

**REQUEST FOR PROPOSALS**  
**CITY OF NEW BEDFORD, MASSACHUSETTS**

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**QUEST CENTER OPERATOR & LEASE OF SPACE AT 1213 PURCHASE STREET,  
NEW BEDFORD, MA 02740**

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**RFP #24192032**



**Proposals Due: Tuesday, August 29, 2023 at 2:00 p.m.**

Jonathan F. Mitchell  
Mayor

Department of Facilities & Fleet Management  
294 Liberty Street  
New Bedford, MA 02740

**City of New Bedford  
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**Operation of Quest Center Business Incubator Program and Lease of Office Space**

**REQUEST FOR PROPOSALS # 24192032**

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## I. General Information



**CITY OF NEW BEDFORD  
MASSACHUSETTS  
REQUEST FOR PROPOSALS**

**Operator for the Quest Center Business Incubator Program and Lease of Office Space**

**RFP #24192032**

The City of New Bedford, Purchasing Department, in conjunction with the Department of Facilities & Fleet Management Department, is soliciting sealed proposals for the operations of the Quest Center Business Incubator Program located at 1213 Purchase Street, New Bedford, MA 02740. The proposal process and award of this Contract will be under the provisions of M.G.L. Chapter 30B.

Interested parties may obtain the Request for Proposals (RFP) beginning on Monday, August 14, 2023, by visiting the City of New Bedford webpage at [newbedford-ma.gov/Purchasing](https://newbedford-ma.gov/Purchasing), Bidnet Direct, or by emailing [purchasing@newbedford-ma.gov](mailto:purchasing@newbedford-ma.gov).

Sealed proposals will be received by the Purchasing Department until Tuesday, August 29, 2023 at 2:00 p.m. All proposals must be submitted *electronically* via Bidnet Direct at <https://www.bidnetdirect.com/massachusetts/newbedfordelectronically> before the above time and date.

Attention is called to the fact that supplies furnished as part of this Contract are exempt from the Sales and Use Tax. All proposals submitted should take this factor into consideration and be calculated accordingly. This project is funded through Quest Center revenue.

The contract will be awarded within sixty (60) days after the proposal opening. The time for award may be extended by mutual agreement between the City and the awarded vendor.

Proposals ***must*** include **ALL DOCUMENTS** required by the Request for Proposal. The Awarding Authority reserves the right to waive any informality, reject any or all proposals, or accept other than the lowest priced proposal if the City determines that it is in the best interests of the City.

The operations of the Quest Center Business Incubator Program shall be conducted in conformance with this Request for Proposals and applicable provisions of the grant from the United States Department of Commerce Economic Development Administration (EDA). The Quest Center Incubator Program is a partnership between the City of New Bedford and the University of Massachusetts – Dartmouth developed for the purpose of providing a center for

product development, testing and demonstration, technology transfer, and new marine science and technology related company information. The Quest Center provides reasonably priced office space, administrative and other support to newly formed private businesses that are involved in the development of products in the field of science and technology. The successful proposer must demonstrate strong working relationships with both the business and academic community and demonstrate that they are qualified to operate a business incubator program. As part of this procurement and in lieu of payment of a portion of the Operator's fee, the City will lease 3,200 + square feet of office space to the Quest Center for a term not to exceed the term of the agreement to operate the Quest Center. The fair market value of the leased space (estimated at \$8.00 per square foot) is approximately twenty-five thousand six hundred dollars (\$25,600.00) for the first year plus the cost of utilities. The required services and the lease shall be for a period of three years, subject to annual appropriation.

Awarding Authority  
City of New Bedford  
Purchasing Department  
Molly Gilfeather Rodriguez, Director of Purchasing

**END OF SECTION – GENERAL INFORMATION, REQUEST FOR PROPOSALS**

## II. Instructions to Proposers



### CITY OF NEW BEDFORD, MASSACHUSETTS

#### Operation of Quest Center Business Incubator Program and Lease of Office Space

**RFP # 24192032**

#### **GENERAL REQUIREMENTS**

1. There will be no scheduled proposer's conference. No oral interpretations will be made to any proposer as to the meaning of any provision of the Request for Proposals or other contract documents. Questions concerning this RFP must be submitted in writing by email to [purchasing@newbedford-ma.gov](mailto:purchasing@newbedford-ma.gov) and received by the City on or before Tuesday, August 22, 2023 at 4:00 p.m. In the event that addenda are/an addendum is issued, all documents will be posted to BidNet Direct, the City's website at <https://www.newbedford-ma.gov/purchasing/>, as well as emailed to interested proposers on record as having emailed [purchasing@newbedford-ma.gov](mailto:purchasing@newbedford-ma.gov) stating their interest. Receipt of all addenda issued must be acknowledged by signing the acknowledgement form attached to said addenda and must be submitted along with the Technical Proposal. Failure to acknowledge all addenda may result in a proposal being rejected as non-responsive.
2. Sealed proposals will be received by the Purchasing Department until Tuesday, August 29, 2023 at 2:00 p.m. All proposals must be submitted electronically via Bidnet Direct at <https://www.bidnetdirect.com/massachusetts/newbedfordelectronically> before the above time and date. Vendors will be instructed to submit separate technical and price proposals. **Do not include pricing information in the technical submission.**
3. Vendors may register at no cost on Bidnet Direct to download RFP documents and submit their proposals to this project. For any difficulties, please contact Bidnet's Vendor Support Department at 800-835-4603, or e-mail [purchasing@newbedford-ma.gov](mailto:purchasing@newbedford-ma.gov).
4. Proposals that are incomplete, not properly endorsed, or signed, or which are otherwise contrary to these instructions may be rejected as informal by the Awarding Authority.
5. The Proposer will be bound by all applicable statutory provisions of law of the Federal Government, the Commonwealth of Massachusetts and of the City of New Bedford.
6. All submitted proposals must be guaranteed to the City of New Bedford for a period of sixty (60) days from the date of the proposal opening. If a contract is to be awarded as a result of this RFP, it will be awarded within the sixty (60) daytime period.

7. As provided by Massachusetts General Law, Chapter 64H, §6(d), purchases made by the City of New Bedford are exempt from the payment of Federal Excise Taxes and Massachusetts Sales Tax; any such taxes must not be included in the quoted price.
8. The City reserves the right to reject all proposals, and to make awards in a manner deemed in the best interest of the City.
9. The Proposer will not be permitted to either assign or underlet the contract nor assign either legally or equitably, any monies hereunder, or its claim thereto, without the previous written consent of the Director of Purchasing.
10. All proposal prices stated must be firm.
11. Before submitting a proposal, each proposer must make a careful study of the specifications contained in this Request for Proposal document and fully assure themselves as to the quality, quantity, and type of services that the City is seeking to have performed.
12. The proposal for this work must cover all contingencies, including all labor and materials, transportation, etc., necessary for the purchase and delivery/execution of the services required by the City of New Bedford.
13. The proposer who is selected to provide services will be required to indemnify the City for all damage to life and property that may occur due to their negligence or that of their employees, subcontractors, etc., during the period of this contract.

The successful proposer shall maintain liability insurance as such that will protect it from claims under Workmen's Compensation Acts, and from other claims for damages for personal injury, including death, property damage and automobile liability, which may arise from operations under this contract. The Awardee covenant agrees to hold the City of New Bedford and its employees, agents and officials harmless from loss or damage due to claims for personal injury and/or property damage arising from or in connection with operations under this contract. A copy of said liability insurance which is in effect and enforceable shall be provided and include the City of New Bedford as an additional insured, on a primary and non-contributory basis, on all liability policies for the length of this agreement. Failure to provide and continue in force such insurance as aforesaid shall be deemed a material breach of the contract and shall operate as an immediate termination thereof.

All policies shall be so written that the City of New Bedford will be notified of the cancellation or restrictive amendment at least thirty (30) days prior to the effective date of such cancellation or amendment. Certificates evidencing such insurance shall be furnished to the City of New Bedford at the execution of this contract and each anniversary date thereafter.
14. The contract agreement will be in the form customarily employed by the City and is attached hereto.

15. The specifications as detailed under the **Scope & Specification of the Work** shall constitute a part of the contract of purchase, as well as all conditions listed under the **Request for Proposals** and **Instruction to Proposers** in this RFP's document. A copy of the successful Proposer's/vendor's proposal will be incorporated herein and made a part of this contract.
16. The successful proposer will be responsible for supplying all labor and materials necessary to satisfy the requirements of this proposal.
17. This Contract must include a certification of tax compliance by the successful proposer as required by General Laws Chapter 62C, Sec. 49A, (Requirement of Tax Compliance by All Contractors Providing Goods, Services, or Real Estate Space to the Commonwealth or Subdivision). All proposers must submit a signed and completed Non-Collusion and Tax Compliance Form with their proposal.
18. A proposal must be signed as follows: 1) if the proposer is an individual, by her/him personally; 2) if the proposer is a partnership, by the name of the partnership, followed by the signature of each general partner; and 3) if the proposer is a corporation, by the authorized officer, whose signature must be attested to by the Clerk/Secretary of the corporation and the corporate seal affixed; All proposers must submit a signed and completed Vote of Corporation Form.
19. If at any time the Vendor fails to fulfill or comply with any of the requirements of this proposal/contract, such as shoddy workmanship, executing improper operating procedures, supplying sub-standard, improperly trained employees, not adhering to the work schedule, etc., the City, at its option, can terminate this contract upon thirty (30) days written notice to the firm. Failure to meet project benchmarks on schedule or utilizing personnel not previously identified in the consultant's proposal may also be considered as grounds for termination.  
As provided in M.G.L. Ch. 30B, sec. 12, the City may not enter into a contract unless funds are available for the first fiscal year. The City's payment and performance obligations for succeeding fiscal years of this Agreement shall depend upon the availability and appropriation of funds. The City, therefore, reserves the right to cancel this Agreement if funds are not appropriated or otherwise made available in any fiscal year succeeding the first year. The City's fiscal year is July 1 through June 30.
20. After the date of acceptance, a proposer may not change any provision of the proposal in a manner prejudicial to the interests of the City or fair competition. Minor informalities will be waived or the proposer will be allowed to correct them. If a mistake and the intended proposal are clearly evident on the face of the proposal document, the mistake will be corrected to reflect the intended correct proposal, and the proposer will be notified in writing; the proposer may not withdraw the proposal. A proposer may withdraw a proposal if a mistake is clearly evident on the face of the proposal document, but the intended correct proposal is not similarly evident.
21. The following list has been prepared for the convenience of the Proposer. Proposer is responsible for verifying and determining the required forms to be submitted with his/her proposal. **Do not include price in the technical proposal.** Proposers shall complete and submit the following attachments with their Technical Proposals in accordance with the Instructions to Proposers:
  - o Technical Proposal
  - o City of New Bedford Non-Collusion and Tax Compliance Form
  - o City of New Bedford Vote of Corporation Form
  - o Addenda Acknowledgement Form (if applicable)

**END OF SECTION – INSTRUCTIONS TO PROPOSERS**

### **III. SCOPE OF SERVICES - SPECIFICATIONS**

All Scope of Services and Specifications are in **Attachment A**.

#### **CONTRACT TYPE:**

This is a firm, fixed-price contract.

