equipment/Systems (per this Contract).
- 14) Specifications should be tailored to the specific project. Delete sections and references that do not apply.
- 15) Specifications shall be stamped by a registered Massachusetts architect or engineer.

C. Heating, Ventilating & Air Conditioning Drawings

Heating, ventilating and air conditioning drawings shall indicate the following:

- 1) Site utilities on the utility drawings.
- 2) HVAC work, other than site work, shall not be combined on the same sheets with Plumbing, Electrical or other drawings except with the prior approval of CUSTOMER.
- 3) The location and size of all piping and ductwork systems.
- 4) All systems sized at all reductions, as well as all riser diagrams of piping and duct systems.
- 5) All directions of flow, pitch on piping, and volumes for duct systems.
- 6) Sufficient servicing and/or replacement space of all large items of equipment.
- 7) All equipment, accessories, valves, and dampers with all necessary access panels identified as to type and size. Access panels, where required for access to valves and dampers, etc.
- 8) All cooling system pumps, chillers, cooling towers, air handling units, ductwork systems, dampers, fan details, temperature control system, air and hydronic balancing equipment, and schedules.
- 9) That all fire and smoke dampers, access panels, and doors are installed in accordance with the latest edition of NFPA Code 90.A.

D. Electrical Drawings.

Electrical drawings shall Include the Following:

- 1) Site utilities shall be indicated on utility drawings.
- 2) Electrical work, other than site work, shall not be combined on the same sheets with Fire Protection, Plumbing, HVAC, or other drawings except with the prior approval of the CUSTOMER.
- 3) General arrangement: Outline layout of each floor. Typical sections through the structure, floor and ceiling heights and elevations, and type of construction, including concrete pads shall be indicated.

Project #:

- 4) Power system: locations, types, and method of control for all motors, heaters, appliances, controllers, starters, branch circuits, feeder conductors, and conduits. Indicate riser diagrams. Show details and indicate method of supporting electrical conduit. For larger projects, thermostats and control wiring are normally covered under the HVAC contract.
- 5) Signal systems: locations and types of all outlets and equipment, service connections, wiring diagrams, and all other essential details.
- 6) Services: location and details of all services, whether overhead or underground, feeder sizes, plans and elevations of switchgear and transformers, metering and service switchboard arrangements, wiring and ground fault diagram, and bus ducts.
- 7) Riser diagrams for all systems.

E. Plumbing Drawings.

Plumbing drawings shall indicate the following:

- 1) All work done by CONTRACTOR shall include all water, gas, air, vacuum, and accessories. Site utilities shall be indicated on the utility drawings.
- 2) Plumbing work, other than site work, shall not be combined on the same sheets with the Fire Protection, HVAC, Electrical, or other drawings except with the prior approval of CUSTOMER.
- 3) Water and gas supply sources.
- 4) All piping shall be carefully sized, and all sizes shall be indicated on drawings and riser diagrams. Indicate all directions of flow and pitch on piping.
- 5) Plumbing legend and/or graphical symbols on the first sheet of the plumbing drawings in accordance with the National Standards Institute (ANSI).
- 6) Plumbing riser diagrams for structures two or more stories in height above ground level.
- 7) Piping material, hanger materials, and detail.
- 8) Back-flow preventers in accordance with requirements of Department of Environmental Protection (DEP).
- 9) Clean-outs in accordance with the Massachusetts State Plumbing Code.

F. CUSTOMER Comments

CONTRACTOR shall review the comments prepared by CUSTOMER and incorporate them into the 90% Design Deliverables. If CONTRACTOR takes exception to any comment it shall provide a response to CUSTOMER. CONTRACTOR shall also provide CUSTOMER with a report indicating the action taken on all comments and indicate where they were incorporated. All comments shall be incorporated, unless approved by CUSTOMER, into the 100% Design Deliverables.

SCHEDULE B: INSTALLATION SERVICES

CONTRACTOR shall implement the Energy Conservation Measures (ECMs) in Table B-1 on the Premises and shall acquire, install, and commission the New Equipment/Systems associated with each ECM.

B-1: Scope of Services Summary

Part I: The Premises

The Project is located at . The buildings to be addressed under this Contract are listed in the chart below:

Building Name	Square Footage	Use	*Hours of operation

* Hours of Operation are provided for information only. See Schedule B-2 for Permitted Work Hours.

Part II: Scope of Services

TABLE B-1 – Energy Conservation Measures (ECMs)

Upon approval by DCAMM, Table B-1 from CONTRACTOR's Proposal will be inserted here.

Part III: Construction Schedule

The Installation Services shall commence on the Effective Date and continue for DCAMM to insert Construction Schedule duration from Proposal here days in duration (including the period for completion of Design set forth in **Schedule A: DESIGN**), or as may be extended pursuant to the terms of the CONTRACT.

CONTRACTOR shall submit a detailed Construction Schedule to DCAMM within 5 days of the Effective Date. When approved by DCAMM, the Construction Schedule shall be incorporated by reference into this Contract, including any updates thereto agreed upon by the CONTRACTOR and DCAMM.

Part IV: Entry/Inventory Restrictions (if applicable)

Project #:

CONTRACTOR shall comply with any and all FACILITY entry, tool inventory, and other restrictions. CONTRACTOR will be working in and around secure facilities and any and all restrictions associated with the operation of the facilities shall be incorporated into the CONTRACTOR's Construction Schedule and Total Contract Value.

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Project #:

B-2: Facility Information

Note: DCAMM OGC to insert information included in RFP in this Schedule for each Contract

CONTRACTOR acknowledges that FACILITY is a [REDACTED] facility, with operations including DCAMM to insert FACILITY use, i.e. administrative offices, classroom, residences, lab space, etc..

The Parties agree that the Installation Services shall be installed in accordance with the following anticipated permitted work hours:

Monday – Friday:

Saturday:

Sunday:

CONTRACTOR shall confirm permitted work hours with CUSTOMER at the first Project meeting. Upon agreement of DCAMM and CONTRACTOR, these schedules may be modified based on two week look-ahead.

B-3: Payment Terms

Part I. – PAYMENTS TO CONTRACTOR

Payment to the Contractor shall be according to the following terms:

- A. CONTRACTOR shall submit payment requisitions and CUSTOMER shall cause payments to be made to CONTRACTOR on a timely basis pursuant to Section 4 of this Contract.

NOTE: DCAMM OGC to insert any special payment terms included in RFP here for each Contract.

- B. Monthly progress payments for all costs incurred during performance of Installation Services shall be made as follows:
- 1) up to 85% of approved and accepted Installation Services, based upon estimated progress submitted per Section 12.5. CUSTOMER shall retain 15% of total costs for such ECM (or, in the case of partial Substantial Completion in accordance with Section 28 of such New Equipment/System or building as set forth in the Schedule of Values) at Substantial Completion Approval Notice.
 - 2) 95% of the total costs of a particular ECM at Final ECM/Equipment Acceptance. Performance testing pursuant to **Schedule D: Energy Savings** will be required prior to payment for Final ECM/Equipment Acceptance. CUSTOMER shall retain 5% of total costs for such ECM at Final ECM/Equipment Acceptance.
 - 3) 100% of the Total Contract Value at Final Project Notification Approval.
- C. Upon submission by the CONTRACTOR and approval by DCAMM, the Parties agree that the Schedule of Values is hereby incorporated into this Contract by reference, including any accepted updates thereto.
- D. See the TOTAL CONTRACT VALUE SUMMARY SHEET at the end of this Schedule for approved distribution of the Total Contract Value.

Part II: ACCELERATED PAYMENT

If DCAMM elects to accelerate its payment obligations for the Total Contract Value under the Contract, while retaining all other rights and obligations required hereunder, this **Schedule B-3: Payment Terms** shall be revised in accordance herewith.

