



Massachusetts Bay Transportation Authority

Green Line Extension Design Build Project

Cambridge, Somerville, and Medford Massachusetts

Execution Version

VOLUME 1

DB Contract Terms and Conditions

MBTA Contract No. E22CN07

December 11, 2017

A handwritten signature in black ink, located in the bottom right corner of the page.

This page left blank intentionally



TABLE OF CONTENTS

Page

SECTION 1. Components; Interpretation of Contract Documents; Standards	2
1.1 Contract Documents.....	2
1.2 Order of Precedence.....	2
1.3 Referenced Standards.....	4
SECTION 2. Scope of Work; Scheduling of Work; Work Restrictions; Role and Responsibilities of Parties.....	4
2.1 General Project Description.....	4
2.2 Scope of Work	5
2.3 Commencement of Work; Milestones and Milestone Deadlines; Project Schedule.....	5
2.4 Access Restraints	8
2.5 Limitations of Operations: Rail Corridor.....	10
2.6 Limitations of Operations: Existing Green Line and New Branches	17
2.7 Track Access Delays and Denials.....	20
2.8 DB Entity Obligations.....	24
2.9 The MBTA's Role	26
2.10 Owner's Representative	26
2.11 Effect of Reviews, Inspections, Tests, Acceptances and Approvals	27
2.12 Subcontracts.....	27
2.13 Self-Performance Requirement.....	29
SECTION 3. Reference Information Documents; MBTA-Furnished Materials and Equipment; Acknowledgment by DB Entity	29
3.1 Reference Information Documents.....	29
3.2 MBTA-Furnished Materials and Equipment	29
3.3 Acknowledgment by DB Entity.....	31
SECTION 4. Quality Assurance/Quality Control.....	32
4.1 DB Entity Responsibilities.....	32
4.2 MBTA, Utility Owner and Railroad Roles in QA/QC	32
SECTION 5. Project Design	33
5.1 Design Exceptions	33
5.2 Failure to Implement Alternative Technical Concepts	33
5.3 Design Reviews	34
5.4 Value Engineering Change Proposals.....	34
SECTION 6. Governmental Approvals; Third-Party Agreements; Environmental Compliance; Hazardous Materials.....	36

6.1	Governmental Approvals	36
6.2	Third-Party Agreements.....	37
6.3	Environmental Compliance	37
6.4	Handling, Transportation and Disposal of Excavated Materials	38
SECTION 7. Project Right of Way.....		40
7.1	General.....	40
7.2	Property Access	40
7.3	Property Acquisitions and Scheduling Work.....	40
7.4	Acquisition of Additional Property Requested by DB Entity.....	41
SECTION 8. Utilities.....		41
8.1	General.....	41
8.2	DB Entity Utility Agreements	42
8.3	Costs of Utility Relocations	43
8.4	FTA Reimbursement Requirements	43
8.5	Betterments	43
8.6	Failure of Utility Owners to Cooperate	44
8.7	Utility Coordination, Documentation and Monitoring Requirements	45
SECTION 9. Construction.....		46
9.1	Commencement of Construction	46
9.2	Supervision and Construction Procedures	48
9.3	Construction Records and Documentation	48
9.4	Safety Requirements	50
9.5	Source of Supply, Quality of Materials and Certificate of Compliance	50
9.6	Trade Names and Alternatives.....	52
9.7	Materials on Site; Prohibited Materials	53
9.8	Disposal of Materials	53
9.9	Motor Vehicles and Certification of Construction Equipment Standard Compliance; Equipment Requirements	54
9.10	Maintenance of the Site	54
9.11	Restoration of Surfaces Opened by Permit.....	55
9.12	Safeguarding Excavations.....	55
9.13	Protection and Restoration of Property and Landscape.....	55
9.14	Use of Explosives	56
9.15	Historic or Archeological Resources	56
9.16	Inspection and Testing	56
9.17	Plant Inspection.....	57
9.18	Nonconforming Work.....	57
9.19	Ownership of Incorporated Materials	58
9.20	Adjacent Contracts.....	58
9.21	Community Coordination and Requirements	58
SECTION 10. Civil Rights Requirements		59
10.1	Disadvantaged Business Enterprise Policy.....	59
10.2	Equal Employment Opportunity (EEO) and EEO Contract Compliance Plan.....	60



10.3 Title VI of the Civil Rights Act of 1964 Compliance Plan.....64

SECTION 11. Performance and Payment Security 65

11.1 Bonds65

11.2 Guaranty.....66

11.3 Performance by Surety or Guarantor66

SECTION 12. Insurance 66

12.1 Insurance Coverages66

12.2 General Requirements.....72

12.3 Waiver of Subrogation74

12.4 Certificates of Insurance74

12.5 Insurance Indemnification74

12.6 Other Insurance Provided by DB Entity and Subcontractor75

12.7 Compliance with Requirements of MBTA’s Insurance Provider.....75

12.8 Inadequacy or Unavailability of Required Coverages75

SECTION 13. Title; Responsibility for Loss or Damage 76

13.1 Title.....76

13.2 Responsibility for Loss or Damage.....76

SECTION 14. Payment..... 76

14.1 Contract Price.....76

14.2 Method of Payment.....79

SECTION 15. Changes And Claims..... 89

15.1 Change Orders89

15.2 Requirements Relating to Change Orders.....89

15.3 Issuance of MBTA-Directed Changes and Directive Letters89

15.4 DB Entity Initiated Change Orders.....90

15.5 Pricing of Change Orders.....98

15.6 Adjustments to Milestone Deadlines104

15.7 Differing Site Conditions.....105

15.8 Variations in Existing Ground Elevations And Survey Data.....108

15.9 Eliminated Work.....108

15.10 Restrictions and Limitations on Change Orders108

15.11 Accord and Satisfaction110

15.12 No Release or Waiver110

SECTION 16. Suspension of All or Part of the Work..... 110

16.1 Suspension for Convenience.....110

16.2 Suspension for Cause.....111

16.3 Traffic Safety in the Event of Suspension111

SECTION 17. Termination for Convenience 111

17.1 Right to Terminate111

17.2 Notice of Termination for Convenience112

17.3	DB Entity's Responsibilities after Receipt of Notice of Termination	112
17.4	Inventory after Termination.....	113
17.5	Settlement Proposal	113
17.6	Amount of Termination for Convenience Settlement.....	113
17.7	Reduction in Amount of Claim.....	114
SECTION 18. Default and Remedies		114
18.1	DB Entity Defaults.....	114
18.2	MBTA Remedies	117
SECTION 19. Damages.....		118
19.1	Liquidated Damages	118
19.2	Offset; Deduction.....	119
19.3	Waiver of Consequential Damages.....	119
19.4	Overall Liability Cap	120
SECTION 20. Labor and Employment Requirements		121
20.1	Key Personnel; Qualifications of Employees	121
20.2	Labor Harmony and Prevailing Wages.....	122
20.3	Required Training.....	123
SECTION 21. Milestones; Early Opening For Operation		124
21.1	Milestone 6.....	124
21.2	Milestone 5.....	125
21.3	Milestone 4A.....	126
21.4	Milestone 4B.....	127
21.5	Milestone 4C.....	128
21.6	Milestone 3A.....	130
21.7	Milestone 3B.....	131
21.8	Milestone 3C.....	132
21.9	Milestone 2: Contract Substantial Completion.....	134
21.10	Milestone 1: Contract Final Acceptance.....	135
SECTION 22. Representations and Warranties; Work Warranty		137
22.1	MBTA Representations and Warranties	137
22.2	DB Entity Representations and Warranties	138
22.3	Work Warranty	139
SECTION 23. Indemnification and Releases		142
23.1	Indemnifications by DB Entity	142
23.2	Restrictions	144
23.3	Employee Claims	144
SECTION 24. Dispute Resolution.....		144
24.1	Applicability of Dispute Resolution Provisions	144
24.2	Mandatory Nature of Process.....	145
24.3	Partnering.....	145

24.4	Dispute Review Board	146
24.5	Program Manager's Decision	146
24.6	Mediation	147
24.7	DB Entity Subcontractors	147
24.8	Continuation of Work	147
24.9	Records Related to Disputes	148
24.10	Subsequent Proceedings; Exclusive Jurisdiction and Venue	148
SECTION 25. Documents, Records and Reporting..... 148		
25.1	Ownership of Documents	148
25.2	Financial Reporting Requirements	148
25.3	Maintenance of, Access to and Audit of Records.....	149
25.4	Retention of Records.....	149
25.5	Public Records Act	150
25.6	Escrowed Proposal Documents.....	150
SECTION 26. Governing Law; Compliance with Law; Payment of Taxes..... 150		
26.1	Massachusetts Law	150
26.2	Federal Law and Regulation	150
26.3	Compliance With Laws.....	151
26.4	Payment of Taxes.....	151
SECTION 27. Miscellaneous..... 152		
27.1	Amendments to Contract Documents and Contracting Authority Levels	152
27.2	Waiver.....	152
27.3	Relationship of Parties; Conflict of Interest.....	153
27.4	Assignment; Change in Control.....	155
27.5	Designation of Representatives and Personal Liability of MBTA Officials	155
27.6	No Gift or Dedication	156
27.7	Use of Police and Other Powers	157
27.8	Patent Rights	157
27.9	Survival	157
27.10	No Third Party Beneficiaries	158
27.11	Notices and Communications	158
27.12	Further Assurances.....	159
27.13	Severability	159
27.14	Headings	159
27.15	Interpretation of Contract Documents	159
27.16	Approvals under Contract Documents.....	160
27.17	Timeliness of Decisions by MBTA	160
27.18	Counterparts	160
27.19	Entire Contract.....	160

EXHIBITS

- EXHIBIT 1A DEFINITIONS**
- EXHIBIT 1B REFERENCE INFORMATION DOCUMENTS LIST**
- EXHIBIT 1C PERMITTING LIST**
- EXHIBIT 1D MBTA-FURNISHED ITEMS LIST**
- EXHIBIT 1E ADJACENT CONTRACTS AND CONTRACTORS LIST**
- EXHIBIT 1F FEDERAL AND COMMONWEALTH REQUIREMENTS**
- EXHIBIT 1G PERFORMANCE BOND**
- EXHIBIT 1H LABOR AND MATERIAL PAYMENT BOND**
- EXHIBIT 1I GUARANTY**
- EXHIBIT 1J DISPUTE RESOLUTION BOARD**
- EXHIBIT 1K DAVIS-BACON/COMMONWEALTH PREVAILING WAGE RATES**
- EXHIBIT 1L FORM H ESCROW AGREEMENT**
 - FORM H-1 PROPOSAL DOCUMENTATION CERTIFICATION**
 - FORM H-2 PROPOSAL DOCUMENTATION DELIVERY CERTIFICATION**
- EXHIBIT 1M DBE PLAN**
- EXHIBIT 1N EEO CONTRACT COMPLIANCE PLAN**
- EXHIBIT 1O TITLE VI COMPLIANCE PLAN**
- EXHIBIT 1P PRICE PROPOSAL**
- EXHIBIT 1Q TECHNICAL PROPOSAL**
- EXHIBIT 1R ADDITIVE OPTION PROPOSAL**
- EXHIBIT 1S SUBCONTRACTOR APPROVAL REQUEST**



This page left blank intentionally



This contract (“DB Contract”) is made and entered into as of December 11, 2017 (“Effective Date”) by and between the Massachusetts Bay Transportation Authority, a body politic and corporate of the Commonwealth of Massachusetts with a principal place of business at Ten Park Plaza, Boston, Massachusetts 02116 (the “MBTA”), and GLX Constructors, an unincorporated joint venture, with a principal place of business at 200 Innerbelt Road, Second Floor, Somerville, MA 02143-4456 (“DB Entity”). The MBTA and DB Entity may be hereinafter collectively referred to as the “Parties.”

This DB Contract is made with reference to the following facts:

A. The MBTA seeks to design and construct the Project, as described in more detail in Section 1.1 of the Technical Provisions.

B. The MBTA has an obligation to exercise oversight responsibilities in accordance with its relationship with the Federal Transit Administration (“FTA”) pursuant to the Full Funding Grant Agreement, the Commonwealth of Massachusetts (“Commonwealth”), and the Massachusetts Department of Transportation (“MassDOT”). In that regard, the MBTA requires that the Project be constructed in accordance with the Contract Documents and the MBTA shall retain final acceptance over all elements of the Project.

C. The MBTA has determined that the Project must be developed on a lump sum basis (subject to certain Allowances) in order to assure that the Project can be funded. The MBTA has further determined that it is in the public’s interest that the Project will be completed no later than the Milestone Deadlines.

D. On October 5, 2016, the MBTA advertised and issued a Request for Letters of Interest and on December 15, 2016, the MBTA issued a Request for Qualifications (the “RFQ”). On January 26, 2017, the MBTA received and opened three (3) Statements of Qualifications from interested Proposers in response to the RFQ.

E. On February 17, 2017, the MBTA selected three (3) Proposers which were determined to be the most qualified to complete the design and construction of the Project.

F. On March 14, 2017, the MBTA issued a draft request for proposals (“Draft RFP”) and thereafter received questions and comments regarding the Draft RFP from each of the Proposers.

G. On May 23, 2017, the MBTA issued a final Request for Proposals (the “RFP”) to the three (3) selected Proposers, which included changes based on the Proposer’s questions and comments to the draft RFP.

H. On September 28, 2017, the MBTA received three (3) proposals. The technical proposals were evaluated by a selection committee established by the MBTA and technical scores were established for each Proposer. Following the technical evaluations, on November 17, 2017, the MBTA publicly opened and read the price proposals, and publicly calculated the overall value rating for each proposal. The Proposal submitted by DB Entity was determined to provide the best value.

I. The Parties intend that this DB Contract will be a lump sum, design build contract (subject to certain Allowances) obligating DB Entity to perform all Work necessary to achieve the Milestone Deadlines, as may be adjusted pursuant to the Contract Documents. DB Entity has engaged in due diligence activities and has established its pricing so as to reasonably ensure that the GLX Lump Sum, Schedule of Operations Fixed Price, Additive Options Price and Allowances will amount to all of the compensation required for DB Entity to complete the Project in accordance with the Contract Documents and by the Milestone Deadlines, subject to DB Entity's rights and remedies under Section 15. In order to allow the MBTA to budget for the Project and to limit the risk of cost overruns, this DB Contract includes restrictions affecting DB Entity's ability to make claims for additional compensation or an extension of a Milestone Deadline. All provisions of this DB Contract shall be interpreted in a manner that is consistent with this goal.

J. The Technical Provisions form the basis for the Release for Construction Submittals and Final Design Documents to be furnished by DB Entity. The Parties intend for DB Entity to assume full responsibility and liability for the Release for Construction Submittals and Final Design Documents, including correction of any errors, omissions, inconsistencies or other defects in the Technical Provisions and for DB Entity to indemnify, defend and hold harmless the MBTA with respect to any defects in the Project which may relate to errors, omissions, inconsistencies or other defects in the Technical Provisions, subject to DB Entity's rights and remedies under Section 15 and limited to the indemnities afforded by Section 23.1.

Now, therefore, in consideration of the sums to be paid to DB Entity, and the foregoing premises and the covenants and contracts set forth herein, the Parties hereby agree as follows:

SECTION 1. COMPONENTS; INTERPRETATION OF CONTRACT DOCUMENTS; STANDARDS

1.1 CONTRACT DOCUMENTS

1.1.1 The term "Contract Documents" shall mean the documents listed in Section 1.2.1.

1.1.2 Capitalized terms appearing in the Contract Documents and not otherwise defined shall have the meanings ascribed to them in Exhibit 1A.

1.2 ORDER OF PRECEDENCE

1.2.1 Each of the Contract Documents sets forth the terms and conditions of this DB Contract, and a requirement occurring in one is as binding as though occurring in all. The Contract Documents are intended to be complementary and to describe and provide for a complete set of documents necessary for DB Entity to design, construct, equip, start-up, test, commission, turn-over and close-out the Project. In the event of any conflict among the requirements and provisions of the Contract Documents and subject to Section 1.2.2 through Section 1.2.4, the order of precedence shall be as set forth below.

(a) Change Orders;

- (b) Volume 1 (excluding Exhibit 1B “Reference Information Documents List” which is not a Contract Document and Exhibit 1Q “Technical Proposal” and Exhibit 1R “Additive Options Proposal” , which has a lower priority as set forth below);
- (c) Approved Design Exceptions and Alternative Technical Concepts, subject to the requirements of Section 5.2;
- (d) Final Design Documents;
- (e) Accepted Release for Construction Submittals;
- (f) Volume 2; and
- (g) Exhibit 1Q “Technical Proposal” and Exhibit 1R “Additive Options Proposal” (excluding Alternative Technical Concepts, which have a higher priority as set forth above).

1.2.2 Notwithstanding Section 1.2.1, if a Contract Document contains different provisions on the same subject matter than another Contract Document, the provisions that establish the higher quality, manner or method of performing the Work or use more stringent standards as determined by the MBTA will prevail. Further, in the event of a conflict among any standards, criteria, requirements, conditions, procedures, specifications or other provisions applicable to the Project established by reference to a described manual or publication within a Contract Document or set of Contract Documents, the standard, criterion, requirement, condition, procedure, specification or other provision offering higher quality or better performance as determined by the MBTA will apply, unless the MBTA in its sole discretion, approves otherwise in writing. If DB Entity becomes aware of any such conflict, DB Entity shall promptly notify the MBTA of the conflict. The MBTA shall issue a written determination regarding which of the conflicting items is to apply promptly after DB Entity notifies the MBTA of any such conflict.

1.2.3 DB Entity shall comply with the Mandatory Specifications, except as expressly provided in Section 5.1. DB Entity shall comply with the Base Specifications, as may be revised in accordance with Volume 2. Notwithstanding Section 1.2.1, in the event of a conflict between or among the Mandatory Specification, a Base Specification, or Project Standards, the Mandatory Specification shall apply, unless the MBTA, in its sole discretion, approves otherwise in writing. If DB Entity becomes aware of any such conflict, DB Entity shall promptly notify the MBTA of the conflict. The MBTA shall issue a written determination regarding which of the conflicting items is to apply promptly after DB Entity notifies the MBTA of any such conflict.

1.2.4 If the Technical Proposal includes statements, offers, terms, concepts or designs that can reasonably be interpreted as offers to provide higher quality items than otherwise required by the other Contract Documents or to perform services or meet standards in addition to or better than those otherwise required, or otherwise contains terms or designs that are more advantageous to the MBTA, in the MBTA’s determination, than the requirements of the other Contract Documents, as reasonably determined by the MBTA, then DB Entity’s obligations shall include compliance with all such statements, offers, terms, concepts and designs.



1.3 REFERENCED STANDARDS

1.3.1 General

Unless otherwise specified, any reference in the Contract Documents to a described publication or other contract affecting any portion of the Work shall be deemed to mean the latest edition or revision thereof and amendments and supplements thereto in effect on the Proposal Date. Unless otherwise agreed to in writing, the Technical Provisions shall be the minimum requirements applicable to the Project.

1.3.2 Project Standards

MBTA-issued standards and guidelines (“Project Standards”) in effect as of the Proposal Date shall apply to the Work, except as otherwise provided in Section 1.2.3 or as specifically approved in writing by the MBTA. Project Standards are those listed in Volume 2, Exhibit 2H of the Technical Provisions.

1.3.3 Industry Standards

Industry Standards in effect as of the Proposal Date shall apply to the Work as applicable and as noted herein, except as may be otherwise provided by the Project Standards or as may be specifically approved in writing by the MBTA.

1.3.4 Changed Standards

After the Proposal Date, the MBTA may adopt changed, new or replacement Project Standards or Industry Standards may change (“Changed Standards”). Prior to performing any Work affected by Changed Standards, DB Entity shall provide written notice to the MBTA if such Changed Standards impact the cost and/or time of performing the Work. After receipt of such notice, the MBTA by written notice to DB Entity may direct DB Entity to comply with such Changed Standards in the performance of the Work and DB Entity shall have a right to request a Change Order pursuant to Section 15.4 to the extent such Changed Standards impact the cost and/or time of performing the Work. If DB Entity fails to provide notice to the MBTA of such Changed Standards as set forth in this Section 1.3.4 and in accordance with Section 15.4, then DB Entity shall comply with such Changed Standards in the performance of the Work without any additional compensation or adjustment to a Milestone Deadline.

SECTION 2. SCOPE OF WORK; SCHEDULING OF WORK; WORK RESTRICTIONS; ROLE AND RESPONSIBILITIES OF PARTIES

2.1 GENERAL PROJECT DESCRIPTION

The Project comprises the design and construction of an extension to the Existing Green Line along the Medford Branch and Union Square Branch, as such Project is described in Section 1.2 of the Technical Provisions.

2.2 SCOPE OF WORK

The Work includes DB Entity's obligation to design, construct, equip, start-up, test, commission, turn-over and close-out the Project in accordance with all requirements of the Contract Documents, and to otherwise comply with all of the requirements in the Contract Documents and reasonably inferable from the Contract Documents. A summary of the scope of Work is described in Section 1.3 of the Technical Provisions. Time is of the essence with respect to all deadlines that the DB Entity is required to meet under the Contract Documents.

2.3 COMMENCEMENT OF WORK; MILESTONES AND MILESTONE DEADLINES; PROJECT SCHEDULE

2.3.1 Commencement of Work

DB Entity shall not commence the Work until a Notice to Proceed ("NTP") is issued by the MBTA; provided, however, that DB Entity may commence design Work prior to NTP at DB Entity's sole risk.

2.3.2 Milestones and Milestone Deadlines

2.3.2.1 Time is of the essence with respect to DB Entity's obligations to complete the Milestones in accordance with the Contract Documents within the Days specified below for each Milestone ("Milestone Deadline"). DB Entity acknowledges that the Milestone Deadlines are based upon the requirements of public convenience, have been carefully considered and have been established for reasons of importance to the MBTA.

<u>Milestone</u>	<u>Milestone Deadline</u>	<u>Liquidated Damages</u>
Milestone 6: Work Complete in Plaza Easement Areas ("Milestone 6") as described in <u>Section 21.1.1</u>	985 Days from Notice to Proceed	\$69,900 per Day \$69,900 per Day
Milestone 5: VMF Functionally Complete and Ready for MBTA Operational Testing ("Milestone 5") as described in <u>Section 21.2.1</u>	1,024 Days from Notice to Proceed	
Milestone 4A: New Green Line Branch One Functionally Complete and Ready for DB Entity Systems Integration Testing Phase II Using MBTA-Furnished LRVs ("Milestone 4A") as described in <u>Section 21.3.1</u>	1,050 Days from Notice to Proceed	\$69,900 per Day
Milestone 4B: New Green Line	60 Days from achieving	\$69,900 per Day

<u>Milestone</u>	<u>Milestone Deadline</u>	<u>Liquidated Damages</u>
Branch One DB Entity Testing Complete and Ready for MBTA Pre-Revenue Demonstration Testing ("Milestone 4B") as described in <u>Section 21.4.1</u>	Milestone 4A	
Milestone 4C: New Green Line Branch One Open to Revenue Service ("Milestone 4C") as described in <u>Section 21.5.1</u>	115 Days from achieving Milestone 4B	\$101,100 per Day
Milestone 3A: New Green Line Branch Two Functionally Complete and Ready for DB Entity Systems Integration Testing Phase II Using MBTA-Furnished LRVs ("Milestone 3A") as described in <u>Section 21.6.1</u>	1,115 Days from Notice to Proceed	\$69,900 per Day
Milestone 3B: New Green Line Branch Two DB Entity Testing Complete and Ready for MBTA Pre-Revenue Demonstration Testing ("Milestone 3B") in <u>Section 21.7.1</u>	60 Days from achieving Milestone 3A	\$69,900 per Day
Milestone 3C: New Green Line Branch Two Open to Revenue Service ("Milestone 3C") as described in <u>Section 21.8.1</u>	123 Days from achieving Milestone 3B	\$69,900 per Day
Milestone 2: Contract Substantial Completion ("Milestone 2") as described in <u>Section 21.9.1</u>	1,340 Days from Notice to Proceed	\$23,400 per Day
Milestone 1: Contract Final Acceptance ("Milestone 1") as described in <u>Section 21.10.1</u>	60 Days from achieving Contract Substantial Completion	\$2,400 per Day

2.3.2.2 DB Entity acknowledges that the Milestone Deadlines take into account access restraints, limitations of operations, and other work restrictions set forth in the Contract Documents.

2.3.2.3 Except as otherwise specifically provided in Section 15, the MBTA shall have no obligation to extend the Milestone Deadlines, and DB Entity shall not be relieved of its obligation to achieve the Milestone Deadlines.

2.3.2.4 In the event DB Entity fails to complete the applicable Milestone within the Milestone Deadline specified, Liquidated Damages will be assessed pursuant to Section 19.1 for each Day of delay in achieving the applicable Milestone not to exceed the amounts specified in Section 19.1.4.

2.3.3 Project Schedule

2.3.3.1 As part of the Work, DB Entity shall provide on a monthly basis a Progress Schedule Submittal in accordance with the requirements of Section 2.4 of the Technical Provisions and that is subject to review and acceptance by the MBTA for compliance with the requirements of Section 2.4 of the Technical Provisions.

2.3.3.2 The Project shall be undertaken and completed in accordance with the Project Schedule established and revised in accordance with the requirements of Section 2.4 of the Technical Provisions. The Project Schedule shall take into account all access restraints, limitations of operations and other work restrictions set forth in the Contract Documents, and DB Entity shall perform the Work in accordance with such access restraints, limitations of operations and other work restrictions. The Project Schedule shall be used by DB Entity and the MBTA for planning and monitoring the progress of the Work and as the basis for determining the amount of partial payments to be made to DB Entity in accordance with Section 14.2.2.

2.3.3.3 If DB Entity plans to complete any of the Milestones earlier than the Milestone Deadlines specified in Section 2.3.2.1, DB Entity shall submit a Baseline Schedule that shows a detailed plan to complete the Milestones earlier than such Milestone Deadlines (“Early Completion Schedule”). The MBTA may, at its sole discretion, accept the Early Completion Schedule, and issue a Change Order to change the Milestone Deadlines for the assessment of Liquidated Damages.

2.3.4 Recovery Schedule

2.3.4.1 If the Work is delayed such that the forecasted date to achieve any Milestone Deadline is more than thirty (30) Days beyond the Milestone Deadline because of delays that do not entitle DB Entity to an adjustment to a Milestone Deadline under the Contract Documents, then, upon written notice from the MBTA, DB Entity shall prepare and submit to the MBTA a Recovery Schedule demonstrating DB Entity’s proposed plan, as applicable, to either: (a) regain lost schedule progress to achieve the applicable Milestone Deadline or (b) mitigate delays in achieving the applicable Milestone if DB Entity can demonstrate to the MBTA’s satisfaction that DB Entity cannot achieve the Milestone by the applicable Milestone Deadline. The Recovery Schedule shall be submitted for review and acceptance with the next Progress Schedule Submittal for compliance with this Section 2.3.4.1 and Section 2.4 of the Technical Provisions.

2.3.4.2 The MBTA shall notify DB Entity within twenty (20) Days after receipt of each such Recovery Schedule whether the Recovery Schedule is accepted or rejected. Within seven (7) Days after any rejection by the MBTA of the Recovery Schedule, DB Entity shall resubmit a revised Recovery Schedule resolving the MBTA’s comments. When the MBTA accepts DB Entity’s Recovery Schedule, DB Entity shall, within seven (7) Days after the MBTA’s

acceptance, incorporate and fully include such recovery efforts into the Project Schedule, deliver the same to the MBTA and proceed in accordance with the accepted Recovery Schedule.

2.3.4.3 All costs incurred by DB Entity in preparing, implementing and achieving a Recovery Schedule shall be borne by DB Entity, shall not entitle DB Entity to a Change Order, and shall not relieve DB Entity from the assessment of Liquidated Damages.

2.3.5 Acceleration Schedule

2.3.5.1 The MBTA may require DB Entity to prepare and submit an Acceleration Schedule. The Acceleration Schedule shall demonstrate DB Entity's proposed plan, as applicable, to: (a) regain lost schedule progress to achieve any subsequent Milestone Deadlines; (b) mitigate delays in achieving the applicable Milestone; or (c) achieve the Milestones prior to the Milestone Deadlines.

2.3.5.2 If the MBTA accepts an Acceleration Schedule, the MBTA shall issue a Change Order directing DB Entity to implement the Acceleration Schedule and DB Entity shall be entitled to compensation for the cost of implementing and achieving the Acceleration Schedule in accordance with Section 15.

2.3.6 Insufficient Schedule Progress

Subject to DB Entity's rights and remedies under Section 15, DB Entity's failure or refusal to comply with the requirements specified in Section 2.4 of the Technical Provisions shall be reasonable evidence that DB Entity is not prosecuting the Work with due diligence as required by the Contract Documents. In such event, the MBTA may:

- (a) require a Recovery Schedule in accordance with Section 2.3.4;
- (b) employ additional force and equipment as may be necessary to complete the Work or such part thereof within the time specified in the Project Schedule, or at the earliest possible date thereafter, and charge the expense thereof to DB Entity, provided that DB Entity fails to cure its failure or refusal to comply with the requirements specified in Section 2.4 of the Technical Provisions within five (5) Business Days after receiving written notice from the MBTA of such failure or refusal; and/or
- (c) exercise any other rights and remedies available to the MBTA under the Contract Documents.

2.4 ACCESS RESTRAINTS

2.4.1 Access Restraint 1

2.4.1.1 DB Entity may request that light rail service to Lechmere Station be shut down for a period starting no earlier than 338 Days before the Milestone Deadline for Milestone 4C and ending no later than the Milestone Deadline for Milestone 4C ("Access Restraint 1"), and the MBTA shall pay for providing bus service during such period. DB Entity shall, at its sole cost

and expense, provide bus service to replace the light rail service in an equivalent manner to the extent light rail service to Lechmere Station is interrupted before or after such 338-Day period.

2.4.1.2 In support of a Project goal to minimize the required busing costs while the Lechmere Station is out of service, DB Entity shall use commercially reasonable efforts to minimize the amount of busing that is required as DB Entity's accommodation in the Work of Access Restraint 1.

2.4.1.3 If DB Entity restores uninterrupted light rail service to and from Lechmere Station early so that the number of Days of the interrupted light rail service and necessary busing is fewer than the 338 Days in Access Restraint 1, then the MBTA will pay DB Entity \$31,200.00 for each Day within Access Restraint 1 that busing is not required, subject to the following conditions:

- (a) the opportunity to earn an Incentive Payment will be limited to a maximum of 60 Days.
- (b) DB Entity shall not be entitled to any adjustment to the MBTA's determination of the number of Days (less than 338 Days) that busing is not required pursuant to this Section 2.4.1.3 for any reason, cause, or circumstance whatsoever, regardless of fault, except to the extent DB Entity demonstrates that its ability to reduce the number of Days of uninterrupted light rail service to and from Lechmere Station is adversely affected by a Force Majeure Event.

2.4.1.4 Nothing in this Section 2.4.1 shall alter or otherwise affect the MBTA's right to assess and recover Liquidated Damages as provided by the DB Contract.

2.4.2 Access Restraint 2

Should DB Entity determine it necessary to relocate the MBTA 13.8kV power line at the School Street Bridge, DB Entity shall allow 60 Days for each tie in required for each relocation, and DB Entity shall coordinate the Work in accordance with Section 7.4 of the Technical Provisions ("Access Restraint 2").

2.4.3 Access Restraint 3

DB Entity shall schedule and perform the Work: (a) between the signal hut located approximately 700 feet north of College Avenue on the northeast side of the Project Right of Way and Winthrop Street in the City of Medford to allow AT&T and/or its contractors 120 Days to install temporary conduits and cables to a location on the southwest side of the Project Right of Way or such other location as may be determined by AT&T and (b) to allow AT&T and/or its contractors an additional 120 Days to install permanent conduits between the signal hut and Winthrop Street to tie-over its temporary cables previously relocated to a final location within the Project Right of Way ("Access Restraint 3"). DB Entity shall coordinate the Work in accordance with Section 7.4 of the Technical Provisions ("Access Restraint 3").

2.4.4 Access Restraint 4



DB Entity shall complete and submit the design to Eversource of the Red Bridge TPSS, the Pearl Street TPSS, and the VMF Third Avenue Substation as further described in Sections 7.4 and 11. 1 of the Technical Provisions no later than 178 Days after NTP and allow Eversource 568 Days after NTP to provide redundant 13.8kV power feeds for the Substations (“Access Restraint 4”).

2.4.5 Access Restraint 5

DB Entity shall not perform any Work between the Broadway Bridge in the City of Somerville to Granville Avenue in the City of Medford until 140 Days after NTP to allow AT&T to complete its conduit and cable relocations from such portions of the Project Right of Way (“Access Restraint 5”).

2.4.6 Access Restraint 6

DB Entity shall not perform any Work from approximately stations 10+00 to 28+00 EB Union Square Branch, and from approximately stations 3+00 to 21+00 WB Union Square Branch until 259 Days after NTP to allow the Commuter Rail Operator to complete its work related to the Swift Interlocking cutover (“Access Restraint 6”). See Volume 2, Exhibit 2D.2, Drawings AC-1 and AC-2.

2.4.7 Access Restraint 7

DB Entity shall not perform any Work on the following parcels identified in Volume 2, Exhibit 2C until 90 Days after NTP: MB 142, MB 144, MB 208, MB 270, MB 274, MB 308, MB 309, MB 311, MB 312, MB 314, MB 315, MB 317, MB 318, MB 320, MB 321, MB 322, MB 324, MB 325, MB 327, MB 328, MB 329, MB 331, MB 332, MB 335, MB 336, MB 339, MB 343/344, MB 347, MB 349, and MB 362 (“Access Restraint 7”).

2.4.8 Access Restraint 8

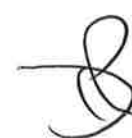
DB Entity shall not perform any Work on the 15,000 square feet of Parcel VMF 904 (48 Third Ave) identified in Volume 2, Exhibit 2C held by GSA until 120 Days after NTP to allow the MBTA to relocate the current tenant from the property (“Access Restraint 8”).

2.5 LIMITATIONS OF OPERATIONS: RAIL CORRIDOR

2.5.1 General

2.5.1.1 DB Entity shall perform all Work in accordance with the Commuter Rail Operator’s Roadway Worker Protection Manual and other applicable provisions of the Contract Documents.

2.5.1.2 DB Entity shall conduct the Work at all times in such a manner and in such sequence as will reasonably assure the least interference with vehicular and pedestrian traffic and operations of the Railroads.



2.5.1.3 DB Entity acknowledges that passenger, freight and non-revenue service on the Fitchburg Mainline and New Hampshire Mainline is subject to change. Subject to Section 2.5.3, DB Entity shall plan the Work to take into account the current operating schedules of the Railroads in effect at the time of performing the Work. DB Entity shall be responsible for staying informed of all changes to the operating schedules and may request such schedules at the Commuter Rail Track Construction Coordination Meeting.

2.5.1.4 DB Entity shall designate a Railroad Coordinator who is responsible for identifying and coordinating the Work affecting each Railroad. The Railroad Coordinator shall coordinate with the MBTA railroad operations, which will then coordinate with all Railroads. The Railroad Coordinator shall attend each Commuter Rail Track Construction Coordination Meeting.

2.5.1.5 DB Entity shall schedule and perform all Work on or near the live tracks with the Railroads in accordance with this Section 2.5, and shall comply with the requirements of the Railroads as set forth in the Contract Documents, including the MBTA Railroad Operations Directorate.

2.5.1.6 DB Entity shall ensure that workers performing the Work are trained in accordance with the requirements of all of the Railroads operating in the corridor. DB Entity shall comply with the Commuter Rail Operator's Roadway Worker Protection Manual. DB Entity shall conduct the Work in accordance with such manual and take all reasonable steps to minimize the number of flaggers required consistent with such manual, including separating the light rail Work from the commuter rails through the use of a divider fence as described in such manual.

2.5.1.7 Equipment shall not be placed or operated within the Encroachment Zone without first obtaining the permission of the MBTA. Work within the Encroachment Zone will be allowed; provided that equipment is located in compliance with the applicable Railroad's requirements. DB Entity may, through coordination and approval of the MBTA, utilize hi-rail vehicles to access and work in areas permitted by the Railroads; provided, however, that the MBTA may, at its sole discretion, disapprove such request to use hi-rail vehicles.

2.5.1.8 DB Entity shall coordinate with the MBTA, property owners, and adjacent contractors performing work within the areas defined by Land Boulevard, Monsignor O'Brien Highway and the Haul Road located adjacent to existing MBTA parking lots, Divco and all utility and infrastructure work necessary for infrastructure improvements to be performed by property owners.

2.5.1.9 During the hours between 10:00 PM and 7:00 AM, DB Entity shall not perform any of the following Work:

- (a) pile driving or pile drilling operations;
- (b) drilling operations; or



- (c) demolition operations, including hammer, excavator, chisel and shearing operations for structures, roadway components, rocks, ledge, concrete, steel, utilities and buildings.

2.5.1.10 In addition to the restrictions described in Section 2.5.1.9 above, during the hours between 10:00 PM and 7:00 AM, DB Entity shall not perform any other Work, unless DB Entity fully coordinates with the affected community and abutting neighborhoods with respect to such Work and complies with the Noise Control Plan submitted by DB Entity and accepted by the MBTA in accordance with the Technical Provisions.

2.5.1.11 The minimum slow order speed during the performance of the Work shall be 30 MPH for a distance not to exceed 0.5 miles, unless authorized by the MBTA in advance.

2.5.1.12 From March 31, 2018 through June 30, 2018, DB Entity is required to use Somerville Junction for any single tracking which may be required to perform the Work. Subsequent to the cross over being completed, DB Entity is required to use the Tufts Interlocking for all single track requests.

2.5.1.13 DB Entity shall coordinate the tie in to Yard Lead-10 with the Commuter Rail Operator regarding its work in reconstructing the YL-10 to a location approximately 50 feet to the South of Washington Street Bridge.

2.5.2 Track Access Process

2.5.2.1 The MBTA has established a Track Access Committee with the authority to approve or deny DB Entity's requests related to track access, additional work hours, and flagging, and to decide other matters as set forth in this Section 2.5. The Track Access Committee and DB Entity, including its Railroad Coordinator, shall attend the Commuter Rail Track Construction Coordination Meeting.

2.5.2.2 At the Commuter Rail Track Construction Coordination Meeting, DB Entity shall provide status reports, detailed work schedules, plans, procedures and other information as may be requested by the Railroads relating to any Work affecting or requiring coordination with the Railroads.

2.5.2.3 All Work that may impact the normal operations of trains is subject to the approval of the Track Access Committee. DB Entity shall submit, in writing, to the Track Access Committee all requests to perform any Work that is subject to the requirements and restrictions of this Section 2.5.

2.5.2.4 DB Entity may request that the Track Access Committee allow that a track be shutdown beyond those shutdowns permitted in Section 2.5.3; provided, however, that DB Entity shall not assume any such request will be approved in scheduling the Work. The Track Access Committee will evaluate each request and grant or deny the request, at its sole discretion, after evaluating the impact to the Railroads.

2.5.2.5 DB Entity must comply with the following requirements for a track shut down:

- (a) no later than 90 Days prior to the shutdown, DB Entity shall submit a three (3) month look-ahead schedule with all required contingency plans to notify the Track Access Committee of the proposed date of the shutdown with sufficient evidence that DB Entity will be ready to utilize a track;
- (b) no later than 60 Days prior to the shutdown, DB Entity shall confirm the schedule for the proposed date of the shutdown, or if needed, reset such schedule;
- (c) no later than 45 Days prior to the shutdown, DB Entity shall submit a 30 Day schedule and written request (with all supporting documentation) for the track shutdown; and
- (d) no later than 30 Days prior to the shutdown, the Track Access Committee will either (i) give its permission to proceed with the track closure and start taking precautions towards such closure or (ii) deny the request.

2.5.2.6 DB Entity acknowledges that approvals by the Track Access Committee are subject to change and may be withdrawn or rescinded at the sole discretion of the Track Access Committee.

2.5.2.7 In addition to any requirements specified by the Track Access Committee, seven (7) Days prior to performing weekend or night Work as defined by the applicable jurisdiction, DB Entity shall provide the MBTA with the following:

- (a) a description of the Work to be performed, including lighting, noise and traffic mitigation plans; and
- (b) evidence of compliance with DB Entity's Safety Management Plan and Environmental Health and Safety Plan.

2.5.3 Trackwork Scheduling Requirements and Restrictions

2.5.3.1 Except as otherwise provided in this Section 2.5, all tracks shall remain in service to the Railroads during weekday peak periods (5:30 AM to 10:00 AM and 3:30 PM to 7:00 PM).

2.5.3.2 During any time in which DB Entity is permitted to perform the Work in or near an Encroachment Zone subject to the requirements of the Commuter Rail Operator's Roadway Worker Protection Manual between the hours of 10:00 AM and 3:30 PM Monday through Friday, DB Entity is entitled to a total of 4 hours of access near the Encroachment Zone during such period. This period of access is established so that the Railroads will have sufficient time to, among other things: (a) mobilize flaggers and otherwise prepare the Encroachment Zone for DB Entity access near the Encroachment Zone; (b) transition trains (off-peak hours) through the work zone; and (c) demobilize flaggers, run test trains and otherwise prepare the tracks for Railroad operations. The phrase "access near the Encroachment Zone" applies to all operations that have the potential to foul the commuter rail, such as, but not limited to, sliding, falling or tipping of equipment, materials or workers.

2.5.3.3 Single track within the Fitchburg Mainline between Tower A and West Cambridge Interlocking will be available to DB Entity between 10:00 AM and 3:30 PM Monday through Friday. Slow orders caused by the Work may limit DB Entity's use of single tracking under this Section 2.5.3.3.

2.5.3.4 Single track within the New Hampshire Mainline will be available between 10:00 AM and 3:30 PM Monday through Friday. Slow orders caused by the Work may limit DB Entity's use of single tracking under this Section 2.5.3.4.

2.5.3.5 DB Entity shall not be granted concurrent single track operations within the Fitchburg Mainline and the New Hampshire Mainline. Further, DB Entity shall not be granted concurrent single track operations between Tower A and Tufts Interlocking and between Tufts Interlocking and Winchester Interlocking on the New Hampshire Mainline.

2.5.3.6 DB Entity shall be required to coordinate with the MBTA and the Commuter Rail Operator for Work within the Commuter Rail Maintenance Facility. Only two adjacent tracks within the Commuter Rail Maintenance Facility may be taken out of service at any one time. Work impacting the Commuter Rail Maintenance Facility requires pre-approval by the Track Access Committee and must be undertaken between the hours of 4:00 AM and 1:30 PM, unless prior authorization is received from the MBTA.