### **IV. QUALITY REQUIREMENTS**

1. Proposers must provide all of the services described in Section III: Scope of Services and comply with all Bid Submission Requirements listed in Section II.
2. Proposers must demonstrate prior satisfactory performance performing services/contracts similar to the proposed contract.
3. Proposers must demonstrate that they are a not-for-profit entity or have applied for non-profit status.

### **V. REFERENCES**

Proposers must submit a complete list of all current customers who have had similar services / contracts to the proposed contract, within the past two (2) years, with contact names and telephone numbers.

### **VI. AWARD PROCEDURES**

1. The decision to award a contract shall be based on the Company's ability to provide quality services and products and to comply with all applicable laws, rules, and regulations.
2. The award of any contract will be made as judged to be in the best interest of the City. The final selection of the company will be made by the Chief Procurement Officer, in conjunction with the recommendation of the Evaluation Committee.
3. Each Proposal will be examined to determine whether it is responsive to the requirements of this RFP. All responsive proposals will be evaluated in accordance with the criteria set forth herein.
4. While the City is under no obligation to contact companies for clarifications, it reserves the right to do so. Depending on the number and quality of the proposals submitted, the City, at the sole discretion of the Evaluation Committee, may elect to interview all or some of the companies during the selection process and to request presentations.

## **A. EVALUATION OF PROPOSALS**

1. An Evaluation Committee will evaluate the non-price proposals and will make a recommendation to the Chief Procurement Officer of the most advantageous proposal. The Evaluation Committee may include, but not be limited to: a representative of the Mayor, the Director of Facilities and Fleet Management or his designee, the Chief Financial Officer.
2. The Proposer will submit a non-price proposal that will provide the Evaluation Committee with sufficient detail to enable the Evaluation Committee to evaluate the non-price proposal in each of the Evaluation Criteria categories listed in Section B, below.
3. In evaluation of each non-price proposal, the Evaluation Committee shall assign a rating of highly advantageous, advantageous, not advantageous, or unresponsive for each of the criteria set forth below. After a composite rating has been assigned for each proposal, the most advantageous proposal, taking into consideration the non-price proposal ratings and the price shall be selected. If other than the highest priced proposals is selected the evaluation committee, shall explain in writing why the added benefits of the proposal justify the higher price.

## **B. EVALUATION CRITERIA:**

HA = Highly Advantageous, A = Advantageous, NA = Not Advantageous,  
U = Unresponsive

1. Relevant projects over the past five years with emphasis on government and/or municipal organizations  
HA - 5+ projects  
A – 1– 5 projects  
NA – N/A  
U – 0 projects
2. Years of experience in providing similar services in the Commonwealth of Massachusetts  
HA – 5+ Years  
A – 1-5 Years  
NA – <1Years  
U – 0 Years
3. Proposer’s Employees demonstrate relevant experience to operate a business incubator program  
HA – Proposer’s employees demonstrate extensive relevant experience in operating a business incubator program.  
A – Proposer’s employees demonstrate relevant experience in operating a business incubator program.  
NA – N/A  
U – Proposal is deficient; Proposer’s employees demonstrate no relevant experience in operating a business incubator program.
4. Proposer demonstrates strong working relationships with both the business and academic community  
HA – Proposer demonstrates substantial experience working cooperatively with both the business and academic community.  
A – Proposer demonstrates experience working cooperatively with both the business and academic community.  
NA – N/A  
U – Proposer demonstrates no experience working cooperatively with both the business and academic community.

**CITY OF NEW BEDFORD**

**VII. PRICING SHEET** (*You may use additional sheet(s) if necessary*)

**INSTRUCTIONS TO PROPOSERS:** Proposers shall subtract the total cost of the Lease for the three (3) years of the contract term from the total of the annual Operator Service Fee for the three (3) years of the contract term to arrive at the Total Bid Price.

*Proposers must fill in all blank spaces*

	<u>Description</u>	<u>Annual Cost</u>
Year 1	Operator Service Fee	\$ _____
Year 2	Operator Service Fee	\$ _____
Year 3	Operator Service Fee	\$ _____
Year 1	Lease	<\$ _____ >
Year 2	Lease	<\$ _____ >
Year 3	Lease	<\$ _____ >

Total 3-year Operator Service Fees (paid by City to Operator): \$ \_\_\_\_\_

Total 3-year lease payments (paid by Operator to City): \$( \_\_\_\_\_ ) (minus)

Total Proposal Price: \$ \_\_\_\_\_  
(In numbers)

**The Total Proposal Price is** \_\_\_\_\_  
(In words)

**Name of Proposer:** \_\_\_\_\_

**By:** \_\_\_\_\_  
(Type or print name of authorized representative)

**By:** \_\_\_\_\_  
(Signature of authorized representative)

**Address:** \_\_\_\_\_

**E-mail:** \_\_\_\_\_

**City/State/Zip:** \_\_\_\_\_

**Tel:** \_\_\_\_\_

**CITY OF NEW BEDFORD  
MASSACHUSETTS**

**NON-COLLUSION AND TAX COMPLIANCE FORM**

**CERTIFICATE OF NON-COLLUSION**

The undersigned certifies under the penalties of perjury that this bid is in all respects bona fide, fair and made without collusion or fraud with any other person. As used in this subsection the word "person" shall mean any natural person, joint venture, partnership, corporation or other business or legal entity.

\_\_\_\_\_  
Signature of individual submitting bid

\_\_\_\_\_  
Name of business/organization

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**TAX COMPLIANCE CERTIFICATION**

Pursuant to Chapter 62C of the Massachusetts General Laws, Section 49A(b), I, the undersigned, authorized signatory for the below named contractor, do hereby certify under the pains and penalties of perjury that said contractor has complied with all laws of the Commonwealth of Massachusetts relating to taxes, reporting of employees and contractors, and withholding and remitting child support.

\_\_\_\_\_  
Signature of person submitting bid

\_\_\_\_\_  
Name of business/organization



**CITY OF NEW BEDFORD**  
**Jonathan F. Mitchell, Mayor**

**CITY OF NEW BEDFORD**  
**MASSACHUSETTS**

**VOTE OF CORPORATION AUTHORIZING**  
**EXECUTION OF CORPORATE AGREEMENTS**

At a meeting of the Board of Directors of \_\_\_\_\_ duly called and

held on \_\_\_\_\_, 20\_\_\_\_ at which a quorum was present and acting throughout, the following vote was duly adopted.

VOTED: That \_\_\_\_\_, a \_\_\_\_\_ of the corporation, be and hereby is authorized to affix the Corporate Seal, sign and deliver in the name and behalf of the corporation contract documents with the City of New Bedford, the above mentioned documents to include but not be limited to Bids, Proposals, Deeds, Purchase and Sales Agreements, Agreements, Contracts, Leases, Licenses, Releases and Indemnifications; and also to seal and execute, as above, surety company bonds to secure bids and proposals and the performance of said contract and payment for labor and materials, all in such form and on such terms and conditions as he/she, by the execution thereof, shall deem proper. A true copy.

ATTEST:

\_\_\_\_\_

Name (Print)

\_\_\_\_\_

Signature

(Affix Corporate Seal)

\_\_\_\_\_

Title

\_\_\_\_\_

Date

**CITY OF NEW BEDFORD, MASSACHUSETTS**  
**LLC CERTIFICATE OF INCUMBENCY AND AUTHORITY**

\_\_\_\_\_, LLC

I, \_\_\_\_\_, do hereby certify that:

1. I am the duly elected and acting \_\_\_\_\_ of \_\_\_\_\_ LLC, a limited liability company organized and existing in good standing under the laws of the State of \_\_\_\_\_ (the "Company").

2. Attached hereto as Exhibit A is a true and correct copy of resolutions which were duly adopted by the members of the Company on \_\_\_\_\_, 20\_\_\_\_\_.

3. The attached resolutions have not been amended, rescinded or modified and are in full force and effect on the date hereof in the form originally adopted, and are in conformity with the Articles of Organization and Operating Agreement of the Company.

4. Attached hereto as Exhibit B is a true and correct copy of the Articles of Organization dated \_\_\_\_\_, 20\_\_\_\_\_ and the Operating Agreement dated \_\_\_\_\_, 20\_\_\_\_\_.

5. The attached Articles of Organization and Operating Agreement have not been amended, rescinded, or modified and are in full force and effect on the date hereof.

6. The following persons are the Authorized Officers of the Company in the capacities indicated, and the signatures set forth after their names and titles are their true and genuine signatures.

Name

Office

Signature

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Witness, my signature and the seal of the Company this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

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

Title:

# CONTRACT TERMS AND CONDITIONS

**AGREEMENT**  
**#24192032**  
**FOR**  
**RFP# 20192228**  
**Between the City of New Bedford**  
**&**  
**(Insert Awarded Proposer Name)**

Agreement made this 1<sup>st</sup> day of September, 2023 by and between the City of New Bedford, a municipal corporation organized under the laws of the Commonwealth of Massachusetts, having its usual place of business at 133 William Street, New Bedford, Massachusetts 02740 (hereinafter referred to as the “Landlord”) and (Insert Awarded Proposer Name) having its usual place of business at (insert address) (hereinafter referred to as the “Tenant”).

## **1. Term of Agreement**

The term of this agreement is three years, subject to annual appropriation.

## **2. Scope of Services**

As identified in the bidding and contract documents, made part of this agreement.

## **3. Compliance with Laws**

Tenant and its agents, officers and employees shall observe and comply with all laws, statutes, ordinances, rules, and regulations of the United States government, the Commonwealth of Massachusetts and local regulatory agencies.

## **4. Indemnification**

Tenant shall conduct its activities so as not to endanger any person; and shall indemnify, save, and hold harmless the Landlord and all its officers, agents and employees from any and all claims for all losses, injuries, damages, and liabilities to person or property caused entirely or in part by the acts or omissions of the Tenant, its agents, officers, or employees.

## **5. Compensation**

Landlord shall pay Tenant as compensation for performance of services described in the Scope of Service attached hereto as Attachment A, a monthly sum, equal to 1/12 of the Annual Operator Service Fee. Invoices shall be prepared monthly and shall include an attached progress report summary.

## **6. Insurance**

Tenant agrees to maintain the following insurance during the performance of the contract, to keep in force at least the following minimum limits of the following:

- a. Separate Commercial General Liability Insurance policies with minimum limits of \$1,000,000.00 combined single limits per occurrence for personal or bodily injuries, including death, and for property damage.
- b. Comprehensive Automobile and Truck Liability Insurance covering owned, hired, and non- owned vehicles with minimum limits of \$1,000,000.00 combined single limit per occurrence for personal or bodily injuries, including death and property damage.
- c. Contractual Liability coverage including, but not limited to, the liabilities assumed under the indemnification provisions of this agreement, if applicable.

- d. Builders Risk Insurance for an amount equal to the value of Tenant's Facilities and improvements, if applicable.
- e. An Umbrella Liability Policy, during construction, in the amount of \$1,000,000.00 as an excess of the primary coverage required above.

Tenant shall, upon written request, furnish the Landlord with certificates of insurance, which shall include a provision that such insurance shall not be canceled without at least thirty (30) days written notice to Owner. Tenant shall name the Landlord as an additional insured on their General and Automobile Liability Insurance policies.

The required limits can be provided by one or more policies provided all other insurance requirements are met.