Part III: PAYMENTS IN THE EVENT OF TERMINATION

If the Contract has been terminated in accordance with Section 42, CONTRACTOR shall be entitled to a Termination Payment for Services performed prior to the effective date of termination, less any amounts provided for in Section 42. Such Termination Payment shall be calculated as set forth below:

Termination by CUSTOMER

If termination is a Termination for Cause by CUSTOMER as provided in Section 42.2 of this Contract, then for the purpose of calculating the value of the Termination Payment to be made to CONTRACTOR, then the Termination Payment shall be the value of the Services performed by CONTRACTOR prior to the termination date, less the offsets provided for in Section 42.2. For purposes of this paragraph, the value of the Services performed by CONTRACTOR prior to the termination date shall be determined by review of the latest periodic estimate required under Section 12.5 (and any agreed upon adjustments thereto).

If the termination is a Termination for Convenience by CUSTOMER as provided in Section 42.3, then for the purpose of calculating the value of the Termination Payment to be made to CONTRACTOR, the Termination Payment shall be the value of the Services performed by CONTRACTOR prior to the termination date, less the offsets provided for in Section 42.3 For purposes of this paragraph, the value of the Services performed by CONTRACTOR prior to the termination date shall be determined by review of the latest periodic estimate required under Section 12.5 (and any agreed upon adjustments thereto).

Termination by CONTRACTOR

If the termination is a Termination for Cause by CONTRACTOR as provided in Section 42.1, then for the purpose of calculating the value of the Termination Payment to be made to CONTRACTOR, the Termination Payment shall be the value of the Services performed by CONTRACTOR prior to the termination date, less the offsets provided for in Section 42.1. For purposes of this paragraph, the value of the Services performed by CONTRACTOR prior to the termination date shall be determined by review of the latest periodic estimate required under Section 12.5 (and any agreed upon adjustments thereto).

Part IV: TOTAL CONTRACT VALUE

Table B-3: Total Contract Value Summary Sheet

Upon Approval of the Pricing and Savings Form from the Proposal, the Total Contract Value Summary sheet will be inserted here.

B-4: Requirements for Resident Engineer and Field Offices

NOTE: DCAMM OGC to insert any modifications to this Schedule and/or any Project-specific office and/or trailer requirements included in the RFP here for each Contract.

- A. **FACILITY** shall provide a suitable location on site for the use of CONTRACTOR's storage and/or office trailer(s).
- B. CONTRACTOR shall provide a suitable field office trailer on site for the use of the DCAMM Resident Engineer. CONTRACTOR shall be responsible for providing general cleaning services and trash/recycling pickup from the Resident Engineer's trailer at least once weekly.
- C. CONTRACTOR shall equip the DCAMM Resident Engineer's office with the following:
1. One (1) lockable steel desk.
 2. One (1) swivel arm chair.
 3. One (1) electronic Fahrenheit thermometer for exterior use.
 4. One (1) lockable four drawer metal file cabinet.
 5. One (1) battery operated electronic calculator.
 6. Two (2) highlighter color variety packs.
 7. Five (5) letter sized wide ruled writing pads.
 8. Fifty (50) letter size manila folders.
 9. Ten (10) blue pens.
 10. Ten (10) 0.9 mechanical pencils with 30 refill leads.
 11. One (1) desktop stapler with 10,000 refill staples.
 12. Sufficient quantity of electric lights and electrical outlets.
 13. Two (2) OSHA approved adjustable hard hats.
 14. Three (3) pairs of safety glasses.
 15. One (1) LED flashlight with (2) sets of replacement batteries.
 16. One (1) compact refrigerator (minimum 4.0 CF)
 17. One (1) hot and cold free standing bottled spring water cooler. CONTRACTOR shall supply bottled spring water for the duration of the Project.
 18. One (1) trash receptacle
 19. One (1) recycling receptacle.
- D. Computer: CONTRACTOR shall furnish (or lease) and install the office equipment listed below for the DCAMM Resident Engineer for the duration of the Project. CONTRACTOR shall install and render fully functional all computer system equipment and software meeting the requirements set forth below and shall be responsible to maintain and/or replace all such items as may become lost, inoperative or damaged in the course of normal use. For the duration of the Project, CONTRACTOR shall provide maintenance service for such computer system equipment and software to provide for full restoration of usability within two (2) business days of any reported malfunction. If found to be un-repairable within two (2) business working days, then immediately replace with new. At the completion of the Project, CONTRACTOR retains ownership of all equipment.

CONTRACTOR shall provide the DCAMM Resident Engineer with one (1) new laptop computer including, at a minimum, each of the following:

Project #:

1. Intel Core i7, 2.4 GHz or higher processor
 2. One (1) GB system memory (SDRAM) 8 GB DDR3 expandable to 16GB.
 3. 750GB hard drive—SATA (7200 rpm).
 4. 15.4 inch LCD screen with LED backlight (1366 x 768).
 5. Intel Graphics Media Accelerator 4500M (minimum 2 GB video memory) or equal.
 6. Built-in 10/100 ethernet LAN (RJ-45 connector) compatible with operating system .
 7. Integrated sound card with internal speakers.
 8. Internal DVD ± -read and rewritable/CD- read and rewritable; 16x8x16 DVD+RW; 16x6x16 DVD-RW; 48x4x48 CD-RW.
 9. Wireless networking B+G+N.
 10. Bluetooth enabled.
 11. One (1) high-speed USB 3.0 port.
 12. Two (2) high-speed USB 2.0 ports.
 13. Latest version of Windows 8 Professional.
 14. Latest version of Microsoft Office Suite.
 15. Latest version of Microsoft Projects.
 16. Latest version of Adobe Acrobat Professional.
 17. Latest version of Internet Explorer
 18. Latest version of antivirus software (Norton AntiVirus or equal, including subscription updates for the duration of the Project).
 19. One 4G wireless USB card. Provide card and unlimited service for the duration of the Project.
 20. One (1) color inkjet combination copier-scanner-printer
 21. Initially supply six (6) black and six (6) color ink cartridges and six (6) reams of 8 ½ x 11 copy paper. CONTRACTOR shall provide paper, additional printer toner and ink cartridges as needed by the DCAMM Resident Engineer throughout the duration of the Project.
 22. Two (2) USB thumb drives each with 32GB capacity.
 23. Supply of fifty (50) RW CDs with jewel cases.
 24. One (1) surge protector with (10) total outlets, all with surge protection.
 25. For all of the above equipment provide a Parts, Labor, and On-site Warranty Repair/Replacement for the duration of the Project.
- E. Documents: CONTRACTOR shall be required to provide the DCAMM Resident Engineer with one (1) complete set of Contract Documents including but not limited to drawings, specifications, detailed energy audits, submittals, and cut sheets.
- F. Camera: CONTRACTOR shall provide the DCAMM Resident Engineer with the following camera equipment:
1. One (1) new digital camera capable of recording images on an external memory card. Camera shall be of slim design, capable of minimum 15.0 Megapixels photos with a minimum 12X Optical Zoom, and capable of recording video with sound.
 2. One (1) carrying case for the digital camera.
 3. Two (2) compatible 8-Gigabyte memory cards.
 4. Two (2) sets of rechargeable lithium ion batteries with charger.
 5. Cables and software for direct transfer from camera to computer.

G. Phone and Related Services: CONTRACTOR shall provide and maintain the tablet and cell phone equipment and services listed below for the duration of the Project. All devices and accessories shall be returned to CONTRACTOR at the completion of the Project. CONTRACTOR shall pay for all calls and fixed charges connected with the cell phone required below.

1. CONTRACTOR shall provide the DCAMM Project Engineer with one (1) touchpad tablet with a 9 inch minimum screen size, Windows RT or Windows 8 based operating system with wi-fi, 32 GB of storage, 2.0 USB port and protective case, power supply, cables and software.
2. CONTRACTOR shall provide Resident Engineer with one (1) new Bluetooth enabled 4G Blackberry cell phone with belt clip, power supply, cables, and software. 4G services shall include unlimited email, data, messaging, caller ID, call waiting, 3-way conferencing, voicemail and all related services for the length of the Project. The Blackberry cell phone services shall also include unconditional replacement if lost, stolen or damaged.
3. CONTRACTOR shall provide communications' system maintenance and replacement service to insure operation throughout the Project, including minimum next day on-site service.
4. CONTRACTOR shall make every effort to incorporate the DCAMM Resident Engineer's current project cell phone number into the Blackberry cell phone service under this Contract.