2.5.3.7 No Railroad service interruptions will be allowed, except in accordance with the following:

- (a) A total of 50 weekend shut downs of all service, in both directions, will be permitted for the duration of the DB Contract; provided, however, that the weekend shutdowns: (i) cannot exceed 25 weekends in a calendar year; (ii) can only occur between March 1 and November 15 in any year; (iii) cannot occur on more than one commuter rail line at the same time; and (iv) must be approved by the MBTA in advance.
- (b) Each weekend shut down identified in Section 2.5.3.7(a) is expected to last for approximately 54 continuous hours. DB Entity is entitled to a total of 48 hours of access in or near the Encroachment Zone to perform the Work, subject to the requirements of the Commuter Rail Operator's Roadway Worker Protection Manual and this Section 2.5.3.7(b), during such 54-hour period. This period of access is established so that the Railroads will have sufficient time to, among other things: (i) mobilize flaggers and otherwise prepare the Encroachment Zone for DB Entity access near the Encroachment Zone; (ii) transition trains (off-peak hours) through the work zone; and (iii) demobilize flaggers, run test trains and otherwise prepare the tracks for Railroad operations. The phrase "access near the Encroachment Zone" shall have the same meaning as set forth in Section 2.5.3.2.
 1. During the hours between 10:00 PM and 7:00 AM, DB Entity shall not perform any of the following Work:
 - (A) pile driving or pile drilling operations;



- (B) drilling operations; or
 - (C) demolition operations, including hammer, excavator, chisel and shearing operations for structures, roadway components, rocks, ledge, concrete, steel, utilities and buildings.
2. In addition to the restrictions described in Section 2.5.3.7(b)(1) above, during the hours between 10:00 PM and 7:00 AM, DB Entity shall not perform any other Work, unless DB Entity fully coordinates with the affected community and abutting neighborhoods with respect to such Work and complies with the Noise Control Plan submitted by DB Entity and accepted by the MBTA in accordance with the Technical Provisions.
- (c) The Work pursuant to this Section 2.5.3.7 shall be subject to the requirements of Section 2.5.3.6.

2.5.4 Holidays and Special Events

No Work impacting Railroad operations will be allowed on the following dates and DB Entity shall assume that weekend closures will not be allowed on the corresponding weekend associated with such dates that are holidays:

- (a) New Year's Day
- (b) St. Patrick's Day
- (c) Patriots Day
- (d) Memorial Day
- (e) Independence Day
- (f) Labor Day
- (g) Thanksgiving Day, including one Day before and after
- (h) Christmas Day
- (i) December 31
- (j) Days of special events as determined by the MBTA not to exceed 2 such special events per calendar year.

2.5.5 Road Work

Bridges may be closed during construction, except at College Avenue where only temporary lane closures will be permitted. Notwithstanding this Section 2.5.5, no two adjacent bridges shall be closed at the same time. DB Entity shall provide an alternate detour, for review and approval by MassDOT and/or the applicable Governmental Entity, for vehicular traffic when

any bridge is closed. Staged construction is permitted at any bridge. All proposed detours and construction staging sequencing shall be subject to the approval of the MBTA and MassDOT prior to commencement of construction.

2.5.6 Roadway Worker Protective Services

2.5.6.1 Roadway worker protective services will be provided by the MBTA or the Commuter Rail Operator in accordance with the Commuter Rail Operator's Roadway Worker Protection Manual then in effect. The cost of DB Entity personnel required to be provided in accordance with the Commuter Rail Operator's Roadway Worker Protection Manual shall be the responsibility of the DB Entity. DB Entity shall arrange for railroad protective services at the Commuter Rail Track Construction Coordination Meetings and in accordance with the Technical Provisions. In planning the Work, DB Entity shall expect that no greater than 18 MBTA-provided protective services personnel will be provided in total for all shifts on any particular Day.

2.5.6.2 DB Entity shall submit to the Track Access Committee a request for the number of protective services personnel sought for all shifts for a particular Day at least forty-five (45) Days prior to performing the applicable portion of the Work. Such request shall contain at a minimum: (a) a description of the Work to be performed during each shift consistent with the Project Schedule; (b) the number of protective services personnel requested for each shift; (c) an explanation of why such personnel are needed to support such Work; and (e) any other additional information reasonably requested by the Track Access Committee to evaluate the merits of the request. The Track Access Committee shall approve or determine the number of protective services personnel required to perform such Work.

2.5.7 Costs and Damages for Certain Service Interruptions

2.5.7.1 In the event that DB Entity fails to adhere to the requirements of this Section 2.5 or Section 2.6 and causes delay in returning the track to revenue service at the end of any work period, DB Entity shall reimburse the MBTA for the cost of any emergency bus service that the MBTA may employ due to the service outage. In addition, should DB Entity fail to adhere to the requirements of this Section 2.5 or Section 2.6 and cause delays in returning the track to revenue service at the end of any work period, the MBTA reserves the right to withdraw, change or modify any previously authorized shut downs of the commuter rail line or Green Line Track Area without liability to the MBTA.

2.5.7.2 DB Entity shall have up to 534 Days following discontinuance of service on the Willey Track to re-establish Pan Am Railway's service by connection to the Yard 10 Lead. Should there be any delay to re-establishing such service beyond such 534 Day period, DB Entity shall pay the MBTA \$2,500 for each Day of such delay to compensate the MBTA for additional crew costs and other additional costs of freight operations.

2.5.7.3 DB Entity acknowledges and agrees that the costs and damages assessed under this Section 2.5.7 are intended to compensate the MBTA solely for DB Entity's delay in restoring the track to service as described in this Section 2.5.7, and shall not excuse DB Entity from liability for any other breach of the requirements of the Contract Documents.

2.5.8 Costs of Signal Modifications

To the extent the Work requires any signal system modifications, such modifications will be performed by the Railroad under contract with the MBTA, and DB Entity shall be responsible for reimbursing the MBTA for the costs of such modifications.

2.6 LIMITATIONS OF OPERATIONS: EXISTING GREEN LINE AND NEW BRANCHES

2.6.1 General

2.6.1.1 The provisions of this Section 2.6 shall apply to Work performed in any of the following areas of the Existing Green Line and any Branch opened for revenue or non-revenue service ("Green Line Track Area"):

- (a) areas where Work is performed within 15 feet to the centerline of an operating track;
- (b) areas where Work is performed within 4 feet to a signal or communications line;
- (c) areas where Work is performed within 15 feet to a power line or cable;
- (d) areas where Work involving tools or equipment are in positions where failure with or without load could occur within 15 feet from the centerline of an operating track; or
- (e) areas where Work is performed involving tools or equipment that has the potential of fouling an operating track.

2.6.1.2 DB Entity shall perform all Work in accordance with the MBTA Right of Way Safety Rulebook, 3rd Edition and all other applicable provisions of the Contract Documents.

2.6.1.3 Access via track shall not occur during revenue operations. DB Entity shall submit all requests for access via track to the MBTA at least 30 Days prior to the first Day of the month in which such access is desired.

2.6.1.4 DB Entity is prohibited from using the elevators and escalators for materials or equipment access to the stations or platforms. All storage and trailers shall be confined to areas designated by the MBTA.

2.6.1.5 Upon request by DB Entity and approval by the MBTA, D.C. traction power, signal power and station power may be shut off during the performance of the Work. DB Entity shall submit such requests to the MBTA no later than 48 hours prior to the desired power shut off. Power shut offs shall only be performed by an MBTA lineman, at the MBTA's expense, who shall be present at the work area throughout the power outage.

2.6.1.6 During the hours between 10:00 PM and 7:00 AM, DB Entity shall not perform any of the following Work:

- (a) pile driving or pile drilling operations;
- (b) drilling operations; or
- (c) demolition operations, including hammer, excavator, chisel and shearing operations for structures, roadway components, rocks, ledge, concrete, steel, utilities and buildings.

2.6.1.7 In addition to the restrictions described in Section 2.6.1.6 above, during the hours between 10:00 PM and 7:00 AM, DB Entity shall not perform any other Work, unless DB Entity fully coordinates with the affected community and abutting neighborhoods with respect to such Work and complies with the Noise Control Plan submitted by DB Entity and accepted by the MBTA in accordance with the Technical Provisions.

2.6.2 Green Line Track Area Access Process

2.6.2.1 Before performing any Work within the Green Line Track Area, DB Entity shall submit in writing for the MBTA's acceptance the following:

- (a) proposed work periods and requirements for any flaggers or other protection services;
- (b) proposed traffic management plan;
- (c) proposed construction sequencing plans for work zones;
- (d) proposed safety plan to maintain safe public access to station entrances, paths and exits, including methods, design and details for partitions, barricades, signage and other protective measures;
- (e) proposed plan to provide any required temporary systems, including power, lighting, communications, security, signals, sanitary facilities, ventilation, signage and fire protection;
- (f) proposed plan for maintaining emergency vehicle (SU-30) and maintaining WB-62 vehicle access to stations, adjacent buildings and operating egresses, including vehicle clearance drawings showing turning radii; and
- (g) proposed plans to protect fouling during the Work.

2.6.2.2 DB Entity shall attend the MBTA's regularly scheduled Right of Way Access Committee meetings. All Work that may impact the normal operations of the Existing Green Line and Branches is subject to the approval of the MBTA. DB Entity acknowledges that approvals by the MBTA are subject to change and may be withdrawn or rescinded at the sole discretion of the MBTA.

2.6.2.3 DB Entity shall provide notice and receive the MBTA's approval at least 72 hours prior to performing any Work within the Green Line Track Area. If such Work requires Work

on any city streets, DB Entity shall also provide notice and receive the applicable City's approval at least 72 hours prior to performing any such Work. If DB Entity suspends the Work for a period of more than 3 consecutive Days, DB Entity shall provide the notice and receive the approval required under this Section 2.6.2.3 prior to recommencing such Work.

2.6.2.4 Seven (7) Days prior to performing weekend or night Work as defined by the applicable jurisdiction, DB Entity shall provide the MBTA with the following:

- (a) a description of the Work to be performed, including lighting, noise and traffic mitigation plans; and
- (b) evidence of compliance with DB Entity's Safety Management Plan and Environmental Health and Safety Plan.

2.6.3 Green Line Track Area Requirements and Restrictions

2.6.3.1 Subject to the requirements and restrictions described in this Section 2.6, the Work within the Green Line Track Area may be performed during the following periods:

- (a) Non-Revenue Period: Between the hours of 1:30 AM and 4:30 AM Monday through Saturday and 1:30 AM and 5:30 AM Sundays.
- (b) Non-Peak Period: Between the hours of 7:30 PM and 1:30 AM each Day.
- (c) Off-Peak Period: Between the hours of 9:30 AM and 3:00 PM Monday through Friday.
- (d) Weekend Period: Between the hours of 1:30 AM Saturday and 5:00 AM Monday.

2.6.3.2 No Work within the Green Line Track Area shall be performed during Peak Periods between the hours of 5:00 AM and 9:30 AM, Monday through Friday and between the hours of 3:00 PM and 7:30 PM, Monday through Friday.

2.6.3.3 At any time DB Entity is permitted to perform the Work within the Green Line Track Area during the Off-Peak Period, DB Entity is entitled to a total of 4 hours per shift of access within the Green Line Track Area during such period so that the MBTA shall have sufficient time to, among other things: (a) mobilize its flaggers and otherwise prepare the Green Line Track Area for DB Entity access; and (b) demobilize its flaggers, run test trains and otherwise prepare the tracks for MBTA operations.

2.6.3.4 In addition to the requirements of Section 2.6.2.4, DB Entity may perform Work during non-revenue periods only after submitting and obtaining MBTA's acceptance of a work plan for such Work. No later than 24 hours prior to performing such Work, DB Entity shall provide notice to the MBTA of the start time of such Work.

2.6.4 Holidays and Special Events

No Work impacting the Green Line Track Area will be allowed on the following dates:

- (a) New Year's Day
- (b) Martin Luther King Day
- (c) Presidents Day
- (d) March 17, Evacuation Day
- (e) Patriots Day
- (f) Memorial Day
- (g) June 17, Bunker Hill Day
- (h) Independence Day
- (i) Labor Day
- (j) Columbus Day
- (k) Veteran's Day
- (l) Thanksgiving Day, including one Day before and after
- (m) Christmas Day, including one Day before and after
- (n) December 31
- (o) Days of special events as determined by the MBTA not to exceed 12 such special events per calendar year.

2.6.5 Flagging and Protection Services

The MBTA shall assign its own personnel in such quantities as the MBTA deems necessary to protect the Green Line Track Area. DB Entity shall provide the MBTA with at least 24 hours advance written notice whenever DB Entity will perform Work for which the Green Line operating procedures or this Section 2.6.5 requires flagging or other MBTA protection services. DB Entity shall not perform Work for which flaggers are required, but not on duty.

2.6.6 Test Trains

Following any Work on or near the running rails, the MBTA may require that test trains be run, to ensure that the Site is suitable for normal transit operations. The MBTA shall be responsible for the costs of providing the test trains. The MBTA shall determine the need for test trains based on DB Entity's request for track access pursuant to Section 2.6.1.3.

2.7 TRACK ACCESS DELAYS AND DENIALS

2.7.1 General



2.7.1.1 The Parties acknowledges that a significant portion of the Work affects operating Railroads and transit operations within the Project Right of Way, and that this DB Contract provides the DB Entity with Pre-Authorized Railroad Track Access and Pre-Authorized Green Line Track Access for the performance of the Work.

2.7.1.2 The Parties agree that, from time to time, the MBTA may change, for any reason, the Pre-Authorized Railroad Track Access or the Pre-Authorized Green Line Track Access, and that the provisions of this Section 2.7 apply to changes to the Pre-Authorized Railroad Track Access or the Pre-Authorized Green Line Track Access.

2.7.2 Unplanned Track Access Delays

2.7.2.1 The following provisions apply to an Unplanned Railroad Track Access Delay:

- (a) An “Unplanned Railroad Track Access Delay” shall occur only if: (a) the MBTA does not notify DB Entity of a denial of access to or near the Encroachment Zone; (b) the MBTA prevents DB Entity from performing Work in and near the Encroachment Zone subject to the requirements of the Commuter Rail Operator’s Roadway Worker Protection Manual at the times and for the durations permitted for such Work as described in Section 2.5.3.2, Section 2.5.3.3, Section 2.5.3.4, or Section 2.5.3.7, as applicable; and (c) such prevention is not caused by the breach of contract, negligence or other culpable act or omission of DB Entity, its employees, agents, officers or Subcontractors or any other Persons performing any of the Work for whom DB Entity may be contractually or legally responsible. The phrase “access near the Encroachment Zone” shall have the same meaning as set forth in Section 2.5.3.2. DB Entity shall comply with the provisions of this Section 2.7 and Section 15.4 as a condition precedent to its entitlement to compensation or a time extension based on an Unplanned Railroad Track Access Delay.
- (b) In the event of an Unplanned Railroad Track Access Delay, then DB Entity shall be: (a) compensated for its actual additional costs incurred as a result of the Unplanned Railroad Track Access Delay on a time and materials basis in accordance with Section 15.4.2; and (b) entitled to an adjustment to the applicable Milestone Deadline where DB Entity has demonstrated an impact to the Critical Path as a result of such Unplanned Railroad Track Access Delay in accordance with Section 15.4.1.

2.7.2.2 The following provisions apply to an Unplanned Green Line Track Access Delay:

- (a) An “Unplanned Green Line Track Access Delay” shall occur only if: (a) the MBTA does not notify DB Entity of a denial of access to or near the Green Line Track Area; (b) the MBTA prevents DB Entity from performing Work in and near the Green Line Track Area at the times and for the durations permitted for such Work as described in Section 2.6.3.1, Section 2.6.3.3, and Section 2.6.3.4; and (c) such prevention is not caused by the breach of contract, negligence or other culpable act or omission of DB Entity, its employees, agents, officers or

Subcontractors or any other Persons performing any of the Work for whom DB Entity may be contractually or legally responsible. DB Entity shall comply with the provisions of this Section 2.7 and Section 15.4 as a condition precedent to its entitlement to compensation or a time extension based on an Unplanned Green Line Track Access Delay.

- (b) In the event of an Unplanned Green Line Track Access Delay, then DB Entity shall be: (a) compensated for its actual additional costs incurred as a result of the Unplanned Green Line Track Access Delay on a time and materials basis in accordance with Section 15.4.2; and (b) entitled to an adjustment to the applicable Milestone Deadline where DB Entity has demonstrated an impact to the Critical Path as a result of such Unplanned Green Line Track Access Delay in accordance with Section 15.4.1.

2.7.3 Unplanned Track Access Denials

2.7.3.1 The following provisions apply to an Unplanned Railroad Track Access Denial:

- (a) An “Unplanned Railroad Track Access Denial” shall occur only if: (i) the MBTA notifies DB Entity that it will not be permitted access to perform Work in or near the Encroachment Zone subject to the requirements of the Commuter Rail Operator’s Roadway Worker Protection Manual and the MBTA’s notice is issued less than 24 hours prior to the scheduled time for the Pre-Authorized Railroad Track Access for the applicable Work and (ii) such occurrence is not caused by the breach of contract, negligence or other culpable act or omission of DB Entity, its employees, agents, officers or Subcontractors or any other Persons performing any of the Work for whom DB Entity may be contractually or legally responsible. The phrase "access near the Encroachment Zone" shall have the same meaning as set forth in Section 2.5.3.2. DB Entity shall comply with the provisions of this Section 2.7 and Section 15.4 as a condition precedent to its entitlement to compensation or a time extension based on an Unplanned Railroad Track Access Denial.
- (b) DB Entity shall reasonably expect to experience 15 Unplanned Railroad Track Access Denials per calendar year (with each Unplanned Railroad Track Access Denial equivalent to a 24 hour period), and DB Entity shall not be entitled to any additional compensation or extension of a Milestone Deadline based on 15 or fewer Unplanned Railroad Track Access Denials per calendar year. An Unplanned Railroad Track Access Denial for a weekend shall be counted only as one (1) Unplanned Railroad Track Access Denial. Solely for purposes of planning the Work, DB Entity’s Project Schedule shall include and allocate Unplanned Railroad Track Access Denials to the months of the year as follows:

Jan.	Feb.	Mar.	Apr.	May	June	July	Aug.	Sept.	Oct.	Nov.	Dec.
2	2	1	1	1	1	1	1	1	1	1	2

- (c) In the event that the number of Unplanned Railroad Track Access Denials in any one calendar year exceeds 15, then DB Entity shall be: (a) compensated for its actual additional costs incurred for each Unplanned Railroad Track Access Denial in excess of 15 per calendar year on a time and materials basis in accordance with Section 15.4.2 and (b) entitled to an adjustment to the applicable Milestone Deadlines provided that DB Entity demonstrates an impact to the Critical Path beyond 15 Days in accordance with Section 15.4.1.

2.7.3.2 The following provisions apply to an Unplanned Green Line Track Access Denial:

- (a) An “Unplanned Green Line Track Access Denial” shall occur only if: (i) the MBTA notifies DB Entity that it will not be permitted access to perform daytime Work in or near the Green Line Track Area and the MBTA’s notice is issued less than 24 hours prior to the scheduled time for the Pre-Authorized Green Line for the applicable Work and (ii) such occurrence is not caused by the breach of contract, negligence or other culpable act or omission of DB Entity, its employees, agents, officers or Subcontractors or any other Persons performing any of the Work for whom DB Entity may be contractually or legally responsible. DB Entity shall comply with the provisions of this Section 2.7 and Section 15.4 as a condition precedent to its entitlement to compensation or a time extension based on an Unplanned Green Line Track Access Denial.
- (b) DB Entity shall reasonably expect to experience 24 Unplanned Green Line Track Access Denials per calendar year (with each Unplanned Green Line Track Access Denial equivalent to a 24 hour period), and DB Entity shall not be entitled to any additional compensation or extension of a Milestone Deadline based on 24 or fewer Unplanned Green Line Track Access Denials per calendar year. An Unplanned Green Line Track Access Denial for a weekend shall be counted only as one (1) Unplanned Green Line Track Access Denial. Solely for purposes of planning the Work, DB Entity’s Project Schedule shall include and allocate Unplanned Green Line Track Access Denials to the months of the year as follows:

Jan.	Feb.	Mar.	Apr.	May	June	July	Aug.	Sept.	Oct.	Nov.	Dec.
2	2	2	2	2	2	2	2	2	2	2	2

- (c) In the event that the number of Unplanned Green Line Track Access Denials in any one calendar year exceeds 24, then DB Entity shall be: (a) compensated for its actual additional costs incurred for each Unplanned Green Line Track Access Denial in excess of 24 per calendar year on a time and materials basis in accordance with Section 15.4.2 and (b) entitled to an adjustment to the applicable



Milestone Deadlines provided that DB Entity has demonstrated an impact to the Critical Path beyond 24 Days in accordance with Section 15.4.1.

2.7.4 Duty to Mitigate Impacts and Documentation

2.7.4.1 DB Entity shall make reasonable efforts to mitigate the impacts of an Unplanned Track Access Delay and Unplanned Track Access Denial by scheduling and providing alternative Work as required to keep its work force productive during periods of Unplanned Track Access Delays and Unplanned Track Access Denials.

2.7.4.2 DB Entity shall establish a weekly log, for the MBTA's review and acceptance, for documenting and tracking the number, cost impact and time impact of Unplanned Track Access Delays and Unplanned Track Access Denials. Such log shall be submitted to the MBTA on a weekly basis and shall include information related to the date of receiving notice of the Unplanned Track Access Delay or Unplanned Track Access Denial, the planned and actual time of track access to or near the applicable zone or area, the location of the Work impacted, the list of affected personnel and equipment, the extent and nature of the scheduled Work and description of the measures taken to mitigate the impacts.

2.7.4.3 DB Entity shall provide notice and the relevant information to the MBTA in writing in accordance with the requirements of Section 15.4 after the occurrence of each Unplanned Track Access Delay or Unplanned Track Access Denial, as a condition precedent to receiving any additional compensation or a time extension based on such Unplanned Track Access Delays or Unplanned Track Access Denial.

2.7.4.4 Within seven (7) days of receiving the log identified in Section 2.7.4.2, DB Entity and the MBTA shall meet to reconcile and agree upon the number of Unplanned Track Access Delays and Unplanned Track Access Denials, if any, experienced by the DB Entity for the applicable week and for the calendar year to date. The reconciled weekly log accepted by the MBTA at such meeting shall be used as the basis to track subsequent Unplanned Track Access Delays and Unplanned Track Access Denials.

2.8 DB ENTITY OBLIGATIONS

2.8.1 DB Entity shall perform the Work in accordance with the terms and conditions set forth in the Contract Documents and in accordance with Good Industry Practices.

2.8.2 Except as otherwise specifically provided in the Contract Documents, all materials, services and efforts necessary to complete the Work on or before the applicable Milestone Deadlines shall be DB Entity's sole responsibility and the cost of all such materials, services and efforts shall be included in the GLX Lump Sum and Additive Options Price.

2.8.3 Subject to DB Entity's rights and remedies under Section 15, DB Entity shall be responsible for the following as part of the Work:

- (a) DB Entity shall correct any errors, omissions, inconsistencies and other defects in the Technical Provisions so as to ensure that DB Entity's Release for Construction Submittals and Final Design Documents, for which DB

Entity and its Architects of Record and Engineers of Record bear sole responsibility, satisfy the requirements of the Contract Documents and provide a constructible design in all respects.

- (b) DB Entity shall complete the Design Documents and Construction Documents, provide all materials and undertake all efforts necessary or appropriate (excluding only those materials, services and efforts that the Contract Documents specify will be provided or undertaken by the others not retained by DB Entity) to complete the Project in accordance with the requirements of the Contract Documents, the Project Schedule, all Governmental Approvals, including Environmental Approvals, the accepted submittals of DB Entity, and all Laws, taking into account the Site and other physical constraints affecting the Project, so as to achieve the Milestones by the applicable Milestone Deadlines, and to otherwise do everything required by and in accordance with the Contract Documents;
- (c) DB Entity shall at all times provide a full-time Project Manager who will act as a single point of contact in all matters on behalf of DB Entity;
- (d) DB Entity shall plan, schedule and execute all aspects of the Work and shall be responsible for coordinating its activities with all parties that are directly impacted by, or have jurisdiction over, the Work. DB Entity shall document and report all Work in accordance with the requirements set forth in the Contract Documents;
- (e) except as otherwise specifically provided herein, DB Entity shall obtain, maintain and pay the cost of obtaining all Governmental Approvals;
- (f) except as otherwise provided herein, DB Entity shall undertake and properly perform all actions required by and all actions necessary to obtain and to maintain in full force and effect and shall comply with all Governmental Approvals and permits in accordance with the requirements of the Contract Documents and Laws;
- (g) DB Entity shall cooperate with the MBTA in connection with all matters relating to the Project, including conducting inspections during the progress and completion of the Work;
- (h) DB Entity shall mitigate delay to the Project and mitigate damages due to delay in all circumstances, including by resequencing, reallocating or redeploying its forces, as appropriate;
- (i) DB Entity shall be responsible for coordination of the Work with all adjacent contractors, Utilities, Railroads, Governmental Entities, affected property owners and the general public; and



- (j) except as otherwise specifically provided in the Contract Documents, the cost of all Work, services, materials and efforts described in this Section 2.8 shall be included in the GLX Lump Sum and Additive Options Price.

2.9 THE MBTA'S ROLE

2.9.1 The MBTA is the direct recipient of the Federal funds and has an obligation to exercise oversight responsibilities in accordance with its relationship with the FTA. The MBTA shall also own and operate the completed Project. As such, the MBTA shall perform management, design and construction oversight of the Work in accordance with its ownership and obligations. The MBTA's oversight will include design and construction reviews, design and construction quality assurance auditing and acceptance, and approval of payment requests.

2.9.2 The MBTA's oversight activities include the following:

- (a) monitoring and reviewing DB Entity's performance during all phases of the Project, including adherence to the Contract Documents;
- (b) reviewing submittals of DB Entity as set forth in and in accordance with the Contract Documents;
- (c) reviewing invoices and payment requests and making payment thereof;
- (d) evaluating value engineering change proposals ("VECPs");
- (e) performing certain verification inspection and testing;
- (f) evaluating Change Order requests; and
- (g) preparing documents, reports and permits as applicable.

2.9.3 In no event shall the MBTA's oversight, assistance or other activities relieve DB Entity from its obligations as set forth in the Contract Documents.

2.10 OWNER'S REPRESENTATIVE

DB Entity acknowledges that the MBTA has engaged an Owner's Representative under Mass. Gen. Laws, ch. 149A, § 15 ½. The rights and responsibilities of the Owner's Representative shall be as provided under Mass. Gen. Laws, ch. 149A, § 15 ½. DB Entity shall cooperate with the MBTA's Owner's Representative and shall provide any information requested by the Owner's Representative. The current Owner's Representative is Stephen Taylor, P.E. of Mott MacDonald. The MBTA reserves the right to change the Owner's Representative from time to time and shall provide DB Entity written notice of such change.

2.11 EFFECT OF REVIEWS, INSPECTIONS, TESTS, ACCEPTANCES AND APPROVALS

2.11.1 DB Entity shall not be relieved of obligations to perform the Work in accordance with the Contract Documents by reviews, tests, inspections, acceptances or approvals performed by the MBTA, or any other Person, or by any failure of the MBTA or any other Person to take any such action. Except with respect to Design Exceptions approved pursuant to Section 5.1 and Nonconforming Work accepted pursuant to Section 9.18.4, the reviews, inspections, tests, acceptances and approvals conducted by the MBTA and others do not constitute acceptance of the materials or of the Work reviewed, tested or inspected that are not in conformance with the Contract Documents. The MBTA may reject or accept any Work or materials, request changes and/or identify additional Work that must be done at any time prior to the date for Contract Final Acceptance, whether or not previous reviews, inspections, tests, acceptances or approvals were conducted by the MBTA or any such other Persons. DB Entity shall perform its own tests, reviews, and inspections to ensure that the Work meets the requirements of the Contract Documents. Such verification shall be completely at DB Entity's expense. The MBTA's review of shop drawings and samples shall not be construed (a) to relieve DB Entity of the responsibility for any errors or omissions in the submittal (including details, dimension, and quantity of materials) or (b) to authorize (i) relief from any requirement under the Contract Documents or (ii) deviation from details, specifications or other requirements under the Contract Documents.

2.11.2 Nothing in the Contract Documents shall preclude, and DB Entity shall not interfere with, any review, inspection or oversight of the Project or the Work that FTA or any other Governmental Entity with jurisdiction may conduct pursuant to any agreement with the MBTA or Law.

2.12 SUBCONTRACTS

2.12.1 DB Entity shall retain or cause to be retained only Subcontractors that are qualified, experienced and capable in the performance of the portion of the Work assigned and otherwise consistent with the Proposal, and shall not allow any Subcontractor that has been suspended or debarred by any federal or Commonwealth agency to perform any Work. DB Entity shall assure that each Subcontractor has at the time of execution of the Subcontract, and maintains at all times during performance of the assigned Work, all licenses required by Laws.

2.12.2 The retention of Subcontractors by DB Entity shall not relieve DB Entity of its responsibility or for the quality of the Work or materials provided by it. DB Entity shall supervise and be fully responsible to the MBTA for the acts, omissions, negligence, intentional misconduct, or breach of Law, contract or Governmental Approval by any Subcontractor.

2.12.3 As soon as a potential (a) first-tier Subcontractor or (b) second-tier Subcontractor that is (i) a structural steel fabricator or erector or (ii) a miscellaneous metal fabricator or erector, has been identified by DB Entity, but in no event less than fourteen (14) Days prior to the scheduled initiation of Work by such proposed Subcontractor, DB Entity shall submit to MBTA for approval in writing, the name and address of such Subcontractor along with other pertinent information in the form attached as Exhibit 1S.



2.12.4 DB Entity shall not terminate or permit termination of any Key Subcontract or permit any substitution, replacement or assignment of any Key Subcontractor, except with the MBTA's prior approval; provided, however, that the MBTA's prior approval is not required in the event of: (a) any termination of this DB Contract where the MBTA elects not to assume DB Entity's future obligations under such Key Subcontract; (b) any suspension, debarment, disqualification or removal of the Key Subcontractor; (c) any agreement for voluntary exclusion of the Key Subcontractor from bidding, proposing or contracting with any federal or Commonwealth department or agency; or (d) a material uncured default by the Key Subcontractor under the Key Subcontract.

2.12.5 DB Entity shall not permit any Work on the Project by any Persons who are precluded from participating in the Project under the OCI Guidance. A list of such Persons is available at the following URL:

http://www.mbta.com/business_center/bidding_solicitations/current_solicitations/?id=64424568

39. DB Entity shall be responsible for periodically checking such list for any updates.

2.12.6 Prior to entering into any Subcontract, the MBTA may, at its sole discretion, require DB Entity to submit a conflict of interest disclosure, in a form provided by the MBTA, completed by each proposed Subcontractor. The MBTA, at its sole discretion, may determine that a proposed Subcontractor has a conflict of interest that cannot be waived or mitigated and preclude DB Entity from entering into a Subcontract with such proposed Subcontractor.

2.12.7 The following requirements shall apply to all Subcontracts:

- (a) no Subcontract entered into by DB Entity will impose any obligation or liability upon the MBTA to any such Subcontractor or any of its employees. The MBTA shall not be bound by any Subcontracts, and no Subcontract shall include a provision purporting to bind the MBTA;
- (b) each Subcontract shall be assignable to the MBTA, contingent only upon written request from and acceptance by the MBTA or its successors or assigns following DB Entity Default or termination or expiration of this DB Contract;
- (c) each Subcontract shall state that any acceptance of assignment of the Subcontract to the MBTA shall not operate to make the MBTA responsible or liable for any breach of the Subcontract by DB Entity or for any amounts due and owing under the Subcontract for Work rendered prior to assumption (but without restriction on the Subcontractor's rights to suspend work or demobilize due to DB Entity's breach); and
- (d) each Subcontract shall include terms and conditions sufficient to ensure compliance by the Subcontractor with all applicable requirements of the Contract Documents, and shall include those terms that are specifically required by the Contract Documents to be included therein.

2.13 SELF-PERFORMANCE REQUIREMENT

DB Entity, either as DB Entity itself or through its Major Participants, must self-perform a minimum of 30% (by dollar value) of the non-Specialty Work construction value. The calculation of the minimum requirement will be based on 30% of the total potential Work value established by subtracting the Specialty Work value from the construction value.

SECTION 3. REFERENCE INFORMATION DOCUMENTS; MBTA-FURNISHED MATERIALS AND EQUIPMENT; ACKNOWLEDGMENT BY DB ENTITY

3.1 REFERENCE INFORMATION DOCUMENTS

3.1.1 The MBTA has provided the Reference Information Documents to DB Entity. Reference Information Documents are not Contract Documents and are provided solely for the purposes of disclosure.

3.1.2 The MBTA does not represent, warrant or guarantee the accuracy or completeness of the Reference Information Documents or the information contained in the Reference Information Documents or that such information is in conformity with the requirements of the Contract Documents, Governmental Approvals or Laws. The MBTA shall not be responsible or liable in any respect for any causes of action, claims or losses by DB Entity or other Person by reason of any use of information, opinions or recommendations contained in, any conclusions DB Entity or other Person may draw from, or any action or forbearance in reliance on, the Reference Information Documents.

3.1.3 DB Entity is obligated to conduct all studies, analyses, and investigations as it deems advisable to verify and supplement information in the Reference Information Documents. Any use of information in the Reference Information Documents in performance of the Work is at DB Entity's own risk. To the extent DB Entity uses such information in the Reference Information Documents in any way, such use is made on the basis that DB Entity, not the MBTA, has approved and is responsible for said information.

3.2 MBTA-FURNISHED MATERIALS AND EQUIPMENT

3.2.1 MBTA-Furnished Items

3.2.1.1 The MBTA shall make available to DB Entity the materials and equipment identified in Exhibit 1D ("MBTA-Furnished Items") for the performance of the Work. To the extent known by the MBTA, the dates of delivery, maintenance requirements, and warranty periods for the MBTA-Furnished Items are set forth in Exhibit 1D.

3.2.1.2 DB Entity acknowledges that DB Entity has reviewed and inspected the MBTA-Furnished Items at the locations identified by the MBTA. To the extent the MBTA has provided certificates of compliance for the MBTA-Furnished Items in Appendix B of Exhibit 1D, the MBTA-Furnished Items conform to the standards and requirements as and to the extent set forth in such certificates of compliance.

3.2.1.3 No later than 60 Days after NTP, DB Entity shall provide to the MBTA an inventory listing of the steel stored and located at each location identified in Exhibit 1D. As part of the inventory listing, DB Entity shall identify any discrepancies between the inventory listing and the list provided in Exhibit 1D.

3.2.1.4 No later than 60 Days after NTP, DB Entity, at its sole cost and expense, shall assume care, custody and control of all MBTA-Furnished Items. DB Entity shall maintain all MBTA-Furnished Items that it plans on incorporating into the Work in accordance with any applicable manufacturer's standards and requirements, and all applicable provisions of the Contract Documents shall apply to the MBTA-Furnished Items incorporated into the Work, including DB Entity's warranty obligations under Section 22.3.

3.2.1.5 The MBTA-Furnished Items shall be transported and stored to the place of use designated by DB Entity at DB Entity's sole cost and expense, including all necessary loading and unloading. To the extent DB Entity elects not to use any MBTA-Furnished Items in the performance of the Work, DB Entity shall comply with all FTA requirements and all other Laws pertaining to the disposal of such MBTA-Furnished Items at DB Entity's sole cost and expense.

3.2.1.6 The MBTA does not represent, warrant or guarantee that the MBTA-Furnished Items are in conformity with the requirements of the Contract Documents, and DB Entity assumes all risk with respect to its use of any MBTA-Furnished Items. Subject to DB Entity's rights and remedies under Section 15, the MBTA shall not be responsible or liable in any respect for any causes of action, claims or losses by DB Entity by reason of any such use.

3.2.1.7 The warranties for certain MBTA-Furnished Items are attached in Appendix C of Exhibit 1D. DB Entity shall be responsible for complying with the Warranty required under Section 22.3 with respect to MBTA-Furnished Items incorporated into the Work.

3.2.2 MBTA-Furnished LRVs

3.2.2.1 The MBTA shall be responsible for providing the MBTA-Furnished LRVs to support the testing and commissioning of the Project as described in the Technical Provisions.

3.2.2.2 DB Entity shall be responsible for all costs to either: (a) provide all rail access for the MBTA-Furnished LRVs via Science Park Station or (b) truck the MBTA-Furnished LRVs to the GLX Extension to a location designated by DB Entity. DB Entity shall be responsible for any loss or damage to the MBTA-Furnished LRVs caused by the breach of contract, negligence or other culpable act or omission of DB Entity, its employees, agents, officers or Subcontractors or any other Persons performing any of the Work for whom DB Entity may be contractually or legally responsible.

3.2.3 Previous GLX Contract Improvements

To the extent that DB Entity incorporates the Previous GLX Contract Improvements into the Work, DB Entity may assume that the Previous GLX Contract Improvements were constructed in accordance with the applicable Previous GLX Contract.

3.3 ACKNOWLEDGMENT BY DB ENTITY

DB Entity acknowledges that it has full responsibility for the design and construction of the Project, regardless of the fact that the MBTA has supplied certain preliminary design work for certain portions of the Project to the DB Entity. DB Entity acknowledges that it has diligently reviewed the Technical Provisions for errors, omissions, inconsistencies or other defects during the preparation of its Proposal, and has incorporated into the GLX Lump Sum and Additive Options Price all costs associated with correction of any such errors, omissions, inconsistencies and other defects. Subject to DB Entity's rights and remedies under Section 15, DB Entity specifically acknowledges and agrees that:

- (a) the Technical Provisions were developed to establish the minimum baseline requirements that shall be equaled or exceeded by DB Entity. DB Entity further acknowledges that while some of these documents have been advanced to a significant level of development, DB Entity is required to provide Release for Construction Submittals and Final Design Documents that are stamped, sealed and certified by its own Massachusetts Registered Architect and Professional Engineer of Record (as applicable) for review and acceptance by the MBTA and possible third parties, and that DB Entity is responsible for the constructability of the Release for Construction Submittals and Final Design Documents;
- (b) the MBTA does not warrant the adequacy of the Technical Provisions, the RIDs or the other RFP Documents, and DB Entity's reliance upon such documentation and the information therein shall be at DB Entity's sole risk;
- (c) the Project can be constructed as contemplated by the Contract Documents and within the properties made available by the MBTA as identified in Volume 2, Exhibit 2C;
- (d) the MBTA shall have no responsibility or liability for errors, omissions, inconsistencies or defects in the Contract Documents;
- (e) DB Entity shall bear responsibility and liability for errors, omissions, inconsistencies and defects in the Contract Documents;
- (f) DB Entity has independently determined that the Technical Provisions present a feasible concept for the Project and can and shall be used as the basis for the design, construction and completion of the Project, and agrees that it shall have no right to seek additional compensation or a time extension to a Milestone Deadline based on any errors, omissions, inconsistencies or other defects in the Technical Provisions;
- (g) DB Entity acknowledges and agrees that it has familiarized itself with the requirements of all Laws and the conditions and schedules contained in all Governmental Approvals prior to entering into this DB Contract;



- (h) DB Entity acknowledges that the Project is a requirement of the State Implementation Plan and the Full Funding Grant Agreement, that both documents contain requirements to complete the Project, and that the MBTA is exposed to penalties in the event of a failure to comply with the requirements of such documents; and
- (i) DB Entity's Warranties and indemnities hereunder cover errors, omissions, inconsistencies and defects in the Project even though they may be related to errors, omissions, inconsistencies or defects in the Technical Provisions.

SECTION 4. QUALITY ASSURANCE/QUALITY CONTROL

4.1 DB ENTITY RESPONSIBILITIES

DB Entity shall be responsible for the quality of the Work including the products of Subcontractors and Suppliers. DB Entity shall establish and maintain the Quality Management Plan ("QMP"). DB Entity shall conduct QA/QC activities in accordance with the QMP, including inspection of all Work included in the Contract Documents.

4.2 MBTA, UTILITY OWNER AND RAILROAD ROLES IN QA/QC

4.2.1 The MBTA's role with respect to QA/QC includes:

- (a) review and acceptance of DB Entity's Quality Management Plan, Design Quality Management Plan and Construction Quality Management Plan;
- (b) oversight of DB Entity's QA/QC activities;
- (c) oversight of DB Entity's construction management, including scheduling, invoicing, document control and construction inspection, equipment, testing and system commissioning; and
- (d) other activities described in Section 2.5 of the Technical Provisions.

4.2.2 Utility Owners and Railroads retaining ownership or maintenance responsibility over their respective facilities may conduct their own inspection and testing. DB Entity shall fully cooperate and coordinate with such Utility Owners and Railroads.

4.2.3 The MBTA's oversight of DB Entity's QA/QC activities shall not relieve DB Entity from its QA/QC obligations or from any requirements of the Contract Documents. Where materials, equipment or other components of the Work are subject to acceptance by the MBTA, the MBTA's acceptance, except as otherwise provided in Section 9.18.4, shall not relieve DB Entity from any requirements of the Contract Documents.

4.2.4 In the event that DB Entity fails to comply with the QMP Recovery Plan, then MBTA may, at its sole discretion and without limiting any other remedies, implement additional measures to cure DB Entity's failure to comply with its QA/QC obligations and responsibilities, and DB Entity shall be liable for MBTA's costs in implementing such measures; provided that



DB Entity fails to cure such failure within five (5) Business Days after receiving written notice from the MBTA of such failure. Nothing in this Section 4.2 shall relieve DB Entity of its QA/QC obligations and responsibilities.

SECTION 5. PROJECT DESIGN

5.1 DESIGN EXCEPTIONS

5.1.1 Design Exceptions are deviations to Mandatory Specifications, Project Standards, and Industry Standards, including those Design Exceptions that may be required as a result of an approved Alternative Technical Concept.

5.1.2 Except for Design Exceptions permitted by the Technical Provisions, DB Entity shall obtain the written approval of the MBTA for all Design Exceptions. DB Entity shall document and make available to the MBTA a record of all Design Exceptions. DB Entity acknowledges that the MBTA may disapprove any and all Design Exceptions in its sole discretion. DB Entity shall allow sufficient time in its schedule of no less than 30 Days for review and response by the MBTA, and shall allow for the possibility that the Design Exception may not be approved.

5.1.3 DB Entity shall use engineering judgment in applying the requirements of the Mandatory Specifications, Project Standards, and Industry Standards where strict adherence to the Mandatory Specifications, Project Standards, and Industry Standards is not possible. If deviation from such Mandatory Specifications, Project Standards, and Industry Standards is required, DB Entity shall submit a specific written request for approval of the Design Exception to the MBTA.

5.1.4 DB Entity shall prepare all documentation required to request Design Exceptions. A summary report, listing all Design Exceptions, shall be prepared by DB Entity and submitted to the MBTA on a monthly basis.

5.2 FAILURE TO IMPLEMENT ALTERNATIVE TECHNICAL CONCEPTS

During design development and construction, should DB Entity be unable to obtain required approvals from third parties or Governmental Entities for any Alternative Technical Concept ("ATC") incorporated into the Contract Documents, or if DB Entity is unable to satisfy other conditions identified by the MBTA or any other party that are necessary to implement an ATC, or if the ATC otherwise proves to be infeasible, DB Entity will be required to conform to the original Contract Documents without regard to the ATC and without additional compensation or extension of time. To the extent such ATC represented additional Work or higher quality of materials from what was otherwise required by the Contract Documents and resulted in a total net increase in the GLX Lump Sum or Additive Options Price (as applicable), the MBTA shall be entitled to a deductive Change Order equal to the amount identified by the MBTA in its approval of such ATC.