Any policy submitted shall not be subject to limitations, conditions or restrictions inconsistent with the intent of the insurance requirements to be fulfilled by Tenant. All policies shall be written through an insurance company of recognized responsibility, duly authorized by the Commonwealth of Massachusetts to transact that class of insurance in the Commonwealth of Massachusetts and shall carry no less than an A- rating as published by A.M. Best's rating guide. No special payment shall be made by the Landlord for any insurance that Tenant may be required to carry. The insurance companies issuing the policy or policies shall have no recourse against the Landlord for payment of any premiums or for assessments under any form of policy. Any such insurance policies may be written in combination with any of the other, where legally permitted, but none of the specified limits may be lowered thereby.

Tenant shall furnish the Landlord with a certificate of such policy or policies of insurance, validly executed by or on behalf of the insurance company. The cancellation section of the insurance certificate will reflect that should any of the described policies be cancelled before the expiration date, the issuing insurer will provide thirty day's prior written notice to the Certificate Holder. Insurers shall have no right of recovery or subrogation against the Landlord it being the intent of the parties that insurance policies so affected shall protect both parties and be primary coverage for any and all losses covered by the above-described insurance. A lapse in insurance coverage will at the sole discretion of the Landlord be deemed sufficient cause for the termination of the Agreement for cause upon written notice to the Tenant provided, however, that the Tenant shall have seven (7) days within which to cure unless there has been an uninsured loss within the period after the lapse.

## **7. Assignment**

The Tenant, its agents, officers, or employees shall not voluntarily or involuntarily assign any of its interest in this Agreement, without the prior written approval of the Landlord. In the event of assignment without the prior written approval of the Landlord, the Landlord shall have the right to immediately terminate this Agreement.

## **8. Termination**

Notwithstanding any other provisions contained in any other section for cancellation or termination of this Agreement, in the event that the Tenant shall fail to perform, keep and observe any of the terms, covenants, or conditions herein contained on the part of Tenant to be performed, kept or observed, the Landlord may give Tenant notice in writing to correct such conditions or cure such default within ten (10) days. In the event that such default is not cured or corrected within ten (10) days after receipt of said notice, the Landlord may terminate this Agreement immediately upon written notice. Either party may terminate this Agreement upon thirty days prior written notice.

This Agreement is subject to annual appropriation and may be terminated by the Landlord upon written notice, in the event annual appropriation is not obtained.

**9. Notices**

Any notice which either party may or must give hereunder shall be in writing deemed given upon delivery if delivered personally, or upon mailing if mailed by certified mail, return receipt requested, addressed as follows:

if to the Landlord: DFFM  
City of New Bedford  
294 Liberty Street  
New Bedford, MA 02740

with a copy to:

City Solicitor  
133 William Street  
New Bedford, MA 02740

and if to the Tenant:

(Insert Awarded Proposer Name, Address)

Any of the above may, by notice aforesaid, direct future notice be sent to a different address.

**10. Invalid Provisions**

It is expressly understood and agreed by and between the parties hereto that in the event that any covenant, condition, or provision herein contained is held to be invalid by any court of competent jurisdiction, or otherwise appears to both parties to be invalid, the invalidity of any such covenant, condition or provision does not naturally prejudice either the Landlord or Tenant in their respective rights and obligation contained in the valid covenants, conditions or provisions of the Agreement.

**11. Entire Agreement**

This Agreement, the Request for Proposal (with attached specifications), applicable addenda, and all submitted Bid Documents constitute the Entire Agreement between the parties hereto and all other representations or statements heretofore made, oral or written, are merged herein and this Agreement may be amended only in writing, and executed by duly authorized representatives of the parties hereto.

[The remainder of this page has intentionally been left blank]

## **ATTACHMENT A**

### **SCOPE OF WORK**

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#### **Operation of Quest Center Business Incubator Program and Lease of Office Space**

The Quest Center Incubator Program is a partnership between the City of New Bedford and the University of Massachusetts – Dartmouth, developed for the purpose of providing a center for product development, testing and demonstration, technology transfer, and new marine science and technology related company information. The Quest Center provides reasonably priced office space, administrative support and other support to newly formed private businesses that are involved in the development of products in the field of science and technology. The Tenant must demonstrate strong working relationships with both the business and academic community and demonstrate that they are qualified to operate a business incubator program. As part of this procurement and in lieu of payment of a portion of the Operator's fee, the City will lease 3,200 + square feet of office space to the Quest Center for a term not to exceed the term of the agreement to operate the Quest Center. The fair market value of the leased space (estimated at \$8.00 per square foot) is approximately twenty-five thousand six hundred dollars (\$25,600.00) for the first year plus the cost of utilities. The required services and the lease shall be for a period of three years, subject to annual appropriation.

Tenant agrees to provide the following services to the clients of the Quest Center Business Incubator Program:

- Assist the Quest Center Manager in marketing the Quest Center.
- Service the Quest Center web page.
- Provide information and assistance to companies interested in coming into the Quest Center.
- Assist the Landlord and the University in obtaining grants to benefit the Quest Center.
- Assist Quest Center clients in obtaining grants.
- Answer telephones and provide clerical support, including mail distribution, typing letters, faxing and copying services for Quest Center and Quest Center clients.
- Assist Quest Center clients in making contacts within the Landlord and the business community.
- Conduct educational seminars for Quest Center clients on a quarterly basis.
- Assist Quest Center clients in accessing technical support.
- Facilitate networking with other institutions for the benefit of the Quest Center and Quest Center clients.
- Maintain communications with the Department of Public Facilities and Fleet Management to ensure that the Department is aware of any maintenance and repair issues that exist at the Quest Center.
- In accordance with procedures to be established by the Landlord, the Tenant will be responsible for ensuring that all invoices and revenues pertaining to the Quest Center are forwarded to the Department of Public Facilities and Fleet Management.
- The Tenant will work with the Landlord to negotiate rate agreements with clients currently part of or joining the Quest Center Business Incubator Program.
- Submit an annual report to the Department of Public Facilities and Fleet Management with metrics on all services provided to clients over the previous year.
- Serve as Construction Coordinator on behalf of the Landlord to support anticipated renovations to the Quest Center.

The Contract between the Landlord and the Tenant shall become effective on or about September 1<sup>st</sup>, 2023 and expire on August 31<sup>th</sup>, 2026.



USABLE AREA OF PREMISES:

Office Space: 3,200± square feet

Storage Space: 0 ± square feet

RESERVED PARKING SPACES:

Number: 0

PERMITTED USES:

Subject to the provisions of § 6.1, Tenant must use the Premises for the following purposes:

office space.

INITIAL TERM: The Initial Term begins on the Date of Occupancy, as defined in § 3.2, at 12:01 a.m., and continues until 11:59 p.m. of the date immediately preceding the thirty-sixth month of the Date of Occupancy. This Lease is contingent upon the existence of an agreement between the Landlord and Tenant for the Operation of the Quest Center business Incubator program and, notwithstanding the previous sentence, this Lease shall terminate immediately upon the termination of the Agreement between the Landlord and the Tenant for the Operation of Quest Center Business Incubator Program.

“Term” includes the Initial Term and any extension term (“Extension Term”) unless otherwise expressly stated. “Expiration Date” means the last day of the Initial Term or of the then applicable Extension Term and includes any effective date of termination of this Lease, unless otherwise indicated.

BASE RENT FOR INITIAL TERM:

Year One: \$\_\_\_\_\_per year

Year Two: \$\_\_\_\_\_per year

Year Three: \$\_\_\_\_\_per year

OPERATOR SERVICE FEE FOR INITIAL TERM:

Year One: \$\_\_\_\_\_per year

Year Two: \$\_\_\_\_\_per year

Year Three: \$\_\_\_\_\_per year

Total 3-year Operator Services Fees (paid by Landlord to Tenant): \$ \_\_\_\_\_

Total 3-year lease payments (paid by Tenant to Landlord): \$ \_\_\_\_\_

Total Agreement Price: \$ \_\_\_\_\_

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## EXHIBITS AND OTHER ATTACHED DOCUMENTS

These are incorporated into and made part of this Lease:

1. Agreement #24192032 between the City of New Bedford & (Insert Awarded Proposer Name)
2. Disclosure Statement for Transaction with a Public Agency Concerning Real Property
3. RFP #24192032 Quest Center Operator & Lease of Space at 1213 Purchase Street, New Bedford, MA 02740
4. RFP #24192032 (Insert Awarded Proposer Name) Technical Proposal
5. RFP # 24192032 (Insert Awarded Proposer Name) Price Proposal

## 2. PREMISES; USABLE AREA

### 2.1 Premises; Appurtenant Rights

Landlord leases the Premises to Tenant, and Tenant leases the Premises from Landlord.

As appurtenant to the Premises, Tenant, in common with other tenants of the Building (and subject to the rules of the Building, as set forth in § 6.4), has the right to use: (i) the common lobbies, malls, corridors, stairways, elevators, service areas, and loading platform of the Building; (ii) the pipes, ducts, conduits, wires, and appurtenant meters and equipment serving the Premises in common with other premises within the Building; (iii) common pedestrian walkways and landscaped areas; (iv) if the Premises include less than the entire floor area of any floor of the Building, the common restrooms, corridors, and elevator lobbies located on such floor and serving the Premises; and (v) all other areas in or about the Building from time-to-time intended for general use by Tenant and other tenants of the Building.

### 2.2 Usable Area

For the purposes of this Lease, "Usable Area" means, with respect to the Premises or any space removed from or added to the Premises, the square footage determined by measuring the entire floor area of the Premises (or such other space) bounded by a line established by the predominant inside finish of the permanent outside Building walls that abuts the floor (not from the inside face of the windows) and by the interior surface of corridor walls or other demising walls. Deductions are not made for columns or other projections necessary to the Building structure or systems or for partitions subdividing the Premises. Notwithstanding the foregoing, under no circumstances does the Usable Area include elevator shafts, vestibules, stair enclosures, elevator-machine rooms or other building-equipment areas, janitorial, electrical, or mechanical closets, loading platforms, or restrooms, irrespective of whether Tenant occupies the entire floor or the entire Building.

Landlord acknowledges that Rent is predicated upon the Premises having a Usable Area equal to or exceeding the Usable Area of the Premises set forth in § 1.1.

## 3. RENT; DATE OF OCCUPANCY

### 3.1 Rent Payment

Tenant agrees to pay, and Landlord agrees to accept, Rent described in § 1.1. Equal monthly installments of Rent are payable on or before the first day of the calendar month for which Rent is due. If the Initial Term commences other than on the first day of a calendar month or ends other than on the last day of a calendar month, Rent for such fractional month is prorated. Notwithstanding the second sentence of this paragraph, if the Initial Term commences other than on the first day of a calendar month, Tenant pays the prorated Rent for such partial calendar month concurrently with the payment of the installment for the first full calendar month of the Initial Term.

If any installment of Rent is not paid when due, Landlord is entitled to late-payment interest on the overdue amount in accordance with and subject to G. L. c. 29, § 29C, and any regulations or administrative bulletins promulgated under said statute.