H. Sanitary Facilities:

1. CONTRACTOR shall provide suitable toilet facilities for its staff, the DCAMM Resident Engineer, and additional facilities for the workers on the job, including personnel of Subcontractors. FACILITY may designate a specific toilet area to be used for CONTRACTOR and Subcontractors engaged in the Services. However, CONTRACTOR shall take responsibility for maintenance and cleaning of such areas and shall leave them in first class condition equal to the accepted conditions of toilet facilities not used for construction personnel.
2. CONTRACTOR shall provide chemical toilets at all work areas in a quantity as required by OSHA. Chemical toilets and their maintenance shall meet requirements of all state and local health regulations and ordinances and shall be subject to the approval of the CUSTOMER.

I. Project Signage: CONTRACTOR/CONTRACTOR shall provide Project identification signage as well as a standard Accelerated Energy Program signage that comply with DCAMM standard sketches and specifications set forth below.

1. The CONTRACTOR shall request the AutoCAD format electronic file of the project signage sketches (AutoCAD Files) from DCAMM in sufficient time for the sign to be fabricated and erected by the CONTRACTOR prior to the start of construction.
2. The CONTRACTOR shall provide one 6 foot high by 8 foot wide project sign as shown on the AutoCAD Files conforming to all DCAMM requirements. Sign shall be

Project #:

fabricated from 1-inch thick MDO exterior grade plywood laminated with waterproof glue. Edges of sign shall be banded with 1 inch by 1/2 inch pressure treated pine banding. Refer to SK-1 for single-lined project title and SK-2 for double-lined project title.

3. Sign shall be supported by two 4 by 4 inch PT post supports set in 12 inch diameter concrete footings to a depth of four feet, such that sign bottom is raised 4 feet above grade. Nails, bolts, and connecting hardware shall be galvanized. PT post supports to be painted matte black. Provide alternative method of support as required by site conditions and approved by the CUSTOMER.
4. Sign shall utilize gloss vinyl lettering with size and color in accordance with the general layouts shown in the AutoCAD Files. Surfaces and edges of sign shall receive two coats of exterior primer and two coats of exterior gloss enamel.
5. The CONTRACTOR shall submit a shop drawing indicating sign construction and lettering for approval by the CUSTOMER.
6. The CONTRACTOR shall locate and install the sign at a location directed by the CUSTOMER. At the completion of the Project, CONTRACTOR shall remove the sign and supports completely and restore surface to original condition.

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B-5: Commissioning/M&V

CONTRACTOR is responsible for conducting performance testing in support of the commissioning, by DCAMM's third party commissioning agent, of all New Equipment/Systems installed pursuant to **Schedule B-1: Scope of Services Summary** and in accordance with this **Schedule B-5: Commissioning/M&V**.

The initial Commissioning and M&V plan is below.

Table B-5: Commissioning / M&V

The Selected Contractor's commissioning and M&V procedure outlines (Table B-5) from the Scope Form of the Contractor's Proposal will be inserted here.

B-6: Training

CONTRACTOR shall be responsible for training the FACILITY staff on the maintenance, operation, and repair of all New Equipment/Systems installed as part of the Contract, per Section 26 of the Contract. CONTRACTOR shall coordinate training with FACILITY and, provide a minimum of **fourteen (14)** days prior written notice in advance of such Training. CONTRACTOR is required to demonstrate that FACILITY staff has attended training.

The training for each ECM is detailed below:

Table B-6: Training

Upon approval by DCAMM, the selected CONTRACTOR's proposed Training (Table B-6) from the Proposal will be inserted here.

CONTRACTOR to provide specific training provided for all applicable ECM'S, including number of hours, type of training, and whether travel will be required by FACILITY staff.

B-7: Goals for Participation by M/WBE Enterprises/Equal Employment Opportunity, Anti-Discrimination, and Affirmative Action Program (Executive Orders No. 526 and No. 565)

PART I: GOALS FOR PARTICIPATION BY MINORITY AND WOMEN BUSINESSES (EXECUTIVE ORDER 565)

1. Goals.

A. The goals for minority business enterprise and woman business enterprise participation established for this Contract are as follows:

MBE/WBE: 10.4 % combined participation of the Total Contract Value.

B. CONTRACTOR and all Subcontractors, sub-subcontractors, and materials suppliers shall comply with all of the terms and conditions of this Article, which include the provisions pertaining to M/WBE participation set forth above in order to meet the M/WBE participation goals established for this Contract.

2. M/WBE Participation Credit.

A. If CONTRACTOR is itself an MBE or WBE, M/WBE participation credit shall be given in an amount equal to the entire Contract Price. If CONTRACTOR is not an MBE or WBE, then M/WBE participation credit will be given for the value of the Work that is actually performed by each MBE or WBE subcontractor or sub-subcontractor.

B. If CONTRACTOR is a joint venture with one or more M/WBE joint venturers, M/WBE participation credit shall be given to the joint venture as follows:

- (1) If the joint venture is certified by Supplier Diversity Office ("SDO") as an MBE or WBE, M/WBE participation credit shall be given in an amount equal to the entire Contract Price.
- (2) If the joint venture is not certified as an MBE or WBE by SDO, M/WBE participation credit shall be given to the joint venture for the value of the Work that is performed by the M/WBE joint venturer(s), and for the value of the Work that is actually performed by each MBE or WBE subcontractor or sub-subcontractor.

C. If an M/WBE supplies but does not install equipment or materials, M/WBE participation credit shall be given only if the M/WBE supplier is regularly engaged in sales of equipment or supplies to the construction industry from an established place of business. M/WBE participation credit shall be given the full amount of the purchase order only if the M/WBE supplier manufactures the goods or substantially alters them before resale. In all other cases, M/WBE participation credit shall be given for 10% of the purchase order.

D. MBE participation credit shall be given for the work performed by MBEs only, and WBE participation credit shall be given for the work performed by WBEs only. MBE participation may not be substituted for WBE participation, nor may WBE participation be substituted for MBE participation.

3. Establishing M/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 M/WBE by any agency other than SDO, or submission of an application to SDO for certification as an M/WBE shall not confer M/WBE status on a firm for the purposes of this Contract.

4. Subcontracts With M/WBEs.

Within thirty (30) days after the award of this Contract, CONTRACTOR shall (i) execute a subcontract with each M/WBE Subcontractor which has executed a Letter of Intent Approved by DCAMM, (ii) cause its Subcontractors to execute a sub-subcontract with each M/WBE sub-subcontractor, and (iii) furnish DCAMM with a signed copy of each such subcontract and sub-subcontract.

5. Performance of Contract Work by M/WBEs.

A. CONTRACTOR shall not perform with its own organization or subcontract or assign to any other firm work designated to be performed by any M/WBE in the Letters of Intent or Schedule of M/WBE Participation without the prior Approval of DCAMM, nor shall any M/WBE assign or subcontract to any other firm, or permit any other firm to perform any of its M/WBE Work without the prior Approval of DCAMM. Any such unapproved assignment, subcontracting, sub-subcontracting, or performances of M/WBE Work by others shall be a change in the M/WBE Work for the purposes of this Contract. DCAMM WILL NOT APPLY TO THE M/WBE PARTICIPATION GOAL(S) ANY SUMS ATTRIBUTABLE TO SUCH UNAPPROVED ASSIGNMENTS, SUB-CONTRACTS, SUB-SUBCONTRACTS, OR PERFORMANCE OF M/WBE WORK BY OTHERS.

B. CONTRACTOR shall be responsible for monitoring the performance of M/WBE Work to ensure that each scheduled M/WBE performs its own M/WBE Work with its own workforce.