5.3 DESIGN REVIEWS

Design reviews shall be conducted by the MBTA, as applicable, in accordance with the terms of the Contract Documents. The MBTA's design reviews shall not relieve DB Entity of its responsibility to perform the Work in accordance with the Contract Documents.

5.3.1 MBTA Reviews

5.3.1.1 Oversight reviews by the MBTA will consist mainly of checks and audits to determine whether the requirements of the Contract Documents are being followed and whether the QA/QC activities are following DB Entity's accepted QMP. The reviews may, at the MBTA's discretion, include review of Design Documents, electronic files, calculations, reports, specifications, geotechnical data, and other relevant design information.

5.3.1.2 DB Entity acknowledges that, in addition to the design review procedures set forth herein, the MBTA may inspect the design throughout the design process at its sole discretion for compliance with the Contract Documents.

5.3.2 Over-the-Shoulder Reviews

Over-the-shoulder reviews are examinations by the MBTA of Design Documents during the design process. The over-the-shoulder reviews may be requested by either Party, and will be conducted in the presence of DB Entity's personnel with the intent to minimize disruption of on-going design Work. Formal assembly and submittal of drawings or other documents may not be required, at the sole discretion of the MBTA. The review may be of progress prints, computer images, draft documents, working calculations, draft specifications or reports, or other Design Documents. If mutually agreed for specific review items, the over-the-shoulder review may consist of an exchange of electronic files between DB Entity and the MBTA.

5.4 VALUE ENGINEERING CHANGE PROPOSALS

5.4.1 General

5.4.1.1 DB Entity may propose to the MBTA solutions that are not in conformance with the Contract Documents by submitting Value Engineering Change Proposals ("VECPs"). Any VECPs that are submitted by DB Entity shall be based on a sound study made by DB Entity indicating that the VECP will: (a) result in a net reduction in the GLX Lump Sum or Additive Options Price (as applicable) or Project Schedule; (b) not adversely impact safety or compliance with the environmental requirements; (c) not require an unacceptable extension of any Milestone Deadlines; and (d) require a Change Order.

5.4.1.2 The MBTA shall not be liable for any delay in acting upon, or for failure to act upon, any VECP submitted pursuant to this Section 5.4. The decision of the MBTA as to the acceptance of any such VECP is at the MBTA's sole discretion.

5.4.1.3 The MBTA, at its sole discretion, may accept or reject, in whole or in part, any VECP through the issuance of a Change Order. If the VECP is accepted in part, DB Entity shall resubmit the estimated reduction of the GLX Lump Sum or Additive Options Price (as

applicable) due to the partially accepted VECP. Unless and until a Change Order is issued with respect to a VECP, DB Entity shall remain obligated to perform in accordance with the terms of the Contract Documents.

5.4.2 Submittal Requirements

As a condition to and prior to the MBTA's review of a VECP, DB Entity shall submit the following to the MBTA:

- (a) VECP Change Listing: A listing of the proposed changes or additions to the Contract Documents required for implementing the VECP;
- (b) VECP Description: A description of the difference between the existing requirements and the proposed changes to the Contract Documents, and the comparative advantages and disadvantages of each, including any changes to the life expectancy of the assets and the life-cycle and maintenance cost analysis of the VECP;
- (c) Project Schedule: Any proposed adjustments in the Milestone Deadlines that will result from acceptance of the VECP shall be accompanied by a contemporaneous schedule analysis (including narrative of the proposed schedule changes) in accordance with Section 15.6.3 of this Volume 1 and Section 2.4 of the Technical Provisions;
- (d) Date for MBTA's Acceptance: A statement that clearly justifies the date by which the VECP must be accepted to obtain the maximum net savings, noting any effect upon the Milestone Deadline. This statement must include a narrative that demonstrates that the most recent Project Schedule has been utilized to justify the proposed acceptance date (e.g. "in order to start to fabricate critical materials, authorization must be provided to work on the shop drawings by no later than [date]");
- (e) VECP Expiration: DB Entity shall state the period of time, from the date of the initial VECP submittal, that the VECP shall remain valid and feasible; and
- (f) Net Savings: A detailed estimate of the anticipated Net Savings shall be provided, calculated in accordance with Section 5.4.3.

5.4.3 VECP Net Savings Calculations

5.4.3.1 The Net Savings for a VECP shall be calculated using the following formula:

$$\text{Net Savings} = a - (b + c + d)$$

5.4.3.2 For purposes of the Net Savings formula set forth in Section 5.4.3.1, items "a", "b", "c" and "d" are to be calculated as follows:



- (a) Original Scope: DB Entity shall calculate the cost of performing the Work in accordance with the original Contract Documents. This cost is to include any original scope of Work that is anticipated to be altered or eliminated by the VECP.
- (b) New VECP Scope: DB Entity shall calculate the estimated cost of performing the Work affected by the VECP in accordance with the proposed changes to the Contract Documents.
- (c) MBTA's Costs: MBTA shall calculate, and provide to DB Entity, the estimated costs to perform additional design reviews, cost estimate reviews, schedule reviews, and any other administrative costs to revise the original Contract Documents and review and recommend implementation of the proposed VECP.
- (d) Other Costs: MBTA shall calculate, and provide to DB Entity, other estimated costs associated with implementing the VECP, including costs incurred related to maintenance, life cycle, Right of Way acquisitions and compliance with Governmental Approvals or Third Party Agreements.

5.4.3.3 If the VECP is accepted by the MBTA, the Net Savings shall be shared equally between the MBTA and DB Entity.

5.4.4 Withdrawal of VECP

DB Entity has the right to withdraw, in whole or in part, any VECP prior to acceptance by the MBTA. Such withdrawal shall be made in writing to the MBTA.

SECTION 6. GOVERNMENTAL APPROVALS; THIRD-PARTY AGREEMENTS; ENVIRONMENTAL COMPLIANCE; HAZARDOUS MATERIALS

6.1 GOVERNMENTAL APPROVALS

6.1.1 The MBTA has obtained, or will obtain, the MBTA-Provided Approvals for the Project, and shall provide copies of such MBTA-Provided Approvals to DB Entity upon request. DB Entity shall obtain and maintain all other Governmental Approvals, including safety certifications and occupancy permits.

6.1.2 Prior to submitting to a Governmental Entity any application for a Governmental Approval (or any proposed modification, renewal, extension, or waiver of a Governmental Approval or provision thereof), DB Entity shall submit such Governmental Approval, together with any supporting studies and analyses, to the MBTA for review and comment, unless otherwise specified in the Technical Provisions. DB Entity shall keep the MBTA informed regarding the status of such Governmental Approvals on a monthly basis.

6.1.3 In the event that any Governmental Approvals required to be obtained by DB Entity must formally be issued in the MBTA's name, DB Entity shall undertake the necessary efforts to obtain such approvals subject to MBTA's reasonable cooperation with DB Entity, at



DB Entity's expense, including execution and delivery of appropriate applications and other documentation in a form approved by the MBTA. MBTA's cooperation shall not require the MBTA: (a) to take a position which it believes to be inconsistent with the Contract Documents, Law or Governmental Approval(s), the requirements of Good Industry Practice, or MBTA policy, or (b) to refrain from taking a position concurring with that of a Governmental Entity, if the MBTA believes that position to be correct.

6.1.4 In the event that the MBTA or FTA must act as the lead agency and directly coordinate with a Governmental Entity in connection with obtaining Governmental Approvals which are the responsibility of DB Entity, DB Entity shall provide all necessary support to facilitate such coordination. Such support shall include conducting necessary field investigations, surveys, and preparation of any required reports, documents, and applications.

6.1.5 DB Entity shall comply with all conditions imposed by and undertake all actions required by and all actions necessary to maintain in full force and effect all Governmental Approvals, except to the extent that responsibility for performance of such measures is expressly assigned to the MBTA in the Contract Documents. Subject to DB Entity's rights and remedies pursuant to Section 15, DB Entity shall be solely responsible for the cost of obtaining and complying with all Governmental Approvals or amendments to be obtained by DB Entity.

6.1.6 DB Entity shall use commercially reasonable efforts to obtain the cooperation of each Governmental Entity as necessary for a Governmental Approval. DB Entity shall notify the MBTA immediately if DB Entity is unable (or anticipates that it will be unable) to obtain a Governmental Approval within a reasonable time.

6.2 THIRD-PARTY AGREEMENTS

6.2.1 The MBTA has entered into certain Third-Party Agreements which contain the MBTA's rights and obligations regarding the Project with respect to certain Third Parties. A listing of such Third-Party Agreements is provided in Volume 2, Exhibit 2F.

6.2.2 DB Entity shall be responsible for coordinating, designing, constructing and satisfying the MBTA obligations owed to Third Parties designated as DB Entity's obligations in the summary table provided in Volume 2, Exhibit 2F and for complying with all applicable Technical Provisions.

6.3 ENVIRONMENTAL COMPLIANCE

6.3.1 DB Entity is responsible at all times for complying with: (a) all applicable Environmental Laws; (b) all conditions and schedules in any Environmental Approvals, whether obtained by the MBTA or DB Entity; and (c) all obligations of the Contract Documents with respect to environmental matters. DB Entity shall be responsible for all costs, liability, penalties, expenses, damages, including economic, property, natural resource and personal injury, or delays resulting from any non-compliance with Environmental Approvals.

6.3.2 DB Entity shall comply with all the requirements set forth in the Technical Provisions including developing and carrying out the Comprehensive Environmental Protection Program ("CEPP") therein described and complying with the requirements of the Technical

Provisions. The cost of complying with all the requirements set forth in the Contract Documents, including preparing and implementing the CEPP, shall be included within the GLX Lump Sum and Additive Options Price.

6.3.3 Except for the MBTA-Provided Approvals, DB Entity, in cooperation with the MBTA, shall obtain all Environmental Approvals necessary for the Project and approvals (if any) for handling and disposal of all excavated materials, including Oil and Hazardous Materials (“OHM”) regulated under any state or federal law including Mass. Gen. Laws ch. 21E and the Massachusetts Contingency Plan (the “MCP”).

6.4 HANDLING, TRANSPORTATION AND DISPOSAL OF EXCAVATED MATERIALS

6.4.1 Management of Excavated Materials

6.4.1.1 DB Entity shall perform the Work in accordance with the requirements of this Section 6.4 and Section 4 of the Technical Provisions.

6.4.1.2 Contaminated media, as defined in the MCP may be encountered within the Site.

6.4.1.3 All OHM and other contaminated media encountered during the performance of the Work shall be managed in accordance with applicable Environmental Laws, Environmental Approvals, the Contract Documents, including Volume 2, Exhibit 2G, the Excavated Materials Management Plan (“EMMP”) and other plans prepared under Section 4 of the Technical Provisions.

6.4.2 Discovery and Management of OHM

In the event DB Entity discovers or otherwise encounters OHM within the Site, DB Entity shall (a) promptly notify the MBTA and the MBTA Licensed Site Professional and (b) undertake all actions consistent with the goals, objectives and other requirements of the EMMP and other plans prepared under Section 4 of the Technical Provisions and with all applicable Environmental Laws in coordination with the MBTA. All response actions under applicable Environmental Laws shall be implemented under the direction of the DB Entity Licensed Site Professional. During construction of the Project, DB Entity shall undertake all reasonable steps consistent with the MCP, the EMMP and other plans prepared under Section 4 of the Technical Provisions, including design modifications and/or revisions to construction techniques, to avoid excavation or dewatering in areas with OHM. DB Entity shall afford the MBTA the opportunity to inspect sites containing OHM before any action is taken that would inhibit the MBTA’s ability to ascertain the nature and extent of the OHM.

6.4.3 Qualifications and Protection of Personnel Responsible for Handling OHM

6.4.3.1 DB Entity shall have a Licensed Site Professional available to the Project at all times who is responsible for the management of OHM. No environmental investigation shall be conducted outside the Site without specific written authorization of the MBTA.

6.4.3.2 All DB Entity personnel handling OHM shall be trained, experienced, certified and enrolled in a medical surveillance program typically required for workers handling OHM. DB Entity shall ensure that all certifications, licenses, authorizations and Environmental Approvals are current and valid through the duration of this DB Contract.

6.4.3.3 DB Entity shall make all workers on-Site aware of the potential OHM to which they may be exposed, shall limit exposure to OHM and provide all necessary equipment to protect them from exposure. DB Entity shall maintain records of all incidents involving OHM and notify the MBTA and appropriate Governmental Entities in a timely manner.

6.4.4 Environmental Approvals and Generator Status

6.4.4.1 It is the responsibility of DB Entity to obtain all Environmental Approvals for performing the Work relating to OHM encountered within the Site or for which DB Entity is considered the generator pursuant to Section 6.4.4.2. DB Entity shall be solely responsible for compliance with such Environmental Approvals and applicable Environmental Laws, including those governing the preparation of waste profiles, waste manifests and bills of lading; provided, however, that the MBTA shall be listed on and sign as the generator all waste profiles, waste manifests and bills of lading for OHM of which the MBTA is considered the generator under Section 6.4.4.2.

6.4.4.2 The MBTA shall be considered the generator of OHM on property owned by the MBTA; provided, however, that DB Entity shall be considered the generator of any OHM which result from: (a) Release(s) of OHM attributable to the negligence, willful misconduct, or breach of contract of DB Entity or any of its officers, employees, agents, Subcontractors, or visitors; and (b) Release(s) of OHM arranged to be brought onto the Site or elsewhere by DB Entity or any of its officers, employees, agents, Subcontractors, or visitors regardless of the cause of the release.

6.4.5 OHM Brought or Released by DB Entity

6.4.5.1 DB Entity shall be solely responsible for: (a) compliance with all Laws applicable to OHM brought onto the Site or elsewhere by DB Entity or any of its agents, officers, employees, visitors, and Subcontractors; (b) use, containment, storage, management, transport and disposal of all OHM in accordance with the Contract Documents and all applicable Environmental Laws and Environmental Approvals; and (c) payment of all penalties, expenses, costs, damages (including to natural resources, property or persons), and liability arising out of or related to the Release of OHM for which DB Entity is responsible as described in Section 6.4.5.2.

6.4.5.2 Management of OHM costs, including assessment, containment and remediation expenses that result from: (a) Release(s) of OHM attributable to the negligence, willful misconduct, or breach of contract of DB Entity or of any of its officers, agents, employees, Subcontractors, and visitors; or (b) Release(s) of OHM arranged to be brought onto the Site or elsewhere by DB Entity or any of its officers, employees, agents, Subcontractors and visitors regardless of the cause of the release of OHM, shall be the responsibility of DB Entity.

SECTION 7. PROJECT RIGHT OF WAY

7.1 GENERAL

7.1.1 The MBTA has acquired, or shall perform all services to acquire, title or rights to use the properties specified in Volume 2, Exhibit 2C designated as acquired, or to be acquired, by the MBTA.

7.1.2 DB Entity is solely responsible, at its own cost and expense and without any adjustments to the Milestone Deadlines, for: (a) obtaining all temporary easements and temporary property interests that are not designated as the MBTA's responsibility in Volume 2, Exhibit 2C for performing the Work, including any temporary easements and property interests needed for laydown, staging and material storage and (b) acquiring all Additional Properties, except for Additional Properties required to be obtained by the MBTA pursuant to Section 7.1.4.

7.1.3 DB Entity shall comply with and perform all Work and mitigation commitments for the properties as identified in Section 5 of the Technical Provisions and all other mitigations and protection of property reasonably necessary to perform the Work under the Contract Documents.

7.1.4 The MBTA shall, at its sole cost and expense, acquire Additional Properties in accordance with this Section 7 if: (a) DB Entity cannot design and construct the permanent Project facilities in accordance with the Technical Provisions within the limits identified in Volume 2, Exhibit 2C, or (b) if Additional Properties are required due to an MBTA-Directed Change.

7.2 PROPERTY ACCESS

7.2.1 Subject to and except as otherwise provided in Section 2.4 and Volume 2, Exhibit 2F, DB Entity shall have access to Project Right of Way and Temporary Right of Way as necessary to support the performance of the Work pursuant to the accepted Baseline Schedule.

7.2.2 DB Entity must obtain from the MBTA a notice of clear right of way prior to entering any property specified in Volume 2, Exhibit 2C as acquired, or to be acquired, by the MBTA or any Additional Property that is otherwise to be obtained by MBTA under Section 7.1.4. Further, DB Entity shall not contact the owners of such properties to obtain early access to such properties without prior notice to the MBTA. Any early access obtained by DB Entity, and any Work performed prior to the MBTA acquiring title or rights to such properties, shall be at DB Entity's sole cost and risk.

7.3 PROPERTY ACQUISITIONS AND SCHEDULING WORK

7.3.1 In developing the Project Schedule, DB Entity shall minimize dependence on the property acquisition process. In the event DB Entity experiences an Excusable Delay entitling DB Entity to an adjustment to a Milestone Deadline and such property is no longer accessible to DB Entity due to such Excusable Delay, the MBTA shall obtain additional rights of access for such properties specified in Volume 2, Exhibit 2C as acquired, or to be acquired, by the MBTA.

7.3.2 DB Entity shall coordinate with the MBTA regarding:

- (a) Project Right of Way requirements and impacts on design and construction activities;
- (b) any adjustments to the Project Schedule necessary to reflect updates to the property acquisition process; and
- (c) any design or construction features that may impact properties for which no property acquisition is contemplated to avoid damages and impacts to such properties.

7.4 ACQUISITION OF ADDITIONAL PROPERTY REQUESTED BY DB ENTITY

7.4.1 If DB Entity identifies any property that it believes should be added to the Project Right of Way as an Additional Property, DB Entity shall submit to the MBTA a request for acquisition of such Additional Property. Such request shall include: (a) the reason and justification for acquiring the Additional Property, including supporting Design Documents and (b) new or revised surveys, legal descriptions, draft ROW plans, and other related documents describing the property or property interests to be acquired. If Additional Property is required pursuant to Section 7.1.4, such request shall also include an analysis identifying alternative approaches and measures that could be utilized to avoid the need for acquiring such Additional Property.

7.4.2 Except for Additional Property required pursuant to Section 7.1.4, the MBTA has no obligation to acquire Additional Property requested by DB Entity and may, in its sole discretion, deny such request.

7.4.3 If the MBTA agrees to acquire Additional Property not required by Section 7.1.4, including any Additional Property to implement an ATC or Additive Option, DB Entity shall pay the MBTA, as applicable: (a) costs of acquisition and relocation services performed by the MBTA and its consultants; (b) costs of relocation and assistance in accordance with Law; (c) amounts to be paid to property owners for the Additional Property; and (d) costs for any condemnation proceedings, including legal and consultant fees. Further, DB Entity shall not be entitled to any additional compensation or time extensions caused by the acquisition of such Additional Property.

SECTION 8. UTILITIES

8.1 GENERAL

8.1.1 DB Entity shall perform, or caused to be performed, the Utility Relocations in accordance with the requirements of Section 7.4 of the Technical Provisions.

8.1.2 For Utility Relocations to be performed by a Utility Owner or its separate contractors, DB Entity shall coordinate, monitor, perform, and otherwise undertake the necessary efforts required under the Contract Documents to enable such Utility Owner or its separate contractors to timely perform such work, in coordination with the Work, and in compliance with

the standards of design and construction and other applicable requirements specified in the Contract Documents.

8.1.3 DB Entity shall establish in the name of the MBTA all Utility services required to be installed and furnished as part of the Work.

8.2 DB ENTITY UTILITY AGREEMENTS

8.2.1 If DB Entity determines that the Work requires any additional Utility Relocation other than those specified in Section 7.4 of the Technical Provisions, DB Entity shall promptly notify the MBTA regarding the circumstances. In such event, unless the MBTA directs otherwise, DB Entity shall prepare, negotiate and enter into a DB Entity Utility Agreement with such Utility Owner, enabling the Utility Relocation to proceed.

8.2.2 Each DB Entity Utility Agreement (if any) entered into pursuant to Section 8.2.1 shall:

- (a) specify and distinguish the scope of the Utility Relocation to be performed by DB Entity and the Utility Owner, respectively, including any Betterments;
- (b) contain provisions for payments, payment terms, controlling specifications, work description, compliance with Law and any requirements with respect to use of the Utility's own forces or Subcontractors pre-approved by any Utility Owner for Work on its facilities;
- (c) include specific procedures for resolving scheduling, design, construction and payment issues arising due to errors or omissions in information the Utility Owner provides to DB Entity;
- (d) require the Utility Owner and its contractors to comply with and abide by all applicable Buy America requirements in connection with performance of Utility Relocations; provided that Utility Owners shall not be obligated to comply with Buy America requirements if the Utility Owner is required by Law to perform such Utility Relocations at its own expense and without right to payment or reimbursement from the MBTA or DB Entity, or if the Utility Owner is otherwise exempt from Buy America requirements; and
- (e) include provisions stating that the MBTA shall have no liability under the DB Entity Utility Agreement, unless and until the MBTA is assigned DB Entity's interests and agrees to assume DB Entity's obligations under such DB Entity Utility Agreement.

8.2.3 The MBTA agrees to cooperate as reasonably requested by DB Entity in preparing and negotiating DB Entity Utility Agreements; provided, however, that such cooperation shall not require the MBTA: (a) to take a position which it believes to be inconsistent with the Contract Documents, Law or Governmental Approval(s), the requirements of Good Industry Practice, or MBTA policy, or (b) to refrain from taking a position concurring with that of a Utility Owner, if the MBTA believes that position to be correct.

8.2.4 DB Entity shall keep the MBTA informed of the status of any negotiations with a Utility Owner regarding a DB Entity Utility Agreement, and shall submit each such DB Entity Utility Agreement (including supplements and amendments) to the MBTA for review and comment prior to execution. DB Entity shall deliver to the MBTA, within ten (10) Days after execution, a true and complete copy of each DB Entity Utility Agreement.

8.3 COSTS OF UTILITY RELOCATIONS

Subject to DB Entity's rights and remedies under Section 15, DB Entity shall be responsible for:

- (a) all costs of Utility Relocations performed by or on behalf of DB Entity;
- (b) all payments (if any) owing to Utility Owners for Utility Relocations under DB Entity Utility Agreements, unless the MBTA is assigned DB Entity's interests and agrees to assume DB Entity's obligations under such DB Entity Utility Agreement; and
- (c) all costs for acquiring temporary or permanent property interests required for Utility Relocations that are not within the permanent easement or fee simple property limits identified in Volume 2, Exhibit 2C, except for any Additional Property that is the MBTA's responsibility pursuant to Section 7.1.4.

8.4 FTA REIMBURSEMENT REQUIREMENTS

Unless the MBTA notifies DB Entity that the MBTA does not intend to seek reimbursement from FTA for Utility Relocations, the following requirements shall apply:

- (a) all Utility Relocation shall be subject to, and the DB Entity shall comply with, 23 CFR Part 645 Subpart A (including requirements as to plans, specifications, estimates, charges, tracking of costs, credits, billings, records retention, and audit, in addition to DB Entity's record retention obligations under Section 23.1) and FTA's associated policies and procedures;
- (b) each DB Entity Utility Agreement (if any) shall incorporate by reference 23 CFR Part 645 Subparts A and B, and assign the obligations arising under 23 CFR Part 645 Subparts A and B to the appropriate parties; and
- (c) DB Entity shall comply with 23 CFR Part 645, Subparts A and B, to ensure that costs of Utility Relocations are eligible for reimbursement from FTA.

8.5 BETTERMENTS

8.5.1 A Utility Owner may request DB Entity to perform work relating to Betterments as a part of the Work, at the Utility Owner's expense. DB Entity shall be responsible for addressing any requests by Utility Owners that DB Entity design or construct a Betterment. Any Betterment performed as part of a Utility Relocation, whether by DB Entity or by the Utility



Owner, shall be subject to the requirements of this Section 8.5 and subject to the same standards and requirements applicable to Utility Relocations.

8.5.2 Upon receiving a request for a Betterment, DB Entity shall notify the MBTA regarding the scope of the Betterment and the estimated costs to be paid by the Utility Owner to DB Entity. Further, DB Entity shall commence negotiating a DB Entity Utility Agreement that includes such Betterment in accordance with Section 8.2; provided, however, DB Entity is not obligated to enter into a DB Entity Utility Agreement that includes such Betterment and provided further that in no event shall any Betterment negatively impact the Project Schedule or Railroad operations.

8.5.3 The MBTA shall approve the Betterment only if: (a) the Betterment is compatible with the Project and will not delay the Critical Path; (b) it is feasible to separate the cost/pricing of the Betterment from that for any related Utility Relocation being furnished or performed by DB Entity; (c) the Utility Owner has agreed to pay DB Entity directly for all the costs of the Betterment; and (d) the Utility Owner has agreed as to the method of pricing such Work. DB Entity shall provide the MBTA with such information, analyses and certificates as may be requested by the MBTA in connection with its review of the Betterment.

8.5.4 Under no circumstances shall DB Entity proceed with any Betterment that is incompatible with the Project, negatively impacts the Project Schedule or is not in compliance with Law, the Governmental Approvals or the Contract Documents. DB Entity shall not be entitled to any increased costs or time extensions under the Contract Documents for the performance of the Betterment.

8.6 FAILURE OF UTILITY OWNERS TO COOPERATE

8.6.1 DB Entity shall use commercially reasonable efforts to obtain the cooperation of each Utility Owner as necessary for Utility Relocations. DB Entity shall notify the MBTA immediately if: (a) DB Entity is unable (or anticipates that it will be unable) to negotiate a DB Entity Utility Agreement for a Utility Relocation within a reasonable time; (b) any Utility Owner will not undertake or permit a Utility Relocation in accordance with the applicable Utility Agreement; or (c) DB Entity otherwise anticipates an impact to any Utility Relocation due to the culpable acts or omissions of a Utility Owner, despite DB Entity's commercially reasonable efforts to obtain such Utility Owner's cooperation.

8.6.2 The notice provided under Section 8.6.1 may include a request that the MBTA assist in obtaining the Utility Owner's timely cooperation. Such request shall provide evidence reasonably satisfactory to the MBTA that: (a) the subject Utility Relocation is necessary; (b) DB Entity included in the Project Schedule a reasonable amount of time for completion of the Utility Relocation; (c) DB Entity undertook commercially reasonable efforts to obtain the Utility Owner's cooperation; and (d) DB Entity has otherwise fulfilled its obligations under the Contract Documents related to the Utility Relocation.

8.6.3 Following the MBTA's receipt of the evidence required under Section 8.6.2, the MBTA shall take such reasonable steps as may be requested by DB Entity to obtain the cooperation of the Utility Owner. Any assistance provided by the MBTA shall not relieve DB



Entity of its sole responsibility for complying with its obligations relating to Utility Relocations. After delivering to the MBTA any notice or request for assistance, DB Entity shall continue to use commercially reasonable efforts to pursue the Utility Owner's cooperation.

8.7 UTILITY COORDINATION, DOCUMENTATION AND MONITORING REQUIREMENTS

8.7.1 General

8.7.1.1 This Section 8.7 defines the responsibility of DB Entity and the MBTA, with regard to the initial Utility Relocation plan and changes that occur during the performance of the Work. DB Entity, with assistance from the MBTA, shall coordinate with Utility Owners that are impacted by the Work. DB Entity shall provide routine and accurate Project Schedule updates, provide notification of delays, and provide documentation of the steps taken to resolve any conflicts for the temporary and/or permanent Utility Relocations of the impacted Utility Owners.

8.7.1.2 DB Entity shall provide copies to the MBTA of DB Entity's communication with the Utility Owners, including:

- (a) advance notice of all Utility-related meetings initiated by DB Entity;
- (b) meeting minutes for all utility-related meetings that the DB Entity attends;
- (c) all test pit records;
- (d) notification letters for any proposed changes to Utility Relocation start dates and/or sequencing;
- (e) written notification to the MBTA of any delays related to Utility Relocations within five (5) Business Days after the occurrence of such delays; and
- (f) any communication, initiated by DB Entity, associated with Additional Property needed to support the Utility Relocation.

8.7.2 Initiation of Utility Relocation

8.7.2.1 The MBTA shall issue all initial notice to proceed dates to Utility Owners who have Owner Utility Agreements based on any of the following:

- (a) the accepted Baseline Schedule; or
- (b) an approved Early Utility Relocation request in the form of an Early Utility sub-net schedule in accordance with Section 8.7.2.3.

8.7.2.2 DB Entity shall provide a Baseline Schedule in accordance with the requirements of Section 2.4 of the Technical Provisions, including all Utility information.

8.7.2.3 "Early Utility Relocations" are defined as any anticipated or required Utility Relocations that need to occur prior to acceptance of the Baseline Schedule. In all cases of



proposed Early Utility Relocations, DB Entity shall present all known information at the pre-construction conference in the form of a 'sub-net' schedule showing when a notice to proceed should be issued for each Early Utility Relocation. DB Entity shall provide advance notification of this intent to request Early Utility Relocation in writing at or prior to the pre-construction meeting. Prior to requesting approval for Early Utility Relocation, DB Entity shall also coordinate with the MBTA and all Utility Owners which may be impacted by the Utility Relocation. If the request for Early Utility Relocations is acceptable to the affected Utility Owner and to the MBTA, the MBTA shall issue a notice-to-proceed to the affected Utility Owner, based on the accepted dates.

8.7.3 Locations of Utilities

The locations of existing Utilities shown within the Contract Documents are approximations only. Subject to DB Entity's rights and remedies under Section 15, DB Entity shall perform a pre-construction Utility survey no later than 120 Days before commencing physical Work in the affected area of the Site, including any required test pits, to determine the location of all Utilities. DB Entity shall prepare and submit a test pit plan to the MBTA no later than thirty (30) Days after NTP. The test pit plan is subject to the MBTA's acceptance.

8.7.4 Post Utility Survey

Following completion of a Utility survey of existing locations, DB Entity shall be responsible to notify the MBTA of any known conflicts associated with the actual location of Utilities prior to the start of the Work. The MBTA and DB Entity shall coordinate with any Utility Owner whose Utilities are to be affected by the Work.

8.7.5 Meetings and Coordination with Utility Owners

8.7.5.1 DB Entity shall notify the MBTA in advance of any meeting DB Entity initiates with a Utility Owner to allow the MBTA to participate in the meeting if needed.

8.7.5.2 Prior to the pre-construction meeting, DB Entity shall meet with all Utility Owners who will be required to perform Utility Relocations within the first 6 months after the Notice to Proceed, to update the affected Utility Owner of all applicable requirements of the Contract Documents that impact the Utilities. DB Entity shall copy the MBTA on any correspondence between the Utility Owner and DB Entity.

8.7.5.3 DB Entity shall be responsible for allowing Utility Owners access to their own Utilities to perform the Utility Relocations and/or inspections. DB Entity shall schedule the Work so as not to delay or prevent each Utility Owner from maintaining its Utility Relocation schedule.

SECTION 9. CONSTRUCTION

9.1 COMMENCEMENT OF CONSTRUCTION

9.1.1 DB Entity shall not commence construction of any portion of the Project prior to occurrence of all the following events, except with the prior written approval of the MBTA:



- (a) DB Entity has obtained all Governmental Approvals necessary for construction of the applicable portion of the Project and performed all conditions of such Governmental Approvals that are a prerequisite to commencement of such construction;
- (b) DB Entity has obtained and maintained in full force and effect all required insurance and bonds;
- (c) DB Entity has obtained all rights of access necessary for the commencement of construction on the applicable portion of the Site;
- (d) DB Entity has satisfied all applicable pre-construction requirements contained in the MBTA-Provided Approvals and other Governmental Approvals for the applicable portion of the construction Work;
- (e) DB Entity has satisfied the following requirements of the Technical Provisions:
 - (i) DB Entity has obtained the MBTA's acceptance of the Baseline Schedule as specified in Section 2.4 of the Technical Provisions;
 - (ii) a safety and security work initiation meeting has occurred in accordance with Section 2.6 of the Technical Provisions;
 - (iii) DB Entity has delivered, and the MBTA has accepted, all submittals and plans that are required under the Technical Provisions to be delivered and accepted prior to the start of construction of the applicable portion of the Work;
 - (iv) DB Entity has obtained the MBTA's Release for Construction for the applicable portion of the construction Work in accordance with the Technical Provisions;
 - (v) DB Entity has performed the pre-construction surveys in accordance with the Technical Provisions; and
 - (vi) DB Entity has completed and documented completion of necessary training required to allow full access to the Site in accordance with Section 20.3;
- (f) DB Entity has obtained any approvals and/or releases from Utility Owners and Third Parties needed for construction Work and has furnished to the MBTA fully executed copies of all such approvals and/or releases; provided that DB Entity may commence construction of elements of the Work that have received such approvals and releases covering such elements, so long as DB Entity does not proceed with any additional construction Work until after it obtains all approvals and releases required for the additional construction Work; and

- (g) DB Entity shall have completed all required investigations to establish and confirm the existence and location of Utilities in such portion of the Project.

9.1.2 Any start of construction shall be at the sole and complete risk of DB Entity. If the Release for Construction Submittals or Final Design Documents for the Project require changes to the Work previously performed, DB Entity shall make such changes to the Work at its sole cost and expense, and with no extension to a Milestone Deadline.

9.2 SUPERVISION AND CONSTRUCTION PROCEDURES

9.2.1 DB Entity shall be solely responsible for, and have control over, construction quality, means, methods, techniques, sequences, procedures and Site safety, and for coordinating all portions of the Work under the Contract Documents, subject, however, to all requirements contained in the Contract Documents. DB Entity shall comply with the work hours and restrictions set forth in the Contract Documents. Should the prosecution of the Work for any reason be discontinued, DB Entity shall notify the MBTA in advance of resuming operations.

9.2.2 DB Entity shall comply with all applicable government noise limitations and requirements, including National Environmental Policy Act (NEPA), Massachusetts Environmental Policy Act, Certificate of Energy and Environmental Affairs on the Notice of Project Change, Notice of Project Change, Green Line Extension Project, EEA #133886, the FTA Transit Noise and Vibration Impact Assessment (May 2006 or the most recent version if updated), and OSHA Occupational Noise Exposure Hearing Conversation Amendment.

9.2.3 In completing the Work, DB Entity acknowledges that safety is a principal goal of the Project, that the Project shall be completed with that goal in mind and that completing the construction of the Work in a safe and efficient manner is DB Entity's responsibility.

9.2.4 DB Entity shall provide appropriate security for the Site and shall be responsible for damage or loss to all property at the Site owned by DB Entity, the MBTA or any other Person in accordance with Section 13.2.

9.2.5 DB Entity shall ensure that all of its activities and the activities of its employees, agents, officers and Subcontractors and all other Persons for whom DB Entity may be legally or contractually responsible are undertaken in a manner that will minimize the effect on surrounding properties, Railroad operations, vehicular and pedestrian traffic, and the public.

9.3 CONSTRUCTION RECORDS AND DOCUMENTATION

9.3.1 During performance of the Work, DB Entity shall use the Program Management Information System ("PMIS") in accordance with the Technical Provisions and collect and preserve the following data in written form acceptable to the MBTA:

- (a) daily labor and equipment reports for DB Entity and each Subcontractor for construction-related activities;
- (b) daily occurrence logs for construction-related activities maintained by DB Entity, in which shall be recorded daily in narrative form all significant



occurrences on the Project, including: (i) weather; (ii) asserted Force Majeure Events; (iii) events and conditions causing or threatening to cause any significant delay or disruption or interference with the progress of the Work; (iv) a narrative listing of complaints and other issues of concern raised by residents and abutters to the Project, and the response thereto; (v) significant injuries to person or property; and (vi) a listing of each activity depicted on the current Project Schedule status submittal which is being actively prosecuted. For any Utility-related Work, such data shall be maintained separately for each Utility. For OHM, such data shall be maintained separately. Any Work that is the subject of a Proposed Change Order Notice or a Change Order Request shall be identified on separate daily occurrence logs;

- (c) quality records documenting all QMP operations, inspections, activities and tests performed, including the Work of Subcontractors. Such records shall include any delays encountered and Work that does not conform to the requirements of the Contract Documents, together with the corrective actions taken regarding such Work;
- (d) certifications and QA reports;
- (e) a monthly written certification by the Quality Manager, delivered to the MBTA with each invoice, indicating that the QMP and all of the measures and procedures provided therein are functioning properly and are being fully complied with;
- (f) weekly written certification, delivered to the MBTA, with factual evidence that required activities and tests have been performed, including (i) type, number, and results of QA/QC activities, including reviews, inspections, tests, audits, monitoring of work performance, and materials analysis; (ii) related data such as qualifications of personnel, procedures, and equipment employed; (iii) the inspector or data recorder, the type of test or observation employed, the results and the acceptability of the Work and action taken in connection with deficiencies; and (iv) with respect to any Nonconforming Work, the nature of the Nonconforming Work and causes for rejection, the proposed corrective action, corrective actions taken and results of corrective actions;
- (g) payroll records in accordance with the requirements of Mass. Gen. Laws, ch. 149, § 27B, including certified weekly payroll reports as required under Section 20.2.1.2(b) that affirm that all employees working on the Project have been paid wages in accordance with the prevailing wage rates contained in Exhibit 1K;
- (h) certified weekly reports establishing DB Entity's compliance with the DBE, MCWU and FCWU goals established in Section 10;

- (i) material certificates of compliance at completion (or earlier as may be available), submitted with the Record Drawings and signed by DB Entity's Project Manager and Quality Manager indicating that all materials incorporated in the Project conform with the requirements of the Contract Documents; and
- (j) such other documentation as is required in accordance with the Contract Documents.

9.3.2 DB Entity shall also submit documentation to, and correspond with, the MBTA through the PMIS as may be directed and requested by the MBTA.

9.4 SAFETY REQUIREMENTS

9.4.1 In accordance with the Contract Documents, DB Entity shall be solely responsible for implementing, maintaining and supervising the Safety Management Plan. DB Entity shall take all reasonable precautions and be solely responsible for the safety of, and shall provide protection to prevent damage, injury or loss to: (a) all employees of DB Entity and its Subcontractors performing the Work and other persons who are on Site or would reasonably be expected to be affected by the Work; (b) the Work and materials and equipment to be used for or incorporated therein; and (c) all other property on, adjacent to, or near the Site. DB Entity shall not perform the Work at any time when conditions are unsuitable for its execution, safety, and permanence. DB Entity shall comply with all health and safety Laws.

9.4.2 DB Entity and any Subcontractor shall not require any person employed in the performance of the Work to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to health or safety, as determined under applicable health and safety Laws.

9.5 SOURCE OF SUPPLY, QUALITY OF MATERIALS AND CERTIFICATE OF COMPLIANCE

9.5.1 The quality of all materials to be used in the Work shall conform to the Contract Documents. Any testing or inspection performed by the MBTA shall not relieve DB Entity of any of its own obligations to test and inspect materials to be used on the Project and to ensure that such materials conform to the requirements of the Contract Documents. DB Entity furnished materials not conforming to the requirements of the Contract Documents will be rejected, whether in place or not. Rejected material shall be removed immediately from the Site, unless otherwise permitted by the MBTA. If DB Entity fails to comply promptly with a request by the MBTA, made under this Section 9.5.1, the MBTA may cause the removal and replacement of rejected material and the cost thereof will be deducted from any moneys due or to become due DB Entity.

9.5.2 When requested by the MBTA or required by the Contract Documents, DB Entity shall furnish to the MBTA samples of materials to be incorporated into the Work. No material that is subject to such a request shall be used prior to acceptance by the MBTA. Manufacturer's warranties, guarantees, instruction sheets, parts lists and other material which are furnished with



articles or materials incorporated into the Project shall be delivered to the MBTA prior to achievement of the applicable Milestone.

9.5.3 The MBTA may make visits at the proportioning plant or source of supply to audit or inspect the production of material, or the manufacture of products. DB Entity shall ensure the cooperation and assistance of both DB Entity and the material producer or manufacturer. DB Entity shall ensure "Rights of Access" clauses are contained in the purchase document with the producers of materials or manufacturers of products allowing MBTA, or an authorized representative, to have free entry at all times to such parts of the off-site plant concerned with the manufacture or production of the materials or products. Adequate work facilities at the off-site plant, shall be furnished free of charge to MBTA for its use during audits or inspections. The MBTA assumes no obligation to inspect materials at the source of supply. The responsibility of incorporating satisfactory materials in the Work rests entirely with DB Entity, notwithstanding any prior inspections or tests.

9.5.4 The use of certain materials on the basis of a notarized certificate of compliance may be allowed under the following conditions: Before such materials are incorporated into the Work, DB Entity shall submit to the MBTA, for acceptance, copies of the manufacturer's or supplier's statement for each kind of such material furnished. The statement shall contain the following information:

- (a) the project for which the material is supplied;
- (b) names and addresses of the entities that manufactured and supplied the material;
- (c) name of the entity to which the material is supplied;
- (d) kind of material supplied;
- (e) quantity of material represented by the certificate;
- (f) means of identifying the material, such as label, marking, seal number, etc.;
- (g) date and method of shipment;
- (h) statement to the effect that the material has been tested and found in conformity with the pertinent parts of the Contract Documents;
- (i) results of all required tests including the chemical analysis in the case of metal; or in lieu of furnishing the results a statement that the results of all required tests pertinent to the certificate and not submitted shall be maintained available by the signatory for a period of not less than 3 years from date of Contract Final Acceptance; and
- (j) signature of a person having legal authority to bind the supplier.

9.5.5 For the MBTA-Furnished Items incorporated into the Work, DB Entity shall provide the applicable certificate of compliance for such MBTA-Furnished Item contained in



Exhibit 1D with a separate certification signed by DB Entity stating that the MBTA-Furnished Items comply with DB Entity's Release for Construction Submittals and Final Design Documents.

9.5.6 If DB Entity or an affiliate of DB Entity has new materials purchased for use on a previous MBTA contract which have never been used and which comply with the Contract Documents, these materials may be furnished and installed in the Work; provided DB Entity submits its own sworn statement certifying that such materials were purchased for use on a previous contract (name and identifying such contract) and that certificates of compliance were furnished for such materials on the previous contract, to which reference can be made. Costs involved in furnishing the certificates shall be borne by DB Entity.

9.5.7 Materials used on the basis of a certificate of compliance may be sampled and tested at any time. The fact that material is used on the basis of a certificate of compliance shall not relieve DB Entity of responsibility for incorporating material in the Work which conforms to the requirements of the Contract Documents and any such material not conforming to such requirements will be subject to rejection, whether in place or not. The MBTA reserves the right to refuse to permit the use of such materials on the basis of a certificate of compliance alone or for failure to otherwise comply with the requirements of the Contract Documents.

9.5.8 Certification of specification compliance on the MBTA standard form or in a form acceptable to the MBTA shall be furnished for materials and installation of the same pursuant to the requirements of the Technical Provisions.

9.6 TRADE NAMES AND ALTERNATIVES

9.6.1 Except as specifically required otherwise in the Technical Provisions, an item equal to those named or described in the Technical Provisions may be furnished by DB Entity, and the naming of any commercial name, trademark, or other identification shall not be construed to exclude any item or manufacturer not mentioned by name or as limiting competition, but shall establish a standard of equality only. An item will be considered equal to the item so named or described if:

- (a) it is at least equal in quality, durability, appearance, strength, safety, reliability, operability, maintainability, and design;
- (b) it will perform at least equally the function imposed by the general design for the Work being contracted for; and
- (c) it is readily compatible with similar equipment in use by the MBTA.