### 3.2 Date of Occupancy; Commencement of Rent Obligation

The obligation of Tenant to pay Rent begins on the Date of Occupancy. The Date of Occupancy is the earlier of (a) the 15<sup>th</sup> day after the Premises are available for Tenant's occupancy, or (b) the day Tenant

actually takes possession of the Premises and begins to use the Premises for any or all of the Permitted Uses. The Premises are deemed available for Tenant's occupancy only when Landlord provides Tenant with a copy of the Certificate of Occupancy for the Premises issued by the appropriate municipal authority.

### 3.3 Tenant's Entry Before Term Without Charge

With the prior approval of Landlord, Tenant may enter the Building and Premises before the Date of Occupancy without payment of any additional sums in order to install telephone equipment, cabling, furniture, and fixtures, and otherwise to prepare the Premises for occupancy by Tenant. Landlord must not withhold or delay such approval. As a condition of granting such approval, Landlord has the right to require that a representative of Landlord accompany Tenant and Tenant's contractors, and Tenant agrees, on behalf of Tenant and Tenant's contractors, to comply with any and all reasonable directions given by said representative of Landlord.

In order to assist Tenant with Tenant's preparation, move into, and occupancy of the Premises, Landlord must provide Tenant and Tenant's agents and contractors with all information concerning the Building's structure, systems, utilities, equipment, and services that Tenant reasonably requests. Landlord must provide such information with reasonable promptness, whether before or after commencement of the Term.

## 4. IMPROVEMENTS BY LANDLORD - Deleted

## 5. LANDLORD'S COVENANTS

### 5.1 Ownership; Signatory Authority; Debarment; Pending Proceedings

Landlord warrants and represents as follows:

- a. Landlord has record title to the premises (or if this Lease is a sublease, Landlord warrants and represents that Landlord holds a current and valid lease of the premises) of which the Premises are a part, and that there are no encumbrances affecting the Premises or Building that would prohibit or interfere with the construction of the Landlord's Improvements or the use of the Premises for the Permitted Uses (or the sublease of the Premises if this Lease is a sublease).
- b. Landlord's name appears in this Lease exactly as Landlord's name appears on Landlord's record title to the Premises if Landlord owns the Premises, or exactly as Landlord's name appears in Landlord's lease if this Lease is a sublease.
- c. Landlord has full legal capacity to enter into this Lease.
- d. If Landlord is not a natural person or natural persons, but Landlord is, rather, a so-called "creature of the law" (e.g., a corporation, a general or limited partnership, a trust, a limited liability company, etc.), Landlord is validly organized and existing, Landlord is in good standing in the state, commonwealth, province, territory, or jurisdiction of Landlord's organization, and Landlord is authorized and qualified to do business in the state, commonwealth, province, territory, or jurisdiction in which the Premises are located.

- e. The execution of this Lease is duly authorized, and each person executing this Lease on behalf of Landlord has full authority to do so and to fully bind Landlord.

## 5.2 Delivery of Premises; Compliance with Law

Landlord warrants and represents that Landlord must deliver the Premises to Tenant in good, clean, and rentable condition, and otherwise in accordance with the provisions of this Lease, and the use of the Premises by Tenant for the Permitted Uses must be in full compliance with (i) all applicable over leases, (ii) all requirements of Landlord's mortgages and insurance policies, (iii) all laws, ordinances, codes, and regulations (including, without limitation, those pertaining to handicapped accessibility) of governmental authorities with jurisdiction, and (iv) all regulations of the Board of Fire Underwriters or any similar insurance-rating body or bodies.

If, at any time, any governmental authority with jurisdiction or the Board of Fire Underwriters or any similar insurance-rating body notifies Landlord or Tenant that all or any part of the Premises or Building is not constructed or maintained in compliance with any applicable law, ordinance, code, or regulation, and demands compliance, then Landlord, upon receipt of such notification, promptly must cause such repairs, alterations, or other work to be done so as to bring about the compliance demanded. Landlord has the right to defer compliance so long as Landlord contests the validity of any such law, order, or regulation in good faith and by appropriate legal proceedings, provided that such failure to comply must not in any way interfere with Tenant's use of the Premises for the Permitted Uses, subject Tenant or Tenant's employees or invitees to any increased risk of injury to their persons or property, adversely affect any other right of Tenant under this Lease, or impose any additional obligation upon Tenant.

## 5.3 Quiet Enjoyment

Landlord warrants and covenants that as long as there is no Event of Default (as defined in § 9.1) by Tenant under this Lease, Tenant must have peaceful and quiet use and possession of the Premises without hindrance or interruption on the part of Landlord or any other person for whose actions Landlord is legally responsible, or by any person claiming by, through, or under Landlord.

At reasonable times and without unreasonably interfering with Tenant's use, occupancy, and enjoyment of the Premises, Landlord and Landlord's agents have the right to enter the Premises to make repairs or to view the Premises. Landlord must give Tenant a minimum of 48-hours' notice for such visits (Landlord has the right to give such notice by telecopier (fax) in the case of minor repairs taking one day or less to complete, or in the case of viewing the Premises); provided, however, that Landlord has the right to enter the Premises at any hour and without 48-hours' notice in the case of an emergency affecting the Premises.

Landlord has the right to enter for the purpose of showing the Premises to prospective tenants only during the last six months of the Term. Landlord must notify Tenant (Landlord has the right to give such notice by telecopier (fax)) at least 24 hours before showing the Premises to prospective purchasers, tenants, or other parties.

## 5.4 Correction of Defective Work; Repair of Premises and Building

Landlord must keep and maintain the Premises, including, without limitation, all equipment and fixtures that Landlord furnishes (whether located within or outside of the Premises) in such good repair, order, and condition as the same are in at the beginning of the Term, reasonable wear and tear, damage that fire or other casualty causes (except as provided in § 7.1), and damage that Tenant's negligence, Tenant's

breach of this Lease, or Tenant's willful misuse causes excepted. Landlord's obligations include repair of broken glass, doors, floor coverings, interior walls and partitions, ceiling tiles, plumbing and lighting fixtures, locks, fire protection equipment, heating, ventilation, and air conditioning equipment, and existing cabling. Landlord must make such repairs to the roof, foundation, exterior walls, floor slabs, and common areas and facilities of the Building, including finishes, as are necessary to keep them in good condition.

Landlord must make routine repairs to the Premises within five business days or as soon as reasonably possible after Landlord discovers or Tenant notifies Landlord of the condition requiring repair, or within such shorter time period as applicable law, code, or regulation requires. "Routine repairs" means any repair that is not an "emergency repair," as defined in the next paragraph.

Landlord must make emergency repairs to the Premises, to the Landlord's Improvements, or to any other portion of the Building immediately upon notice to Landlord or to Landlord's authorized representative of the condition requiring repair. As used herein, "emergency repair" means any repair or replacement that is required to remove an immediate threat to the life, health, or safety of persons or property upon the Premises or the appurtenant areas described in § 2.1.

Landlord must complete all repairs (i) at Landlord's sole cost and expense, except as provided by this § 5.4, (ii) in a good and workmanlike manner, (iii) with respect to repairs of the Premises and the Landlord's Improvements only, with materials of equal or better quality than the original, and (iv) in compliance with all applicable laws, ordinances, codes, and regulations.

In (i) scheduling and carrying out the repairs that this Lease requires, (ii) making any optional repairs, alterations, or improvements to the Building or Premises, and (iii) performing routine maintenance of Building systems, fixtures, or equipment, Landlord must make all reasonable efforts to minimize interference with Tenant's access to and use of the Premises. If any such repairs or maintenance by Landlord causes Tenant to be deprived of the use or quiet enjoyment of all or a material portion of the Premises for a period of more than two consecutive business days, Rent for each succeeding day must be abated in proportion to the deprivation unless said repairs or maintenance are required due to damage caused by the negligence, breach of this Lease, or willful misconduct of Tenant or Tenant's agents or contractors.

#### 5.5 Delivery of Services and Utilities

The Tenant shall promptly pay for its own separate telecommunication service. The Landlord shall provide electricity, heat, sewer and water.

#### 5.6 Hazardous Substance

Landlord represents that Landlord has no knowledge of, and has not received any notice of, the current or past existence of any material, currently considered to be a Hazardous Substance, that is existing, deposited, or discharged on or from, or transported to, from, or across, or migrating toward or across the Premises. For purposes of this Lease, Hazardous Substance means (i) any "hazardous substance," "hazardous material," "toxic substance," "hazardous waste," "hazardous pollutant" or "toxic pollutant," oil, asbestos, urea formaldehyde foam insulation, or "solid waste," as presently defined or otherwise denominated as hazardous, toxic, or a pollutant or a special waste in the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as modified from time to time (42 U.S.C. 9601 et seq.) ("CERCLA"), the regulations promulgated under CERCLA, and the Hazardous Materials

Transportation Act (49 U.S.C. 1801 et seq.); (ii) any additional substance or material that is incorporated in or added to the definition of “hazardous substance” for the purposes of such laws; (iii) a substance listed in the United States Department of Transportation Table (49 CFR 172.101, as modified) or by the Environmental Protection Agency (or any successor agency) as a hazardous substance (40 CFR Part 302, as modified); (iv) any hazardous waste or solid waste, as defined in the Resource Conservation and Recovery Act of 1976, as modified by the Hazardous and Solid Waste Amendments of 1984 (42 U.S.C.A. 6901 et seq.); (v) any material, waste, or substance that is (A) petroleum, (B) asbestos or an asbestos-containing material, (C) polychlorinated biphenyls, (D) urea-formaldehyde (“UFFI”) or UFFI-containing material, (E) radon, (F) designated as a “hazardous substance” pursuant to § 311 of the Clean Water Act (33 U.S.C. 1251 et seq.), or listed pursuant to § 307 of the Clean Water Act (33 U.S.C. 1317); (G) flammable explosive; or (F) radioactive material; and (vi) any additional substance or material that is considered to be a “hazardous substance,” “hazardous material,” “toxic substance,” “hazardous waste,” “solid waste,” or regulated substance or material (including, without limitation, any asbestos-containing material) under any state, federal, or local law, rule, or regulation governing health, safety, natural resources, or the environment relating to the Premises, including, without limitation, G. L. c. 21E (being the Massachusetts Oil and Hazardous Materials Release and Prevention Act) and the definitions of oil and/or hazardous material promulgated thereunder, G. L. c. 21C, Title 5 of the State Environmental Code, G. L. c. 111, 150A, and any hazardous and inflammable substance regulated under G. L. c. 148. Each reference in this Lease to law, a rule, a regulation, etc., whether specific or general, is to law, a rule, a regulation, etc., that is currently in effect, as modified or supplemented.

Landlord agrees that Landlord must not cause or permit any Hazardous Substance to be used, generated, stored, or disposed of on, under, or about, or transported to, from, or across the Premises, or to migrate toward the Premises, provided, however, that this does not (i) prohibit Landlord from permitting other tenants of the Building from using any Hazardous Substance subject to the same provisions that are applicable to Tenant, or (ii) prohibit Landlord and Landlord’s contractors from using necessary amounts of cleaning fluids, pesticides, gasoline, solvents, or similar supplies necessary to carry out Landlord’s construction, repair, and maintenance obligations under this Lease, any of which constitutes a Hazardous Substance, provided that such use, including storage and disposal, by Landlord is in compliance with the manufacturers’ instructions and recommendations for the safe use of such products, and with all laws, rules, regulations, judgments, decrees, orders, licenses, permits, authorizations, agreements, and other restrictions or requirements of governmental authorities relating to the environment, safety, or any Hazardous Substance.