C. CONTRACTOR and each M/WBE shall provide DCAMM with all information and documentation that DCAMM determines is necessary to ascertain whether or not an M/WBE has performed its own M/WBE Work. At the discretion of DCAMM, failure to submit such documentation to DCAMM shall establish conclusively for the purpose of giving M/WBE participation credit under this Contract that such M/WBE did not perform such work.

6. Notification of Changes in M/WBE Work.

A. If at any time during the performance of the Contract CONTRACTOR determines or has reason to believe that a scheduled M/WMBE is unable or unwilling to perform its M/WBE Work, or that there has been or will be a change in any M/WMBE Work, or that CONTRACTOR will be unable to meet the M/WBE participation goal(s) for this Contract for any reason, CONTRACTOR shall immediately notify DCAMM Contract Compliance Office in writing of such circumstances.

B. Any notice of a change in M/WBE Work pursuant to subparagraph "A" above shall include a revised Schedule of M/WBE Participation, and additional or amended Letters of Intent and subcontracts, as the case may be.

7. Actions Required If There is a Reduction in M/WBE Participation.

A. In the event there is a change or reduction in any M/WBE Work which will result in CONTRACTOR failing to meet the M/WBE participation goal(s) for this Contract, other than a reduction in M/WBE Work resulting from a Change Order initiated by DCAMM, then CONTRACTOR shall immediately undertake a diligent, good faith effort to make up the shortfall in M/WBE participation as follows:

(1) CONTRACTOR shall identify all items of the Work remaining to be performed under the Contract that may be made available for subcontracting to M/WBEs. CONTRACTOR shall send a list of such items of work to DCAMM, together with a list of the remaining items of the Work that was not made available to M/WBEs and the reason for not making such work available for subcontracting to M/WBEs.

(2) CONTRACTOR shall send written notices soliciting proposals to perform the items of the Work that may be made available for subcontracting to M/WBEs to all M/WBEs qualified to

perform such work. CONTRACTOR shall advise DCAMM of (i) each M/WBE solicited, and (ii) each M/WBE listed in the SDO directory under the applicable trade category who was not solicited and the reasons therefor. CONTRACTOR shall also advise DCAMM of the dates notices were mailed and provide a copy of the written notice(s) sent.

(3) CONTRACTOR shall make reasonable efforts to follow up the written notices sent to M/WBEs with telephone calls or personal visits in order to determine with certainty whether the M/WBEs were interested in performing the work. Phone logs or other documentation must be submitted to DCAMM evidencing this effort.

(4) CONTRACTOR shall make reasonable efforts to assist M/WBEs that need assistance in obtaining insurance, bonds, or lines of credit in order to perform work under the Contract, and shall provide DCAMM with evidence that such efforts were made.

(5) CONTRACTOR shall provide DCAMM with a statement of the response received from each M/WBE solicited, including the reason for rejecting any M/WBE who submitted a proposal.

(6) CONTRACTOR shall take any additional measures reasonably requested by DCAMM to meet the M/WBE participation goal(s) established for this Contract, including, without limitation, placing advertisements in appropriate media and trade association publications announcing CONTRACTOR's interest in obtaining proposals from M/WBEs, and/or sending written notification to M/WBE economic development assistance agencies, trade groups and other organizations notifying them of the project and of the work available to be subcontracted by CONTRACTOR to M/WBEs.

B. If CONTRACTOR is unable to meet the M/WBE participation goals for this Contract after complying fully with each of the requirements of paragraph "A" above, and CONTRACTOR is otherwise in full compliance with the terms of this Article, DCAMM may reduce the M/WBE participation goals for this Contract to the extent that such goals cannot be achieved.

8. Suspension of Payment and/or Performance for Noncompliance.

A. If at any time during the performance of this Contract, DCAMM determines or has reason to believe that (1) there has been a change or reduction in any M/WBE Work which will result in CONTRACTOR failing to meet the M/WBE participation goal(s) for this Contract, other than a reduction in M/WBE Work resulting from a change in the Contract work ordered by DCAMM, and (2) CONTRACTOR has failed to comply fully with all of the terms and conditions of paragraphs 1 through 7 above, DCAMM may:

(1) suspend payment to CONTRACTOR of an amount equal to the value of the work which was to have been performed by an M/WBE pursuant to CONTRACTOR's Schedule of M/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 9, and/or

(2) suspend CONTRACTOR's performance of this Contract in whole or in part.

B. DCAMM shall give CONTRACTOR prompt written notice of any action taken pursuant to paragraph A above and shall give CONTRACTOR and any other interested party, including any M/WBEs, an opportunity to present evidence to DCAMM that CONTRACTOR 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. DCAMM may invite SDO and the Massachusetts Commission Against Discrimination to participate in any proceedings undertaken pursuant to this paragraph.

C. Upon a showing that CONTRACTOR is in full compliance with the requirements of this Article, or that CONTRACTOR has met or will meet the M/WBE participation goals for this Contract, DCAMM shall release any funds withheld pursuant to clause A(1) above, and lift any suspension of CONTRACTOR's performance under clause A(2) above.

9. Liquidated Damages; Termination.

A. If payment by DCAMM or performance by CONTRACTOR is suspended by DCAMM as provided in paragraph 8 above, DCAMM shall have the following rights and remedies if CONTRACTOR thereafter fails to take all action necessary to bring CONTRACTOR into full compliance with the requirements of this Article, or if full compliance is no longer possible because the default of CONTRACTOR is no longer susceptible to cure, if CONTRACTOR fails to take such other action as may be required by DCAMM to meet the M/WBE participation goals set forth in this Contract:

(1) DCAMM may terminate this Contract, and/or

(2) DCAMM may retain from final payment to CONTRACTOR, as liquidated damages, an amount equal to the difference between (x) the total of the M/WBE participation goals set forth in this Contract, and (y) the amount of M/WBE participation credit earned by CONTRACTOR for M/WBE Work performed under this Contract as determined by DCAMM, the parties agreeing that the damages for failure to meet the M/WBE participation goals are difficult to determine and that the foregoing amount to be retained by DCAMM represents the parties' best estimate of such damages. Any liquidated damages will be assessed separately for MBE and WBE participation.

B. Before exercising its rights and remedies hereunder, DCAMM may, but DCAMM shall not be obligated to, give CONTRACTOR and any other interested party another opportunity to present evidence to DCAMM that CONTRACTOR 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. DCAMM may invite SDO and the Massachusetts Commission Against Discrimination to participate in any proceedings undertaken hereunder.

10. Reporting Requirements.

CONTRACTOR shall submit to DCAMM all information or documentation that is necessary in the judgment of DCAMM to ascertain whether or not CONTRACTOR has complied with any of the provisions of this Article.

11. Awarding Authority's Right to Waive Provisions of this Article in Whole or In Part.

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

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PART II: WORKFORCE EQUAL EMPLOYMENT OPPORTUNITY ANTI-DISCRIMINATION AND AFFIRMATIVE ACTION PROGRAM

The applicable minority workforce utilization percentage for the Contract is 15.3%.

The women workforce utilization percentage for the Contract is 6.9%.

1. Compliance Generally

For purpose of this Article, "minority" refers to Asians, Blacks, Western Hemisphere Hispanics, Native Americans, and Cape Verdeans; "Commission" refers to the Massachusetts Commission Against Discrimination. During the performance of this Contract, CONTRACTOR and all of its Subcontractors (hereinafter collectively referred to in this **Schedule B-7: Goals for Participation by M/WBE Enterprises/Equal Employment Opportunity, Anti-Discrimination, and Affirmative Action Program (Executive Orders No. 526 and No. 565)** as "CONTRACTOR") shall comply with all applicable equal employment opportunity, non-discrimination and affirmative action requirements, including but not limited to the following:

2. Non-Discrimination and Affirmative Action

A. CONTRACTOR shall not discriminate against any employee or applicant for employment because of race, color, religious creed, national origin, age, handicap, sexual orientation, gender identity or expression, or sex. The aforesaid provision shall include, but not be limited to, the following: employment upgrading, demotion or transfer; recruitment advertising; recruitment layoff; termination; rates of pay or other forms of compensation; conditions or privileges of employment; and selection for apprenticeship. CONTRACTOR shall comply with the provisions of M.G.L. c. 151B and all other applicable anti-discrimination and equal opportunity laws.