9.6.2 The burden of proof as to the equality of alternative items shall be upon DB Entity. DB Entity shall furnish, in writing, all information necessary as required by the MBTA at no additional cost to the MBTA. Requests for review of alternative items will not be accepted by the MBTA from anyone other than DB Entity. The MBTA shall be the sole judge as to the equality of alternative items and the MBTA's decision will be at its sole discretion. DB Entity shall make all requests and provide accompanying proof in ample time to permit the MBTA's evaluation and approval without delaying the Work.

9.6.3 Information furnished shall state whether or not acceptance of the alternative item for use in the Work will require a change in the Contract Documents to adapt the design to the alternative item and whether or not incorporation or use of the alternative in connection with the Work is subject to payment of any license fee or royalty. The MBTA does not pay license fees or royalties and such payment shall not be permitted under this DB Contract. Where use of an alternative item involves redesign of or changes to other parts of the Work, DB Entity shall be solely responsible for the cost and the time required to affect such redesign or changes. DB Entity shall reimburse the MBTA for any costs incurred by the MBTA as a result of such change.

9.6.4 Whenever classification, rating, or other certification by a body, such as UL, NEMA, or AREA, is a part of the specification for any item, proposals for use of alternative items shall be accompanied by reports from the listed or equivalent independent testing laboratory indicating compliance with specification requirements. DB Entity shall pay costs of testing required to prove equality of the item proposed.

9.7 MATERIALS ON SITE; PROHIBITED MATERIALS

9.7.1 DB Entity may use materials such as stone, gravel, sand or other materials found in excavations within the Site if such material meets the requirements of the Contract Documents. DB Entity shall perform testing of such materials, at the MBTA's request, to demonstrate compliance with the Contract Documents.

9.7.2 The MBTA reserves the right to audit and perform independent testing of all materials. If requested by the MBTA, DB Entity shall collect and transport samples under the direction of the MBTA for laboratory verification. Material that does not meet the Contract Documents shall be removed from the Site, and shall be disposed of offsite in accordance with Law by DB Entity at no additional cost.

9.7.3 DB Entity shall not furnish or install any materials prohibited by the Technical Provisions.

9.8 DISPOSAL OF MATERIALS

9.8.1 Unless otherwise specified in the Contract Documents, DB Entity shall make its own arrangements for disposing of waste and excess materials.

9.8.2 Prior to disposing of material, DB Entity shall obtain written permission from the owner on whose property the disposal is to be made, and shall otherwise dispose of such material in a manner acceptable to the MBTA. DB Entity shall file with the MBTA the permit, or a certified copy thereof, together with a written release from the property owner absolving the MBTA from any and all responsibility in connection with the disposal of material on such property.

9.8.3 DB Entity shall dispose of the material in a manner to the satisfaction of the MBTA and the affected property owner.



9.9 MOTOR VEHICLES AND CERTIFICATION OF CONSTRUCTION EQUIPMENT STANDARD COMPLIANCE; EQUIPMENT REQUIREMENTS

9.9.1 Motor vehicles used wholly or in part within the Commonwealth by DB Entity or a Subcontractor, or by a Person directly or indirectly employed by them in the execution of this DB Contract, shall comply with Mass. Gen. Laws, ch. 90, §§ 2, 3.

9.9.2 All diesel construction equipment used in the performance of this DB Contract shall have emission control devices installed, such as oxidation catalysts or particulate filters on the exhaust system side of the diesel combustion engine equipment, in accordance with DB Entity's Certification of Construction Equipment Standard Compliance included in Exhibit 1Q.

9.9.3 All DB Entity and Subcontractor equipment operators must be trained, certified, and properly licensed for each specific piece of equipment they will operate.

9.9.4 All equipment used by DB Entity on the Site must be approved by the MBTA (and the Commuter Rail Operator, if applicable) prior to use on the Site and shall not be used if considered unsafe or not conforming to the Contract Documents. DB Entity and its Subcontractor must keep a copy of the manufacturers operating manual or instructions onboard the hi-rail equipment at all times. DB Entity and Subcontractor hi-rail vehicles must be equipped with an exhaust gas purifier, and the hi-rail equipment used shall comply with requirements of the hi-rail equipment manufacturer. Documentation of same must be readily available and provided to the MBTA upon request. If DB Entity or Subcontractor hi-rail equipment is involved in a derailment or a near miss incident or accident which caused injury or exposed personnel to injury and/or caused damage to property, that equipment is subject to the MBTA's Impound Policy Procedure.

9.9.5 Heavy Equipment used in underpass operations must utilize fire resistant hydraulic fluids and conform to Laws.

9.9.6 DB Entity equipment to be used on or in the vicinity of the tracks shall be subject to inspection by the Railroads to prevent any failure that would cause delay in Railroad operations or damage to property or compromise the health and safety of personnel working on the Project.

9.9.7 DB Entity shall notify the MBTA 48 hours prior to bringing in any hoisting equipment (cranes, etc.) to the Site. Equipment must be inspected and certified by a third party inspection agency not under the control or ownership of the crane owner or DB Entity, and approved by the MBTA before being used on the Site. The MBTA shall have the authority to stop any hoisting operation that is unsafe or not in accordance with the approved work plan.

9.10 MAINTENANCE OF THE SITE

9.10.1 DB Entity acknowledges that it is important to protect the Site and adjacent property from dust, debris, fumes and noise, and assure appropriate access to the railroad tracks. DB Entity shall be responsible for controlling rodents within the Site and minimizing the generation of dust, noise, and pollution by construction activities in accordance with the Contract Documents. DB Entity shall keep the Site clean and free from rubbish and debris, and shall

abate dust by cleaning, sweeping and sprinkling water or other means as necessary. The use of water resulting in mud on streets and paved areas in or around the Site will not be permitted. DB Entity shall take care to prevent spillage on haul routes. Any such spillage shall be removed immediately and the affected area shall be cleaned.

9.10.2 DB Entity shall not discharge smoke, dust or any other air contaminants into the atmosphere in such quantity as will violate Laws or Governmental Approvals.

9.10.3 As construction is completed on a daily basis, surfaces adjoining the Project shall be cleaned. In addition, DB Entity shall adhere to the dust control, erosion control, noise abatement and other site procedures required by the Contract Documents. DB Entity shall store construction materials in an orderly manner and maintain storage areas and walkways on the Site free of depressions, obstructions and debris. If DB Entity fails to maintain the Site free from accumulation of waste and rubbish in accordance with the Contract Documents or otherwise fails to comply with use of site and clean-up procedures, and fails within a twenty-four (24) hour period after receipt of written notice from the MBTA to commence and continue correction of such default or neglect with diligence and promptness, the MBTA may after such twenty-four (24) hour period, immediately, without prejudice to other remedies that the MBTA may have, correct such deficiencies. In such a case, the MBTA may deduct from payments then or thereafter due DB Entity, the cost of correcting such deficiencies. If payments then or thereafter due DB Entity are not sufficient to cover such amounts, DB Entity shall pay the difference upon demand.

9.11 RESTORATION OF SURFACES OPENED BY PERMIT

DB Entity shall not allow any Person to make an opening in a street or highway for any purpose, except upon the concurrence of the MBTA that a duly authorized permit or other instrument has been obtained by DB Entity.

9.12 SAFEGUARDING EXCAVATIONS

DB Entity shall provide safeguards and protection around and in the vicinity of excavations necessary to prevent and avoid the occurrence of damage, loss or injury to property and Persons resulting from such excavations.

9.13 PROTECTION AND RESTORATION OF PROPERTY AND LANDSCAPE

9.13.1 Public and private property, including that of the Railroads, shall be preserved and protected at all times at DB Entity's expense. Land monuments and property markers shall not be moved, disturbed or damaged until DB Entity's registered land surveyor has witnessed or referenced their location. Except as otherwise provided in the Technical Provisions, DB Entity shall preserve and protect all natural surroundings, roadside growth, fences, and existing structures.

9.13.2 DB Entity shall be responsible for damage or injury to public or private property resulting from any act, omission, neglect or misconduct in the method of executing the Work, defective Work or materials, or nonperformance of the requirements of the Contract Documents.



9.13.3 DB Entity shall restore any damaged or injured property to a condition similar or equal to that existing before the damage or injury occurred. DB Entity shall bear all costs of repairing, restoring, rebuilding or making good such damage or injury.

9.14 USE OF EXPLOSIVES

DB Entity is prohibited from using explosives in the performance of the Work and explosives shall not be brought within the Site.

9.15 HISTORIC OR ARCHEOLOGICAL RESOURCES

9.15.1 In the event that previously unidentified historic or archeological resources are discovered and which may be affected by the Project, DB Entity shall promptly notify the MBTA. In the event of the discovery of archeological remains during construction, DB Entity shall ensure that construction activity shall be immediately halted and the MBTA shall be notified and provided with sufficient opportunity to make notification to the proper historic preservation agencies and to develop a treatment plan for the Site.

9.15.2 If human remains are encountered, DB Entity shall ensure that construction activity shall be immediately halted and that the MBTA shall be notified immediately. DB Entity and all construction personnel shall be guided by the *Policy Statement Regarding Treatment of Burial Sites, Human Remains and Funerary Objects* issued by the Advisory Council for Historic Preservation in February 2007, and the procedure under Mass. Gen. Laws, ch. 38, § 6; ch. 9, § 27C; and ch. 7, § 38A will be implemented.

9.15.3 The MBTA shall have the right to require DB Entity to recommence Work in the location at any time, even though an investigation may still be ongoing. DB Entity shall promptly recommence Work in the area upon receipt of notification from the MBTA to do so.

9.16 INSPECTION AND TESTING

9.16.1 As part of the MBTA's oversight role, all materials and each part or detail of the Work shall be subject to inspection and testing by the MBTA at hold and notification points established by DB Entity and agreed to by the MBTA in the accepted DB Entity Quality Management Plan ("QMP"). DB Entity shall notify the MBTA in writing seven (7) Days before the scheduled commencement of each such hold and notification. DB Entity shall cooperate with the MBTA in the inspection and testing of the Project.

9.16.2 DB Entity shall perform whatever inspection, sampling and testing DB Entity deems appropriate in order to comply with its obligations under the Contract Documents, in accordance with its QMP. At all points in performance of the Work at which specific inspections, acceptances or approvals by the MBTA are required by the Contract Documents and the DB Entity QMP, DB Entity shall not proceed beyond that point until the MBTA has completed such inspection, acceptance or approval or waived in writing its right to inspect, accept or approve; provided however, that DB Entity may proceed with the Work at its own risk if the MBTA (a) fails to inspect within seven (7) Days of receiving notice from DB Entity that the Work is ready and available for inspection or (b) fails to reject within seven (7) Days of its inspection, unless the MBTA requires a longer time and so notifies DB Entity in writing.

Notwithstanding the foregoing, the MBTA reserves its right to inspect and reject Nonconforming Work at any time in accordance with the Contract Documents. Any testing and inspection conducted by the MBTA supplements, but in no way replaces, testing and inspection required of DB Entity.

9.16.3 At all times before Contract Final Acceptance, DB Entity shall remove or uncover such portions of the finished Work as directed by the MBTA. After examination by the MBTA, DB Entity shall restore the Work to the standard required by the Contract Documents. If the Work exposed or examined is not in conformance with the requirements of the Contract Documents, then uncovering, removing and restoring the Work and recovery of any delay to any Critical Path occasioned thereby shall be at DB Entity's sole expense. In the event that: (a) DB Entity provides seven (7) Days prior notice requesting the MBTA to inspect the Work; (b) the MBTA fails to so inspect; (c) the MBTA subsequently directs that DB Entity remove or uncover such portions of the Work; and (d) the Work is found to have been completed in accordance with the Contract Documents, then DB Entity shall be entitled to additional compensation and an adjustment to the Milestone Deadlines relating to the removal or uncovering in accordance with and subject to the requirements in Section 15. Any Work done or materials used without seven (7) Days prior notice to and opportunity for prior inspection by the MBTA may be ordered uncovered, removed or restored at DB Entity's sole expense, even if the Work proves acceptable to the MBTA after uncovering.

9.17 PLANT INSPECTION

9.17.1 The MBTA may inspect the production of material or the manufacture of products at the source of supply. DB Entity shall ensure that the MBTA shall have free entry at all reasonable times to such parts of the plant as concerns the manufacture or production of materials for the Project, as well as cooperation and assistance necessary to support the inspection.

9.17.2 Plant and other inspections by the MBTA shall in no way constitute acceptance of the elements being produced. Any deviations from approved shop drawings during fabrication shall require that revised drawings be submitted to DB Entity's Engineer of Record for approval. The fabricators shall not have the right to make any changes to the design without approved shop drawings from DB Entity's Engineer of Record.

9.18 NONCONFORMING WORK

9.18.1 Nonconforming Work is any Work that does not conform to the requirements of the Contract Documents. Subject to DB Entity's rights and remedies under Section 15, Nonconforming Work shall be removed and replaced so that all Work is in conformity with the requirements of the Contract Documents, and DB Entity shall promptly take all action necessary to prevent similar deficiencies from occurring in the future.

9.18.2 The fact that the MBTA may not have discovered the Nonconforming Work shall not constitute an acceptance of such Nonconforming Work. If DB Entity fails to correct, or to begin correction of, any Nonconforming Work within ten (10) Days of receipt of notice from the MBTA requesting correction, then the MBTA may cause the Nonconforming Work to be



remedied or removed and replaced and may deduct the cost of doing so from any moneys due or to become due to DB Entity and/or obtain reimbursement from DB Entity for such cost.

9.18.3 DB Entity shall be solely responsible for the costs of remedial actions to correct Nonconforming Work. DB Entity will not be entitled to any additional compensation or time extensions due to Nonconforming Work or the remedial actions required.

9.18.4 The MBTA may, at its sole discretion, accept Nonconforming Work without requiring it to be fully corrected. If the MBTA accepts Nonconforming Work in accordance with this Section 9.18.4, the MBTA shall be entitled to recover from DB Entity an equitable adjustment associated with its failure to perform the Work in accordance with the requirements of the Contract Documents. The MBTA shall deduct the amount of such equitable adjustment from any sums owed by the MBTA to the DB Entity pursuant to this DB Contract. MBTA's acceptance of Nonconforming Work shall be conditioned upon DB Entity's payment of such amounts owing to the MBTA under this Section 9.18.4 for the applicable Nonconforming Work.

9.19 OWNERSHIP OF INCORPORATED MATERIALS

All material incorporated into the Work shall become the sole property of the MBTA but this shall not be construed as relieving DB Entity from the sole responsibility for all material and Work under the Contract Documents or for the restoration of any damaged Work or as waiving the right of the MBTA to require the fulfillment of all the terms of the Contract Documents.

9.20 ADJACENT CONTRACTS

9.20.1 Work by other contractors is anticipated to be in progress near, adjacent to or within the Site during progress of the Work, including work being performed by the Railroads, MBTA's separate contractors, developers, property owners and Utility Owners. Such other contractors and/or contracts include those identified in Exhibit 1E. DB Entity shall coordinate Work with all design and construction efforts for adjacent work (whether or not identified in Exhibit 1E), and work with and monitor such adjacent work, whether performed by the MBTA, its contractors, or another Governmental Entity, community groups, landowners, Utility Owners, Utility Owner's consultants and contractors, resource agencies, environmental groups, or any other Person. DB Entity shall be aware of the impact all such work may have on the Project, and account for all such impacts in planning and performing the Work.

9.20.2 Subject to DB Entity's rights and remedies under Section 15, the MBTA shall have no liability, financial or otherwise, for any loss experienced because of the presence or operations of other contractors working near, adjacent to or within Site.

9.21 COMMUNITY COORDINATION AND REQUIREMENTS

9.21.1 DB Entity shall establish and maintain a continuing liaison with Persons residing or doing business in the vicinity of the Site, for the purpose of minimizing inconveniences resulting from construction, and shall appoint a representative, acceptable to the MBTA, for community relations. The representative shall have the authority to act on behalf of DB Entity directly, or through DB Entity's Construction Manager, regarding all valid requests or complaints. DB Entity shall furnish information to the MBTA as to the status or disposition of



requests and complaints no later than 2 Days from the receipt of such requests or complaints. The name and telephone number of DB Entity's community relations representative shall be furnished to those Persons in the community who might reasonably be expected to be affected by the Work. DB Entity shall establish, make known and maintain a hot line, website and e-mail address where community issues will be recorded, and responded to.

9.21.2 DB Entity shall attend and participate in coordination meetings with the City of Somerville, City of Medford, City of Cambridge, MassDOT, the MBTA and other contractors working within Somerville, Medford and/or Cambridge in accordance with the Technical Provisions. DB Entity shall not schedule any activities that will impede or conflict with community festivals or events in the vicinity of the Work.

9.21.3 No construction equipment shall be left after work hours on any City of Somerville, City of Medford or City of Cambridge streets. All requested roadway lane closures, traffic management, and utility and street opening permits are subject to the prior approval and coordination with the City of Somerville, City of Medford and/or City of Cambridge.

SECTION 10. CIVIL RIGHTS REQUIREMENTS

10.1 DISADVANTAGED BUSINESS ENTERPRISE POLICY

10.1.1 As a condition of receiving federal financial assistance, the MBTA has established a Disadvantaged Business Enterprise ("DBE") program in accordance with 49 Code of Federal Regulation Part 26 of the U.S. Department of Transportation ("USDOT"). The DBE program promotes business opportunities for firms owned by disadvantaged individuals and which are certified as DBEs through the Commonwealth of Massachusetts Supplier Diversity Office ("SDO"). The objective of the DBE program is to support equal access to MBTA contracting opportunities for DBE firms to compete for awards and procurements as contractors, subcontractors, suppliers and providers of goods and services.

10.1.2 DB Entity shall fully comply with the requirements of MBTA's Disadvantaged Business Enterprise Participation Provision contained in Exhibit 1F and 49 CFR Part 26.

10.1.3 DB Entity has provided a DBE Plan that demonstrates the methods by which DB Entity will meet all DBE requirements, including the Project's DBE goals of 7% design and 14% construction and compliance with the overall DBE program requirements set forth in 49 CFR Part 26 and the MBTA DBE Program. Starting six months after the Effective Date and every six months thereafter, DB Entity shall submit an updated DBE Plan to the MBTA reflecting the status of DB Entity's progress in achieving the DBE goals and complying with the DBE program requirements. During the term of this DB Contract, DB Entity may propose changes to the DBE Plan for the MBTA's review and approval. Within thirty (30) Days after receiving such proposed changes from DB Entity, the MBTA shall notify DB Entity whether such changes are approved. Upon approval by the MBTA, DB Entity shall perform the Work and comply with the revised DBE Plan.

10.1.4 DB Entity shall submit to the MBTA monthly DBE utilization reports in the format and method required by the MBTA.

10.1.5 DB Entity shall maintain consistent and open communication with the Office of Diversity and Civil Rights and provide timely submission of monthly or other reports and updates regarding full implementation of the DBE Plan, including detailing all subcontracting and procurement efforts.

10.1.6 Once work has been committed to a DBE, any substitution or termination of DBEs must comply with the requirements as outlined in the MBTA DBE Program and 49 CFR Part 26.53.

10.2 EQUAL EMPLOYMENT OPPORTUNITY (EEO) AND EEO CONTRACT COMPLIANCE PLAN

10.2.1 During the term of this DB Contract, DB Entity shall strive to maintain a Minority Construction Workforce Utilization ("MCWU") goal of 15.3% and a Female Construction Workforce Utilization ("FCWU") goal of 6.9%, determined as the ratio of minority/female employee man hours to total man hours for each job category on the Project, including bricklayers, carpenters, cement masons, electricians, ironworkers, operating engineers, and "the classes of work" enumerated in Mass Gen. Laws, Ch. 149, § 44F.

10.2.2 Equal employment opportunity ("EEO") requirements not to discriminate and to take affirmative action to assure equal opportunity as set forth under laws, executive orders, rules, regulations (28 CFR 35, 29 CFR 1630, 29 CFR 1625-1627, 41 CFR 60 and 49 CFR 27) and orders of the Secretary of Labor as modified by the provisions prescribed herein, and imposed pursuant to 23 U.S.C. § 140 shall constitute the EEO and specific affirmative action standards applicable to DB Entity's project activities under this DB Contract. The provisions of the Americans with Disabilities Act of 1990 (42 U.S.C. § 12101 et seq.) set forth under 28 CFR 35 and 29 CFR 1630 are incorporated by reference in this DB Contract. In the performance of this DB Contract, DB Entity agrees to comply with the following minimum specific requirement activities of EEO:

- (a) DB Entity shall work with the MBTA and the Federal Government to ensure that it has made every good faith effort to provide equal opportunity with respect to all of its terms and conditions of employment and in their review of activities under this DB Contract.
- (b) DB Entity shall accept as its operating policy the following statement: "It is the policy of this Company to assure that applicants are employed, and that employees are treated during employment, without regard to their race, religion, sex, color, national origin, age or disability. Such action shall include: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship, pre-apprenticeship, and/or on-the job training."
- (c) DB Entity shall designate and make known to the MBTA an EEO officer who will have the responsibility for and must be capable of effectively

administering and promoting an active EEO program and who must be assigned adequate authority and responsibility to do so.

- (d) All members of DB Entity's staff who are authorized to hire, supervise, promote, and discharge employees, or who recommend such action, or who are substantially involved in such action, will be made fully cognizant of, and will implement, the DB Entity's EEO policy and contractual responsibilities to provide EEO in each grade and classification of employment. To ensure that the above agreement will be met, the following actions will be taken as a minimum:
- i. Periodic meetings of supervisory and personnel office employees will be conducted before the start of work and then not less often than once every six months, at which time the DB Entity's EEO policy and its implementation will be reviewed and explained. The meetings will be conducted by the EEO officer.
 - ii. All new supervisory or personnel office employees will be given a thorough indoctrination by the EEO officer, covering all major aspects of the DB Entity's obligations within thirty (30) Days following their reporting for duty with DB Entity.
 - iii. All personnel who are engaged in direct recruitment for the Project will be instructed by the EEO Officer in DB Entity's procedures for locating and hiring minorities and women.
 - iv. Notices and posters setting forth DB Entity's EEO policy will be placed in areas readily accessible to employees, applicants for employment and potential employees.
 - v. DB Entity's EEO policy and the procedures to implement such policy will be brought to the attention of employees by means of meetings, employee handbooks, or other appropriate means.
- (e) When advertising for employees, DB Entity shall include in all advertisements for employees the notation: "An Equal Opportunity Employer." All such advertisements will be placed in publications having a large circulation among minorities and women in the area from which the Project work force would normally be derived. Further, DB Entity shall comply with the following with respect to recruitment:
- i. DB Entity will, unless precluded by a valid bargaining agreement, conduct systematic and direct recruitment through public and private employee referral sources likely to yield qualified minorities and women. To meet this requirement, DB Entity will identify sources of potential minority group employees, and establish with such identified sources procedures whereby minority and women applicants may be referred to DB Entity for employment consideration.



- ii In the event DB Entity has a valid bargaining agreement providing for exclusive hiring hall referrals, DB Entity is expected to observe the provisions of that agreement to the extent that the system meets the DB Entity's compliance with EEO contract provisions. Where implementation of such an agreement has the effect of discriminating against minorities or women, or obligates DB Entity to do the same, such implementation violates federal nondiscrimination provisions.
 - iii. DB Entity will encourage its present employees to refer minorities and women as applicants for employment. Information and procedures with regard to referring such applicants will be discussed with employees.
- (f) Wages, working conditions, and employee benefits shall be established and administered, and personnel actions of every type, including hiring, upgrading, promotion, transfer, demotion, layoff, and termination, shall be taken without regard to race, color, religion, sex, national origin, age or disability. The following procedures shall be followed:
- i. DB Entity will conduct periodic inspections of the Site to insure that working conditions and employee facilities do not indicate discriminatory treatment of Site personnel.
 - ii. DB Entity will periodically evaluate the spread of wages paid within each classification to determine any evidence of discriminatory wage practices.
 - iii. DB Entity will periodically review selected personnel actions in depth to determine whether there is evidence of discrimination. Where evidence is found, DB Entity will promptly take corrective action. If the review indicates that the discrimination may extend beyond the actions reviewed, such corrective action shall include all affected persons.
 - iv. DB Entity will promptly investigate all complaints of alleged discrimination made to DB Entity in connection with its obligations under this DB Contract, will attempt to resolve such complaints, and will take appropriate corrective action within a reasonable time. If the investigation indicates that the discrimination may affect persons other than the complainant, such corrective action shall include such other persons. Upon completion of each investigation, DB Entity will inform every complainant of all of their avenues of appeal.
- (g) DB Entity shall comply with the following provisions with respect to training and promotion:
- i. DB Entity will assist in locating, qualifying, and increasing the skills of minorities and women who are applicants for employment or current employees. Such efforts should be aimed at developing full journey level status employees in the type of trade or job classification involved.



- ii. Consistent with DB Entity's work force requirements and as permissible under federal and Commonwealth Laws, DB Entity shall make full use of training programs (i.e., apprenticeship, and on-the-job training programs for the geographical area of contract performance).
 - iii. DB Entity will advise employees and applicants for employment of available training programs and entrance requirements for each.
 - iv. DB Entity will periodically review the training and promotion potential of employees who are minorities and women and will encourage eligible employees to apply for such training and promotion.
- (h) If DB Entity relies in whole or in part upon unions as a source of employees, DB Entity will use good faith efforts to obtain the cooperation of such unions to increase opportunities for minorities and women. Actions by DB Entity, either directly or through a contractor's association acting as agent, will include the procedures set forth below:
- i. DB Entity will use good faith efforts to develop, in cooperation with the unions, joint training programs aimed toward qualifying more minorities and women for membership in the unions and increasing the skills of minorities and women so that they may qualify for higher paying employment.
 - ii. DB Entity will use good faith efforts to incorporate an EEO clause into each union agreement to the end that such union will be contractually bound to refer applicants without regard to their race, color, religion, sex, national origin, age or disability.
 - iii. DB Entity is to obtain information as to the referral practices and policies of the labor union, except that to the extent such information is within the exclusive possession of the labor union and such labor union refuses to furnish such information to DB Entity, DB Entity shall so certify to the MBTA and shall set forth what efforts have been made to obtain such information.
 - iv. In the event the union is unable to provide DB Entity with a reasonable flow of referrals within the time limit set forth in the collective bargaining agreement, DB Entity will, through independent recruitment efforts, fill the employment vacancies without regard to race, color, religion, sex, national origin, age or disability; making full efforts to obtain qualified and/or qualifiable minorities and women. The failure of a union to provide sufficient referrals (even though it is obligated to provide exclusive referrals under the terms of a collective bargaining agreement) does not relieve DB Entity from the requirements of this Section 10.2.2(h). In the event the union referral practice prevents DB Entity from meeting



the obligations pursuant to Executive Order 11246, as amended, and this Section 10.2.2, DB Entity shall immediately notify the MBTA.

- (i) DB Entity must be familiar with the requirements for and comply with the Americans with Disabilities Act and all rules and regulations established there under. Employers must provide reasonable accommodation in all employment activities unless to do so would cause an undue hardship.

10.2.3 DB Entity has provided an EEO Contract Compliance Plan that describes and demonstrates the methods by which DB Entity will comply with applicable equal opportunity Laws and workforce utilization goals. During the term of this DB Contract, DB Entity may propose changes to the EEO Contract Compliance Plan for the MBTA's review and approval. Within thirty (30) Days after receiving such proposed changes from DB Entity, the MBTA shall notify DB Entity whether such changes are approved. Upon approval by the MBTA, DB Entity shall perform the Work and comply with the revised EEO Contract Compliance Plan.

10.2.4 DB Entity shall submit to the MBTA, in the format and method required by the MBTA: (a) monthly MCWU utilization reports and (b) monthly FCWU utilization reports.

10.3 TITLE VI OF THE CIVIL RIGHTS ACT OF 1964 COMPLIANCE PLAN

10.3.1 DB Entity shall comply with all nondiscrimination requirements imposed under federal and Commonwealth Laws in the performance of the Work. DB Entity shall follow and comply with the MBTA's Title VI Program among such elements as public meetings, response to complaints, compliance monitoring and reporting and support for required analyses, all in a manner consistent with good civil rights practice.

10.3.2 DB Entity shall comply with the applicable federal regulations and FTA Circulars relative to non-discrimination in federally-assisted programs of the U.S. Department of Transportation, Federal Transit Administration, as they may be amended from time to time, which are herein incorporated by reference and made a part of this DB Contract.

10.3.3 DB Entity, with regard to the Work, will not discriminate on the grounds of race, color, national origin (including limited English proficiency), age, sex, disability, or low-income status in the selection and retention of Subcontractors, including procurements of materials and leases of equipment. DB Entity will not participate directly or indirectly in the discrimination prohibited by Law, including employment practices when this DB Contract covers any activity, project, or program set forth in Appendix B of 49 CFR Part 21.

10.3.4 In all solicitations, either by competitive bidding, or negotiation made by DB Entity for the Work to be performed under a Subcontract, including procurements of materials, or leases of equipment, each potential Subcontractor or Supplier will be notified by DB Entity of DB Entity's obligations under this DB Contract and Law relative to nondiscrimination on the grounds of race, color, national origin (including limited English proficiency), age, sex, disability, or low-income status.

10.3.5 DB Entity will provide all information and reports required by Law, and will permit access to its books, records, accounts, other sources of information, and its facilities as

may be determined by the MBTA, MassDOT or FTA to be pertinent to ascertain compliance with such Law. Where any information required of DB Entity is in the exclusive possession of another who fails or refuses to furnish this information, DB Entity will so certify to the MBTA, MassDOT or FTA, as appropriate, and will set forth what efforts it has made to obtain the information.

10.3.6 In the event of DB Entity's noncompliance with the nondiscrimination provisions of this DB Contract, the MBTA shall exercise such remedies or impose such sanctions as it or FTA may determine to be appropriate, including, but not limited to, withholding payments to DB Entity until DB Entity complies with such nondiscrimination provisions.

10.3.7 DB Entity shall include the provisions of Section 10.3.1 through Section 10.3.6 in every Subcontract, including procurements of materials and leases of equipment, unless exempt by Law. DB Entity shall take action with respect to any Subcontract or procurement as the MBTA or FTA may direct as a means of enforcing such provisions including sanctions for noncompliance. If DB Entity becomes involved in, or is threatened with litigation by a Subcontractor, or Supplier because of such direction, DB Entity may request the MBTA to enter into any litigation to protect the interests of the MBTA. In addition, DB Entity may request the United States to enter into the litigation to protect the interests of the United States.

10.3.8 DB Entity has provided a Title VI Compliance Plan that describes and demonstrates the methods by which DB Entity will comply with Title VI of the Civil Rights Act of 1964 and applicable nondiscrimination Laws. During the term of this DB Contract, DB Entity may propose changes to the Title VI Compliance Plan for the MBTA's review and approval. Within thirty (30) Days after receiving such proposed changes from DB Entity, the MBTA shall notify DB Entity whether such changes are approved. Upon approval by the MBTA, DB Entity shall perform the Work and comply with the revised Title VI Compliance Plan.

SECTION 11. PERFORMANCE AND PAYMENT SECURITY

11.1 BONDS

DB Entity shall provide security for performance in the form of the bonds listed in this Section 11.1. DB Entity shall maintain these at all times during the term of this DB Contract.

11.1.1 Labor and Material Payment Bond

Concurrently with its execution of this DB Contract, DB Entity shall provide the MBTA with a Labor and Material Payment Bond in the amount of 100% of the Contract Price ("Payment Bond") in accordance with Mass. Gen. Laws, ch. 149, § 29.

11.1.2 Performance Bond

Concurrently with its execution of this DB Contract, DB Entity shall provide the MBTA with a performance bond, including a bond for liens, in the amount of 100% of the Contract Price ("Performance Bond").

11.1.3 Surety Financial Requirements

Any bond provided in accordance with this Section 11.1 shall be issued by a Surety that: (a) is licensed to do business in Massachusetts; (b) holds a certificate of authority as an acceptable surety under Department of the Treasury regulations; and (c) is rated in the top two categories by two nationally recognized rating agencies or at least A minus (A-) or better and Class VIII or better by A.M. Best Company.

11.2 GUARANTY

11.2.1 Fluor Corporation is the Guarantor of DB Entity's obligations under the Contract Documents. Guarantor shall furnish a guaranty ("Guaranty"), in the form attached as Exhibit II, assuring performance of DB Entity's obligations under the Contract Documents and shall be maintained in full force and effect throughout the duration of this DB Contract.

11.2.2 Commencing after the Effective Date, DB Entity shall report the Tangible Net Worth of DB Entity, its Major Participants, and Guarantors, if any, to the MBTA: (a) on a quarterly basis by means of certifications by the chief financial officers of the DB Entity, its Major Participants, and any Guarantors and (b) on an annual basis by means of audited financial statements of DB Entity, its Major Participants, and any Guarantors.

11.2.3 If at any time during the course of this DB Contract the total combined Tangible Net Worth of DB Entity, its Major Participants, and any Guarantors, is less than \$370,000,000, DB Entity shall provide one or more Guarantees from a Guarantor acceptable to the MBTA so that the combined Tangible Net Worth of the DB Entity, its Major Participants, and any Guarantors is at least \$370,000,000. Each such Guaranty shall be in the form attached as Exhibit II, together with appropriate evidence of authorization, execution, delivery, and validity thereof.

11.3 PERFORMANCE BY SURETY OR GUARANTOR

Performance by a Surety or a Guarantor of any of the obligations of DB Entity shall not relieve DB Entity of any of its obligations hereunder. Performance by any Guarantor shall not relieve a Surety of any of its obligations under its bonds. Performance by any Surety shall not relieve any Guarantor of its obligations under the Guaranty.

SECTION 12. INSURANCE

12.1 INSURANCE COVERAGES

DB Entity shall carry and maintain in effect, throughout the term of this DB Contract and extensions thereof, the following insurance coverages:

12.1.1 Workers' Compensation and Employers' Liability Insurance

12.1.1.1 DB Entity shall carry all insurance required under Mass. Gen. Laws, ch. 149, § 34A, including Workers' Compensation Insurance (which shall include Employer's Liability Insurance), as required under the provisions of Mass. Gen. Laws, ch. 152, covering all Work performed under the Contract Documents. Such insurance shall contain a waiver of all subrogation rights against the MBTA.

12.1.1.2 No cancellation or non-renewal of the insurance required under this Section 12.1.1, whether by the insurer or by DB Entity, shall be valid unless written notice thereof is given by the party proposing cancellation or non-renewal to the other party and to the MBTA at least ten (10) Days (for non-payment of premium) or sixty (60) Days (for any reason other than non-payment of premium) prior to the intended effective date thereof, which date shall be expressed in said notice. Notice of cancellation or non-renewal sent by the party proposing cancellation or non-renewal by overnight mail, with a signature of the addressee requested, shall be a sufficient notice. An affidavit of any officer, agent or employee of the insurer or of DB Entity, as the case may be, duly authorized for the purpose that such person has so sent such notice addressed as required by this Section 12.1.1.2 shall be prima facie evidence of the sending of such notice in accordance with this Section 12.1.1.2.

12.1.1.3 This Section 12.1.1 shall apply to the legal representative, trustee in bankruptcy, receiver, assignee, trustee and the successor in interest of DB Entity.

12.1.2 Commercial General Liability Insurance

DB Entity shall carry and maintain Commercial General Liability Insurance for personal injury, bodily injury and property damage, with limits not less than \$1,000,000 per occurrence and \$2,000,000 annual aggregate, covering all Work performed under the Contract Documents. Coverage shall be written on an occurrence basis. Such insurance shall include all operations of the insured, shall include contractual liability covering this DB Contract, and shall include the following:

- (a) All operations;
- (b) Completed operations coverage for a period of five (5) years after Contract Final Acceptance, and DB Entity shall provide to the MBTA certified copies of all applicable insurance policies evidencing such continued products/completed operations coverage after Contract Final Acceptance; and
- (c) Policy endorsement deleting any exclusion for work within 50 feet of rail.

12.1.3 Automobile Liability Insurance

DB Entity shall maintain Automobile Liability Insurance covering the use of all owned, non-owned, leased and hired vehicles with limits not less than \$1,000,000 combined single limit covering all Work performed under the Contract Documents. Coverage shall be written on an occurrence basis.

12.1.4 Umbrella Excess Liability

DB Entity shall carry and maintain Umbrella Excess Liability Insurance with limits not less than \$25,000,000 per occurrence and in the aggregate, covering all Work and services performed under the Contract Documents. This Umbrella Excess Liability Insurance shall be over all Employers' Liability, Commercial General Liability and Automobile Liability coverages to be maintained by DB Entity pursuant to this Section 12.1. Coverage shall be written on an



occurrence basis, in accordance with the broadest commercially-available interpretation of an "occurrence," and must contain specific "broad as primary" or "follow-form" wording or specifically reference the terms, conditions and exclusions of the primary policies.

12.1.5 Builders' Risk Insurance

12.1.5.1 The MBTA shall provide and pay for "all risk" Builders' Risk Insurance on a loss limit, replacement cost basis protecting the respective interests of the MBTA and DB Entity and covering loss or damage for the full insurable portion of the Work. DB Entity shall not charge the MBTA any amounts for such Builders' Risk Insurance coverage. DB Entity will be named an additional insured, and DB Entity shall pay all deductibles or self-insured retentions applicable to any Builders' Risk Insurance claim.

12.1.5.2 Upon written request from DB Entity, the MBTA shall provide DB Entity with a copy of the Builders' Risk Insurance policy form, including policy endorsements and deductible schedule. If DB Entity requests in writing that insurance for risks other than those described herein or other special causes of loss be included in the Builders' Risk Insurance, the MBTA shall include such insurance to the extent it is reasonably available, and the cost thereof will be charged to DB Entity.

12.1.5.3 Any loss under the Builders' Risk Insurance policy shall be adjusted with the MBTA and DB Entity and made payable to the MBTA or as per written order of the MBTA. DB Entity shall pay its Subcontractors their respective shares of those insurance proceeds received by DB Entity, and shall require its Subcontractors to make payments of proceeds to lower-tiered Subcontractors.

12.1.6 DB Entity's Equipment Insurance

DB Entity shall purchase and maintain DB Entity's Equipment Coverage on an "all-risk" basis.

12.1.7 Project-Specific Contractors Pollution Liability Insurance

12.1.7.1 The MBTA shall provide Project-Specific Contractors Pollution Liability Insurance on an occurrence basis protecting the respective interests of the MBTA, DB Entity and all tiered Subcontractors for the Work performed. DB Entity shall not charge the MBTA any amounts for such Project-Specific Contractors Pollution Liability Insurance. DB Entity shall be listed as an additional insured under the Project-Specific Contractors Pollution Liability Insurance, and DB Entity shall pay all deductibles or self-insured retentions applicable to any claim under the Project-Specific Contractors Pollution Liability Insurance.

12.1.7.2 The Project-Specific Contractors Pollution Liability Insurance will provide for limits of \$10,000,000 per incident and \$10,000,000 in the aggregate, and a self-insured retention of \$250,000 per incident, with a policy term of four (4) years with five (5) years of completed operations coverage.

12.1.7.3 The Project-Specific Contractors Pollution Liability Insurance will include blanket non-owned disposal site coverage provided that the disposal site is in compliance with all



applicable federal and state regulatory Laws. The non-owned disposal site coverage shall be written on a claims-made basis. The Contractors Pollution Liability Insurance will also include transportation coverage.

12.1.7.4 Upon written request from DB Entity, the MBTA shall provide DB Entity with a copy of the Project-Specific Contractors Pollution Liability policy form, including policy endorsements and deductible schedule. If DB Entity requests in writing that insurance for risks other than those described in Section 12.1.7 or other special causes of loss be included in the Project-Specific Contractors Pollution Insurance, the MBTA shall include such insurance to the extent it is reasonably available, and the cost thereof will be charged to DB Entity.

12.1.7.5 Any Contractors Pollution Liability Insurance maintained by DB Entity or any tiered Subcontractors shall not contain any term, condition, exclusion or endorsement barring coverage because of the existence of the Project-Specific Contractors Pollution Liability Insurance maintained by the MBTA.

12.1.8 Professional Liability Insurance

12.1.8.1 DB Entity shall maintain, or require its Lead Designer to maintain, a project-specific Professional Liability Insurance policy ("Project-Specific Policy") providing coverage for Lead Designer and all design Subcontractors with limits not less than \$30,000,000 per claim and \$30,000,000 in the aggregate, protecting against any negligent act, error or omission arising out of the Work, including coverage for acts by others for whom Lead Designer or any design Subcontractors are legally responsible. The amount of any self-insured retentions or deductibles under the Project-Specific Policy is subject to review and approval by the MBTA. The Project-Specific Policy shall provide primary coverage. The MBTA shall be listed as an "Indemnified Party" on the Project-Specific Policy. DB Entity shall ensure that such Project-Specific Policy obligates the insurer issuing the Project-Specific Policy to notify the MBTA of any notice of cancellation, non-renewal, reduction in coverage or material change in the Project-Specific Policy in accordance with the time periods set forth in Section 12.2.2.

12.1.8.2 In addition to the Project-Specific Policy, DB Entity shall require its Lead Designer and all design Subcontractors to maintain Architect's and/or Engineer's Professional Liability Insurance with limits not less than the following: (a) Lead Designer: \$25,000,000 per claim and \$25,000,000 in the aggregate; (b) design Subcontractors providing soils, environmental and structural services: \$5,000,000 per claim and \$5,000,000 in the aggregate; and (c) all others design Subcontractors: \$2,000,000 per claim and \$2,000,000 in the aggregate. The Professional Liability Insurance described in this Section 12.1.8.2 shall protect against any negligent act, error or omission arising out of the Work, and shall include coverage for acts by others for whom Lead Designer or any design Subcontractor are legally responsible. All such Professional Liability Insurance shall be excess to the Project-Specific Policy and shall not contain any term, condition, exclusion or endorsement barring coverage because of the existence of the Project-Specific Policy.

12.1.8.3 All Professional Liability Insurance policies described in this Section 12.1.8 shall have a retroactive date so as to cover all professional services performed in connection with the Project prior to the Effective Date, shall be maintained in full force and effect until

completion of the Work, and shall have a total duration of ten (10) years, including any extended reporting period.

12.1.8.4 All Professional Liability Insurance described in this Section 12.1.8 shall support the indemnification requirements set forth in this DB Contract and shall specifically include, but not be limited to, coverage for: (a) boundary surveys; (b) subsurface investigations; (c) soil testing; (d) quantity surveys; (e) bridge Work; (f) tunnel Work when applicable; and (g) dam Work when applicable.

12.1.9 Contractors Protective Professional Indemnity Insurance

DB Entity shall maintain Contractors Protective Professional Indemnity ("CPPI") Insurance with limits not less than \$20,000,000 per claim and \$20,000,000 in the aggregate, protecting against any negligent act, error or omission arising out of the Work performed by DB Entity, including coverage for acts by others for whom DB Entity is legally responsible. The CPPI Insurance shall also include: (a) contractors professional liability insurance providing coverage for DB Entity; and (b) rectification/mitigation coverage. The CPPI Insurance policy shall have a retroactive date no later than the commencement of any Work and shall remain in effect for a total duration of ten (10) years.