Landlord must promptly take or cause others to take all actions that are necessary to assess, remove, and/or remediate each Hazardous Substance that is on, under, or migrating toward the Premises or Building (unless generated by Tenant), as and to the extent required by all laws, rules, regulations, judgments, decrees, orders, licenses, permits, authorizations, agreements, and other restrictions or requirements of governmental authorities relating to the environment or any Hazardous Substance. Landlord must also take all actions required to prevent such Hazardous Substance from causing injury or damage to Tenant and Tenant’s employees, agents, contractors, and invitees, or if injury or damage cannot be prevented, to minimize such injury or damage to the greatest extent possible.

Promptly upon discovery, Tenant must notify Landlord in writing of any facts or circumstances that give rise to any claim by Tenant.

## 6. TENANT'S COVENANTS

### 6.1 Use of Premises

Tenant must use the Premises only for the Permitted Uses set forth in § 1.1, provided, however, that Tenant has the right to use the Premises for other purposes if such use (i) is compatible with the other uses of the

Building, (ii) does not materially increase the amount of visitor or employee traffic to and from the Premises, (iii) does not materially increase Landlord's cost to provide the services (including, without limitation, repairs and maintenance of the Premises and Building) that this Lease requires or any other services currently provided to tenants of the Building, and (iv) is otherwise compatible with all other obligations of Tenant under this Lease.

Tenant must not cause or permit any nuisance in the Building and must not conduct any activity within the Premises or Building that interferes with the rights of other tenants or occupants of the Building.

Tenant covenants and agrees that Tenant must not do or permit anything to be done in or upon the Premises or Building, or bring anything on the Premises or Building that increases the rate of insurance on the Premises or Building above the standard rate applicable to Premises occupied for the Permitted Uses, or that voids such insurance. Tenant further agrees that if Tenant does any of the foregoing, Tenant must promptly pay to Landlord, on demand, any resulting increase as additional rent, or Tenant must cease all activities that cause the increase or the voiding.

## 6.2 Care of Premises

Tenant must not injure, deface, or commit waste in the Premises or any part of the Building. Tenant must exercise reasonable care to ensure that all systems, fixtures, and equipment that Landlord installs are used only for their respective intended purposes and that the electrical, mechanical, and structural systems of the Building and the Premises are not overloaded. Tenant must notify Landlord promptly of any damage to the Premises, malfunction of a system or fixture, or any other condition that requires repair by Landlord.

## 6.3 Hazardous Substance

Tenant agrees that Tenant must not cause or permit any Hazardous Substance to be used, generated, stored, or disposed of on, under, or about the Premises, or to be transported to, from, or across the Premises.

Nothing in this Lease prohibits Tenant from using minimal quantities of cleaning fluid and office or household supplies that constitute(s) a Hazardous Substance but are customarily present in and about premises used for the Permitted Uses, provided that Tenant's use, including storage and disposal of such cleaning fluid and office or household supplies, is in compliance with all applicable laws, rules, regulations, judgments, decrees, orders, licenses, permits, authorizations, agreements, and other restrictions or requirements of governmental authorities relating to the environment or any Hazardous Substance.

If Tenant or Tenant's employees, agents, independent contractors, or invitees cause(s) the release or threatened release of any Hazardous Substance from the Premises, Tenant must promptly notify Landlord and, without cost to Landlord, take such action, or cause others to take such action, as is necessary to assess, remediate, or remove any Hazardous Substance, as and to the extent required by all applicable laws, rules, regulations, judgments, decrees, orders, licenses, permits, authorizations, agreements, and other restrictions or requirements of governmental authorities relating to the environment or any Hazardous Substance. Tenant will hold harmless, indemnify and defend Landlord from and against any and all claims, suits, damages, losses, cost, and expenses, including reasonable attorney's fees, made against or sustained by the Landlord as a result of Tenant's failure to comply with any Environmental Requirements. The representation covenants, warranties and indemnifications contained in this section (Section 6.3) shall survive the expiration or cancellation of this lease.

## 6.4 Compliance with Applicable Laws and Removal of Liens

Tenant must comply with all laws, orders, and regulations of federal, state, county, and city authorities, and with any of Landlord's rules and regulations that are set forth in this Lease or that Landlord establishes, provided that they do not conflict with the provisions of this Lease, and further provided that they are

delivered to Tenant and to the User Agency in the manner required for notices. Tenant has the right to defer compliance so long as Tenant contests in good faith the validity of any such law, order, or regulation by appropriate legal proceedings and first gives Landlord appropriate assurance, reasonably satisfactory to Landlord, against any loss, cost, or expense on account of such deferral, and provided that such contest must not subject Landlord to criminal penalties or civil sanctions, loss of property, liens against property, or civil liability. Tenant must not cause or allow any liens of any kind to be filed against the Premises. If any liens are filed, within 15 days after receiving written notice of such filing, Tenant, at Tenant's sole cost and expense, must take whatever action is necessary to cause such lien to be bonded off or released of record without cost to Landlord.

## 6.5 Assignment and Subletting

Tenant must not assign, sublet, mortgage, pledge, or encumber this Lease (the result of any such action being referred to as a "Transfer") without Landlord's prior written consent, which Landlord must not unreasonably withhold, condition, or delay. Without limiting the foregoing, Landlord and Tenant agree that Landlord has the right to withhold Landlord's consent to any proposed Transfer to a transferee who, by reputation, financial strength, or expected use, is not compatible with the other tenants in the Building whom Landlord, in Landlord's reasonable business judgment, does not deem to be an acceptable credit risk. By valid written instrument, any transferee must expressly assume, for the transferee and the transferee's successors and assigns, and for the benefit of Landlord, all of the obligations of Tenant under this Lease.

Any request by Tenant for Landlord's consent to a Transfer must include (i) the name of the proposed transferee; (ii) the nature of the transferee's business and proposed use of the Premises; (iii) complete information as to the financial conditions and standing of the proposed transferee; and (iv) the provisions of the proposed Transfer. Tenant must promptly supply such additional information about the proposed Transfer and transferee as Landlord reasonably requests. Landlord also has the right to meet and interview the proposed transferee.

Landlord must advise Tenant in writing whether or not Landlord consents to a proposed Transfer within 30 days of receiving Tenant's request for such consent. If such consent is withheld, Landlord must specify the reasons, in writing, to Tenant. If Landlord fails to so notify Tenant within said time period, Landlord is deemed to have given Landlord's consent to the proposed Transfer.

The express or implied consent by Landlord to any Transfer does not constitute a waiver of Landlord's right to prohibit any subsequent Transfer.

As used in this Lease, "assign" or "assignment" includes, without limitation, any transfer of Tenant's interest in the Lease by operation of law.

Notwithstanding any contrary provisions of this § 6.5, in connection with any proposed Transfer, Landlord has an option to cancel and terminate this Lease if Tenant's request is to assign the Lease or to sublet more than 80% of the Premises; or, if Tenant's request is to sublet a portion of the Premises only, to cancel and terminate this Lease with respect to such portion of the Premises for the proposed duration of the sublease. Landlord must exercise this option in writing within 30 days of receiving Tenant's request for Landlord's consent to a proposed Transfer, and in each case, such cancellation or termination must occur as of the effective date of the proposed Transfer. In such event, Tenant must permit Landlord to enter into a direct lease with the proposed transferee.

Landlord acknowledges and agrees that the use or occupation of all or part of the Premises by an agency of state government other than the User Agency named in § 1.1, or the substitution of another agency of state government for the User Agency named in § 1.1, is not a Transfer, provided that the Premises continue to be used for the Permitted Uses. Nevertheless, Tenant must advise Landlord, in writing, if any agency of state government other than the User Agency named in § 1.1 uses or occupies all or any portion

of the Premises, or if there is a substitution of any agency of state government for the User Agency named in § 1.1.

## 6.6 Alterations and Additions

Tenant has the right to make non-structural and structural alterations or additions to the Premises (“Tenant Alterations”) at Tenant’s sole expense, provided that Tenant must first obtain Landlord’s prior written consent, which Landlord must not unreasonably withhold, condition, or delay. Without limiting the foregoing, Landlord has the right to withhold Landlord’s consent to any proposed Tenant Alterations that would violate any law, ordinance, code, or regulation of governmental authorities with jurisdiction, or any regulation of the Board of Fire Underwriters or any similar insurance rating body or bodies, or that would materially and adversely affect the appearance or value of the Building, or the mechanical, electrical, sanitary, or any other system of the Building.

As a condition to giving Landlord’s consent to any Tenant Alterations, Landlord has the right to require that Tenant remove all or a portion of Tenant Alterations at the expiration or earlier termination of this Lease, provided that Landlord must designate all such items to be removed at the time Landlord gives Landlord’s consent.

As a further condition for Landlord’s consent, Landlord has the right to require that, before the commencement of the work, Tenant submit to Landlord, for Landlord’s approval, plans, and specifications that reasonably fix and describe all of the proposed Tenant Alterations. Landlord agrees to review Tenant’s plans and specifications, and to advise Tenant, in writing, of approval or disapproval within ten business days after submission. If Landlord disapproves, Landlord must advise Tenant of the reasons for disapproval of the changes necessary to obtain Landlord’s approval. If Landlord fails to notify Tenant of disapproval within ten business days after submission or fails to advise Tenant of the changes necessary to obtain Landlord’s approval, Tenant’s plans and specifications are deemed approved.

Tenant must (i) do all such Tenant Alterations at reasonable times and in such manner so as not to unreasonably disturb other tenants of the Building, (ii) complete all such Tenant Alterations in accordance with any plans and specifications that Landlord approves and in a good and workmanlike manner, with materials in quality at least equal to the then-present construction, (iii) cause contractors that Landlord approves to perform all such Tenant Alterations, provided that Landlord’s approval is not required for any contractor that Tenant selects pursuant to applicable public bidding laws of the Commonwealth of Massachusetts, (iv) perform and complete all such Tenant Alterations in compliance with all applicable laws, ordinances, codes, and regulations of governmental authorities, and with regulations of the Board of Fire Underwriters or any similar insurance body or bodies, and (v) perform and complete all such Tenant Alterations at Tenant’s sole expense, including the cost of all design work, materials, labor, and state and local permits. Landlord’s approval of any plans and specifications, or changes in plans and specifications, whether expressly given or resulting from Landlord’s inaction, must never be construed as a waiver of any of the requirements of this paragraph.

At all times during the construction of any Tenant Alterations, Tenant must cause Tenant’s contractors and any subcontractors to maintain workers compensation insurance covering the persons employed in connection with such Tenant Alterations as required by law and, if the estimated construction cost of such Tenant Alterations exceeds \$25,000, to secure and maintain

a. commercial general liability insurance for the mutual benefit of Landlord and Tenant, with limits that Landlord reasonably establishes, to protect against the risks or nature of the construction to be undertaken, or with limits customarily carried in connection with similar work undertaken in buildings similar to the Building in the same locality, and (b) such builders-risk insurance protecting the interests of Landlord and Tenant against damage resulting from such Tenant Alterations in amounts that Landlord reasonably deems necessary. Tenant must not permit Tenant’s contractors or any subcontractor to commence any work until all required insurance coverage has been obtained, and certificates evidencing such coverage have been delivered to and approved by Landlord. Each insurance policy must be with a company authorized to do business in Massachusetts and must provide that Landlord be given at least 20 days prior, written notice of any alteration or termination of coverage.