B. CONTRACTOR shall comply with the provisions of Executive Order 526, entitled Order Regarding Nondiscrimination, Diversity, Equal Opportunity and Affirmative Action, which prohibits unlawful discrimination based on race, color, age, gender, ethnicity, sexual orientation, gender identity or expression, religion, creed, ancestry, national origin, disability, veteran's status (including Vietnam-era veterans), or background. Executive Order 526 is herein incorporated by reference and made a part of this Contract.

Pursuant to E.O. 526 CONTRACTOR and any subcontractors may not engage in discriminatory employment practices; and CONTRACTOR certifies that they are in compliance with all applicable federal and state laws, rules, and regulations governing fair labor and employment practices; and commits to purchasing supplies and services from certified minority or women-owned businesses, small businesses, or businesses owned by socially or economically disadvantaged persons or persons with disabilities. These provisions shall be enforced through the contracting agency, the Operational Services Division, and/or the Massachusetts Commission Against Discrimination. Any breach shall be regarded as a material breach of Contract that may subject Contractor to appropriate sanctions. CONTRACTOR shall comply with the provisions of Executive Order No. 246 entitled Revoking and Superseding Executive Orders Numbers 143 and 150, with respect to affirmative action programs for handicapped individuals, which is herein incorporated by reference and made a part of this Contract.

C. In connection with the performance of the Work, CONTRACTOR shall undertake in good faith affirmative action measures designed to eliminate any discriminatory barriers in the terms and conditions of employment on the grounds of race, color, religious creed, national origin, age, sexual orientation, gender identity or expression, or sex, and to eliminate and remedy any effects of such discrimination in the past. Such affirmative action shall entail positive and aggressive measures to ensure equal opportunity in the areas of hiring, upgrading, demotion or transfer, recruitment, layoff or termination, rate of compensation, and

in-service or apprenticeship training programs. This affirmative action shall include all action required to guarantee equal employment opportunity for all persons, regardless of race, color, religious creed, national origin, age, sexual orientation, gender identity or expression, or sex. A purpose of this provision is to ensure to the fullest extent possible an adequate supply of skilled tradesmen for future public construction projects.

D. If CONTRACTOR shall use any subcontractor on any work performed under this Contract, CONTRACTOR shall take affirmative steps to negotiate with qualified minority and women subcontractors. These affirmative steps shall cover both pre-bid and post-bid periods. It shall include notification to the State Office of Minority and Women Business Assistance or its designee, while bids are in preparation, of all products, work or services for which CONTRACTOR intends to negotiate bids. In all solicitations either by competitive bidding or negotiation made by CONTRACTOR either for work to be performed under a subcontract or for the procurement of materials or equipment, each potential subcontractor or supplier shall be notified in writing by CONTRACTOR of CONTRACTOR's obligations under this Contract relative to non-discrimination and affirmative action.

E. As part of its obligation of remedial action under this Article, CONTRACTOR shall maintain on this project not less than the percent ratio set forth herein of minority and women employee worker hours to total worker hours in each job category including but not limited to bricklayers, carpenters, cement masons, electricians, ironworkers, operating engineers, and those "classes of work" enumerated in M.G.L. c. 149, s. 44F.

F. In the hiring of minority and women journeypersons, apprentices, trainees and advanced trainees, CONTRACTOR shall rely on referrals from a multi-employer affirmative action program approved by the Commission, traditional referral methods utilized by the construction industry, and referrals from agencies, not more than three in number at any one time, designated by the Liaison Committee or DCAMM.

3. Liaison Committee, Reports and Records

A. At the option of DCAMM there may be established for the term of this Contract a body to be known as the Liaison Committee. The Liaison Committee shall be composed of one representative each from the Awarding Authority, the Commission and such other representatives as may be designated by the Commission in conjunction with the Awarding Authority. CONTRACTOR (or his agent, if any, designated by him as the on-Site equal employment opportunity officer) shall recognize the Liaison Committee as an affirmative action body, and shall establish a continuing working relationship with the Liaison Committee, consulting with the Liaison Committee on all matters related to minority and women recruitment, referral, employment and training.

B. CONTRACTOR shall prepare projected staffing tables on a quarterly basis. These shall be broken down into projections, by week, of workers required in each trade. Copies shall be furnished one week in advance of the commencement of the period covered, and also when updated, to the Awarding Authority and Liaison Committee. CONTRACTOR shall prepare weekly reports in a form approved by the Awarding Authority of hours worked in each trade by each employee, identified as minority or non-minority. Copies of these shall be provided at the end of each such week to the Awarding Authority and to the Liaison Committee.

C. Records of employment referral orders, prepared by CONTRACTOR, shall be made available to the Awarding Authority and to the Liaison Committee on request.

D. A designee of the Awarding Authority and a designee of the Liaison Committee shall each have right to access to the Site.

E. CONTRACTOR shall comply with the provisions of M.G.L. c. 151B as amended, of the Massachusetts General Laws, both of which are herein incorporated by reference and made a part of this Contract.

F. CONTRACTOR shall provide all information and reports required by the Awarding Authority or the Commission on forms and in accordance with instructions issued by either of them and will permit access to its facilities and any books, records, accounts and other sources of information which may be determined by the Awarding Authority or the Commission to affect the employment of personnel. This provision shall apply only to information pertinent to the Owner's supplementary affirmative action Contract requirements. Where information required is in the exclusive possession of another who fails or refuses to furnish this information, CONTRACTOR shall so certify to the Awarding Authority or the Commission as appropriate and shall set forth what efforts he has made to obtain the information.

4. Sanctions

A. Whenever the Awarding Authority, the Commission, or the Liaison Committee believes CONTRACTOR or any Subcontractor may not be operating in compliance with the terms of this Article, the Commission shall directly, or through its designated agent, conduct an appropriate investigation, and may confer with the Parties, to determine if such Contractor is operating in compliance with the terms of this Article. If the Commission or its agent finds CONTRACTOR or any Subcontractor not in compliance, it may make a preliminary report on non-compliance, and notify such Contractor in writing of such steps as will in the judgment of the Commission or its agent bring such Contractor into compliance. In the event that such Contractor fails or refuses to fully perform such steps, the Commission **may** make a final report of non-compliance, and recommend to the Awarding Authority the imposition of one or more of the sanctions listed below. If, however, the Commission believes CONTRACTOR or any Subcontractor has taken or is taking every possible measure to achieve compliance, it shall not make a final report of non-compliance. Within fourteen days of the receipt of the recommendations of the Commission, the Awarding Authority shall move to impose one or more of the following sanctions, as it may deem appropriate to attain full and effective enforcement:

The recovery by the Awarding Authority from CONTRACTOR of 1/100 of 1% of the Contract award price or \$1,000 whichever sum is greater, in the nature of liquidated damages or, if a Subcontractor is in non-compliance, the recovery by the Awarding Authority from CONTRACTOR, to be assessed by CONTRACTOR as a back charge against the subcontractor, of 1/10 of 1% of the sub-Contract Price, or \$400 whichever sum is greater, in the nature of liquidated damages, for each week that such party fails or refuses to comply; The suspension of any payment or part thereof due under the Contract until such time as CONTRACTOR or any subcontractor is able to demonstrate his compliance with the terms of the Contract;

The termination, or cancellation, of the Contract, in whole or in part, unless CONTRACTOR or any Subcontractor is able to demonstrate within a specified time his compliance with the terms of the contract;

The denial to CONTRACTOR or any subcontractor of the right to participate in any future contracts awarded by the Awarding Authority for a period of up to three years.

B. If at any time after the imposition of one or more of the above sanctions a Contractor is able to demonstrate that it is in compliance with this Article, CONTRACTOR may request the Awarding Authority, in consultation with the Commission, to suspend the sanctions conditionally, pending a final determination by the Commission as to whether CONTRACTOR is in compliance. Upon final determination of the Commission, the Awarding Authority, based on the recommendation of the Commission, shall either lift the sanctions or reimpose them.