12.1.10 Valuable Papers and Records Insurance

To the extent the MBTA does not provide and pay for valuable papers and records insurance as part of the Builders' Risk Insurance, DB Entity shall provide valuable papers insurance with a limit of not less than \$500,000 for each loss. Such insurance shall assure the restoration of any plans, drawings, computations, field notes or other similar data relating to the Work covered by the Contract Documents in the event of loss or destruction until all data is turned over to the MBTA.

12.1.11 Railroad Protective Insurance

12.1.11.1 DB Entity shall furnish, with respect to the operations of DB Entity or any of DB Entity's Subcontractors performing within the Railroad right-of-way, broad form Railroad Protective Liability Insurance covering all Work performed under the Contract Documents in the amount of not less than \$5,000,000 per occurrence, \$10,000,000 aggregate combined bodily injury and property damage.

12.1.11.2 The insurance shall be written on an occurrence basis. The MBTA and the applicable Railroads shall be named insureds on the insurance.

12.1.11.3 DB Entity shall furnish to the MBTA and Railroads a signed original of the policy for Railroad Protective Liability prior to entry upon the Railroad right-of-way. All certificates shall be endorsed to provide 30 Days' notice to each named insured by the insurance company before any change or cancellation of the policies.

12.1.11.4 The required Railroad Protective Insurance provided herein must be in the form commonly referred to as the RMIA ISO RPL Form. Original policies and certificates shall be made out to the MBTA and applicable Railroads and mailed to:

MBTA:

Treasurer
Massachusetts Bay Transportation Authority
10 Park Plaza
Boston, MA 02116
Tel. (617) 222-5755

Director of Contract Administration
Massachusetts Bay Transportation Authority
100 Summer Street, 12th Floor
Boston, MA 02110
Tel. (617) 222-3135

COMMUTER RAIL OPERATOR:

KEOLIS COMMUTER RAIL SERVICES

General Counsel
Keolis Commuter Services, LLC
470 Atlantic Avenue
Boston, MA 02210
Tel. (617) 849-7971

AMTRAK:

General Superintendent
230 Congress Street
Boston, MA 02110
Tel. (617) 654-2020

PAN AM RAILWAYS, INC.:

Pan Am Railways
1700 Iron Horse Park
North Billerica, MA 01862
Attn: V.P. Transportation
Tel. (978) 663-1131

CSX TRANSPORTATION:

CSX Transportation, Inc.
500 Water Street C-907
Jacksonville, FL 32202
Attn: CSX Corridor Occupancy Services Group



12.2 GENERAL REQUIREMENTS

12.2.1 The required insurance coverages hereinbefore specified shall be placed with insurance companies licensed or approved by the Commonwealth of Massachusetts Division of Insurance to do business in the Commonwealth of Massachusetts and having an A.M. Best's financial strength rating of A- or better.

12.2.2 Any insurance required to be maintained by DB Entity pursuant to Section 12.1 shall be placed and in full force and effect before the Work is commenced and be kept in full force and effect throughout the term of this DB Contract. All such insurance shall require that the MBTA be given at least sixty (60) Days advance written notice in the event of any cancellation, non-renewal, reduction in coverage or material change, except that ten (10) Days advance written notice shall be so required for cancellation for non-payment of premium. Any such notice shall be provided to the MBTA by overnight mail, with a signature of the addressee requested.

12.2.3 DB Entity and all Subcontractors shall name the MBTA as an additional insured under the Commercial General Liability, Automobile Liability, and Umbrella Excess Liability Insurance policies identified in Section 12.1. DB Entity and all Subcontractors shall also name the following Third Parties as additional insureds under the Commercial General Liability, Automobile Liability and Umbrella Excess Liability policies identified in Section 12.1 by having each such Person specifically identified by name in a separate additional insured endorsement: (a) DW NP Property, LLC, DW NP Q, R, V Property, LLC, and their respective lenders, members, managers, owners, directors, officers, employees, agents, affiliates, successors and assigns; (b) Atlantic-Somerville Realty, LLC and Atlantic Management Corporation; (c) Anthony F. Martignetti; (d) UniFirst Corporation; (e) North Point Apartments Limited Partnership and North Point II Apartment LLC; and (f) any other Third Party as may be later designated by the MBTA. With respect to Commercial General Liability Insurance only, all such policies shall contain additional insured endorsement forms CG 20 10 11 85, CG 20 10 10 01, CG 20 37 10 01, or their substantial equivalents so that the policies provide additional insured coverage for (i) both ongoing and completed operations; and (ii) liability "arising out of" the Work.

12.2.4 All such required insurance shall not contain any exclusions for acts of terrorism, and shall fully cover any acts of terrorism, irrespective of whether such acts of terrorism are caused by domestic or foreign terrorists, and irrespective of whether such acts of terrorism are certified or non-certified by the Secretary of the Treasury, in concurrence with the Secretary of State and the Attorney General of the United States, to be an act of terrorism pursuant to the federal Terrorism Risk Insurance Act of 2002.

12.2.5 Except with respect to the types of insurance described in Section 12.1.8 (but only to the extent that the Subcontractor does not provide professional services), Section 12.1.9, Section 12.1.10, and Section 12.1.11 and with respect to the limits of insurance policies described in Section 12.1.4 and Section 12.1.8.2, all insurance as is required of DB Entity shall also be provided by or on behalf of all Subcontractors to cover their operations performed. DB Entity shall ensure that no modifications, deviations or omissions to such insurance occur that are not in compliance with these requirements. DB Entity shall require in all Subcontracts that

all Subcontractors comply with the insurance and notice requirements of this Section 12. DB Entity assumes all liability for any Subcontractor's failure to comply with the insurance provisions of this Section 12.

12.2.6 Prior to the commencement of any Work under this DB Contract, DB Entity shall furnish to the MBTA certified copies of all insurance policies intended to meet the requirements of Section 12.

12.2.7 DB Entity waives all rights against the MBTA and its agents, officers, directors and employees for the recovery of damages to the extent such damages are covered by the insurance described in this Section 12.

12.2.8 If any of the insurance as is required of DB Entity is cancelled because DB Entity failed to pay premiums or any part thereof, or becomes unavailable to DB Entity because of insurer insolvency or for any other reason, the MBTA shall have the right, but not the duty, to pay such premiums to the applicable insurer(s), or to obtain such coverage from other insurers and to deduct such payment from any sums that may be due or become due to DB Entity, or to seek reimbursement for said payments from DB Entity, which sums shall be due and payable immediately upon receipt by DB Entity from the MBTA.

12.2.9 Nothing contained in this Section 12 shall limit DB Entity's liability (or that of its Subcontractors) or the availability of its insurance for damage or injury, including death, or any other claim which arises out of or relates to any DB Entity actions, omissions or obligations (or that of any of its Subcontractors) under this DB Contract. The MBTA shall not be deemed to have assessed the entire risk that may be applicable to DB Entity or its Subcontractors under this DB Contract, and the insurance requirements in no way limit DB Entity's obligations to perform the Work, including performing all indemnification obligations under this DB Contract. DB Entity is not relieved of any liability or obligations assumed under this DB Contract by reason of its failure to obtain or maintain insurance as required by this Section 12.

12.2.10 All Commercial General Liability, Automobile Liability and Umbrella Excess Liability Insurance to be maintained by DB Entity and any Subcontractor shall be primary to and non-contributory with any insurance carried by the MBTA and by any Third Party identified in or later designated by the MBTA pursuant to Section 12.2.3.

12.2.11 No Commercial General Liability, Automobile Liability or Umbrella Excess Liability Insurance to be maintained by DB Entity pursuant to this Section 12 shall contain (a) any insured-versus-insured, cross-liability or cross-claim exclusion or endorsement barring coverage for claims by the MBTA against DB Entity or any of DB Entity's Subcontractors; or (b) any exclusion or endorsement barring claims arising out of work performed within 50 feet of a Railroad.

12.2.12 DB Entity shall pay all deductibles and self-insured retentions applicable to any claims under any of the insurance coverages DB Entity is required to maintain pursuant to this Section 12. In no event shall the MBTA be required to pay any deductibles or self-insured retentions on any claim asserted under any insurance maintained by DB Entity or any Subcontractor.

12.2.13 Except as provided in Section 12.1.8.2 above, all insurance policies required to be maintained by DB Entity must be project-specific and all such insurance policy limits may be established, as applicable, through coverages afforded through the primary coverage itself or through a combination of umbrella or excess policies that may be used to achieve the required policy limit. Any such insurance shall include, for policies with applicable aggregate limits, provisions stating that any such aggregate limit(s) shall apply on a per project basis.

12.2.14 Except as to the Professional Liability Insurance described in Section 12.1.8, no primary or umbrella liability insurance to be maintained by DB Entity shall provide that defense costs or attorney's fees erode policy limits.

12.3 WAIVER OF SUBROGATION

All policies of insurance maintained by DB Entity or any Subcontractor must be endorsed waiving any rights of subrogation held by DB Entity, any Subcontractor or their respective insurers against the MBTA or the MBTA's agents, directors, officers and employees or any Third Party identified in or later designated by the MBTA pursuant to Section 12.2.3 to the extent such damages are covered under such policies, and evidence of such waiver must be furnished to the MBTA. The MBTA waives its and its insurers' subrogation rights against DB Entity or DB Entity's agents, directors, officers and employees to the extent such damages are covered by the insurance described in this Section 12. All Commercial General Liability, Automobile Liability and Umbrella Excess Liability policies maintained by DB Entity and its Subcontractors must be endorsed waiving subrogation against the Third Parties identified in or later designated by the MBTA pursuant to Section 12.2.3.

12.4 CERTIFICATES OF INSURANCE

12.4.1 Certificates of Insurance evidencing insurance under this Section 12 shall be delivered to the MBTA or DB Entity, as applicable, prior to the commencement of any Work, upon renewal or extension, and otherwise upon the MBTA's or DB Entity's request, as applicable throughout the term of this DB Contract. The applicable Party shall provide the requested Certificate of Insurance no later than seven (7) Days after receipt of the other Party's request.

12.4.2 DB Entity shall require its Subcontractors to furnish similar Certificates of Insurance, copies of which shall be filed with the MBTA. Failure of any Subcontractor or other Person to file such Certificates of Insurance shall not relieve such Person of its responsibility to carry and maintain such insurance. The MBTA shall have the right, but not the obligation, to prevent any such Person from entering the Site until such certificate has been filed and approved by the MBTA.

12.5 INSURANCE INDEMNIFICATION

The responsibilities imposed by the provisions of Section 23.1 relating to "indemnity" and "save harmless" shall be insured to limits of the policies of insurance specified in Section 12.1 above to the extent DB Entity's indemnity obligations under Section 23.1 are insurable under such policies of insurance.

12.6 OTHER INSURANCE PROVIDED BY DB ENTITY AND SUBCONTRACTOR

12.6.1 The insurance requirements set forth in this Section 12 are intended to afford broad coverage against relatively high limits of liability, but may not provide all the insurance needed or desired by DB Entity or any Subcontractor. Any insurance for limits of liability in excess of and greater than those specified, or other coverage which DB Entity or any Subcontractor may be required by Law to carry, or may need for its own protection, shall be at DB Entity's and/or the Subcontractor's own expense.

12.6.2 Any policy of insurance covering DB Entity or any Subcontractor for its owned or leased machinery, watercraft, vehicles, tools or equipment for physical loss or damage shall provide for waiver of subrogation rights in favor of the Indemnified Parties.

12.7 COMPLIANCE WITH REQUIREMENTS OF MBTA'S INSURANCE PROVIDER

DB Entity shall ensure that all designs for the Work comply with the requirements of the MBTA's property insurance provider, FM Global. DB Entity shall work with the MBTA to coordinate with the MBTA's risk manager to ensure such compliance.

12.8 INADEQUACY OR UNAVAILABILITY OF REQUIRED COVERAGES

12.8.1 The MBTA makes no representation that the limits of liability specified for any insurance policy to be carried pursuant to this DB Contract or approved variances therefrom are adequate to protect DB Entity against its undertakings under the Contract Documents, to the MBTA, or any other Person. No such limits of liability or approved variances therefrom shall preclude the MBTA from taking any actions as are available to it under the Contract Documents or otherwise at Law

12.8.2 If DB Entity demonstrates to the MBTA's reasonable satisfaction that it has used diligent efforts in the global insurance and reinsurance markets to maintain the insurance coverages it is required to provide under this Section 12, and if, despite such diligent efforts and through no fault of DB Entity, any of such coverages (or any of the required terms of such coverages, including insurance policy limits) become unavailable during the performance of the Work on commercially reasonable terms, the MBTA shall grant DB Entity an interim written variance from such requirements under which DB Entity shall obtain and maintain or cause to be obtained and maintained alternative insurance packages and programs that provide risk coverage as comparable to that contemplated in this section as is commercially reasonable under then-existing insurance market conditions.

12.8.3 DB Entity shall not be excused from satisfying the insurance requirements of this Section 12 merely because premiums for such insurance are higher than anticipated. To establish that the required coverages (or required terms of such coverages, including insurance policy limits) are not commercially available, DB Entity shall bear the burden of proving either that: (a) the same is not available at all in the global insurance and reinsurance markets; or (b) the premiums for the same have so materially increased over those previously paid for the same coverage that no reasonable and prudent risk manager for a Person seeking to insure comparable risks would conclude that such increased premiums are justified by the risk protection afforded.



For the purpose of clause (b), the only increases in premiums that may be considered are those caused by changes in general market conditions in the insurance industry affecting insurance for similar projects, and DB Entity shall bear the burden of proving that premium increases are the result of such changes in general market conditions. For the avoidance of doubt, no increase in insurance premiums attributable to claims or loss experience on the Project or of any entity or affiliate related to DB Entity, whether under an insurance policy required by this section or in connection with any unrelated work or activity of any entity or affiliate related to DB Entity, shall be considered in determining whether required insurance is commercially unavailable.

12.8.4 DB Entity shall not charge MBTA for increased costs or any time extension to the Milestone Deadlines resulting from the unavailability of coverage and the requirement to provide acceptable alternatives. The MBTA shall be entitled to a reduction in the Price if it agrees to accept alternative policies providing less than equivalent coverage and if DB Entity is not required to self-insure for such risks, with the amount to be determined based on evidence of insurance premiums as of the Proposal Date.

SECTION 13. TITLE; RESPONSIBILITY FOR LOSS OR DAMAGE

13.1 TITLE

DB Entity warrants and guarantees that legal title to and ownership of the Work shall be free and clear of any and all liens, claims, security interests or other encumbrances when title thereto passes to the MBTA. Title to all Work shall pass to the MBTA on the earlier of the date: (a) payment for such Work has been made by the MBTA; (b) such Work is incorporated into the Project; or (c) this DB Contract is terminated pursuant to Section 17 or Section 18. DB Entity shall deliver to the MBTA such assignments, bills of sale, contracts or other documents as reasonably requested by the MBTA to evidence such transfer of title.

13.2 RESPONSIBILITY FOR LOSS OR DAMAGE

DB Entity shall bear the risk of loss or damage for the Work, whether on-Site or off-Site, and shall be responsible for maintenance and security of the Work until Contract Substantial Completion; provided, however, that DB Entity shall not be responsible for risk of loss, damage, maintenance and security of the applicable portion of the Work associated with Milestone 5, Milestone 4C and Milestone 3C after the MBTA determines that DB Entity has achieved the applicable Milestone pursuant to Section 21. Except for DB Entity's obligations under Section 22.3, DB Entity's responsibility for loss or damage to the applicable portion of the Work after achievement of Milestone 5, Milestone 4C, Milestone 3C and Contract Substantial Completion (as applicable) shall be limited to those losses or damages caused by DB Entity, Subcontractors, anyone employed directly or indirectly by any of them or anyone for whose acts any of them may be liable. Nothing in this Section 13.2 shall diminish or reduce DB Entity's obligations to complete the Work and achieve Final Acceptance in accordance with the Contract Documents.

SECTION 14. PAYMENT

14.1 CONTRACT PRICE

14.1.1 General

The "Contract Price" is the sum of (a) the GLX Lump Sum (which includes Mobilization); (b) the Schedule of Operations Fixed Price; (c) the Allowances; (d) the Owner Contingency; (e) the Additive Options Price; and (f) the Change Order Value which are further described as follows:

14.1.1.1 GLX Lump Sum: DB Entity shall be paid a lump sum amount ("GLX Lump Sum"), which is contained in the Price Proposal. The GLX Lump Sum includes Mobilization and all other costs for performing the Work that is not covered by Sections 14.1.1.2 through 14.1.1.6. Mobilization shall not exceed two percent (2%) of the GLX Lump Sum.

14.1.1.2 Schedule of Operations Fixed Price: A fixed price amount of \$720,000.00 ("Schedule of Operations Fixed Price") has been included in the Contract Price for the costs of all Project Schedule-related Work required by and performed in accordance with the Contract Documents, including computers, computer software, the planning and coordination with Utilities, training, schedule preparation and schedule submittals. The Schedule of Operations Fixed Price is subject to payment pursuant to Section 14.2.3.

14.1.1.3 Allowances: Allowances in the total amount of \$11,050,000 ("Allowances") have been provided for the payment of all services, personnel, labor, materials, and equipment necessary to perform the Allowance Items described in Section 14.1.2.

14.1.1.4 Owner Contingency: A contingency fund of \$127,500,000 ("Owner Contingency") has been established by the MBTA and is included in the Contract Price. The use of the Owner Contingency is at the sole discretion of the MBTA and is payable pursuant and subject to Section 14.2.6.

14.1.1.5 Additive Options Price: The total amount for the Additive Options is set forth in the Price Proposal ("Additive Options Price").

14.1.1.6 Change Order Value: Change Order Value is the amount of all approved Change Orders issued pursuant to Section 15 and funded by the Owner Contingency in accordance with Section 14.2.6.

14.1.2 Allowance Items

14.1.2.1 Traffic Officer Services Allowance Item: An allowance in the amount of \$3,250,000 ("Traffic Officer Services Allowance") has been established for the payment to DB Entity of the costs of police officer services necessary for the direction and control of vehicular traffic. The Traffic Officer Services Allowance shall be paid based on the hourly rates of such personnel performing the services.

14.1.2.2 Contaminated Groundwater (50 Tufts Street) Allowance Item. An allowance in the amount of \$2,000,000 ("Contaminated Groundwater (50 Tufts Street) Allowance") has been established for the payment of: (a) the direct costs of labor, materials, equipment and services for treating the groundwater contaminated in the areas located on Parcels MB-140, MB-141, MB-138, MB-145, MB-125, and MB-422 identified in Volume 2, Exhibit 2C by the Release of OHM that occurred prior to the Effective Date from the property located at 50 Tufts Street in Somerville, Massachusetts and (b) the direct costs incurred by DB Entity for operating,

maintaining and demobilizing a temporary groundwater treatment facility and testing of the contaminated and treated groundwater for the areas located on Parcels MB-140, MB-141, MB-138, and MB-145, MB-125, and MB-422 identified in Volume 2, Exhibit 2C in accordance with discharge permit requirements. The Contaminated Groundwater (50 Tufts Street) Allowance shall not be used to pay: (i) costs typically and customarily associated with dewatering, treatment and testing of uncontaminated groundwater, including supplying and operating a fractionation tank for solids removal; (ii) the costs associated with any changes to permanent structures and facilities; (iii) costs associated with any changes to DB Entity's means and methods, implemented because of the contaminated groundwater, and such costs shall be included in the GLX Lump Sum; or (iv) costs covered by insurance that is required to be maintained under the Contract Documents. The maximum duration of groundwater treatment pursuant to this Section 14.1.2.2 shall not exceed 300 consecutive Days and any costs incurred by DB Entity beyond such 300 consecutive Day period shall be at DB Entity's sole cost and expense and shall not be eligible for payment from the Contaminated Groundwater (50 Tufts Street) Allowance.

14.1.2.3 Contaminated Groundwater (Union Square Station) Allowance Item. An allowance in the amount of \$800,000 ("Contaminated Groundwater (Union Square Station) Allowance") has been established for the payment of: (a) the direct costs of labor, materials, equipment and services for treating the groundwater contaminated by the Release of OHM that occurred prior to the Effective Date at the Union Square Station location; (b) the direct costs associated with operating, maintaining and demobilizing a temporary groundwater treatment facility and testing of the contaminated and treated groundwater in accordance with discharge permit requirements during the construction of the Union Square Station; and (c) the direct costs associated with procuring, constructing and maintaining a groundwater oil separation and treatment facility, supplemental Licensed Site Professional services, testing of the contaminated groundwater prior to discharge to the municipal combined sewer system and the incremental increase in cost to remove and dispose of the oil contaminants to a licensed disposal/recycling facility. The Contaminated Groundwater (Union Station) Allowance shall not be used to pay : (i) costs typically and customarily associated with dewatering, treatment or testing of uncontaminated groundwater or (ii) costs covered by insurance that is required to be maintained under the Contract Documents, and such costs shall be included in the GLX Lump Sum. The maximum duration of groundwater treatment pursuant to this Section 14.1.2.3 shall not exceed 250 consecutive Days and any costs incurred by DB Entity beyond such 250 consecutive Day period shall be at DB Entity's sole cost and expense and shall not be eligible for payment from the Contaminated Groundwater (Union Square Station) Allowance.

14.1.2.4 Transportation and Disposal of Excavated Materials Allowance Item. An allowance in the amount of \$3,000,000 ("Transportation and Disposal of Excavated Materials Allowance") has been established for the payment of direct costs for the transportation and disposal of excavated materials in compliance with the Excavated Materials Management Plan that: (a) exceed the quantity set forth in Section 4.1 of the Technical Provisions for each applicable Soil Category Class B-1 through C-2; (b) meets all applicable criteria for disposal at an approved facility; and (c) cannot be reused at the Site. Measurement for payment of the Transportation and Disposal of Excavated Materials Allowance shall be based on tons of material actually disposed, as measured at the disposal facility by certified scale, and documented on the return manifest or certified weight slip and accompanied by appropriate bill of lading. Disposal of the material at a higher cost disposal facility than required to meet

applicable disposal criteria shall be eligible for payment only if: (i) DB Entity provides written notification to the MBTA that a lower cost disposal facility meeting the criteria is not available and (ii) MBTA approves the use of the higher cost disposal facility. The Transportation and Disposal of Excavated Materials Allowance shall not be used to pay the costs of excavation, stockpiling, characterization and testing of soils and other excavated materials (whether contaminated or not), coordination with disposal facilities for acceptance of the materials, or loading, and such costs shall be included in the GLX Lump Sum. DB Entity shall maintain, and provide to the MBTA upon request, records and documentation to track and substantiate the actual quantities excavated for each Soil Category Class, including quantities that are priced as part of the GLX Lump Sum.

14.1.2.5 Spare Parts and Equipment Allowance Item. An allowance in the amount of \$1,000,000 (“Spare Parts and Equipment Allowance”) has been established for the payment of the direct costs of spare parts, replacement materials, special tools and test equipment furnished by DB Entity pursuant to the process set forth in Volume 2, Exhibit 2I, Section 01710. The MBTA shall use the Spare Parts and Equipment Allowance to purchase those items from the list prepared by DB Entity pursuant to such process. The Spare Parts and Equipment Allowance shall not be used to pay for packaging, shipping, delivering or unloading the spare parts, replacement materials, special tools or test equipment, and such costs shall be included in the GLX Lump Sum or Additive Options Price (as applicable).

14.1.2.6 TAK Lighting Allowance Item. An allowance in the amount of \$1,000,000 (“TAK Lighting Allowance”) has been established for the payment of the direct costs (labor, material and equipment) for furnishing and installing the TAK lighting system pursuant to Volume 2, Section 11.5.4.18. The TAK Lighting Allowance shall not be used to pay for the design or indirect costs associated with the furnishing and installation of the TAK lighting system, and such costs shall be included in the GLX Lump Sum. The MBTA reserves the right to exclude all or part of the TAK lighting system from the Work. If the estimated cost for furnishing and installing the TAK lighting system exceeds the TAK Lighting Allowance, DB Entity shall work with the MBTA to prioritize the TAK lighting system elements such that the TAK Lighting System Allowance is not exceeded.

14.2 METHOD OF PAYMENT

14.2.1 General

14.2.1.1 Payment to DB Entity shall be made in accordance with DB Entity’s satisfactory completion (as evidenced by the MBTA’s written acceptance) of activities as contained in the Project Schedule and related administrative requirements. The Project Schedule shall be cost- and resource-loaded with a detailed breakdown of specific activities of the Work and shall ascribe a dollar value to each item, which breakdown shall be subject to acceptance by the MBTA.

14.2.1.2 Payment for the Work shall be based on percent complete of the Activities shown on the Project Schedule.

14.2.1.3 The MBTA may withhold payment of the specific Schedule Activity in the event that DB Entity: (a) fails to complete a required deliverable in accordance with the Contract Documents; (b) fails to complete any portion of the Work in compliance with the Contract Documents; or (c) has not achieved the stated completion percentage. Once (i) the nonconforming deliverable or Work is corrected to comply with the Contract Documents or (ii) DB Entity achieves the stated completion percentage, the MBTA shall release the applicable portion of the payment to DB Entity.

14.2.1.4 Payment of any current invoice or estimate, or any release of Retainage shall not: (a) constitute an acceptance of the Work; (b) prejudice or affect the obligation of DB Entity, at its own cost and expense, to repair, correct, renew or replace any defects and imperfections in the design or construction of, or in the strength of, or quality of materials used in or about the construction of the Work; or (c) relieve DB Entity from liability for damages due or attributable to any defects or imperfections in the design or construction of, or in the strength of, or quality of materials used in or about the construction of the Work and its appurtenances, which defects or imperfections shall have been discovered on or before the expiration of any warranty period. The MBTA shall be the sole judge of such defects, imperfections, or damages and DB Entity shall be liable to the MBTA for failure to correct the same as provided herein.

14.2.2 Delivery of Partial Payment Request and Certificate

14.2.2.1 On or about the fifth Business Day of each month, DB Entity shall deliver to the MBTA a draft payment request (the "Draft Partial Payment Request") in the form agreed to by the Parties. Within 5 Business Days thereafter, the MBTA shall meet with DB Entity regarding the form and content of the Draft Partial Payment Request and return comments on the Draft Partial Payment Request.

14.2.2.2 DB Entity shall deliver a corrected payment request with no additions or deletions other than those approved by the MBTA, together with any necessary certificates ("Partial Payment Request"), on a form of Partial Payment Request acceptable to the MBTA, along with the cost- and resource-loaded Baseline Schedule or Progress Schedule Submittal (as applicable). Each Partial Payment Request shall be executed by a designated representative of DB Entity appointed by DB Entity to have such authority in accordance with this DB Contract certifying the Partial Payment Request's accuracy. No Partial Payment Request shall be considered complete unless it: (a) describes the status of completion as it relates to the current accepted Project Schedule; (b) states the payments that are then due, calculated in accordance with the Project Schedule, as of the end of the prior month; (c) includes the required attachments and certificates thereto in a form approved by the MBTA; (d) in the case of amounts to be paid on a unit price basis, includes invoices, receipts or other evidence establishing the number of units delivered; and (e) in the case of amounts invoiced on a time and materials basis, includes all supporting documentation described in Section 15.5.2. The MBTA shall pay DB Entity undisputed amounts within the time specified in the Contract Documents after receipt of a complete Partial Payment Request.

14.2.2.3 With each Partial Payment Request, DB Entity shall submit the following additional information:

- (a) a Progress Schedule Submittal that is the basis for the Partial Payment Request, that includes the following:
 - i. activity ID;
 - ii. activity description;
 - iii. budgeted cost for each activity;
 - iv. value completed this period;
 - v. percentage completed this period;
 - vi. value completed to date;
 - vii. percentage completed to date;
 - viii. balance of budgeted cost per activity; and
- (b) separate information must be provided per DBE, MCWU, and FCWU Subcontractor, including:
 - i. budgeted cost
 - ii. value completed this period
 - iii. percentage completed this period
 - iv. value completed to date
 - v. percentage completed to date
 - vi. balance of value; and
- (c) other information reasonably required by the MBTA

Failure to provide such information with each Partial Payment Request may result in non-payment by the MBTA.

14.2.2.4 DB Entity shall certify in writing on forms approved by the MBTA that the Work for which payment is included in the Partial Payment Request has in fact been done.

14.2.2.5 DB Entity shall complete and deliver with each Partial Payment Request an executed Affidavit of Subcontractor Payment for each Subcontractor, in the form attached as Appendix No. 4 to Exhibit 1E, which has been signed by an authorized representative of DB Entity.

14.2.3 Payment for Schedule of Operations Fixed Price



14.2.3.1 The Schedule of Operations Fixed Price is to ensure compliance with the scheduling requirements of the Contract Documents and is intended to be an incentive payment to DB Entity for compliance with the scheduling requirements of the Contract Documents.

14.2.3.2 Five percent (5%) of the Schedule of Operations Fixed Price shall be eligible for payment upon the MBTA's acceptance of the Baseline Schedule and may be invoiced in the Partial Payment Request following such acceptance. Subject to Section 14.2.3.3, the remaining ninety-five percent (95%) of the Schedule of Operations Fixed Price shall be eligible for payment in equal monthly installments starting from the month after acceptance of the Baseline Schedule through Substantial Completion ("Monthly Schedule of Operations Payment").

14.2.3.3 Notwithstanding the provisions of this Section 14.2.3, failure to comply with the scheduling requirements of the Contract Documents may result in a non-payment of a Monthly Schedule of Operations Payment. Amounts of any previous Monthly Schedule of Operations Payment that are not paid due to failure to comply with the scheduling requirements of the Contract Documents shall not be eligible for payment in subsequent Partial Payment Requests.

14.2.4 Payment for Mobilization

DB Entity may submit a payment request for Mobilization following NTP. No other payments will be made until after the Baseline Schedule is accepted by the MBTA in accordance with the Contract Documents.

14.2.5 Payment for Allowance Items

14.2.5.1 Any payments for Allowance Items under this DB Contract are subject to the terms of this Section 14.2.5. Before DB Entity performs any Allowance Item, DB Entity shall submit an itemized written estimate for the Allowance Item to be performed to the MBTA for review and approval. If DB Entity self performs any portion of the Allowance Item, DB Entity shall include a written estimate of its costs to the MBTA for review and approval.

14.2.5.2 Payment for Allowance Items will be made as follows:

- (a) If DB Entity performs the Work for an Allowance Item, payment shall be made on a time and material basis in accordance Section 15.5.2.
- (b) If a Subcontractor performs the Work for an Allowance Item, payment shall be made based upon receipted invoices and signed receipts, without charges for any DB Entity markup such as overhead and profit.

14.2.5.3 The final payment for Allowance Items under this DB Contract shall be withheld until DB Entity has paid for all costs in connection with the Allowance Item (except for Allowance Items performed by DB Entity).

14.2.5.4 Each Allowance associated with an Allowance Item will be adjusted to the actual amount paid by DB Entity for the Allowance Item performed; provided, however, that the amount associated with each Allowance Item shall not be overrun. If the accepted payments under the applicable Allowance Item reach 75% of the Allowance and DB Entity anticipates that



known Work for the Allowance Item will exceed the Allowance, DB Entity shall notify the MBTA that additional quantities of the Allowance Item will be required, and submit a proposed cost to complete the Allowance Item in excess of the applicable Allowance amount. If the MBTA is in agreement, a Change Order will be issued to DB Entity for a not to exceed amount. No payment will be made for an Allowance Item after expenditure of 100% of the Allowance amount. After 100% of the Allowance associated with each Allowance Item has been expended, DB Entity will proceed on a time and materials basis as may be authorized and directed by the MBTA, until such time as a final lump sum can be negotiated for the extra work scope. Once agreement is reached, a Change Order will be issued in accordance with Section 15.

14.2.6 Payment from Owner Contingency

The MBTA has established an Owner Contingency, which may be used by the MBTA for the payment of Change Orders. Those costs payable from the Owner Contingency will be authorized only through execution of a Change Order in accordance with Section 15. Change Orders paid through the Owner Contingency shall reduce the Owner Contingency and shall not change the Contract Price. MBTA may, at its sole discretion, increase or decrease the Owner Contingency, and DB Entity shall have no right to any claim against the Owner Contingency.

14.2.7 Payment for Unincorporated Materials

14.2.7.1 Partial Payments Requests may seek payment for certain materials stored or on hand, but not incorporated in the Work, subject to the requirements of this Section 14.2.7.

14.2.7.2 Upon presentation to the MBTA by DB Entity of copies of paid invoices, advance payments may be made for acceptable reinforcing steel, structural steel, piles, culvert pipe, guard rail, track rails, precast prestressed concrete members, costly machinery items, and other similar nonperishable materials purchased exclusively for the Work and delivered on or in the approved storage places at the Site, but which materials are not considered as erected or complete in place under the items of the Contract Documents, and for which partial payment would not otherwise be made until such materials and items were erected or complete in place.

14.2.7.3 The amount to be included in the Partial Payment Request for such unincorporated materials will be the value of the materials as shown by the certified copies of paid invoices including transportation and handling costs. However, the MBTA reserves the right to limit payment for such materials when such payment is based upon a standard unit of measure. When payments are made on the basis of estimated quantities, payment for material stores or on-hand may be limited to an amount not to exceed the value of ninety percent of the estimated contract quantity.

14.2.7.4 Before any advance on unincorporated materials is made, the MBTA shall require, as security for the incorporation of the materials in the Work, documents from DB Entity transferring to the MBTA the absolute legal title to such materials. However, the transfer of title and the partial payment for such materials shall not in itself constitute acceptance of same nor void the right to reject material subsequently found unsatisfactory under the Contract Documents, nor in any way relieve DB Entity of its responsibility for satisfactorily furnishing and placing the material in the Work in accordance with the terms of the Contract Documents.



14.2.7.5 In the event any of such material subsequently becomes lost, stolen, impaired, or damaged, the monetary value of the lost, stolen, impaired, or damaged material as may have been paid for in a Partial Payment Request will be deducted from the next Partial Payment Request, and no further payment will be made therefor until such material has been satisfactorily replaced.

14.2.7.6 If it is impractical due to lack of area on the Site or other valid reason, DB Entity may request in writing permission from the MBTA to store materials off the Site and still have the materials paid for as materials on hand and the MBTA may approve payment; however, no advance payment for materials stored off the Site will be made until written approval of the MBTA has been given. Such request will state the reason for the request, the proposed storage location, and methods that will be employed to ensure that material is properly protected and insured and will be used exclusively for the Work.

14.2.8 Payment by the MBTA

14.2.8.1 Upon the receipt of the completed Partial Payment Request, the MBTA shall review the Partial Payment Request and all attachments and certificates thereto for conformity with the requirements of the Contract Documents and shall notify DB Entity within three (3) Business Days after receipt of the completed Partial Payment Request of: (a) the amount approved for payment; (b) the reasons for disapproval of any remaining invoiced amounts set forth in the Partial Payment Request and (c) any amounts that the MBTA intends to deduct or withhold pursuant to Section 14.2.10.

14.2.8.2 Following receipt of the completed Partial Payment Request by the MBTA, the MBTA shall process payment to DB Entity in the amount of the Partial Payment Request approved for payment, less any applicable Retainage and less any amounts which the MBTA is otherwise entitled to have withheld pursuant to the Contract Documents. The MBTA shall make such payment to DB Entity no later than thirty (30) Days after approval of the Partial Payment Request.

14.2.9 Retainage

14.2.9.1 Except as provided in Section 14.2.9.2, the MBTA shall withhold funds (the "Retainage") from each payment to DB Entity for the Work. The Retainage shall be equal to five percent (5%) of the amount due for all Work; provided that if, after fifty percent (50%) of the Work is complete, the MBTA may, at its sole discretion, cease withholding Retainage from each payment thereafter; provided further that: (a) the MBTA may resume withholding of funds in the amount of five percent (5%); and in addition (b) the MBTA shall deduct five percent (5%) of the value of all items that are planted in the ground until Contract Final Acceptance.

14.2.9.2 When the Work has achieved Contract Substantial Completion and after receipt of a completed Contract Substantial Completion Partial Payment Request, the MBTA shall release the Retainage, less one percent (1%) of the total of the Contract Price (excluding any unused Owner Contingency and unused Allowance) and less amounts that the MBTA is entitled to deduct in accordance with Section 14.2.10.

14.2.10 Deductions

14.2.10.1 In addition to Retainage and subject to the terms and conditions of the Contract Documents, the MBTA may deduct from each payment to DB Entity the following:

- (a) any damages or Liquidated Damages which have accrued as of the date of the payment;
- (b) any sums expended by the MBTA in performing any of DB Entity's obligations under the Contract Documents which DB Entity has failed to perform;
- (c) amounts for incomplete or disputed Work;
- (d) the amount owed for Nonconforming Work that the MBTA allows to remain in place;
- (e) the amount for which a demand for direct payment has been received from a Subcontractor by the MBTA; and
- (f) any other sums which the MBTA is entitled to recover from DB Entity under the terms of the Contract Documents.

14.2.10.2 The failure by the MBTA to deduct any of these sums from a payment shall not constitute a waiver of the MBTA's right to recover such sums or to deduct such funds from future progress payments.

14.2.11 Prompt Payment to Subcontractors

14.2.11.1 DB Entity is required to promptly pay Subcontractors under this DB Contract within ten (10) Business Days from the receipt of each payment DB Entity receives from the MBTA. Failure to comply with the requirements of this Section 14.2.11.1 may result in the withholding of payment to DB Entity until such time as all payments due under this Section 14.2.11.1 have been received by the Subcontractor(s). DB Entity further agrees to make payment in full, including retainage, to each Subcontractor no later than ten (10) Business Days after the Subcontractor has satisfactorily completed all of the work required under its Subcontract.

14.2.11.2 DB Entity shall, by appropriate contract with each Subcontractor, require each Subcontractor to adhere to the applicable provisions of the Contract Documents and to make payments to other Subcontractors in a similar manner.

14.2.11.3 If DB Entity determines the work of the Subcontractor to be unsatisfactory, it must notify the MBTA. Any delay or postponement of payment by DB Entity to its Subcontractor may take place only for good cause and with prior written approval from the MBTA.

14.2.11.4 The MBTA may withhold payments to DB Entity pending certified proof from DB Entity that all Subcontractors have been paid for their work in accordance with this Section 14.2.11.

14.2.11.5 In addition to any other remedies available against DB Entity, failure of DB Entity to comply with the requirements of this Section 14.2.11 shall be a DB Entity Default.

14.2.12 Claims Against DB Entity for Payment of Labor and Materials

14.2.12.1 Forthwith after DB Entity receives payment on account of a periodic estimate, DB Entity shall pay to each Subcontractor the amount paid for the labor performed and the materials furnished by that Subcontractor, less any amount specified in any court proceedings barring such payment and also less any amount claimed due from the Subcontractor by DB Entity.

14.2.12.2 Not later than the sixty-fifth (65th) Day after each Subcontractor substantially completes its work in accordance with its Subcontract, the entire balance due under the Subcontract, less amounts retained by the MBTA as the estimated cost of completing any incomplete and unsatisfactory items of the Work, shall be due the Subcontractor; and the MBTA shall pay that amount to DB Entity. DB Entity shall forthwith pay to the Subcontractor the full amount received from the MBTA, less any amount specified in any court proceedings barring such payment and also less any amount claimed due from the Subcontractor by DB Entity.

14.2.12.3 Each payment made by the MBTA to DB Entity pursuant to Section 14.2.12.1 and Section 14.2.12.2 for the labor performed and the materials furnished by a Subcontractor shall be made to DB Entity for the account of that Subcontractor; and the MBTA shall take reasonable steps to compel DB Entity to make each such payment to each such Subcontractor. If the MBTA has received a demand for direct payment from a Subcontractor for any amount that has already been included in a payment to DB Entity or which is to be included in a payment to DB Entity for payment to the Subcontractor as provided in Section 14.2.12.1 and Section 14.2.12.2, the MBTA shall act upon the demand as provided in this Section 14.2.12.

14.2.12.4 If, within seventy (70) Days after the Subcontractor has substantially completed its work, the Subcontractor has not received from DB Entity the balance due under the Subcontract including any amount due for extra labor and materials furnished to DB Entity, less any amount retained by the MBTA as the estimated cost of completing the incomplete and unsatisfactory items of the Work, the Subcontractor may demand direct payment of that balance from the MBTA. The demand shall be by a sworn statement delivered to or sent by certified mail to the MBTA, and a copy shall be delivered to or sent by certified mail to DB Entity at the same time. The demand shall contain a detailed breakdown of the balance due under the Subcontract and also a statement of the status of completion of the Subcontract work. Any demand made after substantial completion of the Subcontract work shall be valid even if delivered or mailed prior to the seventieth (70th) Day after the Subcontractor has substantially completed its work. Within ten (10) Days after the Subcontractor has delivered or so mailed the demand to the MBTA and delivered or so mailed a copy to DB Entity, DB Entity may reply to the demand. The reply shall be by a sworn statement delivered to or sent by certified mail to the MBTA and a copy shall be delivered to or sent by certified mail to the Subcontractor at the same time. The reply shall contain a detailed breakdown of the balance due under the Subcontract including any amount due for extra labor and materials furnished to DB Entity and of the amount due for each claim made by DB Entity against the Subcontractor.



14.2.12.5 Within fifteen (15) Days after receipt of the demand by the MBTA, but in no event prior to the seventieth (70th) Day after substantial completion of the Subcontract work, the MBTA shall make direct payment to the Subcontractor of the balance due under the Subcontract including any amount due for extra labor and materials furnished to DB Entity, less any amount: (a) retained by the MBTA as the estimated cost of completing the incomplete or unsatisfactory items of work; (b) specified in any court proceedings barring such payment; or (c) disputed by DB Entity in the sworn reply; provided, that the MBTA shall not deduct from a direct payment any amount as provided in this Section 14.2.12.5(c) if the reply is not sworn to, or for which the sworn reply does not contain the detailed breakdown required by Section 14.2.12.4. The MBTA shall make further direct payments to the Subcontractor forthwith after the removal of the basis for deductions from direct payments made as provided in subsections (a) and (b) of this Section 14.2.12.5.

14.2.12.6 The MBTA shall forthwith deposit the amount deducted from a direct payment as provided in Section 14.2.12.5(c) in an interest-bearing joint account in the names of DB Entity and the Subcontractor in a bank in Massachusetts selected by the MBTA or agreed upon by DB Entity and the Subcontractor, and shall notify DB Entity and the Subcontractor of the date of the deposit and the bank receiving the deposit. The bank shall pay the amount in the account, including accrued interest, as provided in an agreement between DB Entity and the Subcontractor or as determined by decree of a court of competent jurisdiction.

14.2.12.7 All direct payments and all deductions from demands for direct payments deposited in an interest-bearing account or accounts in a bank pursuant to Section 14.2.12.6 shall be made out of amounts payable to DB Entity at the time of receipt of a demand for direct payment from a Subcontractor and out of amounts which later become payable to DB Entity and in the order of receipt of such demands from Subcontractors. All direct payments shall discharge the obligation of the MBTA to DB Entity to the extent of such payment.

14.2.12.8 The MBTA shall deduct from payments to DB Entity amounts which, together with the deposits in interest-bearing accounts pursuant to Section 14.2.12.6, are sufficient to satisfy all unpaid balances of demands for direct payment received from Subcontractors. All such amounts shall be earmarked for such direct payments, and the Subcontractors shall have a right in such deductions prior to any claims against such amounts by creditors of DB Entity.