Landlord has the right to inspect the work as the work progresses and to require Tenant to remove any Tenant Alterations that do not conform to the approved plans and specifications. Tenant must not permit any mechanic's liens or similar liens to remain upon the Premises for labor and materials furnished to Tenant, and Tenant must promptly cause any such lien to be released of record or bonded off without cost to Landlord.

All Tenant Alterations must remain the exclusive property of Tenant until Tenant vacates the Premises. Any Tenant Alteration remaining on the Premises after Tenant vacates the Premises becomes the property of Landlord without payment.

#### 6.7 Yield Up at Termination of Lease

At the expiration or other termination of this Lease, Tenant must remove all of Tenant's effects from the Premises. Tenant must surrender and deliver up the Premises to Landlord in the condition in which Tenant is required to maintain the Premises, as set forth in this Lease, reasonable wear and tear, and damage by fire or other casualty, excepted. Any personal property of Tenant remaining upon the Premises after Tenant has surrendered possession of the Premises becomes the property of Landlord. If Landlord removes and disposes of any remaining property, Tenant agrees to pay the reasonable costs of removal and disposal, less any salvage value that Landlord actually recovers, provided that such claim is submitted to Tenant, in writing, within 30 days after Tenant vacates the Premises.

### 7. CASUALTY; EMINENT DOMAIN

#### 7.1 Damage by Fire or Other Casualty

If fire or other casualty damages the Premises or any other portion of the Building to which Tenant has appurtenant rights under § 2.1 (and that is necessary for reasonable access to or egress from the Premises, or for Tenant's use and enjoyment of the Premises, as this Lease contemplates), then, subject to the next paragraph, Landlord must proceed with diligence to establish and collect all valid claims that arise against insurers, based upon any such damage and, subject to the then applicable building codes, zoning ordinances and other legal requirements, Landlord must proceed with diligence to repair such damage or destruction and to restore the Premises and Building as nearly as practicable to their condition before such casualty, at Landlord's sole expense (but, provided Landlord has maintained the casualty insurance that this Lease requires, only to the extent of insurance proceeds that Landlord's insurers made available to Landlord and to any mortgagee of the Building). Notwithstanding the forgoing, Landlord has no duty to repair any damage to any Tenant Alterations unless the damage was caused by the negligence, breach of this Lease, or willful misconduct of Landlord.

Notwithstanding the preceding paragraph, if either Landlord or Tenant determines, in Landlord's or Tenant's reasonable business judgment, that Landlord cannot be reasonably expected to repair the damage to the Premises or to the Building within 150 days from the date of the fire or other casualty, due to the character of such damage, then either Landlord or Tenant has the right to terminate this Lease. Tenant also has the right to terminate this Lease if Landlord, having notified Tenant of Landlord's intention to repair the damage to the Premises or Building, as provided in this Lease, fails to complete such repairs within 150 days after a fire or other casualty.

The rights of Landlord and Tenant to terminate this Lease if there is a fire or other casualty are subject to the following notice provisions: Within 30 days after the occurrence of a fire or other casualty, Landlord must notify Tenant of Landlord's election to terminate this Lease in accordance with the preceding paragraph. Tenant must notify Landlord of Tenant's election to terminate this Lease in accordance with the preceding paragraph (i) within 30 days after the occurrence of a fire or casualty or

(ii) within 30 days after the expiration of the 150-days' period given to Landlord to repair the Premises if this Lease is not terminated and Landlord fails to complete such repair within said 150-days' period. Any such termination of this Lease by Landlord or Tenant is effective no earlier than 30 days after the giving of notice. Unless so terminated, this Lease remains in full force and effect, subject, however, to other provisions of this § 7.1.

If any damage to the Premises or the Building or if Landlord's repair of either or both (i) renders any part of the Premises unfit for Tenant's use and occupancy or otherwise materially interferes with Tenant's use and occupancy of the Premises, or (ii) causes a material cessation or reduction in Landlord's services under this Lease (even if Tenant continues to use and occupy the Premises), Rent or a just portion of Rent must be abated until the Premises, such services, or both have been restored as required under this Lease.

## 7.2 Eminent Domain

If all or any substantial part of the Premises or the Building is taken for any public or quasi-public use under governmental law or by right of eminent domain (the "Taking"), this Lease terminates at Landlord's election, which Landlord has the right to make notwithstanding the divestiture of Landlord's entire interest in the Building. Tenant has the right to terminate this Lease if the Taking would materially interfere with Tenant's use and occupancy of the Premises (even if Landlord reconstructs the Premises and Building to the maximum extent practicable in the case of a partial Taking), or, in the case of a partial Taking, if (i) Tenant determines, in Tenant's reasonable business judgment, that Landlord cannot reasonably be expected to complete, within 150 days from the date of the Taking, any reconstruction of the Premises, of the Building, or of both that is necessary for Tenant's use and occupancy of the Premises in accordance with the provisions of this Lease, or (ii) Landlord, having elected not to terminate the Lease, fails to complete such reconstruction within 150 days after the Taking.

The foregoing rights of Landlord and Tenant to terminate this Lease if there is a Taking is subject to the following notice provisions: Within 30 days after a Taking of all or a substantial part of the Premises or the Building, Landlord must notify Tenant of Landlord's election to terminate the Lease in accordance with the preceding paragraph. Tenant must notify Landlord of Tenant's election to terminate the Lease within 30 days after the Taking, or within 30 days after the expiration of the 150-days' period given to Landlord to restore the Premises after a partial Taking if this Lease is not terminated and Landlord has failed to complete such restoration within said 150-days' period. Any such termination of the Lease by Landlord or Tenant is effective no earlier than 30 days after the giving of notice. Unless terminated pursuant to the foregoing provisions, this Lease remains in full force and effect, subject, however to other provisions of this § 7.2.

If Landlord does not terminate this Lease after a Taking, or if the Taking effects less than all or a substantial part of the Premises or the Building, Landlord must proceed with diligence to establish and collect all valid claims that arise against the Taking authority or others and, subject to the then- applicable building codes, zoning ordinances, and other legal requirements, Landlord must proceed with diligence to restore the Premises and the Building, or their remains, as nearly as practicable to their condition before such Taking, at Landlord's sole expense, subject, however, to the extent of the proceeds from the Taking.

If any Taking of the Premises or the Building or if Landlord's restoration of either or both (i) reduces the Usable Area of the Premises, (ii) renders any part of the Premises unfit for Tenant's use and occupancy, or otherwise materially interferes with Tenant's use and occupancy of the Premises, or (iii) causes a material cessation or reduction in Landlord's services under this Lease (even if Tenant continues to use and occupy the Premises), Rent or a just portion of Rent must be abated until the Premises or their remains, such services, or all of them are restored, as this Lease requires. In the case of a Taking that reduces the Usable Area of the Premises, interferes with Tenant's use and occupancy of the Premises, or materially diminishes Landlord's services on a permanent basis, a just portion of Rent must be abated for the remainder of the Term.

Landlord reserves all rights to any damages or compensation payable by reason of any Taking, and Tenant grants to Landlord all of Tenant's rights to such damages or compensation, and covenants to execute and deliver such further instruments as Landlord requests from time to time in order to obtain such damages or compensation, provided, however, that Tenant reserves for Tenant any award specifically reimbursing Tenant for moving or relocation expenses, and any other award, the payment of which does not diminish the amounts otherwise payable to Landlord.

## 8. INDEMNIFICATION AND INSURANCE

### 8.1 Indemnification of Landlord by Tenant

Tenant must indemnify, save harmless, and defend Landlord from any and all liability, claim, or cost arising, in whole or in part, out of any injury, loss, or damage to any person or property while on or within the Premises, Building, or appurtenant areas if caused by any negligence, breach of this Lease, or willful misconduct of Tenant or Tenant's employees, agents, contractors, servants, or invitees. This indemnity and hold-harmless agreement includes indemnity against all costs, expenses, and liabilities that Landlord incurs in connection with any such injury, loss, or damage, or any such claim, or any proceeding brought thereon or in defense thereof, including, but not limited to, reasonable legal fees and expenses charged by public or private counsel that Landlord employs. This indemnity survives the Expiration Date.

### 8.2 Tenant's Insurance

In addition to the covenant of indemnity, Tenant further covenants and agrees to obtain and keep in force during the Term of this Agreement a policy or policies of insurance as follows:

- a. During any period of construction, if applicable, prior to Tenant's occupancy of Premises:
  1. Worker's Compensation and Employer's Liability Insurance in the form and in the amount prescribed by law for such coverage. Tenant shall not option out of such coverage during such period of construction without prior written approval by the Landlord.
  2. Separate Commercial General Liability Insurance policies with minimum limits of \$1,000,000.00 combined single limits per occurrence for personal or bodily injuries, including death, and for property damage.
  3. Comprehensive Automobile and Truck Liability Insurance covering owned, hired, and non-owned vehicles with minimum limits of \$1,000,000.00 combined single limit per occurrence for personal or bodily injuries, including death and property damage.
  4. Contractual Liability coverage including, but not limited to, the liabilities assumed under the indemnification provisions of this agreement.
  5. Builders Risk Insurance for an amount equal to the value of Tenant's Facilities and improvements.
  6. An Umbrella Liability Policy, during construction, in the amount of \$1,000,000.00 as an excess of the primary coverage required above.
- b. Following the Tenant's occupancy of the Premises or any part thereof:
  1. Worker's Compensation and Employer's Liability Insurance in the form and in the amount prescribed by law for such coverage. Tenant shall not option out of such coverage during the term

hereof without the prior written approval of the Landlord.

2. Commercial General Liability Insurance against the claims of any and all persons for bodily injuries, including death and property damage, arising out of the use or occupancy of the Premises by the Tenant's officers, employees, agents, guests, patrons, or invitees in the sum of not less than \$1,000,000.00 (one million dollars) combined single limit per occurrence. The Insurance shall be primary without right of contribution from Landlord's insurance, include contractual coverage under the indemnification provisions contained herein, shall name the Landlord as an additional insured, and shall be at the Tenant's sole cost and expense.
  3. All Risk Coverage equal to 80% of replacement cost of Tenant's Facilities and improvements.
  4. An Umbrella Liability Policy in an amount of \$1,000,000.00 as an excess of the primary coverages required above in sections 1-3.
- c. Special Conditions - Concerning insurance to be furnished by Tenant, it is a condition precedent to acceptability thereof that:
1. Any policy submitted shall not be subject to limitations, conditions or restrictions inconsistent with the intent of the insurance requirements to be fulfilled by Tenant.
  2. All policies shall be written through an insurance company of recognized responsibility, duly authorized by the Commonwealth of Massachusetts to transact that class of insurance in the Commonwealth of Massachusetts.
  3. No special payment shall be made by the Landlord for any insurance that the Tenant may be required to carry.
  4. The Landlord shall be named as an additional insured on the following policies: Comprehensive General Liability; All Risk Coverage; Umbrella Liability Policy. Tenant hereby agrees to indemnify and hold the Landlord harmless from any and all such claims.
  5. The insurance companies issuing the policy or policies shall have no recourse against the Landlord for payment of any premiums or for assessments under any form of policy.
  6. Any of such insurance policies may be written in combination with any of the other, where legally permitted, but none of the specified limits may be lowered thereby.
- d. Prior to occupancy of the Premises, Tenant shall furnish the Landlord with a certificate of such policy or policies of insurance, validly executed by or on behalf of the insurance company, certifying that such insurance is in full force and effect, and specifically insuring the liability assumed by Tenant with a requirement of thirty (30) days prior notice to the Landlord of any material change or cancellation thereof. Insurers shall have no right of recovery or subrogation against the Landlord, it being the intent of the parties that insurance policies so effected shall protect both parties and be primary coverage for any and all losses covered by the above-described insurance. A lapse in insurance coverage will at the sole discretion of the Landlord be deemed sufficient cause for the termination of the lease for cause upon written notice to Tenant provided, however, that Tenant shall have seven (7) days within which to cure unless there has been an uninsured loss within the period after the lapse.