C. Sanctions recommended by the Commission and enumerated under Section A above shall not be imposed by the Awarding Authority except after an adjudicatory proceeding, as

that term is used in M.G.L. c. 30A, has been conducted. No investigation by the Commission or its agent shall be initiated without prior notice to CONTRACTOR.

D. Notwithstanding the provisions of 4A-4C above, if the Awarding Authority determines after investigation that CONTRACTOR or any Subcontractor is not in compliance with the terms of this Article, it may suspend any payment or portion thereof due under the Contract until CONTRACTOR demonstrates to the satisfaction of the Awarding Authority compliance with the terms of this Article. This temporary suspension of payments by the Awarding Authority is separate from the sanctions set forth in Section 4A-4C of this Article above, which are determined by MCAD and recommend to the Awarding Authority. Payment may be suspended only after CONTRACTOR and any other interested party shall have been given the opportunity to present evidence in support of its position at an informal hearing held by the Awarding Authority, and the Awarding Authority has concluded upon review of all the evidence that such penalty is justified. Payment shall not be suspended if the Awarding Authority finds that CONTRACTOR made its best efforts to comply with this Article, or that some other justifiable reason exists for waiving the provisions of this Article in whole or in part.

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B-8: Prevailing Wage Rates

The minimum wage rates provided in **APPENDIX A: REFERENCE DOCUMENTS** have been provided by the Division of Occupational Safety of the Massachusetts Department of Labor and Workforce Development. The Awarding Authority is not responsible for errors or omissions in such wage rates.

M.G.L. c. 149, §§ 26 and 27 provide as follows:

" . . . Payments by employers to health and welfare plans, pension plans and supplementary unemployment benefit plans under collective bargaining agreements or understandings between organized labor and employers shall be included for the purpose of establishing minimum wage rates as herein provided.

. . . The aforesaid rates of wages in the schedule of wage rates shall include payments by employers to health and welfare plans, pension plans and supplementary unemployment benefit plans as provided in said section twenty-six, and such payments shall be considered as payments to persons under this section performing work as herein provided. Any employer engaged in the construction of such works who does not make payments to a health and welfare plan, a pension plan and a supplementary unemployment benefit plan, where such payments are included in said rates of wages, shall pay the amount of said payments directly to each employee engaged in said construction."

Mass General Laws c. 149, §27 as amended on August 8, 2008 requires annual updates to prevailing wage schedules for all public construction projects lasting longer than one year. The Contractor is required to obtain the wage schedules from awarding authorities, and to pay no less than these rates to covered workers. The Contractor and all subcontractors are required to anticipate such annual updated prevailing wage schedules and neither the Contractor nor any subcontractors shall be entitled to claim additional compensation for base contract work due to updated prevailing wage schedules.

[NOTE: For each Contract, DCAMM to insert the Prevailing Wage Rates from Division of Occupational Safety of the Massachusetts Department of Labor and Workforce Development in Appendix A.

All compliance and certification forms related to Certified Payroll requirements, M/WBE requirements and Workforce requirements are provided in Exhibit VIII.]

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B-9: Instructions/Model Forms for Submission of Project Change Requests

In accordance with Section 23 of this Contract, CONTRACTOR is required to adhere to the following instructions and model forms for the submission of Project Change Requests, and any reasonable updates to such forms:

- **Form 13E:** INSTRUCTIONS AND PROCEDURES REGARDING CHANGE ORDERS AND EQUITABLE ADJUSTMENTS-ENERGY
- **Form 14:** REQUEST FOR APPROVAL OF WAGES AND RATES FOR CHANGE ORDER PRICING
- **Form 15-1:** CHANGE ORDER SUMMARY SHEET
- **Form 15-2:** NET IMPACT TO ANNUAL SAVINGS AND PROJECT INCENTIVES
- **Form 15-3:** CHANGE ORDER SUBMISSION FORMAT FOR CONTRACTOR AND/OR SUBCONTRACTOR
- **Form 5:** REQUEST AND AGREEMENT FOR CHANGE IN THE PLANS AND/OR SPECIFICATIONS AND/OR CONTRACT

The instructions and model forms listed above are found in **APPENDIX A: REFERENCE DOCUMENTS** and hereby incorporated into this Contract. **APPENDIX A: REFERENCE DOCUMENTS** also includes the following DCAMM forms for CONTRACTOR's reference:

- Daily Time and Materials Report
- CH25A Sample Change Order Request Log

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B-10: Closeout Procedures and Forms

In accordance with Section 28 of this Contract, CONTRACTOR is required to adhere to the following instructions and model forms (and any reasonable updates to such forms) for the submission of requests for Substantial Completion, Final ECM/Equipment Acceptance, and Final Project Approval:

- Substantial Completion and ECM/Equipment Acceptance Form
- Final Completion Approval Form
- Final Completion Log

The forms listed above are included in **APPENDIX A: REFERENCE DOCUMENTS** and hereby incorporated into this Contract.

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SCHEDULE C: EXTENDED WARRANTY AND REPLENISHABLE STOCK

Schedule C-1: Extended Warranty

CONTRACTOR shall provide a one year Builder's Warranty and transfer all manufacturer's warranties on New Equipment/Systems in accordance with Section 32 of this Contract. In addition, CONTRACTOR shall provide extended warranty services in accordance with the following table:

Table C-1: Extended Warranty

Upon approval by DCAMM, selected CONTRACTOR's Extended Warranty Services (Table C-1) from the Proposal will be inserted here.

If not included in Project, DCAMM to indicate "Not Applicable"

Project #:

Schedule C-2: Replenishable Stock

CONTRACTOR shall provide stock and replacement parts in accordance with the following table:

Table C-2: Stock and Replacement Parts

Upon approval by DCAMM, the selected CONTRACTOR's Replacement Parts and Stock (Table C-2) from the Proposal will be inserted here.

SCHEDULE D: ENERGY SAVINGS

CONTRACTOR agrees that the following energy and/or water cost and unit savings are estimated to be achieved by the installation of the New Equipment/Systems required in this Contract. Energy Savings are below:

Part I: Estimated Energy Savings

Table D-1: Energy Unit and Cost Savings

UPON APPROVAL BY DCAMM, Table D-1 from CONTRACTOR's Proposal will be inserted here.

These savings will be verified no less than quarterly throughout the Project, and prior to Final ECM/Equipment Acceptance Notice using the methodology established in the M&V procedures of **Schedule B-5: Commissioning/M&V**.

These savings are based upon the following assumptions and Energy Baseline:

Table D-2: Energy Baseline

NOTE: DCAMM to insert Table D-2: Energy Baseline included in RFP here for each Contract.

Any changes to savings shall be based upon the baseline.

CONTRACTOR shall be required to submit revised savings data prior to the approval of any Change Order or amendment to the Contract by DCAMM.

[if applicable: Further calculations and assumptions concerning these savings are found in Appendix A: REFERENCE DOCUMENTS (Basis of Design, Proposal, pp. xxxx, etc.)]