14.2.12.9 Any assignment by a Subcontractor of the rights under this Section 14.2.12 to a surety company furnishing a bond under the provisions of Mass. Gen. Laws, ch. 149, § 29 shall be invalid. The assignment and subrogation rights of the surety to amounts included in a demand for direct payment which are in the possession of the MBTA or which are on deposit pursuant to Section 14.2.12.6 shall be subordinate to the rights of all Subcontractors who are entitled to be paid under this Section 14.2.12 and who have not been paid in full.

14.2.13 Final Payment

14.2.13.1 Within sixty-five (65) Days from and after the effective date of the Certificate of Contract Substantial Completion, the MBTA shall forward to DB Entity a substantial completion estimate as stipulated in Mass. Gen. Laws, ch. 30, § 39G, which will include an agreement form for DB Entity's acceptance. Within thirty-five (35) Days from and after the

MBTA receives written acceptance of the substantial completion estimate from DB Entity, the MBTA shall make payment of the entire sum so found to be due thereunder after deducting therefrom all previous payments and all amounts to be kept and all amounts to be retained under the provisions of the Contract Documents and Mass. Gen. Laws, ch. 30, § 39G.

14.2.13.2 Within thirty (30) Days from and after the execution by DB Entity and the MBTA of the Certificate of Contract Final Acceptance, the MBTA shall forward to DB Entity a copy of the final estimate as stipulated in Mass. Gen. Laws, ch. 30, § 39G, which will include an agreement form for DB Entity's acceptance. Within thirty-five (35) Days from and after the MBTA receives written acceptance of the final estimate from DB Entity, the MBTA shall make payment of the entire sum, including Retainage, so found to be due thereunder after deducting therefrom all previous payments and all amounts to be kept and all amounts to be retained under the provisions of the Contract Documents and Mass. Gen. Laws, ch. 30, § 39G.

14.2.13.3 All prior partial estimates and payments will be subject to correction in the substantial completion estimate and final payment and the final estimate and payment. If within six months from the date the substantial completion estimate or the final estimate is forwarded to DB Entity, DB Entity has not filed a valid (as determined by the MBTA) written reason(s) for not accepting said estimate, then said estimate will be considered acceptable to DB Entity and payment of said estimate made in full satisfaction of the Work.

14.2.13.4 Acceptance by DB Entity of the Final Payment shall operate as and will be a release to the MBTA and every member, agent, and employee thereof, from all claims and liability to DB Entity for anything done or furnished for, or relating to, the Work, or for any act or neglect of the MBTA or of any person relating to or affecting the Work, except (a) for a claim against the MBTA for the remainder if any, of the amounts kept or retained to satisfy liens or claims pending against DB Entity; or (b) for a claim against the MBTA to dispute the quantity and amount of, or the failure of the MBTA to approve a quantity and amount of, all or part of the Work or any Work pursuant to a Change Order.

14.2.13.5 DB Entity hereby offers and agrees to assign to the MBTA all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. § 15), arising from purchases of goods, services or materials pursuant to the Contract Documents or any Subcontract. This assignment shall be made and become effective upon the MBTA's tendering of Final Payment to DB Entity, without further acknowledgment by the Parties.

14.2.14 Continued Performance during Disputes

Failure of the MBTA to pay any amount in dispute shall not postpone, alleviate, diminish or modify in any respect DB Entity's obligation to perform under the Contract Documents, including DB Entity's obligation to achieve Contract Final Acceptance and complete all Work in accordance with the Contract Documents, and DB Entity shall not cease or otherwise limit its performance under the Contract Documents on account of any such amount. Any dispute regarding such payment shall be resolved pursuant to Section 15.4 and Section 24. Upon resolution of any such dispute, subject to the requirements specified in this Section 14.2, the MBTA shall pay to DB Entity any amount owing.

SECTION 15. CHANGES AND CLAIMS

15.1 CHANGE ORDERS

15.1.1 This Section 15 sets forth the requirements for obtaining all Change Orders and any other relief under or relating to this DB Contract. A Change Order changes the scope of Work and reallocates funds from or to the Owner's Contingency to adjust the Change Order Value. A Change Order may also adjust the Milestone Deadlines. DB Entity acknowledges and agrees that the Owner's Contingency belongs to the MBTA. DB Entity shall not be entitled to any portion of the Owner's Contingency, except pursuant to a Change Order executed in accordance with this Section 15.

15.1.2 DB Entity acknowledges and agrees that the Contract Price (excluding the unused Owner Contingency and unused Allowances) constitute full compensation for performance of all of the Work, subject only to those exceptions specified in Section 14 and this Section 15. DB Entity hereby waives the right to any claim for a time extension or for any monetary compensation in addition to the Contract Price (excluding the unused Owner Contingency and unused Allowances), except as set forth in this Section 15. All Change Orders are to be proposed and processed in accordance with this Section 15 and the MBTA GLX Change Order Guidelines.

15.2 REQUIREMENTS RELATING TO CHANGE ORDERS

15.2.1 A Change Order shall be executed by the MBTA Authorized Representative or its designee. DB Entity may request Change Orders pursuant to Section 15.4 only. A Change Order shall not be effective for any purpose, unless executed by the MBTA as specified herein.

15.2.2 The MBTA may, without notice to any Surety or Guarantor, authorize changes in the Work within the general scope of this DB Contract pursuant to a Change Order. Such changes shall not invalidate this DB Contract or release any Surety or Guarantor. The terms and conditions of the Contract Documents apply to all additions, deductions and changes to the Work.

15.2.3 Upon the MBTA's approval of the matters set forth in the Change Order form (whether it is initiated by the MBTA or DB Entity), the MBTA shall sign such Change Order form indicating approval thereof. A Change Order may, at the sole discretion of the MBTA, direct DB Entity to proceed with the Work with the amount of any such adjustment to be determined in the future in accordance with the terms of the Contract Documents.

15.3 ISSUANCE OF MBTA-DIRECTED CHANGES AND DIRECTIVE LETTERS

15.3.1 The MBTA may issue a Change Order for an MBTA-Directed Change. The MBTA may issue unilateral Change Orders, at its discretion, for an MBTA-Directed Change.

15.3.2 The MBTA shall not accept any responsibility whatsoever for extra work or services performed for which there is no specific proper contracting authority written approval.

15.3.3 The MBTA may at any time issue a Directive Letter to DB Entity in the event of any disagreement regarding the scope of the Work or whether DB Entity has performed in accordance with the requirements of the Contract Documents. The Directive Letter will describe the Work and state that the Work is within DB Entity's original scope of Work or is necessary to comply with the requirements of the Contract Documents. DB Entity shall proceed immediately as directed in the Directive Letter, but shall have the right to submit a Proposed Change Order Notice ("PCO Notice") and to subsequently file a Change Order Request ("CO Request") with the MBTA pursuant to Section 15.4.

15.3.4 The fact that a Directive Letter was issued by the MBTA shall not be considered evidence that a MBTA-Directed Change occurred. The determination whether a MBTA-Directed Change in fact occurred shall be based on an analysis of the requirements of the Contract Documents and a determination by the MBTA as to whether the Directive Letter in fact constituted a change in those requirements.

15.4 DB ENTITY INITIATED CHANGE ORDERS

15.4.1 Time Extensions

15.4.1.1 Subject to strict compliance with the requirements of this Section 15.4 and any other applicable requirements and limitations set forth in the Contract Documents, DB Entity may request a Change Order to extend a Milestone Deadline only for delays directly caused by one or more of the following events or circumstances that change the duration of the Critical Path ("Excusable Delay"):

- (a) MBTA-Caused Delay;
- (b) a suspension of the Work by the MBTA pursuant to Section 16.1;
- (c) Unplanned Track Access Delays pursuant to Section 2.7.2;
- (d) Unplanned Track Access Denials pursuant to Section 2.7.3;
- (e) Changed Standards;
- (f) Change in Law;
- (g) delays caused by a Utility Owner in performing a Utility Relocation pursuant to an Owner Utility Agreement;
- (h) Governmental Approval Delay;
- (i) the presence and operations of separate contractors working within the Site, subject to DB Entity's compliance with Section 15.4.1.3;
- (j) differing site conditions pursuant to Section 15.7;
- (k) Force Majeure Events;

- (l) any Third Party Release of OHM which: (i) is required to be reported to a Governmental Entity, (ii) renders use of the affected portion of the Site unsafe absent containment and/or remediation, and (iii) does not result from DB Contractor's failure to exercise reasonable efforts to protect the Site from third parties;
- (m) failure of the MBTA-Furnished Items to conform to the standards and requirements as and to the extent set forth in the applicable certificates of compliance contained in Exhibit 1D; or
- (n) failure of the Previous GLX Contract Improvements to materially meet the requirements of the applicable Previous GLX Contract.

15.4.1.2 Any extension of a Milestone Deadline shall occur only pursuant to a Change Order in accordance with Section 15.6.

15.4.1.3 DB Entity shall work cooperatively with the MBTA, adjacent contractors, Utility Owners and other third parties to identify and implement, to the maximum extent possible, no cost measures to recover Project Schedule delays, regardless of cause, including the re-sequencing of the Work.

15.4.1.4 No time extensions will be granted due to weather or a weather event, unless the weather event constitutes a Force Majeure Event.

15.4.1.5 Notwithstanding anything to the contrary in this Section 15.4.1, an extension of time will not be granted for any delay, interference, hindrance or suspension of the Work caused by the breach of contract, negligence or other culpable act or omission of DB Entity, its employees, agents, officers or Subcontractors or any other Persons performing any of the Work for whom DB Entity may be contractually or legally responsible.

15.4.2 Price Adjustments

15.4.2.1 Subject to strict compliance with the requirements of this Section 15.4 and any other applicable requirements and limitations set forth in the Contract Documents, DB Entity may request a Change Order for increased costs in the Work directly caused by the following events or circumstances ("Compensable Event"):

- (a) a suspension of the Work by the MBTA pursuant to Section 16.1;
- (b) MBTA-Directed Changes;
- (c) MBTA-Caused Delays;
- (d) Unplanned Track Access Delays pursuant to Section 2.7.2;
- (e) Unplanned Track Access Denials pursuant to Section 2.7.3;
- (f) Changed Standards;

- (g) Change in Law;
- (h) additional Work that is subject to an Allowance Item and that exceeds the applicable Allowance pursuant to Section 14.2.5;
- (i) differing site conditions pursuant to Section 15.7;
- (j) any Third Party Release of OHM which: (i) is required to be reported to a Governmental Entity, (ii) renders use of the affected portion of the Site unsafe absent containment and/or remediation, and (iii) does not result from DB Contractor's failure to exercise reasonable efforts to protect the Site from third parties;
- (k) failure of the MBTA-Furnished Items to conform to the standards and requirements as and to the extent set forth in the applicable certificates of compliance contained in Exhibit 1D;
- (l) failure of the Previous GLX Contract Improvements to materially meet the requirements of the applicable Previous GLX Contract; or
- (m) correcting defects in any prescriptive requirements in the Mandatory Specifications; provided that: (i) DB Entity could not have discovered such defects through the exercise of reasonable diligence in accordance with Good Industry Practice prior to execution of this DB Contract; (ii) DB Entity discovered and corrected such defects by no later than submission of the Intermediate Design Submittal for the applicable portion of the Work; and (iii) DB Entity's recoverable costs are limited to those design and construction costs necessarily incurred to correct the defects in prescriptive requirements in the Mandatory Specifications and were independent of DB Entity's other Work.

15.4.2.2 Except for Compensable Events, DB Entity shall have no claim for damages of any kind for or based on delay, hindrance, interference, disruption or other time-related damages of any kind arising out of the Work.

15.4.2.3 Notwithstanding anything to the contrary in this Section 15.4.2, DB Entity shall not be granted any additional compensation for any costs caused by the breach of contract, negligence or other culpable act or omission of DB Entity, its employees, agents, officers or Subcontractors or any other Persons performing any of the Work for whom DB Entity may be contractually or legally responsible.

15.4.3 Proposed Change Order Notice

15.4.3.1 The requirements of this Section 15.4 constitute conditions precedent to DB Entity's entitlement to a Change Order or any other relief arising out of or relating to the Contract Documents or the Project.

15.4.3.2 If DB Entity wishes to obtain a Change Order or any other relief arising out of or relating to the Contract Documents or the Project, including the assertion of any contract claim, statutory claim, equitable claim, claim for additional compensation or claim for extension of time, or if DB Entity wishes to obtain relief based on or arising out of any written or oral order from the MBTA, including any direction, instruction, interpretation or determination by the MBTA, DB Entity shall deliver a signed PCO Notice to the MBTA within five (5) Business Days after DB Entity first discovered (or in the exercise of reasonable diligence should have discovered) the event, condition, situation or matter that gives rise to the PCO Notice. The PCO Notice must include sufficient detail to identify the nature and scope of the event, condition, situation or matter that is the subject of the PCO Notice, the date that the event, condition, situation or matter occurred or arose, the reasons why DB Entity believes additional compensation, time or other relief will or may be due, and the contractual or other basis for the requested relief. DB Entity shall include the identifier "PCO Notice No. 1" on the subject line of its first PCO Notice after the Notice to Proceed and shall sequentially number every subsequent PCO Notice. The PCO Notice shall be in a form approved by the MBTA. As a condition precedent to DB Entity's entitlement to a Change Order for a claim under Section 15.7, DB Entity shall also comply with Section 15.7.2.2.

15.4.3.3 The requirements of Section 15.4.3.2 shall not apply to claims that: (a) are not actionable against the MBTA by DB Entity on its own behalf or on behalf of any of its Subcontractors; (b) arise in tort for personal injury, wrongful death or property damage; or (c) are against insurance companies.

15.4.3.4 DB Entity's compliance with Section 15.4.3.2 shall be a condition precedent to DB Entity's right to seek any compensation, time extension or other relief and DB Entity's failure to provide a signed PCO Notice within the five (5) Business Day period and in strict accordance with Section 15.4.3.2 shall constitute a waiver of all of DB Entity's rights, claims and remedies based on or in any way related to the event, condition, situation or matter that is the subject of DB Entity's request for any compensation, time extension or other relief.

15.4.3.5 Any adjustments made to the Change Order Value or Milestone Deadlines shall not include increased costs or time extensions for delay resulting from DB Entity's failure to provide, or delay in providing, any information under this Section 15.4, regardless of whether or when the MBTA may have requested such additional information.

15.4.4 Change Order Request

15.4.4.1 If DB Entity wishes to obtain a Change Order, or any other relief arising out of or relating to the Contract Documents or the Project, including the assertion of any contract claim, statutory claim, equitable claim, claim for additional compensation or claim for extension of time, or if DB Entity wishes to obtain relief based on or arising out of any written or oral order from the MBTA, including any direction, instruction, interpretation or determination by the MBTA, then, in addition to delivering a signed PCO Notice in strict compliance with the terms of Section 15.4.3.2, DB Entity shall also satisfy the requirements of this Section 15.4.4, which requirements constitute conditions precedent to DB Entity's entitlement to a Change Order or any other relief. DB Entity understands and agrees that it shall be forever barred from recovering any additional compensation, damages, extension of time or any other relief if it fails

to submit a proper CO Request pursuant to this Section 15.4.4, even though DB Entity complied with Section 15.4.3.

15.4.4.2 DB Entity shall deliver a CO Request, in a form approved by the MBTA, to the MBTA within twenty (20) Days after DB Entity's delivery of the PCO Notice, or such longer period of time as may be agreed to in writing by the MBTA prior to expiration of said twenty (20) Day period.

15.4.4.3 Each CO Request shall be numbered sequentially and shall:

- (a) state the number of the PCO Notice to which it relates;
- (b) state in detail the facts underlying the CO Request, and the reasons why DB Entity believes additional compensation, time or other relief is, will or may be due;
- (c) identify the Contract Document provisions that are relevant to the CO Request;
- (d) identify any documents and the substance of any oral communication that provide any of the basis for the CO Request;
- (e) state the name, title, and activity of each MBTA representative and other Persons who may be aware or knowledgeable of the facts underlying the CO Request;
- (f) state in detail the basis for a claim or assertion that the Work in question is not required of DB Entity, if applicable;
- (g) state in detail the basis for a request for a time extension or acceleration to the Project Schedule or any Milestone, if applicable;
- (h) identify particular elements of DB Entity performance for which additional compensation is, will or may be sought, including the amount of compensation that is the subject of the CO Request (a good faith estimate shall be provided if it is not practical to provide a known liquidated figure);
- (i) state the proposed adjustment to the Change Order Value or Milestone Deadlines (if any) sought by DB Entity;
- (j) state, if the CO Request involves unpaid amounts for Work performed, that the Work has actually been performed and that the costs as shown are the amounts properly due for the performance of such Work;
- (k) include an analysis of the impact of the Change Order on the Project Schedule;



- (l) state, if the CO Request is based in whole or in part on any relief requested by any Subcontractor, that DB Entity has determined in good faith that the Subcontractor's claims are justified as to both entitlement and amount, and otherwise meet all requirements for DB Entity CO Requests;
- (m) include, if the CO Request is based in whole or in part on any relief requested by any Subcontractor, DB Entity's summary of its analysis of the Subcontractor's claim components; and
- (n) take into consideration any Work which will be eliminated as a result of the CO Request. The credit for eliminated Work shall be proposed by DB Entity and its Subcontractors at the same time and in the same manner as required for any increase.

DB Entity shall promptly furnish, when requested by the MBTA, such other information and details as may be required to determine the facts or contentions involved.

15.4.4.4 Each CO Request shall meet all requirements set forth in Section 15.4.4.3; provided that if any such requirements cannot be met due to the nature of the event, condition, situation or matter involved, DB Entity shall provide an incomplete CO Request which contains all information capable of being ascertained and which shall include a list of those CO Request requirements which are not fulfilled, together with an explanation reasonably satisfactory to the MBTA stating why such requirements cannot be met. DB Entity shall provide the MBTA with a monthly update relative to each outstanding incomplete CO Request that describes the status of all previously unfulfilled requirements and states the date by which DB Entity expects to fulfill the remaining requirements relating to the CO Request.

15.4.4.5 DB Entity shall give the MBTA access to any and all of DB Entity's books, records and other materials relating to any CO Request, and shall cause its Subcontractors to do the same by including appropriate language in all Subcontracts, so that the MBTA may investigate the basis for a CO Request.

15.4.4.6 If at any time prior to the MBTA's execution of a Change Order, DB Entity accepts a lower price for materials or services than it proposed to the MBTA, DB Entity is required to offer these savings back to the MBTA and the savings will be reflected in the Change Order.

15.4.5 Negotiation of CO Request; MBTA Determination

15.4.5.1 Following DB Entity's delivery of a CO Request, the Parties shall first attempt to resolve the issue(s) presented through negotiations between the MBTA's and DB Entity's Authorized Representatives (or their designees). The Parties shall meet in good faith promptly after the time that a CO Request pursuant to Section 15.4.4 is made, and DB Entity shall provide as promptly as possible any additional information that the MBTA determines is necessary to evaluate the CO Request and conduct such negotiations. DB Entity shall include both the CO Request number and the underlying PCO Notice number identifier on all correspondence and communications that relate to the CO Request. There shall be at least one meeting to attempt to

resolve the CO Request. If the Parties reach agreement resolving the issues raised by the CO Request, they shall memorialize their agreement in the form of a Change Order that:

- (a) is signed by the Authorized Representatives of both the DB Entity and the MBTA;
- (b) references the date and number of the CO Request and the date and number of the underlying PCO Notice that are the subject of the negotiated agreement;
- (c) sets forth all of the terms of the Parties' agreement; and
- (d) includes a written certification by DB Entity's Authorized Representative that conforms with the MBTA GLX Change Order Guidelines and states, at a minimum: (i) that DB Entity submitted the underlying CO Request in good faith; (ii) that the underlying CO Request was prepared and submitted in accordance with the terms of the Contract Documents; (iii) that the Change Order includes all time-related claims and direct and indirect costs sought by DB Entity in connection with the CO Request; (iv) that the Change Order is based on cost and pricing data submitted by the DB Entity that are accurate, current, and as complete as they reasonably can be at the time of the certification; (v) that the amount of the Change Order does not include attorney's fees, interest or non-compensable costs; and (vi) that DB Entity will be responsible for fully and finally resolving Subcontractors' claims for relief based on the terms of the Change Order.

15.4.5.2 At any time after it delivers a CO Request, and after at least one meeting between the MBTA and DB Entity to attempt to resolve the CO Request, DB Entity may request in writing that the MBTA's Director of Construction issue a written determination on a CO Request ("MBTA Determination").

15.4.5.3 DB Entity's request to the MBTA's Director of Construction for a written MBTA Determination shall include, at a minimum, the following:

- (a) Each of the items in Section 15.4.4.3(a) through 15.4.4.3(n), as applicable, including up-to-date information for each such item;
- (b) the dates and assigned sequential numbers of the CO Request and the PCO Notice underlying the CO Request;
- (c) a written certification by an employee or representative of DB Entity with authority to bind DB Entity and with knowledge of the facts underlying the CO Request stating that: (i) he/she has thoroughly reviewed the CO Request and that DB Entity is submitting it in good faith; (ii) the CO Request has been prepared and submitted in accordance with the terms of the Contract Documents; (iii) the documentation submitted by DB Entity accurately reflects the appropriate adjustments in the Change Order Value and/or Milestone Deadlines and includes all delay claims and direct and

indirect costs sought by DB Entity in connection with the CO Request; (iv) the cost and pricing data submitted by the DB Entity are accurate, current, and as complete as they reasonably can be at the time of the certification; and (v) the amount claimed does not include attorney's fees, interest or non-compensable costs.

- (d) if the CO Request includes relief sought from DB Entity by any of its Subcontractors (at any tier), a written certification by an employee or representative of each Subcontractor with authority to bind the Subcontractor and with knowledge of the facts underlying the CO Request stating that: (i) he/she has thoroughly reviewed the CO Request and that the Subcontractor is submitting it in good faith; (ii) the CO Request has been prepared and submitted in accordance with the terms of the Subcontractor's contract; (iii) the documentation submitted by Subcontractor accurately reflects the appropriate adjustments in the Subcontractor price and includes all delay claims and direct and indirect costs sought by the Subcontractor in connection with the CO Request; (iv) the cost and pricing data submitted by the Subcontractor are accurate, current, and as complete as they can be at the time of the certification; and (v) the amount claimed does not include attorney's fees, interest or non-compensable costs.
- (e) if the CO Request includes relief sought from DB Entity by its Subcontractors (at any tier), a written certification by an employee or representative of DB Entity stating that: (i) DB Entity has thoroughly reviewed the Subcontractor's request for relief and that DB Entity is submitting it in good faith; (ii) the Subcontractor request for relief has been prepared and submitted in accordance with the terms of the Contract Documents, Laws and the applicable Subcontract or purchase order and contains all information required by the Contract Documents and applicable to the Subcontractor; and (iii) DB Entity has no reason to believe and does not believe that the factual basis for the Subcontractor request for relief is falsely represented.

15.4.5.4 Subsequent to providing the information required by Section 15.4.5.3, DB Entity shall provide any additional information that the MBTA's Director of Construction requests in order to evaluate the CO Request.

15.4.5.5 Within twenty-one (21) Days of receipt of DB Entity's request in accordance with the requirements of this Section 15.4.5 for a written MBTA Determination, the MBTA's Director of Construction will either issue an MBTA Determination or notify the Parties in writing of the date by which an MBTA Determination will be issued, in which event the MBTA's Director of Construction will issue the MBTA Determination by the date indicated.

15.4.5.6 In the MBTA Determination, the MBTA Director of Construction will provide a written response to DB Entity's request, which includes the following:

- (a) a brief description of the CO Request;
- (b) a summary of the material reviewed in reaching the determination;
- (c) a determination of the outcome of the CO Request relating to the merit, cost and time (as applicable);
- (d) supporting reasons, including citations to applicable terms of the Contract Documents; and
- (e) instructions for implementation of the MBTA Determination (if necessary).

15.4.5.7 If the MBTA's Director of Construction does not issue an MBTA Determination within the later of twenty-one (21) Days after receipt of DB Entity's request for an MBTA Determination or the date by which the MBTA's Director of Construction indicated an MBTA Determination would be issued, then, as of the expiration of such time period, the MBTA's Director of Construction shall be deemed to have denied the CO Request and the MBTA Determination shall be and shall take effect as a denial of the CO Request.

15.4.5.8 On his or her own initiative, and after at least one meeting between the MBTA and DB Entity to attempt to resolve the CO Request, the MBTA's Director of Construction may issue a written MBTA Determination on a CO Request.

15.4.5.9 An MBTA Determination (including a deemed denial, if applicable) shall be deemed to conclusively resolve all issues that are the subject of a CO Request, unless within thirty (30) Days after the MBTA Determination, DB Entity notifies the MBTA's Authorized Representative in writing that DB Entity is requesting a Dispute Resolution Board ("DRB") Recommendation with respect to the CO Request. DB Entity's written notice that it is requesting a DRB Recommendation shall comply with the requirements of Section 24.4 and Exhibit 1J and DB Entity shall send a copy of such notice to the DRB. Provided that DB Entity submits written notice of its request for a DRB Recommendation within thirty (30) Days after the MBTA Determination and such notice satisfies the requirements of Exhibit 1J, the CO Request shall become a Dispute. An MBTA Determination is a condition precedent to submitting a Dispute to the DRB.

15.4.6 Performance of Disputed Work

At all times during the process described in this Section 15.4, DB Entity and all Subcontractors shall proceed with the Work diligently, without delay, in accordance with the Contract Documents, and as directed by the MBTA.

15.5 PRICING OF CHANGE ORDERS

15.5.1 Cost Proposal for Lump Sum Agreement

15.5.1.1 It is the intent of the Parties that if there is merit to a CO Request they will negotiate a reasonable lump sum price. A negotiated Change Order shall specify scheduling requirements, time extensions and all costs of any nature arising out of the Work covered by the

Change Order. Change Orders shall be developed and processed in accordance with the MBTA GLX Change Order Guidelines.

15.5.1.2 DB Entity shall submit a detailed cost proposal identifying all categories of costs in accordance with the MBTA GLX Change Order Guidelines. DB Entity's cost proposal shall be firm for a period of 60 Days from the date of the cost proposal. The cost proposal shall be on a lump sum or unit price basis as specified by the MBTA. Unless otherwise directed, the stated price shall be divided so as to show that it is the sum of: (a) estimated cost of direct labor, materials, and the use of equipment, plus 10 percent of such total for overhead; (b) actual cost of Workmen's Compensation and Employer's Liability Insurance, Health, Welfare and Pension Benefits, Social Security deductions, and Employment Security Benefits and such additional fringe benefits which DB Entity is required to pay as a result of Union Labor Agreements and/or is required by authorized Governmental Entities; (c) a reasonable percent of the total of items (a) and (b) shall be negotiated for profit utilizing the procedure specified in MBTA GLX Change Order Guidelines; and (d) Subcontractors total price plus a 10% mark up for overhead and handling in accordance with Section 15.5.1.3; and (e) the estimated proportionate cost of surety bonds.

15.5.1.3 A 10% overhead and handling mark-up shall be applied to DB Entity's first tier Subcontractors' agreed upon price. The MBTA shall not be required to pay any further overhead and handling mark-up to second and subsequent tier Subcontractors.

15.5.1.4 In submitting pricing in accordance with this Section 15.5.1, the following additional limitations and requirements shall apply:

- (a) the term "direct labor" shall mean the labor expended in performing the required Work, exclusive of all supervisory labor;
- (b) no payment other than overhead markup will be made for general superintendence and the use of small tools, manual equipment, or buildings;
- (c) payment for design/engineering services which may be required in the performance of extra Work and which is not otherwise provided for in the Contract Documents shall be for actual costs to be incurred that comply with the standards of the Federal Acquisition Regulations, Part 31, including: (i) direct labor based on hours to perform the extra Work at the hourly rates paid; (ii) overhead costs based on audited financial statements and other data as may be required by the MBTA; (iii) ten percent of the total of items (i) and (ii); and (iv) other direct expenses related to the performance of the extra Work; and
- (d) DB Entity shall, when requested by the MBTA, furnish itemized statements of the cost of the Work ordered and give the MBTA access to accounts, bills, and vouchers relating thereto, and unless DB Entity shall furnish such itemized statements, access to accounts, bills and vouchers, DB Entity shall not be entitled to payment for which such information is sought by the MBTA.

15.5.2 Time and Materials Change Orders

15.5.2.1 The MBTA may, at its discretion, issue a Time and Materials Change Order at any time. The Time and Materials Change Order shall instruct DB Entity to perform the Work, indicating expressly the intention to treat the items as changes in the Work, and setting forth the kind, character, and limits of the Work as far as they can be ascertained, the terms under which changes to the Change Order Value will be determined, and a price level that DB Entity is not allowed to exceed. Time and Materials Change Orders must be authorized in writing by the MBTA and shall be negotiated to a lump sum at the earliest possible date, at which point time sheets may be discontinued.

15.5.2.2 Compensation for a Time and Materials Change Order shall be determined as follows: (a) the actual cost for direct labor, material (less value of salvage, if any) and use of equipment in accordance with Section 15.5.3, plus 10 percent of such cost for overhead; (b) actual cost of Workmen's Compensation and Employer's Liability Insurance, Health, Welfare and Pension Benefits, Social Security deductions, and Employment Security Benefits and such additional fringe benefits which the DB Entity is required to pay as a result of Union Labor Agreements and/or is required by authorized Governmental Entities; (c) a reasonable percent of the total of items (a) and (b) for profit utilizing the procedure specified in the MBTA GLX Change Order Guidelines; (d) Subcontractors total price plus a 10% mark up for overhead and handling in accordance with Section 15.5.2.3; and (e) the estimated proportionate cost of surety bonds.

15.5.2.3 A 10% overhead and handling mark-up shall be applied to DB Entity's first tier Subcontractors' agreed upon price. The MBTA shall not be required to pay any further overhead and handling mark-up to second and subsequent tier Subcontractors.

15.5.2.4 In submitting pricing in accordance with this Section 15.5.2, the following additional limitations and requirements shall apply:

- (a) the term "direct labor" shall mean the labor actually expended in performing the required Work, exclusive of all supervisory labor;
- (b) no payment other than overhead markup will be made for general superintendence and the use of small tools, manual equipment, or buildings;
- (c) payment for design/engineering services which may be required in the performance of extra Work and which is not otherwise provided for in the Contract Documents shall be for actual costs to be incurred that comply with the standards of the Federal Acquisition Regulations, Part 31, including: (i) direct labor based on hours to perform the extra Work at the hourly rates paid; (ii) overhead costs based on audited financial statements and other data as may be required by the Authority; (iii) ten percent of the total of items (i) and (ii); and (iv) other direct expenses related to the performance of the extra Work; and
- (d) DB Entity shall, when requested by the MBTA, furnish itemized statements of the cost of the Work ordered and give the MBTA access to accounts, bills,

and vouchers relating thereto, and unless DB Entity shall furnish such itemized statements, access to accounts, bills and vouchers, DB Entity shall not be entitled to payment for which such information is sought by the MBTA.

15.5.2.5 When DB Entity has reached seventy percent (70%) of the not-to-exceed amount in the Time and Materials Change Order, DB Entity shall notify the MBTA if additional funds will or will not be required. If additional funds are required, DB Entity and the MBTA shall attempt to negotiate a lump sum amount to complete the Work. If a lump sum cannot be negotiated because the scope is still not completely defined, then a second Time and Materials Change Order may be issued to revise the not-to-exceed amount.

15.5.2.6 All labor, materials and equipment for Time and Materials Change Orders shall be documented on an MBTA Daily Report of Labor, Equipment and Material and signed off by the MBTA no later than one Day after the Work is accomplished to be considered for payment. In addition, DB Entity shall submit a time and materials proposal for Work performed to the MBTA in the same manner as required for proposals in the MBTA GLX Change Order Guidelines. DB Entity shall also provide the MBTA access to all accounts, bills, vouchers and other documents relating thereto. If DB Entity fails to furnish such itemized statements and access to all accounts, bills, vouchers and such other documents, DB Entity shall not be entitled to payment for any items of extra Work for which such information is sought. The requirements of this Section 15.5.2.6 apply not only to DB Entity, but also to all on-Site and off-Site Subcontractors. DB Entity should ensure that the requirements of this Section 15.5.2.6 are included in its Subcontracts with its Subcontractors.

15.5.2.7 DB Entity shall contemporaneously collect, record in writing, segregate and preserve (a) all data necessary to determine the costs described in this Section 15.5.2 with respect to all Work which is the subject of a Time and Materials Change Order; and (b) all data necessary to show the actual impact (if any) of the change on each Critical Path or Milestone Deadline with respect to all Work which is the subject of a Time and Materials Change Order. Such data shall be provided to the authorized representative of the MBTA reviewing any CO Request regarding such Work.

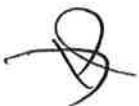
15.5.3 Equipment Rates

In the event there arises the need for determination of costs for use of equipment as part of "actual costs" or "cost of performance" or "damages", such costs for use of equipment shall be established in accordance with the following:

15.5.3.1 "Construction equipment" as used herein means equipment in sound workable condition, either owned or controlled by DB Entity or a Subcontractor at any tier, or obtained from a commercial rental source, and furnished for use under the Contract Documents.

15.5.3.2 Allowable hourly ownership and operating costs for DB Entity-owned or Subcontractor-owned equipment shall be determined as follows:

- (a) Actual cost data from DB Entity's accounting and operating records shall be used whenever such data can be determined for hourly ownership and



operating costs for each piece of equipment, or groups of similar serial or series equipment. Actual costs shall be limited to booked costs of the annual accounting period or periods during which the equipment was utilized for the Work, and will not include estimated costs not recorded and identifiable in DB Entity's formal accounting records. DB Entity shall afford MBTA auditors full access to all accounting, equipment usage, and other records necessary for development or confirmation of actual hourly cost rates for each piece of equipment, or groups of similar serial or series equipment. DB Entity's refusal to give such full access shall invalidate any request or claim for payment of the equipment costs. When costs cannot be determined from DB Entity's records, hourly equipment cost rates may be determined under item (b) below.

- (b) When the MBTA ascertains that it is not practicable to determine actual equipment cost rates or elements thereof from DB Entity's records, hourly equipment cost rates or elements shall be determined by the use of rate schedules or the formula developed from the "Rental Rate Blue Book" (Volume 1) published by Equipment Watch:
- (1) hourly rates shall be developed by dividing monthly rates by 176 hours per month (the "weekly," "hourly" and "daily" rates listed in the "Blue Book" will not be used);
 - (2) Blue Book Rates shall in all cases be adjusted by application of Rate Adjustment Tables (machine age adjustment) plus adjustment to eliminate Equipment Overhead plus Regional Adjustment;
 - (3) Blue Book Rates shall be reduced by 20 percent to eliminate duplicate and excessive costs included in the Blue Book Rates. Overhead and profit will be added in the Recapitulation Sheet;
 - (4) equipment rates for standby equipment shall be calculated using Blue Book Rates less 20 percent to eliminate duplicate and excessive costs included in the Blue Book Rates, and shall be further reduced by 75 percent to determine standby rates;
 - (5) standby equipment is defined as equipment that is on the Site and necessary to support the immediate ongoing Work, but is not operational for part of the work shift. Equipment that is simply parked on the Site and not necessary for any part of a work shift is not standby equipment;
 - (6) the number of hours to be paid for shall be the number of hours that the equipment is actually used on a specific activity. The "current revisions" to the Blue Book will be used in establishing rates. The "current revision" applicable to specific Work will be the "current revision" as of the first Day of Work performed on that Work and that rate will apply throughout the period the Work is being performed. In



all cases, the MBTA reserves the right to utilize, in preference to Blue Book rates, equipment cost rates based upon actual costs per accounting records or hybrid rates as described above; and

- (7) the 10 percent overhead markup shall compensate DB Entity for all incremental overhead costs, including equipment overhead, general superintendence, general foreman, small tools, manual equipment, field overhead and central office overhead.

15.5.3.3 Reasonable hourly costs of renting equipment are allowable subject to DB Entity production of auditable records supporting actual costs incurred, provided further that:

- (a) costs such as fuel, lubricants, and minor or running repairs incident to operating such rented equipment that are not included in the rental rate are allowable;
- (b) costs incident to major repair and overhaul of rental equipment are not allowed; and
- (c) charges for equipment leased or rented from any division, subsidiary organization under common control, or business under common ownership, ordinarily will be reimbursable to the extent that they do not exceed the actual costs of ownership and operating costs determined pursuant to Section 15.5.3.2. Rental cost of equipment leased or rented from any division, subsidiary, affiliate of DB Entity under common control, or business under common ownership, that has an established practice of renting out the same or similar equipment to unaffiliated parties, shall be allowed at rates higher than actual ownership and operating costs, provided that DB Entity furnishes the MBTA adequate documentation, including the rental and usage records for the same or similar equipment items, demonstrating a reasonable likelihood that the equipment would have been rented out if not used for the Work, and that the rental rates charged are consistent with rates charged to unaffiliated parties and going market rates. Rental costs under a sale and leaseback arrangement will be allowable only up to the amount DB Entity would be allowed if DB Entity retained title.

15.5.3.4 Equipment cost rates shall be exclusive of labor cost of equipment operators. Such costs shall be reimbursable, subject to DB Entity production of auditable payroll and other records sufficient for determination of hours, pay rates, and reimbursable fringe costs.

15.5.3.5 Except in cases of unit price or lump sum Change Orders approved by the MBTA before the Work is done, actual reimbursable hours of equipment usage and operator time must be adequately documented by DB Entity's field and office records maintained during performance of the Work in a manner acceptable to the MBTA. Failure of DB Entity to so maintain time records which adequately segregate added equipment hours caused by extra Work required by the MBTA, or caused by other MBTA actions cited in DB Entity's claim for damages, from other equipment time used to perform the base Work, when maintenance of such



records would have been feasible, shall constitute a cardinal omission of DB Entity, invalidating any claim for equipment cost reimbursement.

15.6 ADJUSTMENTS TO MILESTONE DEADLINES

15.6.1 General

15.6.1.1 The MBTA shall not evaluate any request by DB Entity for an adjustment to the Milestone Deadlines unless: (a) DB Entity satisfies the conditions of this Section 15.6 and (b) DB Entity's request is verifiable through an MBTA review of the Time Impact Analysis ("TIA").

15.6.1.2 DB Entity shall not be entitled to any adjustment to a Milestone Deadline unless DB Entity clearly demonstrates entitlement to a time extension to the satisfaction of the MBTA by a documented TIA performed in accordance with the requirements of Section 15.6.3 and Section 2.4 of the Technical Provisions.

15.6.1.3 When DB Entity experiences an Excusable Delay and DB Entity requests an extension of time pursuant to this Section 15.6, DB Entity and the MBTA shall meet to review and analyze DB Entity's request for an extension of time.

15.6.2 Notice

DB Entity shall not be entitled to any time extension due to an Excusable Delay, unless it satisfies the requirements in Section 15.4, including the requirements to provide a timely written PCO Notice and a timely written CO Request.

15.6.3 Time Impact Analysis

15.6.3.1 A documented preliminary TIA supporting the request for a time extension and meeting the requirements of this Section 15.6.3 and Section 2.4 of the Technical Provisions shall be submitted to the MBTA no later than 15 Days after the start of the Excusable Delay. A documented final TIA shall be submitted to the MBTA no later than 15 Days after the end of the Excusable Delay. During the time between the preliminary TIA and final TIA, the Excusable Delay shall be documented in Progress Schedule Submittals submitted in accordance with requirements of this Section 15.6.3 and Section 2.4 of the Technical Provisions.

15.6.3.2 DB Entity shall submit to the MBTA a written TIA illustrating the influence of each Excusable Delay on the current Milestone Deadlines. Each TIA shall include a 'fragnet' demonstrating how DB Entity proposes to incorporate each Excusable Delay into the Progress Schedule Submittal. This fragnet must be incorporated in a copy of latest accepted Progress Schedule Submittal. A fragnet is defined as a sequence of new activities and/or activity revisions that are proposed to be added to the existing schedule to demonstrate the influence of delay and the method for incorporating delays and impacts into the schedule as they are encountered. This fragnet also shall be presented with resource and cost loading.

15.6.3.3 In the event the MBTA is unable to return any Progress Schedule Submittal as "Accepted or Accepted as Noted," and the effect of Excusable Delays on Milestone Deadlines

needs evaluation, the MBTA and DB Entity shall employ the Baseline Schedule and not any unapproved Progress Schedule Submittal for such evaluations. The procedure for updating the Baseline Schedule shall be in accordance with Section 2.4 of the Technical Provisions.

15.6.3.4 DB Entity shall not be entitled to any extension of a Milestone Deadline unless DB Entity provides a timely submittal of a detailed schedule analysis by using the contemporaneous window analysis methodology or other similar methodology acceptable to MBTA that includes: (a) a detailed narrative which clearly describes the events causing the delay and the resulting impacts to the Project Schedule; (b) documentation substantiating and supporting the Excusable Delay; (c) detailed CPM schedules (both electronic and hard copies) clearly delineating the Excusable Delay; (d) a matrix identifying delays that do not qualify as Excusable Delays; and (e) any additional information reasonably requested by the MBTA, in order to enable MBTA to perform a timely and informed analysis of the request for extension of a Milestone Deadline.

15.6.3.5 DB Entity shall provide a separate electronic file of the Baseline Schedule and Progress Schedule Submittals for all activities in progress or completed through the time periods for each Excusable Delay. Each updated schedule will be compared and analyzed, identifying any slippage between the actual dates for any impacted or delayed activities and the Baseline Schedule and each previously accepted Progress Schedule Submittal. This schedule slippage can then be correlated to the Excusable Delay that occurred between two schedule update periods.

15.6.3.6 For each update window schedule submitted, revisions in activities, logic ties and constraint dates affecting Work after that update window shall be included only if they are identified and jointly agreed to be incorporated by DB Entity and the MBTA.

15.6.3.7 DB Entity acknowledges and agrees that the actual delays in activities which, according to the most recent Progress Schedule Submittal that has been accepted by the MBTA, do not have any effect on the Milestone or Milestone Deadline shown by the Critical Path in the network, do not have effect on the Milestone or Milestone Deadline and therefore will not be the basis for an extension of time.

15.7 DIFFERING SITE CONDITIONS

15.7.1 Site Investigation and Due Diligence Activities

15.7.1.1 DB Entity has, prior to submitting the Proposal, in accordance with Good Industry Practice, (i) reviewed geotechnical information, (ii) visually inspected and examined the Site and surrounding locations to the extent accessible but without undertaking any destructive or subsurface investigations, and (iii) undertaken other appropriate activities sufficient to familiarize itself with surface conditions and subsurface conditions affecting the Project to the extent DB Entity deems necessary or advisable for performing its obligations under the Contract Documents, but only to the extent such conditions were accessible for visual inspection or were shown in the information supplied by the MBTA, and without undertaking destructive or independent investigation of subsurface conditions. As a result of such review, inspection, examination and other activities, DB Entity is familiar with and accepts the physical requirements of the Work. DB Entity acknowledges and agrees that it has been afforded the



opportunity to review information and documents and to conduct visual inspections of the Site and surrounding locations, and that such information has provided an adequate background on the condition of the Site enabling DB Entity to develop the GLX Lump Sum and Additive Options Price. DB Entity's activities as described in this Section 15.7.1.1 ("Due Diligence Activities") included the following:

- (a) reviewing available geotechnical and subsurface information provided to DB Entity by the MBTA;
- (b) reviewing available as-built information regarding existing structures and improvements provided to DB Entity by the MBTA;
- (c) participating in Site visits;
- (d) recommending specific testing or exploratory measures to be performed by the MBTA and reviewing the results of such testing or exploratory measures to the extent provided to DB Entity by the MBTA; and
- (e) reviewing, understanding and establishing pricing that takes into account the descriptions in Section 15.7.1.2 of the types of conditions that are ordinarily encountered and generally recognized as inherent in work of the character provided for in the plans and Contract Documents.