Landlord and Tenant acknowledge and agree that Landlord is self-insured and that this Lease does not require Landlord to procure or maintain insurance of any kind for payment of damages to Tenant or to any other party. Notwithstanding any other provision of this Lease, but subject to the provisions of § 13.1, the provisions of G. L. c. 258 and any successor statute govern Landlord's liability for injuries to persons or property.

#### 8.4 Tenant's Personal Property; Assumption of Risk

All of the furnishings, equipment, effects, and personal property of every kind and nature of Tenant, and of all persons claiming by, through, and under Tenant, that, during the Term, are on the Premises or in the Building at the sole risk and hazard of Tenant, except for damage or loss caused by Landlord's gross negligence or willful misconduct. If fire, water, or other casualty destroys or damages the whole or any part of such personal property, no part of such loss or damage is to be charged to or to be borne by Landlord unless such loss or damage is due to the gross negligence or willful misconduct of Landlord. The indemnification Section of 8.1 shall apply to any claims asserting such liability against the Landlord.

### 9. DEFAULT

#### 9.1 Event of Default by Tenant

Each of the following is an "Event of Default" by Tenant:

- a. Tenant fails to pay, when due, any sum of money due to Landlord by Tenant under this Lease, whether such sum is an installment of Rent or any other payment or reimbursement, and such failure continues for a period of ten business days after written notice from Landlord.
- b. Tenant fails to comply with any other obligation or covenant of Tenant under this Lease, and fails to cure such failure within 30 days after receiving written notice from Landlord specifying such failure, or for those failures that cannot be cured within such 30-days' period, if Tenant fails to commence such cure within such 30-days' period and thereafter fails to diligently pursue such cure to completion.
- c. Any warranty, representation, or statement that Tenant makes in this Lease is incorrect or misleading in any material respect on the date made.

#### 9.2 Remedies of Landlord

Upon the occurrence of an Event of Default by Tenant, in addition to the remedies described in § 9.3 and any other remedies available to Landlord at law or in equity, Landlord has the right to terminate this Lease upon not less than 60-days'-prior-written notice to Tenant; provided, however, that in the case of a non-monetary Event of Default by Tenant that poses an immediate threat to the health or safety of persons or property, Landlord has the right to reduce said 60-days'-notice period to ten days. Upon such termination, this Lease comes to an end as fully and completely as if the Expiration Date stated in such notice were the Expiration Date originally fixed, and Tenant must then quit and surrender the Premises to Landlord as provided in § 6.7, but Tenant remains liable for damages arising out of such Event of Default, as provided in this Lease.

Upon termination of this Lease by Landlord pursuant to this § 9.2, Tenant must pay to Landlord Rent payable by Tenant to Landlord up to the Expiration Date, and Tenant remains liable for any breach of Tenant's obligations under this Lease occurring before the Expiration Date. In addition, Tenant is liable to pay Landlord, as damages, the aggregate of Rent remaining in the Term.

Tenant must pay Rent in the same manner, to the same extent, and at the same time as if this Lease had not been terminated. In calculating the amounts to be paid by Tenant pursuant to the preceding sentence,

Landlord must credit Tenant with the net rents that Landlord actually receives from a reletting of the Premises. Net rents must be determined by deducting from the gross rents, as and when Landlord receives the gross rents from such reletting, the reasonable expenses that Landlord incurs or pays in terminating this Lease and the reasonable expenses that Landlord incurs or pays in connection with the reletting of the Premises that are allocable to the Term. In no event is Tenant entitled to receive any excess of such net rents over the sums that Tenant must pay to Landlord under this Lease. If Landlord terminates this Lease by reason of an Event of Default by Tenant, Landlord must take all reasonable steps to mitigate Landlord's damages, including making reasonable efforts to relet the Premises for a period that is equal to, shorter, or longer than the Term.

### 9.3 Cure by Landlord

If Tenant fails to perform any of Tenant's obligations, agreements, or covenants under this Lease, and if Tenant does not cure such failure within 30 days after written notice from Landlord specifying the failure or, for those failures that are incapable of being cured within such 30-days' period, if Tenant fails to commence such cure within said 30-days' period and thereafter to diligently pursue such cure to completion, Landlord, at Landlord's sole option, without waiving or limiting any claim for damages, and at any time thereafter, has the right to perform such obligation of Tenant, provided that Landlord, after notice to Tenant (including telephonic notice), has the right to cure any such failure before the expiration of the waiting period described above if the curing of such breach before the expiration of the waiting period is reasonably necessary to prevent injury or damage to persons or property, including Landlord's interest in the Premises or Building. If Landlord makes any expenditure or incurs any obligation for the payment of money in order to cure Tenant's failure to perform, such sums paid or obligations incurred, to the extent they are reasonable, are due from Tenant to Landlord as additional rent. Landlord must deliver to Tenant an itemized statement of all costs that Landlord incurs to cure Tenant's failure to perform, together with copies of all bills, invoices, receipts, and other documents evidencing such costs. Tenant must pay any additional rent due by reason of such costs with the second installment of Rent due after Landlord delivers such statement to Tenant.

### 9.4 Event of Default by Landlord

Each of the following is an "Event of Default" by Landlord:

- a. Landlord fails to comply with any obligation or covenant of Landlord under this Lease and fails to cure such failure within 30 days after receiving written notice from Tenant specifying such failure, or for those failures that cannot be cured within such 30-days' period, if Landlord fails to commence such cure within said 30-days' period and thereafter to diligently pursue such cure to completion.
- b. Any warranty, representation, or statement that Landlord makes in this Lease is incorrect or misleading in any material respect on the date made.

### 9.5 Remedies of Tenant

Upon the occurrence of an Event of Default by Landlord, Tenant has the remedies described in § 9.6, if applicable, given the nature of the Event of Default, and Tenant has any other remedies available to Tenant at law or in equity. In addition, if the Event of Default by Landlord is of such a nature that the Event of Default materially interferes with Tenant's use or occupancy of the Premises, in Tenant's reasonable judgment, and Landlord fails to fully cure or eliminate the cause(s) of such Event of Default within 60 days following written notice from Tenant stating that such an Event of Default has occurred, then Tenant also has the right to terminate this Lease by giving Landlord a written Notice of Termination that Tenant must give at least ten days before the Expiration Date stated in such Notice of

Termination. Upon the Expiration Date, this Lease comes to an end as fully and completely as if the Expiration Date stated in such notice were the Expiration Date originally fixed, provided, however, that Landlord remains liable for any breach of Landlord's obligations under this Lease occurring before the date of termination, and Tenant is required to comply with the provisions of § 6.7.

#### 9.6 Cure by Tenant

If Landlord fails to perform any obligation, agreement, or condition of Landlord under this Lease, including, but not limited to, failing to make any required repairs or to provide any Building services, and if such failure interferes with Tenant's use or occupancy of the Premises, in Tenant's reasonable judgment, and if Landlord does not cure such failure within 60 days after written notice from Tenant specifying the failure (or, for those failures that are incapable of being cured within such 60-days' period, if Landlord fails to commence such cure within said 60-days' period and thereafter fails to diligently pursue such cure to completion), Tenant, at Tenant's sole option, and without waiving or limiting any claim for damages, at any time thereafter has the right to perform such obligation for Landlord, provided that Tenant has the right to cure any such failure before the expiration of the waiting period described above (but after notice to Landlord, including telephonic notice) if the curing of such failure before the expiration of the waiting period is reasonably necessary to prevent injury to persons or property. If Tenant makes any expenditure or incurs any obligation for the payment of money in order to cure Landlord's failure to perform as aforesaid, such monies paid or obligations incurred, to the extent they are reasonable, are deemed paid or incurred on behalf of Landlord, and Landlord agrees to reimburse Tenant therefore or save Tenant harmless therefrom. Tenant must deliver to Landlord an itemized statement of all costs that Tenant incurs to cure Landlord's failure to perform, together with copies of all bills, invoices, receipts, and other documents evidencing such costs. Landlord must promptly pay any outstanding bills for labor, materials, or both, and, within 60 days of Tenant's demand, must reimburse Tenant for any amount that Tenant pays on behalf of Landlord. If Landlord fails to reimburse Tenant within such period, Tenant has the right to deduct the amount from the next or any succeeding payments of Rent due under this Lease.

#### 9.7 Remedies Cumulative

Any and all rights and remedies of Landlord and Tenant under this Lease, at law, and in equity, are cumulative and are not to be deemed incompatible with each other, and Landlord and Tenant each has the right to exercise any two or more such rights and remedies simultaneously, to the extent permitted by law.

### 10. MORTGAGE PROVISIONS

#### 10.1 Estoppel Certificate

Within 20 business days from receipt of a written request from Landlord or any mortgagee of the Building, Tenant must execute and deliver to Landlord a certificate in the form of the then-current *City of New Bedford Estoppel Certificate* that indicates any then-existing exceptions.

#### 10.2 Subordination

Upon the written request of Landlord, Tenant must subordinate this Lease and its lien to the lien of any future mortgage(s) upon the Premises that is (are) held by a bank, insurance company, governmental agency, or other financial institution (or more than one), provided that Landlord and the holder(s) of such mortgage(s) executes and delivers to Tenant the then-current *City of New Bedford Subordination*,

*Non-Disturbance, and Attornment Agreement.* The word "mortgage," as used in this Lease, includes mortgages, deeds of trust, and all similar instruments, and all modifications, extensions, renewals, and replacements thereof.

## 11. HOLDING OVER

### 11.1 Holding Over by Tenant

If Tenant or anyone claiming under Tenant remains in possession of the Premises or of any part of the Premises after the expiration of the Term without any agreement in writing between Landlord and Tenant with respect to such possession, then before Landlord's acceptance of Rent, the person remaining in possession is deemed a tenant-at-sufferance. After Landlord's acceptance of Rent, such person is deemed a tenant-from-month-to-month, subject to the provisions of this Lease insofar as the same are applicable to a tenant-from-month-to-month. However, Tenant agrees that Landlord has the right to accept any Rent that Tenant tenders after the expiration or earlier termination of this Lease without prejudice to any claim that Landlord has for a higher fair-market rent for the Premises, provided that Landlord must give Tenant written notice of such claim *before* acceptance of Rent. Nothing in this § 11.1 is to be construed to give Tenant a right to remain in possession of the Premises after the Expiration Date.