Part II: Energy Savings Tracking

The Contractor shall provide within thirty (30) days following the execution of this Contract, and as part of final project closeout, the following documentation to enable the Commonwealth of Massachusetts to track savings associated with energy conservation projects:

- DCAMM Site Audit Template: **DCAMM to insert filename for Project's AEP Audit Template here for each Contract**

Project #:

**EXHIBIT I: COMPLIANCE AND CERTIFICATION FORMS FOR CERTIFIED PAYROLL,
M/WBE AND WORKFORCE REQUIREMENTS**

The following forms, completed by CONTRACTOR and, if applicable, approved by DCAMM are included in the following pages:

- *Certificate of Compliance with Certain Workforce Related Legal Requirements (I – 9; worker classification, workers' compensation insurance; unemployment insurance; social security and income taxes; hospitalization and medical benefits)*
- *Schedule For Participation (for Minority and Women Business Enterprises)*
- *Letter of Intent (for Minority and Women Business Enterprises)*
- *Anticipated Veteran and Service-Disabled Veteran-Owned Business Enterprise Participation*

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WORKFORCE CERTIFICATION FORM

CERTIFICATE OF COMPLIANCE WITH CERTAIN WORKFORCE RELATED LEGAL REQUIREMENTS: I-9 EMPLOYMENT ELIGIBILITY VERIFICATION, WORKER CLASSIFICATION, WORKERS' COMPENSATION INSURANCE, UNEMPLOYMENT INSURANCE, SOCIAL SECURITY AND INCOME TAXES, HOSPITALIZATION AND MEDICAL BENEFITS

Applicable to All DCAMM Construction Projects

To Be Executed by General Contractors/Construction Managers/All Subcontractors

Company Name: _____ ("Company")

Project Title: _____ ("Project")

Project No.: Mass. State Project No.: _____

I, _____ authorized signatory for
Print Name

Company whose principal place of business is at _____
Address

do hereby certify under penalties of perjury that Company shall comply with the following legal requirements for any and all employees to be employed in the Project who are required to be listed in the certified payroll reports for the Project: 1) Federal Department of Homeland Security Requirements in hiring such employees including, but not limited, to the faithful completion of the Federal Department of Homeland Security Form I-9 process by Company; 2) proper classification of individuals employed on the project; 3) all laws concerning workers' compensation insurance coverage, unemployment insurance, social security taxes, and income taxes; and 4) all laws concerning hospitalization and medical benefits that meet the minimum requirements of the connector board established in chapter 176Q of the General Laws. Company acknowledges that with the weekly workforce reports that must be submitted on a weekly basis, Company and all of its Subcontractors will be required to certify that the Form I-9 process was faithfully completed and that all other legal requirements related to its workforce referenced above were followed for all employees listed on each certified payroll report when submitted. By the signature of the Company's Authorized

Project #:

Signatory below, the Company certifies under the pains and penalties of perjury that the Company shall comply with all requirements of applicable law and the this Workforce Certification; that the Company will not knowingly use undocumented workers in connection with the performance of this contract; that pursuant to federal requirements, the Company shall verify the immigration status of all workers assigned to the contract without engaging in unlawful discrimination; and that the Company shall not knowingly or recklessly alter, falsify, or accept altered or falsified documents from any such worker. The Company understands and agrees that breach of any of the terms of this Workforce Certification during the period of a contract may be regarded as a material breach, subjecting the Company to sanctions, including but not limited to monetary penalties, withholding of payments, contract suspension or termination. Company shall require each of its Subcontractors to execute and provide to Company a Workforce Certification with the execution of each subcontract, and Company shall forward a copy of each such Workforce Certification to the General Contractor or Construction Manager for filing with DCAM.

Company Social Security No. or Federal Identification No. is: _____

Signed under the pains and penalties of perjury the ____ day of _____ 20 ____

Signature: _____

Name and Title: _____
Duly Authorized

Project #:

EXHIBIT II: PERFORMANCE BOND

Know all men by these presents, that

as principal, and

as surety, are held and firmly bound unto the Commonwealth of Massachusetts in the sum of

in lawful money of the United States of America, to be paid to the Commonwealth of Massachusetts, for which payments, well and truly to be made, we bind ourselves, our respective heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

Whereas, the said principal has made a Contract with the Commonwealth, acting through its _____ ("Awarding Authority"), bearing date of _____, 20____, for the construction of Project No. _____ Contract No. _____ Project Name _____

Now the condition of this obligation is such that if the principal shall well and truly keep and perform all the undertakings, covenants, agreements, terms and conditions of said Contract and any extensions thereof that may be granted by the Commonwealth, with or without notice to the surety, and during the life of any guarantee required under the Contract, and shall also well and truly keep and perform all the undertakings, covenants, agreements, terms and conditions of any and all duly authorized modifications, alterations, changes or additions to said Contract that may hereafter be made, notice to the surety of such modifications, alterations, changes or additions being hereby waived, then this obligation shall become null and void; otherwise it shall remain in full force and virtue.

In the event that the Contract is abandoned by the principal, or is terminated by the Commonwealth under the provisions of said Contract, said surety shall, if requested in writing by the Awarding Authority, take such action as is necessary to complete the Contract.

In witness whereof we hereunto set our hand and seals this _____ day of _____, 20____.

_____ (Seal) _____ (Seal)
(Print Name of CONTRACTOR) (Print Name of Surety)

BY _____
(Signature - Title)

BY _____
(Signature - Title)

Surety Address

Project #:

EXHIBIT III: LABOR AND MATERIAL PAYMENT BOND

PAYMENT BOND

Know all men by these presents, that _____ as
principal, and _____
as surety, are held and firmly bound unto the Commonwealth of Massachusetts in the sum
of _____
in lawful money of the United States of America, to be paid to the Commonwealth of
Massachusetts, for which payments, well and truly to be made, we bind ourselves, our
respective heirs, executors, administrators, successors and assigns, jointly and severally,
firmly by these presents.

Whereas, the said principal has made a Contract with the Commonwealth acting
through its _____ ("Awarding Authority"),
bearing date of _____, 20____, for the construction of
Project No. _____ Contract No. _____
Project Name _____

Now the condition of this obligation is such that if the principal shall pay for all labor
performed or furnished and for all materials used or employed in said Contract and in any
and all duly authorized modifications, alterations, extensions of time, changes or additions to
said Contract that may hereafter be made, notice to the surety of such modifications,
alterations, extensions of time, changes or additions being hereby waived, the foregoing to
include any other purpose or items set out in, and to be subject to, provisions of
Massachusetts General Laws Chapter 30, section 39A, and Chapter 149, section 29, as
amended, then this obligation shall become null and void; otherwise it shall remain in full
force and virtue.

In witness whereof we hereunto set our hand and seals this _____ day of
_____, 20_____.

_____(Seal) _____(Seal)
(Print Name of Contractor) (Print Name of Surety)

BY _____ BY _____
(Signature - Title) (Signature - Title)

Surety Address

Project #:

EXHIBIT IV: INSURANCE CERTIFICATES

Certificates of Insurance appear on the following pages.

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Project #:

EXHIBIT V: TRENCH APPLICATION AND PERMIT DOCUMENTS

Trench application and permit documents appear on following pages.

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Project #:

**EXHIBIT VI: CERTIFICATE OF COMPLIANCE WITH STATE TAX LAWS AND WITH
UNEMPLOYMENT COMPENSATION CONTRIBUTION REQUIREMENTS**

Pursuant to M.G.L., Ch. 62C, s.49A and M.G.L. Ch. 151A, s.19A, I,

_____ authorized signatory for

_____ whose

principal place of business is at _____

_____ do hereby certify under penalties of perjury

that _____

has filed all state tax returns and paid all taxes as required by law and has complied with all state laws pertaining to contributions to the unemployment compensation fund and to payments in lieu of contributions.

The Business Organization Social Security Number or Federal Identification Number is

_____.

Signed under the penalties of perjury the _____ day of

_____, 20 _____.

Signature: _____

Name and Title: _____

Project #:

EXHIBIT VII: EVIDENCE OF AUTHORITY

Select proper form of Evidence of Authority based on Contractor's type of business organization.

For Corporation:

If a corporation, either: (1) complete the fields below; or (2) attach to each signed copy of contract a notarized copy of vote of corporation authorizing the signatory to sign this contract. If the attesting clerk is same as individual executing contract, have signature notarized below.

At a duly authorized meeting of the Board of Directors of _____

_____ held on _____
(Name of the Corporation) (Date of voting meeting)

At which all the partners and investor were present or waived notice, it was voted

_____, _____
(Name) (Officer)

of this corporation be and hereby is authorized to execute contracts and bonds in the name and behalf of said corporation, and affix its Corporate Seal thereto, and such execution of any contract

or obligation in this company's name on its behalf by such

_____ under seal of the corporation, shall be valid and binding upon this company,

A TRUE COPY,

ATTEST _____
Clerk

Place of Business: _____

On this ____ day of _____, 20__, before me, the undersigned notary public, _____ (name of document signer) personally appeared, proved to me through satisfactory evidence of identification, which were _____, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that (he) (she) signed it voluntarily for its stated purpose, as the duly elected clerk for _____, a corporation, as the voluntary act of the corporation, and that the above vote has not been amended or rescinded and remains in full force and effect as of the date of this contract.