15.7.1.2 As a result of the Due Diligence Activities, DB Entity agrees that the following conditions are ordinarily encountered at the Site during the performance of the Work and generally recognized as inherent in the Work, and that the GLX Lump Sum, Additive Options Price and Milestone Deadlines take into account and include all cost and time impacts for encountering such conditions:

- (a) soil strata elevations variations of plus or minus five (5) feet than those shown on the Contract Documents or Reference Information Documents;
- (b) top of rock elevations variations range of plus or minus five (5) feet than those shown on the Contract Documents or Reference Information Documents;
- (c) rip-rap, seawalls or old foundation elements wherein the volume removed in any one location is three (3) cubic yards or less;
- (d) abandoned rail ties and track;
- (e) abandoned sewer, water or drain lines that are equal to or less than 12 inches in diameter;
- (f) abandoned earth support and utility support systems components equal to or less than one (1) cubic yard in diameter;
- (g) boulders that are less than three (3) cubic yards in size;



- (h) water table elevations that vary up to 10 feet from the elevations indicated in the Contract Documents or Reference Information Documents;
- (i) existing utility locations, including signal and power lines, depicted in the Contract Documents or Reference Information Documents which are determined to be located within three (3) feet (in any direction) of the locations identified in the Contract Documents or Reference Information Documents, provided, however, that this clause (i) shall not prejudice DB Entity's rights to claim a differing site conditions pursuant to Section 15.7.2 for existing utilities that are depicted in neither the Contract Documents nor the Reference Information Documents; and
- (j) surface water in the area within the Millers River watershed that accumulates on account of rain events.

15.7.1.3 DB Entity acknowledges and agrees that Section 15.7.1.2 does not provide an exhaustive list of those conditions that may be ordinarily encountered at the Site during the performance of the Work or generally recognized as inherent in the Work, and that DB Entity has the burden of proving entitlement to any adjustment to the Change Order Value or Milestone Deadlines for other conditions encountered at the Site in accordance with Section 15.7.2.

15.7.2 Differing Site Conditions Claim

15.7.2.1 If during the progress of the Work, DB Entity or the MBTA discovers that the actual subsurface or latent physical conditions encountered at the Site differ substantially or materially from those shown on the plans or indicated in the Contract Documents, either DB Entity or the MBTA may request an equitable adjustment in the Change Order Value applying to Work affected by the differing site conditions. A request for such an adjustment shall be in writing and shall be delivered by the Party making such claim to the other Party as soon as possible after such conditions are discovered. Upon receipt of such a claim from DB Entity, or upon its own initiative, the MBTA shall make an investigation of such physical conditions, and, if they differ substantially or materially from those shown on the plans or indicated in the Contract Documents or from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the plans and Contract Documents and are of such a nature as to cause an increase or decrease in the cost of performance of the Work or a change in the construction methods required for the performance of the Work which results in an increase or decrease in the cost of the Work, the MBTA shall make an equitable adjustment in the Change Order Value or Milestone Deadlines and this DB Contract shall be modified in writing accordingly.

15.7.2.2 DB Entity shall no later than 24 hours and before such conditions are disturbed, notify the MBTA in writing describing the subsurface or latent physical condition at the site where it is maintained, that conditions differ substantially or materially from the conditions indicated in the Contract Documents or from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract Documents.

15.7.2.3 No claim under this Section 15.7.2 shall be allowed, unless DB Entity has provided the notice required under Section 15.7.2.2 and complied with the requirements of Section 15.4, including the requirements to provide a timely written PCO Notice and a timely written CO Request, nor shall such claim be allowed if such conditions are disturbed after initial discovery and prior to their investigation by the MBTA.

15.7.2.4 DB Entity shall promptly submit to the MBTA an itemized written statement of the details and the amount of Work associated with such differing site conditions, together with its estimated costs for the same, in accordance with the requirements of Section 15.4 and DB Entity shall keep actual costs and certify the same to the MBTA in writing. In addition, DB Entity shall keep records and observations of the conditions that amounted to cost/time reductions, as well as all of the applicable cost/time increases.

15.8 VARIATIONS IN EXISTING GROUND ELEVATIONS AND SURVEY DATA

As a result of the Due Diligence Activities, DB Entity acknowledges that: (a) existing ground elevations throughout the Site vary by plus or minus two (2) feet from those survey points shown in Volume 2, Exhibit 2D.1, (b) certain areas of the Site vary from the survey data provided in Volume 2, Exhibit 2D.1, as identified in the preface of Volume 2, Exhibit 2D; and (c) DB Entity has taken into account the costs and impacts of such variances in the GLX Lump Sum.

15.9 ELIMINATED WORK

15.9.1 Should any Work contained in the Contract Documents be found to be unnecessary by the MBTA, the MBTA shall, upon issuance of a Change Order to DB Entity, eliminate the Work from this DB Contract and this action shall not constitute a Termination for Convenience or otherwise invalidate this DB Contract.

15.9.2 When DB Entity is notified of such eliminated Work, payment will not be made for such items eliminated, except that DB Entity shall be compensated for actual Work done and costs actually incurred for materials purchased prior to notification and the MBTA shall receive a credit for the eliminated Work based on the actual cost the MBTA would have paid DB Entity if the Work had been completed. The actual cost shall be calculated utilizing the cost set forth in the Progress Schedule Submittal. If there is no such cost in the Progress Schedule Submittal, the actual cost shall be calculated in the same manner as any other change to this DB Contract.

15.10 RESTRICTIONS AND LIMITATIONS ON CHANGE ORDERS

15.10.1 DB Entity acknowledges and agrees that the MBTA shall bear responsibility for Change Orders solely limited to the matters for which the MBTA expressly assumes responsibility under this Section 15.

15.10.2 DB Entity shall exercise reasonable diligence and cooperate with the MBTA to obtain proceeds from insurance policies required by the Contract Documents as compensation for any matter relating to the Project, rather than requesting a Change Order. Increases in the Change Order Value shall be net of all insurance proceeds paid from insurance policies applicable to any event, condition, situation or matter giving rise to the Change Order; provided,

however, that DB Entity shall not be entitled to any increase in the Change Order Value for any matter for which it would have obtained insurance proceeds if it exercised reasonable diligence and cooperated with the MBTA to obtain such proceeds.

15.10.3 DB Entity shall bear responsibility for all costs and delays in performing the Work that are not expressly articulated in this Section 15 to be the responsibility of the MBTA, including but not limited to costs and delays:

- (a) arising from or related to DB Entity's failure to correct defects, errors, omissions or inconsistencies in the documents and information provided by the MBTA in the RFP;
- (b) arising from or related to defective or incorrect schedules of Work or changes in the planned sequence, means or methods of performance of the Work;
- (c) arising from or related to defects, errors, omissions, or inconsistencies in the Contract Documents;
- (d) that are or would be covered by insurance policies required to be obtained by or on behalf of DB Entity under the Contract Documents;
- (e) arising from or related to correction or rejection of Nonconforming Work and/or review and acceptance thereof by the MBTA;
- (f) arising from or related to any design changes requested by the MBTA as part of the process of accepting DB Entity's design for conformity with the requirements of the Contract Documents;
- (g) arising from or related to the breach of contract, negligence or other culpable act or omission of DB Entity, its employees, agents, officers or Subcontractors or any other Persons performing any of the Work for whom DB Entity may be contractually or legally responsible;
- (h) arising from or related to any delay that is not on the Critical Path; and
- (i) arising from or related to any events beyond the control of the MBTA for which the MBTA has not agreed to assume liability under this Section 15.

15.10.4 DB Entity hereby assumes responsibility for all matters set forth in Section 15.10.3, and acknowledges and agrees that assumption by DB Entity of responsibility for such costs and delays, and the consequences and costs resulting therefrom, is reasonable under the circumstances of this DB Contract and accounted for in the Contract Price (excluding the Owner Contingency and Change Order Value). DB ENTITY HEREBY EXPRESSLY WAIVES ALL RIGHTS TO ASSERT ANY CLAIMS BASED ON ANY CHANGE IN THE WORK, DELAY OR ACCELERATION (INCLUDING ANY CONSTRUCTIVE CHANGE, DELAY, SUSPENSION OR ACCELERATION) FOR WHICH DB ENTITY FAILED TO PROVIDE A PROPER AND TIMELY PROPOSED CHANGE ORDER NOTICE AND A PROPER AND TIMELY CHANGE ORDER REQUEST, AS REQUIRED BY DB CONTRACT TERMS AND



CONDITIONS VOLUME 1, SECTION 15.4, AND FURTHER AGREES THAT DB ENTITY SHALL BE ENTITLED TO NO COMPENSATION OR DAMAGES WHATSOEVER IN CONNECTION WITH THE WORK EXCEPT TO THE EXTENT THAT THE CONTRACT DOCUMENTS EXPRESSLY SPECIFY THAT DB ENTITY IS ENTITLED TO A CHANGE ORDER OR OTHER COMPENSATION OR DAMAGES.

15.11 ACCORD AND SATISFACTION

Except as otherwise specified in a Change Order, execution of a Change Order by the MBTA and DB Entity shall be deemed an accord and satisfaction of all claims by DB Entity of any nature arising from or relating to the Work, event, condition, situation or matter covered by or the subject of the Change Order.

15.12 NO RELEASE OR WAIVER

15.12.1 No Change Order shall release DB Entity's Sureties or Guarantors from their respective obligations.

15.12.2 Permitting DB Entity to finish the Work or any part thereof after any deadline established for the Work, or the making of payments to DB Entity after such date, shall not constitute a waiver on the part of the MBTA of any rights under the Contract Documents or Laws.

15.12.3 The performance or acceptance of any part of the Work after any Milestone Deadline, shall not be deemed to be a waiver by the MBTA of its right to terminate this DB Contract for abandonment or failure to complete the Work within the time specified, or of its right to impose and deduct damages as provided in the Contract Documents.

SECTION 16. SUSPENSION OF ALL OR PART OF THE WORK

16.1 SUSPENSION FOR CONVENIENCE

16.1.1 The MBTA may order DB Entity in writing to suspend, delay or interrupt all or any part of the Work for such period of time as it may determine to be appropriate for the convenience of the MBTA; provided, however, that if there is a suspension, delay or interruption for fifteen (15) Days or more or due to a failure of the MBTA to act within the time specified in the Contract Documents, the MBTA shall make an adjustment in the Change Order Value for any increase in the cost of the performance of this Contract, but shall not include any profit to DB Entity on such increases; and provided further, that the MBTA shall not make any adjustment in the Change Order Value under this provision for any suspension, delay, interruption, or failure to act to the extent that such is due to any cause for which this DB Contract provides for an equitable adjustment of the Change Order Value under any other provision of the Contract Documents.

16.1.2 DB Entity shall not be entitled to any additional compensation or extension of time based on or arising out of a suspension of Work unless DB Entity complies with the requirements of Section 15. DB Entity shall submit the amount of a claim under Section 16.1.1 to the MBTA in writing as soon as practicable after the end of the suspension, delay, interruption

or failure to act and, in any event, not later than the date of Final Payment under this DB Contract.

16.1.3 In the event that a suspension, delay, interruption or failure to act by the MBTA increases the cost of performance to any Subcontractor, that Subcontractor shall have the same rights against DB Entity for payment for an increase in the cost of its performance as this Section 16.1 provides for DB Entity against the MBTA; provided, that nothing in this Section 16.1 shall in any way change, modify or alter any other rights that DB Entity or any such Subcontractor may have against each other.

16.1.4 Upon receipt of a written order from the MBTA pursuant to this Section 16.1, DB Entity shall immediately delay the commencement of the Work or delay or suspend any portion thereof in accordance with such order. The Work shall be resumed when approved in writing by the MBTA.

16.2 SUSPENSION FOR CAUSE

16.2.1 The MBTA has the authority to suspend the Work, wholly or in part, for such period as the MBTA deems necessary because of: (a) the failure on the part of DB Entity to perform any requirement of the Contract Documents; (b) for the failure of DB Entity to correct unsafe conditions; (c) for failure to carry out orders; or (d) for causes and conditions considered unsuitable for the prosecution of the Work due to the breach of contract, negligence or other culpable act or omission of DB Entity, its employees, agents, officers or Subcontractors or any other Persons performing any of the Work for whom DB Entity may be contractually or legally responsible. DB Entity shall promptly comply with a written order by the MBTA for DB Entity to suspend the Work, wholly or in part. The suspended Work shall be resumed at the discretion of the MBTA upon the MBTA's written determination that appropriate corrective action has been taken.

16.2.2 DB Entity shall not be entitled to any increase in the Change Order Value or extension of a Milestone Deadline in connection with any suspension under this Section 16.2, including for the Work described in Section 16.3 resulting from a suspension pursuant to this Section 16.2.

16.3 TRAFFIC SAFETY IN THE EVENT OF SUSPENSION

In the event of a suspension of Work under this Section 16, DB Entity shall undertake all Work necessary to provide a safe, smooth, and unobstructed passageway through the Site for use by train traffic, pedestrians and motorists as applicable during the period of such suspension.

SECTION 17. TERMINATION FOR CONVENIENCE

17.1 RIGHT TO TERMINATE

The MBTA may, at any time, terminate for its convenience all of DB Entity's rights and obligations under the Contract Documents, or any part thereof, in the event that the MBTA determines that such action is in the interest of the MBTA. In such case, the MBTA shall deliver to DB Entity a Notice of Termination for Convenience pursuant to Section 17.2.



17.2 NOTICE OF TERMINATION FOR CONVENIENCE

17.2.1 The MBTA shall notify DB Entity of a decision to terminate this DB Contract for convenience by delivery to DB Entity of a written Notice of Termination for Convenience specifying the extent of termination, and its effective date. Any deductive Change Order or other notice of scope deletions or reductions shall not be construed as a termination under this Section 17.2, unless such notice is expressly labeled "Notice of Termination for Convenience".

17.2.2 Termination (or partial termination) of this DB Contract shall not relieve any Surety or Guarantor of its obligation for any claims arising out of the Work performed and such termination shall not be deemed to affect any of the MBTA's rights with respect to compliance of the completed Work with all applicable requirements, any of its rights under the Performance Bond, or any of its rights against Subcontractors.

17.3 DB ENTITY'S RESPONSIBILITIES AFTER RECEIPT OF NOTICE OF TERMINATION

After receipt of a Notice of Termination for Convenience, and except as otherwise directed by the MBTA, DB Entity shall immediately proceed as follows, regardless of any delay in determining or adjusting any amounts due under this Section 17:

- (a) stop Work as specified in the notice;
- (b) execute no further Subcontracts, except as necessary to complete the continued portion of the Work, if any, or approved in advance by the MBTA for mitigation of damages;
- (c) terminate all Subcontracts to the extent they relate to the Work terminated, except to the extent that continuation of the Subcontracts is necessary in order to mitigate damages and as approved in advance by the MBTA or except to the extent that the MBTA requests assignment of the Subcontracts pursuant to Section 17.3(d);
- (d) assign to the MBTA, in the manner, at the times, and to the extent directed by the MBTA, all of the rights, title, and interest of DB Entity under the Subcontracts so terminated, in which case the MBTA shall have the right, in its sole discretion, to settle or pay any or all claims arising out of the termination of such Subcontracts;
- (e) settle all outstanding liabilities and claims arising out of such termination of Subcontracts, with the approval or ratification of the MBTA, to the extent it may be required, which approval or ratification shall be final;
- (f) transfer title and deliver to the MBTA, in the manner, at the times, and as and to the extent, if any, directed by the MBTA: (i) fabricated or unfabricated parts, the Work in process, completed Work, supplies and other material produced or acquired for the terminated Work; and (ii) Design Documents and Construction Documents and all other completed or partially completed

drawings (including plans, elevations, sections, details and diagrams), specifications, records, as-builts, samples, information and other property and deliverables that would have been required to be furnished to if the Work had been completed;

- (g) complete performance in accordance with the Contract Documents of all Work not terminated;
- (h) take all action that may be necessary, or that the MBTA may direct, for the protection and preservation of the property related to the Contract Documents that is in the possession of DB Entity and in which the MBTA has or may acquire an interest; and
- (i) use its best efforts to sell, in a manner, at the times, to the extent and at the price or prices directed or authorized by the MBTA, any property that has been pre-purchased for the Project; provided, however, that DB Entity: (i) is not required to extend credit to any purchaser; and (ii) may acquire the property under the conditions prescribed and at prices approved by the MBTA. The proceeds of any transfer or disposition will be applied to reduce any payments to be made by the MBTA under the Contract Documents or paid in any other manner directed by the MBTA.

17.4 INVENTORY AFTER TERMINATION

DB Entity shall submit to the MBTA a list of inventory. Within thirty (30) Days of receipt of such list, DB Entity shall deliver such inventory to the MBTA and the MBTA shall arrange for the MBTA to accept title to such inventory, as appropriate. DB Entity shall not sell any inventory subsequent to receiving a termination notice from the MBTA without the MBTA's written directive and authorization.

17.5 SETTLEMENT PROPOSAL

After receipt of a Notice of Termination for Convenience, DB Entity shall submit a final termination settlement proposal to the MBTA in the form and with the certification prescribed by the MBTA. DB Entity shall submit the termination settlement proposal promptly, but no later than thirty (30) Days from the effective date of termination, unless DB Entity has requested a time extension in writing within such 30-Day period and the MBTA has agreed in writing to allow such an extension. If the MBTA, in its sole discretion, determines that the facts justify it, a termination settlement proposal may be reviewed and acted on after such 30-Day period or any extension thereof. If DB Entity fails to submit the termination settlement proposal within the time allowed, the MBTA may determine, on the basis of information available to it, the amount, if any, due DB Entity as a result of the termination and shall pay DB Entity the amount so determined.

17.6 AMOUNT OF TERMINATION FOR CONVENIENCE SETTLEMENT

17.6.1 DB Entity and the MBTA may agree upon the whole or any part of the amount or amounts to be paid to DB Entity by reason of the total or partial termination for convenience of



the Work. Such negotiated settlement may include payment for the Work completed as of the termination date, costs incurred by reason of such termination and a reasonable allowance for overhead and profit solely on the Work that has been completed as of the termination date. Upon determination of the settlement amount, this DB Contract will be amended accordingly and DB Entity will be paid the agreed amount. The MBTA's execution and delivery of any settlement agreement shall not be deemed to affect any of its rights with respect to compliance of the completed Work with all applicable requirements, any of its rights against the Sureties or Guarantors, or any of its rights against Subcontractors.

17.6.2 In the event of failure of DB Entity and the MBTA to agree upon the whole amount to be paid to DB Entity by reason of the termination of Work pursuant to this Section 17, the amount payable shall be determined and paid by the MBTA. In the event DB Entity disputes the amount of such payment, it shall have the right to seek additional payment in accordance with the dispute resolution procedure set forth in Section 24.

17.6.3 In no event shall DB Entity be entitled to recover loss of profits on the Work not performed or materials not purchased.

17.7 REDUCTION IN AMOUNT OF CLAIM

The amount otherwise due DB Entity under this Section 17 shall be reduced by: (a) all unliquidated advance or other payments on account made to DB Entity applicable to the terminated portion of this DB Contract; (b) the amount of any claim which the MBTA or Subcontractors may have against DB Entity in connection with this DB Contract; and (c) the agreed price for, or the proceeds of sale of, any materials, supplies or other things acquired by DB Entity or sold, pursuant to the provisions of this Section 17, and not otherwise recovered by or credited to the MBTA.

SECTION 18. DEFAULT AND REMEDIES

18.1 DB ENTITY DEFAULTS

18.1.1 Events or Conditions Triggering Default

The MBTA may, upon written notice, declare DB Entity in default under this DB Contract upon the occurrence of any one or more of the following events or conditions, each of which events shall be considered a "DB Entity Default":

- (a) DB Entity fails to promptly begin the Work within thirty (30) Days after issuance of NTP;
- (b) DB Entity fails to achieve Milestone 2 within ninety (90) Days after the applicable Milestone Deadline, unless DB Entity demonstrates to the MBTA's satisfaction that DB Entity is implementing the recovery efforts set forth in and otherwise complying with the accepted Project Schedule;
- (c) DB Entity fails to perform the Work in accordance with the Contract Documents, or refuses to remove and replace Nonconforming Work that is

material to the functionality, quality or safety of the Work, and such failure or refusal continues without cure for a period of thirty (30) Days after the MBTA delivers written notice to DB Entity of such failure or refusal;

- (d) DB Entity discontinues the prosecution of the Work (except as permitted under the Contract Documents), and such discontinuation continues without cure for a period of thirty (30) Days after the MBTA delivers written notice to DB Entity of such discontinuation;
- (e) DB Entity fails to resume performance of Work that has been suspended or stopped within ten (10) Days after receipt of notice from the MBTA to do so, or after cessation of the event preventing performance, if applicable;
- (f) DB Entity fails to maintain and keep in force the insurance required by, and in compliance with, Section 12;
- (g) DB Entity or any Guarantor makes any representation or warranty in the Contract Documents or any certificate, schedule, instrument or other document delivered pursuant to the Contract Documents that was materially false or materially misleading when made, and such circumstance continues without cure for a period of thirty (30) Days after the MBTA delivers written notice to DB Entity, with cure regarded as complete only when the adverse effects are remedied;
- (h) DB Entity fails to maintain and keep in force the Performance Bond or Labor and Materials Payment Bond required by, and in compliance with, Section 11.1;
- (i) DB Entity materially breaches any agreement, representation or warranty contained in the Contract Documents, including minimum wage payments and equal employment opportunity requirements, or DB Entity fails to provide financial data as specified in the Contract Documents, and DB Entity fails: (1) to commence reasonable steps to cure such breach or failure within thirty (30) Days after the MBTA delivers written notice to DB Entity and (2) to cure such breach or failure no later than ninety (90) Days after the MBTA delivers written notice to DB Entity, with cure regarded as complete only when the adverse effects are remedied;
- (j) DB Entity, its Major Participants, and any Guarantors fail to meet the Tangible Net Worth requirements set forth in Section 11.2 and DB Entity, within thirty (30) days after MBTA delivers written notice of such failure, does not provide the required Guaranty;
- (k) DB Entity receives a notice of non-compliance from a Governmental Entity with authority relating to a material element of the Project and fails to respond or address such notice to the satisfaction of such Governmental Entity within the time required by such notice, or if no time period is provided, within ten (10) Days of receipt of such notice;

- (l) DB Entity assigns or transfers the Contract Documents or any right or interest herein or there is a Change in Control, except as expressly permitted under the Contract Documents;
- (m) DB Entity fails to discharge or obtain a stay of any final judgment(s) or order for the payment of money against it in excess of \$100,000 in the aggregate arising out of the prosecution of the Work (provided that for purposes hereof, the posting of a bond in the amount of one hundred and twenty-five percent (125%) of such judgment or order shall be deemed an effective stay), and such failure continues without cure for a period of thirty (30) Days after the MBTA delivers written notice to DB Entity;
- (n) DB Entity fails, absent a valid dispute, to make payment when due for labor, equipment or materials in accordance with its agreements with Subcontractors and Law, or shall have failed to comply with any Law or failed reasonably to comply with the instructions of the MBTA consistent with the Contract Documents, and such failure continues without cure for a period of ten (10) Days after the MBTA delivers written notice to DB Entity;
- (o) DB Entity or any Guarantor is a party to fraud which affects the performance under the Contract Documents;
- (p) DB Entity materially fails to comply with the requirements related to the DBE, MCWU and FCWU programs, including failure to undertake good faith efforts to meet the identified goals, in Section 10, and such failure continues without cure for a period of thirty (30) Days after the MBTA delivers written notice to DB Entity;
- (q) any Guarantor, or any Person who provided a guaranty to the MBTA with respect to this DB Contract, revokes or attempts to revoke its obligations under any guaranty, or otherwise takes the position that such instrument is no longer in full force and effect;
- (r) DB Entity fails to timely observe, perform or cause to be observed or performed any material covenant, contract, obligation, term or condition required to be observed or performed by DB Entity under the Contract Documents, and such breach or failure continues without cure for a period of thirty (30) Days after the MBTA delivers written notice thereof to DB Entity;
- (s) DB Entity commences a voluntary case seeking liquidation, reorganization or other relief with respect to itself or its debts under any bankruptcy, insolvency or other similar Law now or hereafter in effect; seeks the appointment of a trustee, receiver, liquidator, custodian or other similar official of DB Entity or any substantial part of DB Entity's assets; files an answer admitting the material allegations of a petition filed against DB Entity in any involuntary case or court or other proceeding commenced against DB Entity; consents to any such relief or to the appointment of control by any



- such official in any involuntary case commenced against DB Entity; makes an assignment for the benefit of creditors; fails, is unable, or admits in writing the inability generally to pay DB Entity's debts as they become due; takes any action to authorize any of the foregoing; or any of the foregoing acts or events shall occur with respect to any Guarantor or any Major Participant; or
- (t) an involuntary case is commenced against DB Entity, any Guarantor or any Major Participant seeking: (i) liquidation, reorganization, dissolution, winding up, a composition or arrangement with creditors, a readjustment of debts or other relief with respect to DB Entity, any Guarantor or any Major Participant (as applicable) or their respective debts under any bankruptcy, insolvency or other similar Law now or hereafter in effect; or (ii) the appointment of a trustee, receiver, liquidator, custodian or other similar official of DB Entity, any Guarantor or any Major Participant (as applicable) or any substantial part of their respective assets; or (iii) seeking the issuance of a writ of attachment, execution, or similar process; or (iv) seeking like relief, and such involuntary case shall not be contested by DB Entity, any Guarantor or any Major Participant (as applicable) in good faith or shall remain undismissed and unstayed for a period of ninety (90) Days.

18.2 MBTA REMEDIES

Upon the occurrence of a DB Entity Default, the MBTA may, in its sole discretion, exercise any one or more of the following remedies:

- (a) exercise any and all remedies available under the Contract Documents or at Law or in equity, including recovery of damages to the extent provided by Law and the exercise of its rights pursuant to the Performance Bond or Guaranty;
- (b) terminate all of DB Entity's rights under this DB Contract and all of DB Entity's rights of entry upon possession and control and operation of the Project;
- (c) require DB Entity to withdraw from the Site, assign to the MBTA (without recourse to DB Entity) such of DB Entity's Subcontracts as the MBTA may request and remove such materials, equipment, tools and instruments used by, and any debris or waste materials generated by, DB Entity in the performance of the Work;
- (d) take possession of any and all Design Documents and Construction Documents and all other completed or partially completed drawings (including plans, elevations, sections, details and diagrams), specifications, records, information, schedules, samples, shop drawings and other documents and site facilities of DB Entity that the MBTA deems necessary for completion of the Work;

- (e) take the performance of the Work from DB Entity, and use DB Entity's materials, equipment, tools and instruments located on the Site as may be suitable and acceptable and may enter into a contract with another Person for the completion of the Work in accordance with the terms and provisions of the Contract Documents, or use such other methods as will be required for the completion of the Project in the opinion of the MBTA. All costs and charges incurred by the MBTA, including attorneys' fees and costs, together with the cost of completing the Work under the Contract Documents, will be deducted from any moneys due or which may become due to DB Entity. If such expense exceeds the sum which would have been payable under this DB Contract, then DB Entity and its Surety(ies) and Guarantor(s) shall be liable and shall pay to the MBTA the amount of such excess;
- (f) offset any sums owed to DB Entity by any sums owing from DB Entity, including Liquidated Damages or other damages owing the MBTA under the Contract Documents; or
- (g) withhold all or any portion of further payments to DB Entity until such time as the MBTA is able to determine how much (if any) remains owing to DB Entity. Promptly upon such determination, the MBTA shall notify DB Entity in writing of the amount, if any, that DB Entity shall pay the MBTA or the MBTA shall pay DB Entity with respect thereto.

SECTION 19. DAMAGES

19.1 LIQUIDATED DAMAGES

19.1.1 Applicability

19.1.1.1 DB Entity understands and agrees that if DB Entity fails to complete the Work in accordance with the Milestone Deadlines, the MBTA shall suffer substantial losses and damages. DB Entity agrees that DB Entity shall be liable for all such losses and damages.

19.1.1.2 DB Entity and the MBTA have agreed to liquidate damages with respect to certain types of losses and damages. DB Entity acknowledges and agrees that the Liquidated Damages assessed under this Section 19.1 are intended to compensate the MBTA solely for DB Entity's delay in achieving the Milestone Deadlines, and shall not excuse DB Entity from liability from any other breach of the requirements of the Contract Documents, including any failure of the Work to conform to applicable requirements.

19.1.1.3 The MBTA's assessment of Liquidated Damages pursuant to Section 2.5.7 and this Section 19.1 shall be the MBTA's sole and exclusive compensation for delays for which DB Entity is liable under Section 2.5.7 and this Section 19.1; provided, however, that nothing in this Section 19.1.1.3 shall prejudice the MBTA's rights and remedies related to a DB Entity Default.

19.1.2 Amount

19.1.2.1 DB Entity acknowledges and agrees that because of the unique nature of the Project and the fact that it is impracticable and extremely difficult to ascertain and determine the actual damages that would accrue to the MBTA and the public in the event of DB Entity's failure to achieve the applicable Milestone Deadline, DB Entity agrees to pay to the MBTA a liquidated amount (the "Liquidated Damages") as compensation to the MBTA for such damages. Liquidated Damages shall be payable in the amounts set forth in Section 2.3.1.

19.1.2.2 DB Entity understands and agrees that any Liquidated Damages payable in accordance with this Section 19.1 are in the nature of Liquidated Damages and not a penalty and such sums are reasonable under the circumstances existing as of the date of execution and delivery of this DB Contract.

19.1.3 Payment

Liquidated Damages, to the extent not paid, shall be payable by DB Entity to the MBTA within thirty (30) Days after DB Entity's receipt of an invoice therefore from the MBTA.

19.1.4 Limitation on Liquidated Damages

19.1.4.1 In no event shall the total amount of Liquidated Damages assessed under this Section 19 exceed \$69,900 for any one Day.

19.1.4.2 In no event shall the total amount of Liquidated Damages assessed under this Section 19 exceed a total amount of \$25,000,000.

19.2 OFFSET; DEDUCTION

The MBTA shall have the right to offset or deduct any amount owed by DB Entity to the MBTA from any amounts owed to DB Entity under this DB Contract.

19.3 WAIVER OF CONSEQUENTIAL DAMAGES

19.3.1 To the extent permitted by Law, neither Party shall be liable to the other for punitive damages or indirect, incidental or consequential damages, whether arising in contract, tort (including negligence) or any other theory of liability.

19.3.2 The limitations on liability for punitive, indirect, incidental or consequential damages under Section 19.3.1 shall not limit either Party's obligation to make payments expressly required under the Contract Documents or any right of recovery the MBTA may have for:

- (a) losses (including defense costs) to the extent (i) covered by the proceeds of insurance required to be carried by DB Entity pursuant to Section 12; or (ii) covered by the proceeds of insurance actually carried by or insuring DB Entity under policies solely with respect to the Project and the Work, regardless of whether required to be carried pursuant to Section 12;

- (b) losses arising out of fraud, criminal conduct, intentional misconduct, recklessness, bad faith or gross negligence on the part of DB Entity or any of its Subcontractors;
- (c) DB Entity's indemnity obligations under Section 23 or elsewhere in the Contract Documents;
- (d) DB Entity's obligation to pay Liquidated Damages as specified in the Contract Documents;
- (e) fines, fees and criminal penalties assessed against DB Entity or its Subcontractors by the Commonwealth or any other Governmental Entity acting under its respective regulatory or police powers (and, with respect to the MBTA, not acting in its capacity as a Party to this DB Contract); and
- (f) any other direct damages arising from a breach of this DB Contract by DB Entity.

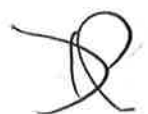
19.4 OVERALL LIABILITY CAP

19.4.1 Except as provided in Section 19.4.2, DB Entity's total aggregate liability to the MBTA under the Contract Documents for any and all damages and losses relating to the Project shall not exceed thirty-five percent (35%) of the Contract Price ("Overall Liability Cap").

19.4.2 DB Entity's liability under the Contract Documents shall not be limited nor released by the Overall Liability Cap for the following:

- (a) liability for any type of damage or loss to the extent: (i) it is covered by insurance that DB Entity is required to carry under the Contract Documents or actually carries for the Project or (ii) which DB Entity is deemed to have self-insured as provided under the Contract Documents;
- (b) liability for damages, compensation or benefits payable to employees of DB Entity or any Subcontractor in excess of payments made under the Worker's Compensation and Disability Benefits insurance required under the Contract Documents; or
- (c) liability for any type of damages or losses arising out of fraud, criminal conduct, intentional misconduct, recklessness, bad faith or gross negligence on the part of DB Entity or any of its Subcontractors.

19.4.3 Subject to DB Entity's rights and remedies under the Contract Documents, nothing in this Section 19.4 shall be construed as limiting DB Entity's obligations to complete the Work in accordance with the Contract Documents for the Contract Price (excluding the unused Owner Contingency and unused Allowance), nor diminish or prejudice the MBTA's right to declare a DB Entity Default and terminate this DB Contract pursuant to Section 18.



19.4.4 Nothing in this Section 19.4 shall be construed to release or limit the obligations or liability of any Surety(ies) under the Performance Bond or Labor and Material Payment Bond; provided, however, that DB Entity's liability for damages and losses under the Performance Bond or Labor and Material Payment Bond shall be limited to the full penal sum of such bonds, and the Overall Liability Cap shall not be additive to such penal sum. The obligations and liability of the Surety(ies) shall be in the full penal sum of such bonds.

SECTION 20. LABOR AND EMPLOYMENT REQUIREMENTS

20.1 KEY PERSONNEL; QUALIFICATIONS OF EMPLOYEES

20.1.1 Key Personnel

20.1.1.1 The following Persons, who were identified by DB Entity in its Technical Proposal, shall be considered to be Key Personnel of DB Entity:

- (a) Project Manager;
- (b) Project Safety and Security Manager;
- (c) Construction Manager;
- (d) Design Manager;
- (e) Quality Manager;
- (f) Project Controls Manager;
- (g) Systems Integration Manager;
- (h) Title VI Program Lead;
- (i) EEO Compliance Lead;
- (j) DBE Compliance Lead; and
- (k) Testing and Commissioning Manager.

20.1.1.2 The MBTA has approved the appointment of each Person to a key position (including Persons employed by Subcontractors) identified as Key Personnel. DB Entity shall notify the MBTA in writing of any proposed changes in any Key Personnel. DB Entity shall not change, or permit any change in, any Key Personnel without the prior written consent of the MBTA, which consent may be withheld by the MBTA in its sole discretion.

20.1.2 Non-Performing Personnel

All Persons performing Work shall have the skill and experience and any licenses required to perform the Work assigned to them. If the MBTA determines in its sole discretion that any Person employed by DB Entity or any Subcontractor is not performing the Work in a



proper and skillful manner, then at the written request of the MBTA, DB Entity shall remove such Person from the Project and such Person shall not be reemployed on the Project without the prior written approval of the MBTA. If such Person is not removed or if DB Entity fails to ensure that skilled and experienced personnel are furnished for the proper performance of the Work, then the MBTA may suspend the affected portion of the Work by delivery of written notice of such suspension to DB Entity and may withhold payment to DB Entity until DB Entity complies with this requirement. Such suspension shall in no way relieve DB Entity of any obligation contained in the Contract Documents or entitle DB Entity to a Change Order. Once compliance is achieved, DB Entity shall be entitled to and shall promptly resume the Work.

20.1.3 Certification of Undocumented Workers

DB Entity shall assure that all workers and employees used in the performance of the Work are legally documented workers and that DB Entity has verified the immigration status in accordance with the DB Entity Certification of Undocumented Workers included in Exhibit 1Q.

20.2 LABOR HARMONY AND PREVAILING WAGES

20.2.1.1 DB Entity shall furnish labor that can work in harmony with all other elements of labor employed or to be employed in the Work and shall ensure labor harmony during all phases of the Project.

20.2.1.2 DB Entity shall require prevailing wages to be paid for labor performed on the Project in accordance with the requirements of the Davis Bacon Act and Mass. Gen. Laws, ch. 149, §§ 26-27H, inclusive and Exhibit 1K. In addition, DB Entity shall, in accordance with the requirements of Mass. Gen. Laws, ch. 149, § 27B, (a) keep a true and accurate record of all mechanics and apprentices, teamsters, chauffeurs and laborers employed on the Project, showing the name, address, and occupational classification of each employee on the Project, and the hours worked by, and the wages paid to each such employee; and (b) provide certified weekly payroll reports to the MBTA that affirm that all employees performing any portion of the Work have been paid wages in accordance with the prevailing wage rates contained in Exhibit 1K, and such payroll shall also include the rates paid operators of rented trucks or rental equipment of any kind used on the Work; (c) promptly furnish to the Attorney General or her representative, upon her request, a copy of the record required under this Section 20.2.1.2, signed by the DB Entity or its authorized agent under the penalties of perjury; and (d) keep such records in such manner as the Commissioner of Labor shall prescribe, and shall be open to inspection by the MBTA or any authorized representative of the Department of Labor or any applicable Governmental Entity at any reasonable time and as often as may be necessary. The requirements of this Section 20.2.1.2 shall also apply to the work of any Subcontractor, having a Subcontract for any of the Work performed on the Contract Documents.

20.2.1.3 If DB Entity finds it necessary during the progress of the Work to secure a minimum wage rate for some additional classification, DB Entity shall make a request for such additional classification to the MBTA, who in turn will obtain the additional classification and corresponding minimum wage rate from the Commonwealth's Department of Labor and advise DB Entity of the same. These additional classifications and minimum wage rates are then to be



considered a part of the Contract Documents, and DB Entity shall have no claim for additional compensation because of the additional classification and minimum wage rates.

20.2.1.4 Not later than fifteen (15) Days after the effective date of a Certificate of Contract Substantial Completion, DB Entity shall furnish to the MBTA directly a statement in the form specified by Mass. Gen. Laws, ch. 149, § 27B, executed by DB Entity or by any authorized officer or employee of DB Entity who supervises the payment of wages. All Subcontractors shall furnish the statement required by this Section 20.2.1.4 directly to the MBTA within fifteen (15) Days after completion of their portion of the Work.

20.3 REQUIRED TRAINING

Completion of the trainings set forth in this Section 20.3 shall be a condition precedent to any employee of DB Entity or Subcontractor being permitted to perform the applicable portion of the Work.

20.3.1 OSHA Training

DB Entity shall, at its sole cost and expense, ensure that all workers and employees of DB Entity and its Subcontractors performing the Work will have successfully completed a course in construction safety and health approved by the United States Occupational Safety and Health Administration that is at least 10 hours in duration at the time the worker or employee begins work and shall furnish documentation of successful completion of said course with the first certified payroll report for each employee.

20.3.2 Commuter Rail Operator Safety Training

DB Entity shall, at its sole cost and expense, ensure that all workers employed by DB Entity and its Subcontractors attend Roadway Worker Protection training at the sole cost and expense of DB Entity and its Subcontractors in accordance with the requirements of the Railroads. The Commuter Rail Operator has adopted and implemented a program that will afford on-track safety for all roadway workers whose duties are performed on or near the Commuter Rail Operator's operated property. The Commuter Rail Operator's program will provide specific levels of protection required by Law. Attendees must successfully complete the Roadway Worker Training in order to receive an RWP license. The license is valid for a one-year period after which the person must re-attend the Commuter Rail Operator's Roadway Worker Protection class. To register for the "Roadway Worker Protection" class, contact:

John Tormey
Asst. Force Account Administrator
rwp@keoliscs.com
RWP Tel 617-222-8401

20.3.3 MBTA Training

20.3.3.1 In accordance with the requirements of the Railroads, DB Entity shall, at its sole cost and expense, ensure that all workers employed by DB Entity and Subcontractors attend a



one-day, eight-hour training class conducted by MBTA Subway Operations Training and the Safety Department which must include a 4 hours safety awareness program focusing on the particular hazards posed by the MBTA's operations and facilities. Attendees must successfully complete the Right of Way Safety Training in order to receive a Right of Way license. The license is valid for a two-year period after which the person must attend the MBTA's right of way re-certification class. To register for the "Right of Way Safety" class, contact:

Supervisor and Chief Rules Examiner of Training
Cabot RTL Training
275 Dorchester Avenue, 2nd Floor
Telephone: (617) 222-5377

20.3.3.2 All personnel of DB Entity and Subcontractors shall carry valid license cards on their persons at all times in accordance with the requirements of the Railroads. All such personnel that fail to carry their license cards are subject to ejection from the Site and dismissal from further Work on the Project. Failure of DB Entity or any Subcontractor to comply with the requirements set forth in this Section 20.3.3.2 shall subject such entity to removal from the MBTA's list of prequalified contractors.

SECTION 21. MILESTONES; EARLY OPENING FOR OPERATION

21.1 MILESTONE 6

21.1.1 Conditions of Milestone 6

Milestone 6 shall have been achieved when DB Entity has completed all Work required by the Technical Provisions, including Drawing LES-A-100 of Volume 2, Exhibit 2B.1, in the areas labeled as "Plaza Easement-1" and "Plaza Easement-2" on Attachment 4-A of Volume 2, Exhibit 2F.

21.1.2 Notice of Milestone 6

When the conditions set forth in Section 21.1.1 have occurred, DB Entity shall submit to the MBTA a Notice of Milestone 6, which notice shall set forth the date that Milestone 6 occurred.

21.1.3 MBTA Action Upon Receipt of Notice of Milestone 6

21.1.3.1 Within twenty-one (21) Days of receipt of the Notice of Milestone 6, the MBTA shall deliver to DB Entity either: (a) a Certificate of Milestone 6 in accordance with Section 21.1.3.2 or (b) a notice indicating that DB Entity has not achieved Milestone 6 pursuant to Section 21.1.3.3.

21.1.3.2 Once the MBTA has determined that DB Entity has achieved Milestone 6, the MBTA shall prepare a Certificate of Milestone 6.

21.1.3.3 Should the MBTA determine that DB Entity has not achieved Milestone 6, then: (a) the MBTA shall notify DB Entity, in writing, with reasons for such determination; (b) DB



Entity shall remedy the deficiencies and notify the MBTA when the the applicable portion of the Work is ready for re-inspection; and (c) the MBTA shall re-inspect the applicable portion of the Work and the Parties shall repeat the process set forth in this Section 21.1.