## 12. FISCAL YEAR APPROPRIATIONS AND AUTHORIZATIONS - DELETED

## 13. PERSONAL LIABILITY

### 13.1 Liability of Tenant

No official, employee, or consultant of the Tenant is ever personally liable to Landlord, or to any successor-in-interest to Landlord, or to any person claiming through or under Landlord for or on account of any Event of Default by Tenant or failure by Tenant to perform any of Tenant's obligations under this Lease, or for or on account of any amount that is due or becomes due under this Lease, or for the satisfaction of any judgment against Tenant under this Lease, or on any claim, cause, or obligation whatsoever under this Lease. Notwithstanding the foregoing, nothing in this paragraph limits any right that Landlord otherwise has to obtain injunctive relief against Tenant. In addition, nothing in this § 13.1 limits the recourse of Landlord on account of willful fraudulent conduct.

### 13.2 Liability of Landlord

No official, employee or consultant of the City of New Bedford is ever personally liable to Tenant, or to any successor-in-interest to Tenant, or to any person claiming through or under Tenant for or on account of any Event of Default by Landlord or failure by Landlord to perform any of Landlord's obligations under this Lease, or for or on account of any amount that is due or becomes due under this Lease, or for the satisfaction of any judgment against Landlord under this Lease, or on any claim, cause, or obligation whatsoever under this Lease.

## 14. NOTICE

### 14.1 Notice

- a. Unless otherwise expressly permitted under this Lease, all notices or other communication required or permitted to be given under this Lease must be in writing, signed by a duly authorized representative of the party giving notice and given by hand delivery (including, without limitation, courier and overnight-delivery service) or mailed by United States certified mail, postage prepaid, return receipt requested.
- b. Unless otherwise expressly stated in this Lease, notices must be addressed and sent to Tenant at the address appearing for Tenant in § 1.1, and (ii) at the address set forth for the User Agency in § 1.1 if different from the address of Tenant. Unless otherwise expressly stated in this Lease, notices must be addressed and sent to Landlord at the following address:

with a copy to:

Director Public Facilities and Fleet Management  
294 Liberty Street  
New Bedford MA 02740

City Solicitor  
133 William Street  
New Bedford, MA 02740

- c. Under this § 14, Landlord and Tenant, at any time and from time-to-time, has the right to designate a different address or different addresses to which notices must be sent. Notices sent in this manner are deemed given, for all purposes, (i) on the date shown on the receipt for delivery or (ii) as of the date notice is sent if delivery is refused.

### 14.2 Special Notice Where Failure to Reply Results in Consent or Approval

If the consent or approval of Landlord or Tenant is deemed under this Lease to be given to a request or submission following a period of non-reply, such consent or approval is effective only if the outside of the envelope containing the request or submission bears the following legend with the appropriate time period filled in, printed in bold-face all-uppercase type at least one-quarter inch high (28-point font):

**NOTICE: THIS REQUEST FOR APPROVAL REQUIRES IMMEDIATE REPLY. FAILURE TO RESPOND WITHIN 30 DAYS RESULTS IN AUTOMATIC APPROVAL.**

## 15. FORCE MAJEURE

### 15.1 Force Majeure Event

Whenever this Lease requires performance on or by a fixed date, or within a fixed time or a reasonable time, if war, fire, flood, or other casualty, or strike, weather, or any other event that is beyond the reasonable control of the party whose performance is required (each a "Force Majeure Event") delays performance, the time for performance must be extended for a period that is equal to the duration of the delay.

## 16. MISCELLANY

### 16.1 Extension

There shall be no Extension Term for this Lease.

## 16.2 Entire Agreement

This Lease contains all of the agreements between Landlord and Tenant with respect to the subject matter of this Lease and supersedes all prior writings and dealings between Landlord and Tenant with respect to this Lease.

## 16.3 Changes in Lease

The provisions of this Lease must not be modified in any manner except by a written instrument signed, sealed, and mutually agreed upon by all the parties to this Lease and approved as required by law. No such instrument is void for lack of consideration.

## 16.4 Binding Agreement

This Lease binds and inures to the benefit of the parties to this Lease and to their respective representatives, successors, and assigns. All provisions of this Lease must be construed as covenants running with the land.

## 16.5 Governing Law

This Lease must be construed and governed by the laws of the Commonwealth of Massachusetts. Landlord and Tenant agree to bring any Federal or State legal proceedings arising under this Lease, in which the City of New Bedford is a party, in a court of competent jurisdiction within the Commonwealth of Massachusetts.

## 16.6 Waiver

The failure of either party to seek redress for violation or to insist upon the strict performance of any covenant or condition of this Lease does not prevent a subsequent act, that would have originally constituted a violation, from having all the force and effect of a violation. No provision of this Lease is deemed to have been waived by any party unless such waiver is in writing and signed by an authorized representative of the party to be bound by such waiver.

## 16.7 No Broker

Landlord and Tenant each represents and warrants to the other that no broker, agent, commission salesman, or other person has represented Landlord or Tenant in connection with the procurement or consummation of this Lease.

## 16.8 Rights and Remedies Not Exclusive

Unless otherwise expressly stated in this Lease, no mention in this Lease of any specific right or remedy precludes Landlord or Tenant from exercising any other right, having any other remedy, or maintaining any action to which Landlord or Tenant otherwise is entitled, either at law or in equity.

## 16.9 Accord and Satisfaction

Acceptance by Landlord of a lesser sum than Rent then due must not be deemed to be other than on account of the earliest installment of such Rent due, and any endorsement or statement on any check of Landlord or Tenant, or any letter accompanying any check or payment from either Landlord or Tenant to the other, must not be deemed an accord and satisfaction, and Landlord and Tenant each has the right to accept such check or payment without prejudice to such party's right to recover any balance due with respect to such payment or pursue any other remedy provided in this Lease.

## 16.10 Debarred or Suspended Contractors

Landlord must not accept bids or proposals from, or enter into any contract with, any person or firm for the construction (including but not limited to the Landlord's Improvements), repair, or maintenance of the Premises if such person or firm is debarred or suspended from contracting with the Commonwealth of Massachusetts, with the government of the United States of America, or with both under any applicable statute or regulation. Landlord must require each person and firm with whom Landlord contracts for the construction, repair, or maintenance of the Premises to agree with Landlord not to accept bids or proposals from, or enter into any contract with, any such debarred or suspended person or firm for all or any part of the construction (including but not limited to the Landlord's Improvements), repair, or maintenance of the Premises, and Landlord must strictly enforce each such agreement.

#### 16.11 Time of Essence

Time is of the essence to this Lease and to each of its provisions.

#### 16.12 Non-Discrimination in Employment

Landlord must not discriminate against any qualified employee, applicant for employment, contractor, or person or firm seeking to provide goods or services to Landlord because of race, ethnicity, color, national origin, ancestry, age, gender, religion, belief, physical or mental handicap, or sexual orientation or preference. Landlord must comply with all applicable federal and state statutes, rules, and regulations prohibiting discrimination in employment.

#### 16.13 Severability

If any provision of this Lease is declared to be illegal, unenforceable, or void, then Landlord and Tenant are relieved of all obligations under that provision (or the application of that provision under circumstances in which that provision is illegal or unenforceable), provided, however, that the remainder of this Lease must be enforced to the fullest extent permitted by law.

#### 16.14 Notice of Lease

Upon the request of Tenant, Landlord must execute and deliver to Tenant a recordable notice of this Lease.

#### 16.15 No Agreement Until Signed

No legal obligation arises with respect to the Premises or other matters covered by this Lease until this Lease is executed by Landlord and by the Tenant and delivery is made by and to each.

#### 16.16 Deleted.

#### 16.17 Paragraph Headings

The paragraph headings in this Lease are for convenience of reference only and in no way define, increase, or limit the scope or intent of any provision of this Lease.

#### 16.18 Counterparts

This Lease is executed in multiple counterparts, each such counterpart is an original for all intents and purposes, and all such counterparts together constitute one and the same Lease.

#### 16.19 Exhibits and Other Attached Documents

Each attached exhibit or other document is an integral part of this Lease for all lawful intents and purposes.

16.20 Termination of Operator's Agreement

This Lease is contingent upon the existence of an agreement between the Landlord and Tenant for the Operation of the Quest Center business Incubator program and, this Lease shall terminate immediately upon the termination of the Agreement between the Landlord and the Tenant for the Operation of Quest Center Business Incubator Program.

THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK.

Landlord and Tenant have executed multiple counterparts of this document, under seal in accordance with the laws of the Commonwealth of Massachusetts, Tenant having done so by the Commissioner of the Division of Capital Asset Management and Maintenance, who was joined by an authorized representative of the User Agency as an adjunctive signatory, neither of whom incurs any personal liability as a result of such signature.

<p>(Insert Vendor Name)</p> <hr/> <p>By: Title:</p>	<p>City of New Bedford, Massachusetts</p> <hr/> <p>By: Jonathan F. Mitchell Title: Mayor</p>
<p>CERTIFIED that funds are available</p> <hr/> <p>By: Title:</p>	<p>Department of Facilities &amp; Fleet Management</p> <hr/> <p>By: Jennifer Vieira Title: Director of Facilities &amp; Fleet Management</p>
<p>APPROVED as to Form and Legality</p> <hr/> <p>By: Elizabeth McNamara Title: First Assistant City Solicitor</p>	<p>Chief Financial Office</p> <hr/> <p>By: Michael Gagne Title: Interim Chief Financial Officer</p>
<p>Purchasing Department</p> <hr/> <p>By: Molly Gilfeather Rodriguez Title: Director of Purchasing</p>	

**Disclosure of Beneficial Interests in Real Property Transaction**

This form contains a disclosure of the names and addresses of all persons with a direct or indirect beneficial interest in the real estate transaction described below. This form must be filed with the Massachusetts Division of Capital Asset Management, as required by M.G.L. c. 7, §40J, prior to the conveyance of or execution of a lease for the real property described below. Attach additional sheets if necessary.

1. Public agency involved in this transaction: \_\_\_\_\_  
(Name of jurisdiction)

2. Complete legal description of the property:

3. Type of transaction:     Sale     Lease or rental for \_\_\_\_\_ (term):

4. Seller (s) or Lessor (s): \_\_\_\_\_

Purchaser(s) or Lessee(s): \_\_\_\_\_

5. Names and addresses of all persons who have or will have a direct or indirect beneficial interest in the real property described above. *Note: If a corporation has, or will have a direct or indirect beneficial interest in the real property, the names of all stockholders must also be listed except that, if the stock of the corporation is listed for sale to the general public, the name of any person holding less than ten percent of the outstanding voting shares need **not** be disclosed.*

Name	Address
_____	_____
_____	_____
_____	_____
_____	_____

(Continued on next page)

5. Continued

None of the persons listed in this section is an official elected to public office in the Commonwealth of Massachusetts except as noted below:

Name	Title or Position
_____	_____
_____	_____

6. This section must be signed by the individual(s) or organization(s) entering into this real property transaction with the public agency named in item 1. If this form is signed on behalf of a corporation, it must be a duly authorized officer of that corporation.

The undersigned acknowledges that any changes or additions to item 4 of this form during the term of any lease or rental will require filing a new disclosure with the Division of Capital Asset Management within 30 days following the change or addition.

The undersigned swears under the pains and penalties of perjury that this form is complete and accurate in all respects.

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

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

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

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