_____ (official signature and seal of notary public)

Project #:

DATE OF THIS AGREEMENT: _____

(Clerk)

(Corporate Seal)

For LLC:

If a limited liability company, either: (1) complete the fields below; or (2) attach to each signed copy of contract a notarized copy of vote of corporation authorizing the signatory to sign this contract. If the attesting manager is same as individual executing contract, have signature notarized below.

At a duly authorized meeting of the Members of _____

_____ held on _____
(Name of the LLC) (Date of voting meeting)

At which all the members were present or waived notice, it was voted

_____,
(Name)

(Manager)

of this company be and hereby is authorized to execute contracts and bonds in the name and behalf of said company, and affix its Company Seal thereto, and such execution of any contract

or obligation in this company's name on its behalf by such

_____ under seal of the company, shall be valid and binding upon this company,

A TRUE COPY,

ATTEST _____
Clerk

Place of Business: _____

On this ____ day of _____, 20__, before me, the undersigned notary public, _____ (name of document signer) personally appeared, proved to me through satisfactory evidence of identification, which were _____, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that (he) (she) signed it voluntarily for its stated purpose, as the duly elected manager for _____, a limited liability company, as the voluntary act of the company, and that the above vote has not been amended or rescinded and remains in full force and effect as of the date of this contract.

Project #:

_____ (official signature and seal of notary public)

DATE OF THIS AGREEMENT: _____

(Clerk)

(Corporate Seal)

For LLP:

If a limited liability partnership, either: (1) complete the fields below; or (2) attach to each signed copy of contract a notarized copy of evidence of authority authorizing the signatory to sign this contract. If attesting is same as individual executing contract, have signature notarized below.

At a duly authorized meeting of the partners and investors of _____

_____ held on _____
(Name of the partnership) (Date of voting meeting)

At which all the partners and investors were present or waived notice, it was voted

_____, _____
(Name) (Title)

of this company be and hereby is authorized to execute contracts and bonds in the name and behalf of said partnership, and affix its Corporate Seal thereto, and such execution of any contract

or obligation in this company's name on its behalf by such

_____ under seal of the company, shall be valid and binding upon this company,

A TRUE COPY,

ATTEST _____
Partner or Investor

Place of Business: _____

On this ____ day of _____, 20__, before me, the undersigned notary public, _____ (name of document signer) personally appeared, proved to me through satisfactory evidence of identification, which were _____, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that (he) (she) signed it voluntarily for its stated purpose, as the duly elected _____ for _____, a partnership, as the voluntary act of the partnership, and that the above vote has not been amended or rescinded and remains in full force and effect as of the date of this contract.

Project #:

_____ (official signature and seal of notary public)

DATE OF THIS AGREEMENT: _____

(Partner or Investor)

(Corporate Seal)

Project #:

EXHIBIT VIII: GOOD STANDING CERTIFICATE

Form AF-4A 1/78

EXECUTIVE OFFICE FOR
ADMINISTRATION AND FINANCE
The Commonwealth of Massachusetts

_____ MASSACHUSETTS BUSINESS CORPORATION

_____ NON-PROFIT CORPORATION

_____ FOREIGN (Non-Massachusetts) CORPORATION

I, _____, _____ President _____ Clerk of
(Typed Name)

_____ whose principal office is located at

do hereby certify that the above named Corporation has filed with
the State Secretary all certificates and annual reports required by Chapter 156B, section 109
(Business Corporation), by Chapter 156C, Section 12 (Limited Liability Company) or by
Chapter 180, Section 26A (Non-Profit Corporation) of the Massachusetts General Laws.

SIGNED UNDER THE PENALTIES OF PERJURY THIS ____ day of _____,
20____.

Signature of responsible corporate
Officer _____.

Please refer entities which refuse or fail to complete and
execute Form AF-4A, and also direct any questions you may have
to:

Laurie Flynn, Director
Office of the Secretary of the Commonwealth
Corporate Division
John W. McCormack Building, Room 1710
Boston, MA 02108

EXHIBIT IX: EXECUTIVE ORDER 504 CONTRACTOR CERTIFICATION FORM

BIDDER/CONTRACTOR LEGAL NAME:

BIDDER/CONTRACTOR VENDOR/CUSTOMER CODE:

Executive Order 504: For all Contracts involving CONTRACTOR's access to personal information, as defined in M.G.L. c. 93H, and personal data, as defined in M.G.L. c. 66A, owned or controlled by Executive Department agencies, or access to agency systems containing such information or data (herein collectively "personal information"), Contractor certifies under the pains and penalties of perjury that CONTRACTOR (1) has read Commonwealth of Massachusetts [Executive Order 504](#) and agrees to protect any and all personal information; and (2) has reviewed all of the Commonwealth of Massachusetts Executive Office of Technology Services and Security's Security Policies available at www.mass.gov/ITD under Policies, Legal and Technical Guidance.

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

- (1) obtain a copy, review, and comply with the contracting agency's Information Security Program (ISP) and any pertinent security guidelines, standards and policies;
- (2) comply with all of the Commonwealth of Massachusetts Executive Office of Technology Services and Security's Security Policies ("Security Policies") available at www.mass.gov/ITD under Policies, Legal and Technical Guidance;
- (3) communicate and enforce the contracting agency's ISP and such Security Policies against all employees (whether such employees are direct or contracted) and Subcontractors;
- (4) implement and maintain any other reasonable appropriate security procedures and practices necessary to protect personal information to which CONTRACTOR is given access by the contracting agency from the unauthorized access, destruction, use, modification, disclosure or loss;
- (5) be responsible for the full or partial breach of any of these terms by its employees (whether such employees are direct or contracted) or Subcontractors during or after the term of this Contract, and any breach of these terms may be regarded as a material breach of this Contract;

Project #:

(6) in the event of any unauthorized access, destruction, use, modification, disclosure or loss of the personal information (collectively referred to as the “unauthorized use”): (a) immediately notify the contracting agency if CONTRACTOR becomes aware of the unauthorized use; (b) provide full cooperation and access to information necessary for the contracting agency to determine the scope of the unauthorized use; and (c) provide full cooperation and access to information necessary for the contracting agency and CONTRACTOR to fulfill any notification requirements.

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 under Section 11 of the Commonwealth’s Terms and Conditions, withholding of payments, contract suspension, or termination. In addition, CONTRACTOR 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.

Bidder/Contractor Name: _____.

Bidder/Contractor Authorized Signature: _____.

Print Name and Title of Authorized
Signatory: _____.

Date: _____.

This Certification may be signed once and photocopied to be attached to any Commonwealth Contract that does not already contain this Certification Language and shall be interpreted to be incorporated by reference into any applicable contract subject to Executive Order 504 for this Contractor

Project #:

APPENDIX A: REFERENCE DOCUMENTS

The following documents are attached in electronic format:

Name of document	Date	Cross-reference to this section of the ESA (where applicable)
(1) Proposal		
(2) CONTRACTOR's Response to First Set of Questions		
(3) (Any other applicable documents to be inserted by DCAMM)		
(4) Selection (E-3) Letter from DCAMM		
(5) Sample Schedule of Values (S1b)	N/A	Schedule B-3
(6) Prevailing Wage Rates	N/A	Schedule B-8
(7) Instructions/Model Forms for Submission of Project Change Request including: (a) CH25A Sample COR Log (b) Daily Time and Materials Report	N/A	Schedule B-9
(8) Closeout Procedures and Model Forms (a) CAMIS Capital Project Information Template	N/A	Schedule B-10
(9) Compliance and Certification Forms for Certified Payroll, M/WBE and Workforce Requirements	N/A	Exhibit I