21.2 MILESTONE 5

21.2.1 Conditions of Milestone 5

Milestone 5 shall have been achieved when the VMF (excluding the VMF Yard) is functionally complete and ready for MBTA operational testing as evidenced by the occurrence of the following conditions:

- (a) DB Entity has completed all field and component testing in accordance with DB Entity's accepted the Test Program Plan for the VMF;
- (b) DB Entity has activated all building systems;
- (c) DB Entity has completed, and the MBTA has accepted, the operations and maintenance manuals for the VMF;
- (d) DB Entity has provided all applicable certificates of conformance required under FTA regulations and provided the deliverables as set forth in the Safety and Security Certification Plan;
- (e) DB Entity has obtained the certificates of occupancy from the Department of Public Safety for both buildings;
- (f) DB Entity has obtained approval from the MBTA of the Final Project Safety and Security Certificate for the applicable portion of the Work; and
- (g) DB Entity has completed the Work identified and as described in the Criteria Milestone Requirements for Milestone 5.

21.2.2 Notice of Milestone 5

When the conditions set forth in Section 21.2.1 have occurred, DB Entity shall submit to the MBTA a Notice of Milestone 5, which notice shall set forth the date that Milestone 5 occurred.

21.2.3 MBTA Action Upon Receipt of Notice of Milestone 5

21.2.3.1 Within twenty-one (21) Days of receipt of the Notice of Milestone 5, the MBTA shall deliver to DB Entity either: (a) a Certificate of Milestone 5 in accordance with Section 21.2.3.2 or (b) a notice indicating that DB Entity has not achieved Milestone 5 pursuant to Section 21.2.3.3.

21.2.3.2 Once the MBTA has determined that DB Entity has achieved Milestone 5, the MBTA shall prepare a Certificate of Milestone 5.

21.2.3.3 Should the MBTA determine that DB Entity has not achieved Milestone 5, then: (a) the MBTA shall notify DB Entity, in writing, with reasons for such determination; (b) DB Entity shall remedy the deficiencies and notify the MBTA when the applicable portion of the Work is ready for re-inspection; and (c) the MBTA shall re-inspect the applicable portion of the Work and the Parties shall repeat the process set forth in this Section 21.2.

21.3 MILESTONE 4A

21.3.1 Conditions of Milestone 4A

Milestone 4A shall have been achieved when the main line track through Red Bridge Interlocking and the first of either the Union Square Branch or Medford Branch is functionally complete and ready for DB Entity Systems Integration Testing Phase II using the MBTA-Furnished LRVs as evidenced by the occurrence of the following conditions:

- (a) DB Entity has completed Local Field Acceptance Testing (“LFAT”) and System Integration Testing (“SIT-I”) in accordance with DB Entity’s System Test Plan for, at minimum, the entire Branch (with the exception of the Lechmere Viaduct Spans 1-7) and certified test results have been submitted to the MBTA as set forth in Volume 2, Exhibit 2I;
- (b) DB Entity has completed and tested all associated track, platforms, switches, signals, signage, lighting, and associated transit operation systems (with the exception of the Lechmere Viaduct Spans 1-7);
- (c) DB Entity’s Safety and Security Certification Plan is current;
- (d) DB Entity has received from the MBTA written concurrence that the integration testing period is approved to start after satisfying the requirements set forth in Sections 21.3.1(a) through 21.3.1(c);
- (e) DB Entity has completed the operation manuals and one round of review comments have been provided by the MBTA with a satisfactory confirmation of an initial submittal;
- (f) DB Entity has scheduled the first certificate of occupancy inspection with the Department of Public Safety;
- (g) DB Entity has scheduled the first fire department inspection with the fire department;
- (h) DB Entity has participated in the first Pre-Revenue Demonstration Testing meeting with the MBTA; and
- (i) DB Entity has completed the Work identified and as described in the Criteria Milestone Requirements for Milestone 4A.

21.3.2 Notice of Milestone 4A

When the conditions set forth in Section 21.3.1 have occurred, DB Entity shall submit to the MBTA a Notice of Milestone 4A, which notice shall set forth the date that Milestone 4A occurred.

21.3.3 MBTA Action Upon Receipt of Notice of Milestone 4A

21.3.3.1 Within twenty-one (21) Days of receipt of the Notice of Milestone 4A, the MBTA shall deliver to DB Entity either: (a) a Certificate of Milestone 4A in accordance with Section 21.3.3.2 or (b) a notice indicating that DB Entity has not achieved Milestone 4A pursuant to Section 21.3.3.3.

21.3.3.2 Once the MBTA has determined that DB Entity has achieved Milestone 4A, the MBTA shall prepare a Certificate of Milestone 4A.

21.3.3.3 Should the MBTA determine that DB Entity has not achieved Milestone 4A, then: (a) the MBTA shall notify DB Entity, in writing, with reasons for such determination; (b) DB Entity shall remedy the deficiencies and notify the MBTA when the applicable portion of the Work is ready for re-inspection; and (c) the MBTA shall re-inspect the applicable portion of the Work, and the Parties shall repeat the process set forth in this Section 21.3.

21.4 MILESTONE 4B

21.4.1 Conditions of Milestone 4B

Milestone 4B shall have been achieved when the main line track through Red Bridge Interlocking and the first of either the Union Square Branch or Medford Branch is ready for MBTA Pre-Revenue Demonstration Testing as evidenced by the occurrence of the following conditions:

- (a) DB Entity has achieved Milestone 4A;
- (b) DB Entity has completed all System Integration Testing and Final Configuration Testing in accordance with the DB Entity's accepted System Test Plan as set forth in Volume 2, Exhibit 2I;
- (c) DB Entity has received the MBTA's approval to start the Pre-Revenue Demonstration Testing period by satisfying the conditions set forth in Section 21.4.1(b);
- (d) DB Entity has provided all applicable certificates of conformance required under FTA regulations and provided the deliverables to the MBTA as set forth in the Safety and Security Certification Plan in accordance with Volume 2, Exhibit 2I;
- (e) DB Entity has completed Local Field Acceptance Testing ("LFAT") and System Integration Testing ("SIT-I") in accordance with DB Entity's System Test Plan for the remainder of the Lechmere Viaduct (Spans 1-7) and

certified test results have been submitted to the MBTA as set forth in Volume 2, Exhibit 2I;

- (f) DB Entity has completed and tested all associated track, platforms, switches, signals, signage, lighting, and associated transt operation systems for the remainder of the Lechmere Viaduct (Spans 1-7); and
- (g) DB Entity has completed the Work identified and as described in the Criteria Milestone Requirements for Milestone 4B.

21.4.2 Notice of Milestone 4B

When the conditions set forth in Section 21.4.1 have occurred, DB Entity shall submit to the MBTA a Notice of Milestone 4B, which notice shall set forth the date that Milestone 4B occurred.

21.4.3 MBTA Action Upon Receipt of Notice of Milestone 4B

21.4.3.1 Within twenty-one (21) Days of receipt of the Notice of Milestone 4B, the MBTA shall deliver to DB Entity either: (a) a Certificate of Milestone 4B in accordance with Section 21.4.3.2 or (b) a notice indicating that DB Entity has not achieved Milestone 4B pursuant to Section 21.4.3.3.

21.4.3.2 Once the MBTA has determined that DB Entity has achieved Milestone 4B, the MBTA shall prepare a Certificate of Milestone 4B.

21.4.3.3 Should the MBTA determine that DB Entity has not achieved Milestone 4B, then: (a) the MBTA shall notify DB Entity, in writing, with reasons for such determination; (b) DB Entity shall remedy the deficiencies and notify the MBTA when the applicable portion of the Work is ready for re-inspection; and (c) the MBTA shall re-inspect the applicable portion of the Work, and the Parties shall repeat the process set forth in this Section 21.4.

21.5 MILESTONE 4C

21.5.1 Conditions of Milestone 4C

Milestone 4C shall have been achieved when the main line track through Red Bridge Interlocking and the first of either the Union Square Branch or Medford Branch is opened for revenue service as evidenced by the occurrence of the following conditions:

- (a) DB Entity has achieved Milestone 4B;
- (b) DB Entity has completed the Pre-Revenue Demonstration Testing as set forth in Volume 2, Exhibit 2I;
- (c) DB Entity has achieved Milestone 5, including all punch list items, and final testing has been completed for the Vehicle Maintenance Facility;



- (d) All elevators, canopies (if applicable), signage, structures, wayfinding, fare collection, egress, fire protection, communications, lighting, TAK lighting, security fences, platforms, drainage, security features, track, signals, systems have been completed and tested;
- (e) DB Entity has made final change-over of permanent locks, transmitted keys to the MBTA and provided information to the MBTA of change-over in security provisions for the applicable portion of the Work;
- (f) DB Entity has obtained approval from the MBTA of the Final Project Safety and Security Certificate for the applicable portion of the Work;
- (g) DB Entity has received full concurrence to open for revenue service;
- (h) DB Entity has obtained the certificates of safety from the fire department and the Department of Public Safety;
- (i) DB Entity has successfully completed the testing reliability requirements on the communications and train control systems as specified in the Technical Provisions;
- (j) DB Entity has delivered and installed all equipment and materials required for commencing operations, and all such equipment and materials have passed all testing, inspections and safety certifications required under the Contract Documents;
- (k) DB Entity has completed all training of personnel in accordance with the Contract Documents;
- (l) DB Entity has completed the Work identified and as described in the Criteria Milestone Requirements for Milestone 4C; and
- (m) DB Entity has purchased and delivered to locations designated by the MBTA, free and clear of all Liens all replacement spare parts required under the Contract Documents related to the Work under Milestone 4C.

21.5.2 Notice of Milestone 4C

When the conditions set forth in Section 21.5.1 have occurred, DB Entity shall submit to the MBTA a Notice of Milestone 4C, which notice shall set forth the date that Milestone 4C occurred.

21.5.3 MBTA Action Upon Receipt of Notice of Milestone 4C

21.5.3.1 Within twenty-one (21) Days of receipt of the Notice of Milestone 4C, the MBTA shall deliver to DB Entity either: (a) a Certificate of Milestone 4C in accordance with Section 21.5.3.2 or (b) a notice indicating that DB Entity has not achieved Milestone 4C pursuant to Section 21.5.3.3.



21.5.3.2 Once the MBTA has determined that DB Entity has achieved Milestone 4C, the MBTA shall prepare a Certificate of Milestone 4C.

21.5.3.3 Should the MBTA determine that DB Entity has not achieved Milestone 4C, then: (a) the MBTA shall notify DB Entity, in writing, with reasons for such determination; (b) DB Entity shall remedy the deficiencies and notify the MBTA when the applicable portion of the Work is ready for re-inspection; and (c) the MBTA shall re-inspect the applicable portion of the Work, and the Parties shall repeat the process set forth in this Section 21.4.

21.5.3.4 Once DB Entity has achieved Milestone 4C, DB Entity shall not be allowed to shut-down service without the prior written authorization of the MBTA.

21.6 MILESTONE 3A

21.6.1 Conditions of Milestone 3A

Milestone 3A shall have been achieved when main line track through the Red Bridge Interlocking and second of either the Union Square Branch or Medford Branch is functionally complete and ready for DB Entity Systems Integration Testing Phase II using the MBTA-Furnished LRVs as evidenced by the occurrence of the following conditions:

- (a) DB Entity has completed Local Field Acceptance Testing (“LFAT”) and System Integration Testing (“SIT-I”) in accordance with DB Entity’s Systems Test Plan and certified test results have been submitted to the MBTA as set forth in Volume 2, Exhibit 2I;
- (b) DB Entity has completed and tested all associated track, platforms, switches, signals, signage, lighting, and associated transit operation systems;
- (c) DB Entity’s Safety and Security Certification Plan is current;
- (d) DB Entity has received from the MBTA written concurrence that the integration testing period is approved to start after satisfying the requirements of Sections 21.6.1(a) through 21.6.1(c);
- (e) DB Entity has completed the operation manuals and one round of review comments have been provided by the MBTA with a satisfactory confirmation of an initial submittal;
- (f) DB Entity has scheduled the first certificate of occupancy inspection with the Department of Public Safety;
- (g) DB Entity has scheduled the first fire department inspection with the fire department;
- (h) DB Entity has participated in the first Pre-Revenue Demonstration Testing meeting with the MBTA; and



- (i) DB Entity has completed the Work identified and as described in the Criteria Milestone Requirements for Milestone 3A.

21.6.2 Notice of Milestone 3A

When the conditions set forth in Section 21.6.1 have occurred, DB Entity shall submit to the MBTA a Notice of Milestone 3A, which notice shall set forth the date that Milestone 3A occurred.

21.6.3 MBTA Action Upon Receipt of Notice of Milestone 3A

21.6.3.1 Within twenty-one (21) Days of receipt of the Notice of Milestone 3A, the MBTA shall deliver to DB Entity either: (a) a Certificate of Milestone 3A in accordance with Section 21.6.3.2 or (b) a notice indicating that DB Entity has not achieved Milestone 3A pursuant to Section 21.6.3.3.

21.6.3.2 Once the MBTA has determined that DB Entity has achieved Milestone 3A, the MBTA shall prepare a Certificate of Milestone 3A.

21.6.3.3 Should the MBTA determine that DB Entity has not achieved Milestone 3A, then: (a) the MBTA shall notify DB Entity, in writing, with reasons for such determination; (b) DB Entity shall remedy the deficiencies and notify the MBTA when the applicable portion of the Work is ready for re-inspection; and (c) the MBTA shall re-inspect the applicable portion of the Work, and the Parties shall repeat the process set forth in this Section 21.6.

21.7 MILESTONE 3B

21.7.1 Conditions of Milestone 3B

Milestone 3B shall have been when the main line track through Red Bridge Interlocking and the second of either the Union Square Branch or Medford Branch is ready for MBTA Pre-Revenue Demonstration Testing as evidenced by the occurrence of the following conditions:

- (a) DB Entity has achieved Milestone 3A;
- (b) DB Entity has completed all System Integration Testing and Final Configuration Testing in accordance with the DB Entity's accepted Systems Test Plan as set forth in Volume 2, Exhibit 2I;
- (c) DB Entity has received the MBTA's approval to start the Pre-Revenue Demonstration Testing period by satisfying the conditions set forth in Section 21.7.1(b);
- (d) DB Entity has provided all applicable certificates of conformance required under FTA regulations and provided the deliverables to the MBTA as set forth in the Safety and Security Certification Plan in accordance with Volume 2, Exhibit 2I; and



- (e) DB Entity has completed the Work identified and as described in the Criteria Milestone Requirements for Milestone 3B.

21.7.2 Notice of Milestone 3B

When the conditions set forth in Section 21.7 have occurred, DB Entity shall submit to the MBTA a Notice of Milestone 3B, which notice shall set forth the date that Milestone 3B occurred.

21.7.3 MBTA Action Upon Receipt of Notice of Milestone 3B

21.7.3.1 Within twenty-one (21) Days of receipt of the Notice of Milestone 3B, the MBTA shall deliver to DB Entity either: (a) a Certificate of Milestone 3B in accordance with Section 21.7.3.2 or (b) a notice indicating that DB Entity has not achieved Milestone 3B pursuant to Section 21.7.3.3.

21.7.3.2 Once the MBTA has determined that DB Entity has achieved Milestone 3B, the MBTA shall prepare a Certificate of Milestone 3B.

21.7.3.3 Should the MBTA determine that DB Entity has not achieved Milestone 3B, then: (a) the MBTA shall notify DB Entity, in writing, with reasons for such determination; (b) DB Entity shall remedy the deficiencies and notify the MBTA when the applicable portion of the Work is ready for re-inspection; and (c) the MBTA shall re-inspect the applicable portion of the Work, and the Parties shall repeat the process set forth in this Section 21.7.

21.8 MILESTONE 3C

21.8.1 Conditions of Milestone 3C

Milestone 3C shall have been achieved when the main line track through Red Bridge Interlocking and the second of either the Union Square Branch or Medford Branch is opened for revenue service as evidenced by the occurrence of the following conditions:

- (a) DB Entity has achieved Milestone 3B;
- (b) DB Entity has completed the Pre-Revenue Demonstration Testing as set forth in Volume 2, Exhibit 2I;
- (c) All elevators, canopies (if applicable), signage, structures, wayfinding, fare collection, egress, fire protection, communications, lighting, TAK lighting, security fences, platforms, drainage, security features, track, signals, systems have been completed and tested;
- (d) DB Entity has made final change-over of permanent locks, transmitted keys to the MBTA and provided information to the MBTA of change-over in security provisions for the applicable portion of the Work;

- (e) DB Entity has obtained approval from the MBTA of the Final Project Safety and Security Certificate for the applicable portion of the Work;
- (f) DB Entity has received full concurrence to open for revenue service;
- (g) DB Entity has obtained the certificates of safety from the fire department and the Department of Public Safety;
- (h) DB Entity has successfully completed the testing reliability requirements on the communications and train control systems as specified in the Technical Provisions;
- (i) DB Entity has delivered and installed all equipment and materials required for commencing operations, and all such equipment and materials have passed all testing, inspections and safety certifications required under the Contract Documents;
- (j) DB Entity has completed all training of personnel in accordance with the Contract Documents;
- (k) DB Entity has completed the Work identified and as described in the Criteria Milestone Requirements for Milestone 3C; and
- (l) DB Entity has purchased and delivered to locations designated by the MBTA, free and clear of all Liens all replacement spare parts required under the Contract Documents related to the Work under Milestone 3C.

21.8.2 Notice of Milestone 3C

When the conditions set forth in Section 21.8.1 have occurred, DB Entity shall submit to the MBTA a Notice of Milestone 3C, which notice shall set forth the date that Milestone 3C occurred.

21.8.3 MBTA Action Upon Receipt of Notice of Milestone 3C

21.8.3.1 Within twenty-one (21) Days of receipt of the Notice of Milestone 3C, the MBTA shall deliver to DB Entity either: (a) a Certificate of Milestone 3C in accordance with Section 21.8.3.2 or (b) a notice indicating that DB Entity has not achieved Milestone 3C pursuant to Section 21.8.3.3.

21.8.3.2 Once the MBTA has determined that DB Entity has achieved Milestone 3C, the MBTA shall prepare a Certificate of Milestone 3C.

21.8.3.3 Should the MBTA determine that DB Entity has not achieved Milestone 3C, then: (a) the MBTA shall notify DB Entity, in writing, with reasons for such determination; (b) DB Entity shall remedy the deficiencies and notify the MBTA when the applicable portion of the Work is ready for re-inspection; and (c) the MBTA shall re-inspect the applicable portion of the Work, and the Parties shall repeat the process set forth in this Section 21.8.



21.8.3.4 Once DB Entity has achieved Milestone 3C, DB Entity shall not be allowed to shut-down service without the prior written authorization of the MBTA.

21.9 MILESTONE 2: CONTRACT SUBSTANTIAL COMPLETION

21.9.1 Conditions of Contract Substantial Completion

Contract Substantial Completion shall have been deemed achieved when each of the following conditions have occurred:

- (a) the Work has been completed, except for (i) Work having a value of less than 1% of the then-adjusted Contract Price (less the unused Owner Payment Contingency and unused Allowance);
- (b) DB Entity has achieved Milestone 3C and Milestone 4C;
- (c) DB Entity has received all applicable Governmental Approvals which DB Entity is obligated under the Contract Documents for the Project;
- (d) DB Entity has successfully completed all of the inspections and tests required under the Contract Documents, and has demonstrated that the requirements of the Contract Documents for the Project have been met;
- (e) DB Entity has corrected all Nonconforming Work that materially or adversely impacts the Project;
- (f) DB Entity has submitted, in acceptable form, all of the required operations and maintenance plans, procedures, rules, schedules, agreements and manuals required by the Contract Documents;
- (g) DB Entity has provided the MBTA with information regarding any transition of responsibility for payment of utilities;
- (h) DB Entity has discontinued the use of and removed temporary facilities from the Site, along with mock-ups and similar elements;
- (i) DB Entity has provided the MBTA unrestricted access to the Project;
- (j) DB Entity has submitted copies of, and assigned as requested by the MBTA, manufacturer's warranties and Subcontractor warranties required pursuant to Section 23;
- (k) DB Entity has completed the Work identified and as described in the Criteria Milestone Requirements for Contract Substantial Completion; and
- (l) DB Entity has prepared a Punch List and a schedule for the completion of all Punch List items that are acceptable to the MBTA.

21.9.2 Notice of Contract Substantial Completion



When the conditions set forth in Section 21.9.1 have occurred, DB Entity shall submit to the MBTA a Notice of Contract Substantial Completion, which notice shall set forth the date that Contract Substantial Completion occurred.

21.9.3 MBTA Action Upon Receipt of Notice of Contract Substantial Completion

21.9.3.1 Within twenty-one (21) Days of receipt of the Notice of Contract Substantial Completion, the MBTA shall deliver to DB Entity either: (a) a Certificate of Contract Substantial Completion in accordance with Section 21.9.3.2 or (b) a notice indicating that DB Entity has not achieved Contract Substantial Completion pursuant to Section 21.9.3.3. If the MBTA fails to respond pursuant to this Section 21.9.3.1 to DB Entity's Notice of Contract Substantial Completion within such 21-day period, DB Entity's Notice of Contract Substantial Completion shall take effect as the MBTA's declaration that DB Entity has achieved Contract Substantial Completion.

21.9.3.2 Once the MBTA has determined that DB Entity has achieved Contract Substantial Completion, the MBTA shall prepare a Certificate of Contract Substantial Completion, which shall be accompanied by DB Entity's Punch List of items to be completed or corrected, as verified by the MBTA. The Certificate of Contract Substantial Completion shall be executed by DB Entity and the MBTA. The date the Certificate of Contract Substantial Completion is executed by the MBTA and DB Entity shall be the effective date of the Certificate of Contract Substantial Completion.

21.9.3.3 Should the MBTA determine that DB Entity has not achieved Contract Substantial Completion, then: (a) MBTA shall notify DB Entity, in writing, with reasons for such determination, and provide DB Entity an itemized list of incomplete or unsatisfactory Work items, the completion of which are required for DB Entity to achieve Contract Substantial Completion; (b) DB Entity shall remedy the deficiencies and notify the MBTA when the Work is ready for re-inspection; and (c) the MBTA shall re-inspect the Work and the Parties shall repeat the process set forth in this Section 21.9.

21.10 MILESTONE 1: CONTRACT FINAL ACCEPTANCE

21.10.1 Conditions of Contract Final Acceptance

Contract Final Acceptance of the Project shall be deemed to have occurred when all of the following have occurred:

- (a) all requirements for Contract Substantial Completion of the Project shall have been fully satisfied;
- (b) DB Entity has purchased and delivered to locations designated by the MBTA, free and clear of all Liens: (i) all special tools required under the Contract Documents; (ii) all replacement spare parts required under the Contract Documents; and (iii) extra stock and similar items required under the Contract Documents to locations designated by the MBTA;



- (c) DB Entity has submitted Record Drawings, final Project videos, photographs, and models, damage and settlement survey, property survey, and similar final record information in accordance with the Technical Provisions;
- (d) DB Entity has delivered to the MBTA a certification that the construction of the Project complies with the design intent signed and stamped by DB Entity's Engineer of Record;
- (e) DB Entity has submitted evidence documenting closure or concurrence of non-closure by the MBTA for all environmental compliance actions in accordance with the Environmental Mitigation Plan;
- (f) DB Entity has certified that all environmental compliance actions have been completed in accordance with the Technical Provisions;
- (g) DB Entity has submitted a pest control final inspection report and warranty in accordance with the Technical Provisions;
- (h) DB Entity has submitted a consent of Surety to Final Payment;
- (i) DB Entity has submitted evidence of final, continuing insurance coverage complying with the MBTA's requirements;
- (j) DB Entity has performed final cleaning in accordance with the Technical Provisions;
- (k) all Work that DB Entity is obligated to perform for, or on behalf of, Utility Owners has been accepted by the MBTA as, provided under the Contract Documents, and DB Entity has paid for all work performed by such Utility Owners or their separate contractors that DB Entity is obligated to pay for;
- (l) DB Entity has submitted a Project close-out report related to its performance under following plans: (i) DBE Program Plan; (ii) EEO Contract Compliance Plan; and (iii) Title VI Compliance Plan;
- (m) all of DB Entity's and Subcontractors' personnel, supplies, equipment, waste materials and debris, rubbish and temporary facilities have been removed from the Site;
- (n) DB Entity has delivered to the MBTA a certification representing that there are no outstanding claims of DB Entity or claims, Liens or stop notices of any Subcontractor or laborer with respect to the Work, other than any previously submitted unresolved claims of DB Entity and any claims, Liens or stop notices of a Subcontractor or laborer being contested by DB Entity (in which event the certification shall include a list of all such matters with such detail as is requested by the MBTA and, with respect to all Subcontractor and laborer claims, Liens and stop notices, shall include a representation by DB Entity that it is diligently and in good faith contesting such matters by



appropriate legal proceedings which shall operate to prevent the enforcement or collection of the same). For purposes of such certificate, the term "claim" shall include all matters or facts which may give rise to a claim;

- (o) the Punch List items have been completed to the reasonable satisfaction of the MBTA; and
- (p) all of DB Entity's other obligations under the Contract Documents (other than obligations which by their nature are required to be performed after Contract Final Acceptance) have been satisfied in full or waived.

21.10.2 Notice of Contract Final Acceptance

When the conditions set forth in Section 21.10.1 have occurred, DB Entity shall submit to the MBTA a Notice of Contract Final Acceptance, which notice shall set forth the date that Contract Final Acceptance occurred.

21.10.3 MBTA Action Upon Receipt of Notice of Contract Final Acceptance

21.10.3.1 Within twenty-one (21) Days of receipt of the Notice of Contract Final Acceptance, the MBTA shall deliver to DB Entity either: (a) a Certificate of Contract Final Acceptance in accordance with Section 21.10.3.2 or (b) a notice indicating that DB Entity has not achieved Contract Final Acceptance pursuant to Section 21.10.3.3.

21.10.3.2 Once the MBTA has determined that DB Entity has achieved Contract Final Acceptance, the MBTA shall prepare a Certificate of Contract Final Acceptance, which shall be executed by DB Entity and the MBTA.

21.10.3.3 Should the MBTA determine that DB Entity has not achieved Contract Final Acceptance, then: (a) MBTA shall notify DB Entity, in writing, with reasons for such determination; (b) DB Entity shall remedy the deficiencies and notify the MBTA when the Work is ready for re-inspection; and (c) the MBTA shall re-inspect the Work and the Parties shall repeat the process set forth in this Section 21.10.

SECTION 22. REPRESENTATIONS AND WARRANTIES; WORK WARRANTY

22.1 MBTA REPRESENTATIONS AND WARRANTIES

The MBTA hereby represents and warrants to DB Entity as follows:

- (a) the MBTA is duly authorized to enter into this DB Contract and has full power, right and authority to execute, deliver and perform its obligations under, in accordance with and subject to the terms and conditions of this DB Contract and the other Contract Documents to which the MBTA is a party;
- (b) each Person executing this DB Contract or any other Contract Document on behalf of the MBTA to which the MBTA is a party has been or at such time

will be duly authorized to execute each such document on behalf of the MBTA;

- (c) neither the execution and delivery by the MBTA of this DB Contract and the other Contract Documents, nor the consummation of the transactions contemplated hereby or thereby, is in conflict with or will result in a default under or violation of any other agreements or other instruments to which the MBTA is a party or by which it is bound; and
- (d) there is no action, suit, proceeding, investigation or litigation pending and served on the MBTA (or any official representative of the MBTA) that challenges the MBTA's authority to execute, deliver or perform, or the validity or enforceability of, this DB Contract and the other Contract Documents to which the MBTA is a party, or that challenges the authority of the officials executing this DB Contract or the other Contract Documents, and the MBTA has disclosed to DB Entity any pending and unserved or threatened action, suit, proceeding, investigation or litigation with respect to such matters of which the MBTA is aware.

22.2 DB ENTITY REPRESENTATIONS AND WARRANTIES

DB Entity hereby represents and warrants to the MBTA as follows:

- (a) DB Entity has the requisite power and all required licenses to carry on its present and proposed activities in the Commonwealth of Massachusetts, and has full power, right and authority to execute and deliver this DB Contract and the other Contract Documents to which DB Entity is a party and to perform each and all of the obligations of DB Entity provided for herein and therein. DB Entity has filed and will continue to file with the State Secretary all certificates and annual reports required by Mass Gen. Laws ch. 156B, ch. 156D, or ch. 180, as applicable. Other out-of-state business organizations, such as individual proprietorships, partnerships, and joint ventures, shall appoint an agent in Massachusetts for the service of legal process and furnish a copy of such appointment to the Secretary of the Commonwealth prior to the issuance of a contract by the MBTA;
- (b) DB Entity has taken or caused to be taken all requisite action to authorize the execution and delivery of, and the performance of its obligations under, this DB Contract and the other Contract Documents to which DB Entity is a party;
- (c) each Person executing this DB Contract or any other Contract Documents on behalf of DB Entity has been or will at such time be duly authorized to execute each such document on behalf of DB Entity;
- (d) neither the execution and delivery by DB Entity of this DB Contract and the other Contract Documents to which DB Entity is a party, nor the consummation of the transactions contemplated hereby or thereby, is in



conflict with or will result in a default under or a violation of the governing instruments of DB Entity or any other agreements or instruments to which it is a party or by which it is bound;

- (e) there is no action, suit, proceeding, investigation or litigation pending and served on DB Entity that challenges DB Entity's authority to execute, deliver or perform, or the validity or enforceability of, this DB Contract and the other Contract Documents to which DB Entity is a party, or that challenges the authority of DB Entity's Authorized Representative executing this DB Contract or the other Contract Documents; and DB Entity has disclosed to the MBTA any pending and unserved or threatened action, suit, proceeding, investigation or litigation with respect to such matters of which DB Entity is aware;
- (f) DB Entity is in material compliance with all Laws;
- (g) the Project shall be free of defects, including design defects, and shall be free of Design Exceptions not previously approved by the MBTA in accordance with the Contract Documents; and
- (h) during the time this DB Contract is in effect neither it nor any affiliated company, as hereinafter defined, shall participate in or cooperate with an international boycott, as defined in Section 999 (b) (3) and (4) of the Internal Revenue Code of 1954, as amended, or engages in conduct declared to be unlawful by Mass. Gen. Laws, ch. 151E, § 2. If there shall be a breach in the warranty representation and agreement contained in this Section 22.2(h), then without limiting such other rights as it may have, the MBTA shall be entitled to declare a DB Entity Default. As used herein, an affiliated company shall be any business entity of which at least 51 percent of the ownership interests are directly or indirectly owned by DB Entity or by a person or persons or business entity or entities directly or indirectly owning at least 51 percent of the ownership interests of DB Entity, or which directly or indirectly owns at least 51% of the ownership interests of DB Entity.

22.3 WORK WARRANTY

22.3.1 Warranty and Warranty Period

22.3.1.1 Subject to DB Entity's rights and remedies under Section 15, DB Entity warrants that: (a) the Work shall be free of defects; (b) the equipment and materials furnished under the Contract Documents shall be of good quality and, except for the MBTA-Furnished Items, the Previous GLX Contract Improvements or as expressly permitted otherwise in the Contract Documents, new; (c) the equipment, materials and goods used or supplied for the Project shall be fit for use for the intended function; and (d) the Work (including the incorporation of MBTA-Furnished Items and Previous GLX Contract Improvements) shall meet all of the requirements of the Contract Documents (collectively "Warranty").

22.3.1.2 The Warranty shall apply for a period of two (2) years after Contract Substantial Completion. If any Work is completed after Contract Substantial Completion (i.e., Punch List items), or modified, corrected, repaired, replaced and/or reperformed pursuant to this Section 22.3, then the warranty applicable to such portion of the Work shall apply for two (2) years from the date of completion of the Work, or the modification, correction, repair, replacement or reperformance, but in no event longer than four (4) years after Contract Substantial Completion ("Warranty Period"). Notwithstanding the above, the expiration of the Warranty Period does not bar the MBTA's claim for any latent defect in the Work that could not have been reasonably discovered prior to the expiration of the Warranty Period.

22.3.1.3 The Warranty required in this Section 22.3 shall not limit or reduce any requirements in the Contract Documents for DB Entity to provide warranties for certain materials, equipment and other items for periods greater than the Warranty Period; nor shall the Warranty required in this Section 22.3 limit or reduce any warranty provided by any Person for materials, equipment or other items furnished for use on the Project.

22.3.2 Remedy

22.3.2.1 Within seven (7) Days of receipt by DB Entity of notice from the MBTA identifying a failure of any of the Work to satisfy the Warranty, DB Entity and the MBTA shall mutually agree when and how DB Entity shall remedy such failure.

22.3.2.2 If DB Entity does not proceed promptly to effectuate such remedy within the agreed time (or immediately, in the case of emergency conditions), the MBTA, after seven (7) Days' notice to DB Entity, if DB Entity has not commenced a remedy within such seven-Day period, shall have the right to perform or have performed by third parties the necessary remedy, and the costs thereof shall be borne by DB Entity.

22.3.2.3 If DB Entity and the MBTA do not agree as to whether an item of Work is in compliance with the Contract Documents, the MBTA may: (a) issue a Directive Letter to DB Entity to remedy the Work as the MBTA determines is necessary, and DB Entity shall perform such remedy; or (b) after notice to DB Entity, remedy the Work itself or by third parties and the costs thereof shall be borne by DB Entity.

22.3.2.4 If DB Entity learns of an emergency associated with the failure of any of the Work to satisfy the Warranty that requires immediate curative action, DB Entity shall implement such curative action as it deems reasonably necessary, and shall notify the MBTA of said emergency and the resulting curative action. If the MBTA learns of an emergency associated with the failure of any of the Work to satisfy the Warranty that requires immediate curative action, then the MBTA shall have the right to perform or have performed by third parties the necessary remedies with the costs thereof to be borne by DB Entity, and the MBTA shall notify DB Entity of the emergency and the resulting curative action.

22.3.2.5 DB Entity shall submit a report to the MBTA within 48 hours of completion of any Work remedied or corrected under the Warranty. Such report shall: (a) identify the MBTA representative requesting such Work and the date of the request; (b) include a description of the

defect and remedial plan; (c) identify the start and completion date of the Work remedied or corrected; and (d) include a description of the remedial/corrective Work performed.

22.3.3 Applicability of Warranties to Re-Done Work

The Warranty shall apply to all Work redone or remedied pursuant to the terms of this Section 22.3. Following acceptance by the MBTA of the re-done, repaired, corrected or replaced Work, the Warranty for re-done or remedied elements of such Work shall extend for the Warranty Period as set forth in Section 22.3.1.2.

22.3.4 Subcontractor Warranties

22.3.4.1 Without in any way derogating or otherwise limiting DB Entity's own representations and warranties (including the Warranty contained in this Section 22.3) and other obligations with respect to all of the Work, DB Entity shall obtain from all Subcontractors and cause to be extended to the MBTA appropriate representations, warranties (for periods at least co-extensive in duration with DB Entity's Warranty for such Work), guarantees and obligations with respect to design, materials, workmanship, equipment, tools and supplies furnished by such Subcontractors. All representations, warranties, guarantees and obligations of Subcontractors: (a) shall be written so as to survive all inspections, tests, acceptances and approvals hereunder; and (b) shall run directly to and be enforceable by DB Entity, the MBTA and/or their respective successors and assigns. DB Entity assigns to the MBTA all of DB Entity's rights and interests in all extended warranties for periods exceeding the Warranty Period that may be received by DB Entity from any of its Subcontractors.

22.3.4.2 Upon receipt from the MBTA of notice of a failure of any of the Work to satisfy any Subcontractor warranty, representation, guarantee or obligation, DB Entity shall be responsible for enforcing or performing any such representation, warranty, guaranty or obligation, in addition to DB Entity's other obligations hereunder. The MBTA's rights under this Section 22.3.4.2 shall commence at the time such representation, warranty, guaranty or obligation is furnished and shall continue until the expiration of the Warranty Period. Until such expiration, the cost of any equipment, material, labor (including re-engineering) or shipping shall be borne by DB Entity if such cost is covered by the Warranty and DB Entity shall be required to replace or repair defective equipment, material or workmanship furnished by Subcontractors.

22.3.5 Assignment of Warranties

The Warranty and all Subcontractor warranties shall be assignable by the MBTA without approval by DB Entity or any Subcontractor, which assignment shall be effective upon delivery of notice to DB Entity or Subcontractor of the assignment.

22.3.6 No Limitation on Liability

The warranties are in addition to all rights and remedies available under the Contract Documents or Laws, and shall not limit DB Entity's liability or responsibility imposed by the Contract Documents or Laws with respect to the Work, including liability for breach of contract, design defects, latent construction defects, strict liability, negligence or fraud. Warranty periods



shall not reduce any limitations or repose periods for the Parties to file a lawsuit alleging a breach of any of the terms of this DB Contract.

22.3.7 Warranty Costs and Damages

22.3.7.1 DB Entity shall have adequate spare parts and equipment to support its Warranty obligations, and shall not use any spare parts and equipment from the MBTA's inventory.

22.3.7.2 All costs of correcting Work to comply with the Warranty, including additional testing and inspections, shall be deemed to be included in the GLX Lump Sum and Additive Options Price. DB Entity shall reimburse the MBTA or pay the MBTA's expenses made necessary thereby within ten (10) Days after DB Entity's receipt of invoices therefor.

22.3.7.3 If DB Entity fails or refuses to provide the Warranty remedies described in this Section 22.3, notwithstanding a valid request by the MBTA, DB Entity shall be liable to the MBTA for the cost of performance of the Warranty work by others, throughout the Warranty Period.

SECTION 23. INDEMNIFICATION AND RELEASES

23.1 INDEMNIFICATIONS BY DB ENTITY

Subject to Section 23.2, DB Entity shall release, defend, indemnify and hold harmless MassDOT, MBTA and their respective officers, agents, and employees (collectively, the "Indemnified Parties") from and against any and all third-party claims, demands, liabilities, judgments, penalties, costs, expenses and damages and including attorney and expert consultant fees and costs incurred in connection with the enforcement of this indemnity, arising out of, relating to or resulting from the following:

- (a) the breach or alleged breach of the Contract Documents by DB Entity, its employees, agents, officers or Subcontractors or any other Persons performing any of the Work, for whom DB Entity may be contractually or legally responsible;
- (b) the failure or alleged failure by DB Entity or its employees, agents, officers or Subcontractors or any other Persons for whom DB Entity may be contractually or legally responsible, to comply with any Laws, including Environmental Laws, in performing the Work;
- (c) any alleged patent or copyright infringement or other allegedly improper appropriation or use of trade secrets, patents, proprietary information, know-how, copyright rights or inventions in performance of the Work or undertaking any other activities under the Contract Documents, or arising out of any use in connection with the Project or methods, processes, designs, information, or other items furnished or communicated to the MBTA or another Indemnified Party pursuant to the Contract Documents, provided that this indemnity shall not apply to any infringement resulting from the



MBTA's failure to comply with specific written instructions regarding use provided to the MBTA by DB Entity. In case any materials, equipment, devices, processes or any other items are held to constitute an infringement and their use enjoined, DB Entity, at its expense, shall (i) secure for the MBTA the right to continue using said materials, equipment, devices, processes or other items by suspension of the injunction or by procuring a license or licenses; (ii) replace such materials, equipment, devices, processes or other items with noninfringing materials, equipment, devices, processes or other items; or (iii) modify them so that they become noninfringing, or remove the enjoined materials, equipment, devices, processes or other items and refund the sums paid therefore without prejudice to any other rights of the MBTA;

- (d) the alleged negligent act or omission or willful misconduct of DB Entity, its employees, agents, officers or Subcontractors or any other Persons performing any of the Work, for whom DB Entity may be contractually or legally responsible;
- (e) any and all claims by any Governmental Entity claiming taxes based on gross receipts, purchases or sales, the use of any property or income of DB Entity or any of its Subcontractors or any of their respective agents, officers or employees with respect to any payment for the Work made to or earned by DB Entity or any of its Subcontractors or any of their respective agents, officers or employees under the Contract Documents;
- (f) any and all Liens filed in connection with the Work, including all expenses and attorneys' fees incurred in discharging any Lien, provided that there is no default in payments owing to DB Entity with respect to such Work;
- (g) (i) any Release of OHM attributable to the negligence, willful misconduct, or breach of contract by DB Entity or any of its officers, employees, agents, Subcontractors, visitors, or any other Persons for whom DB Entity may be contractually or legally responsible; or (ii) any Release of any OHM caused to be present on the Site or elsewhere by DB Entity or any of its officers, employees, agents, Subcontractors, visitors, or any other Persons for whom DB Entity may be contractually or legally responsible;
- (h) the claim or assertion by any contractor of inconvenience, disruption, delay or loss caused by interference by DB Entity (or its employees, agents, officers or Subcontractors or any other Persons for whom DB Entity may be contractually or legally responsible) with or hindering the progress or completion of work being performed by other contractors, or failure of DB Entity or its employees, agents, officers or Subcontractors or any other Persons for whom DB Entity may be contractually or legally responsible to cooperate reasonably with other contractors in accordance with the requirements of the Contract Documents; or



- (i) any claims, damages, losses, liabilities and costs, including attorneys' fees, arising out of, relating to or resulting from errors, omissions, inconsistencies or other defects in the Work, regardless of whether such errors, omissions, inconsistencies or defects were also included in the Technical Provisions, unless such claim, damage, loss, liability or cost is due to: (i) errors, omissions, inconsistencies or defects for which DB Entity is entitled to relief pursuant to Section 15.4.2.1(m); (ii) a failure of the MBTA-Furnished Items pursuant to Section 15.4.2.1(k); or (iii) a failure in the Previous GLX Contract Improvements pursuant to Section 15.4.2.1(l).

23.2 RESTRICTIONS

23.2.1 DB Entity's indemnity obligations under Section 23.1 shall not extend to any loss, damage or expense incurred by an Indemnified Party to the extent caused by:

- (a) the reckless or willful misconduct, bad faith or fraud of such Indemnified Party; or
- (b) the MBTA's material breach of any of its obligations under the Contract Documents.

23.2.2 DB Entity's indemnity obligations under Section 23.1 shall not be construed to limit any statutes of limitations otherwise applicable to causes of action for breach of contract held by the MBTA against DB Entity.

23.3 EMPLOYEE CLAIMS

In claims by an employee of DB Entity, Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under Section 23.1 shall not be limited by a limitation on the amount or type of damages, compensation or benefits payable by or for DB Entity or a Subcontractor under workers' compensation, disability benefit or other employee benefits laws.

SECTION 24. DISPUTE RESOLUTION

24.1 APPLICABILITY OF DISPUTE RESOLUTION PROVISIONS

24.1.1 The purpose of this Section 24 and Exhibit 1J (collectively "Section 24") is to provide a structured approach for the Parties to resolve Disputes consistent with the Contract Documents and without incurring unreasonable administrative time and costs. The Parties agree to use their best efforts to resolve Disputes using good faith negotiations, the principles of partnering, and the processes set forth in this Section 24.

24.1.2 All requirements of the Contract Documents that apply to Disputes brought by DB Entity also apply to Disputes brought by DB Entity on behalf of any of its Subcontractors or Suppliers (including lower-tier Subcontractors and Suppliers).

24.1.3 This Section 24 shall not apply to claims that: (a) are not actionable against the MBTA by DB Entity on its own behalf or on behalf of any of its Subcontractors or Suppliers; (b) arise in tort for personal injury, wrongful death or property damage; (c) are for injunctive relief; or (d) are against insurance companies.

24.2 MANDATORY NATURE OF PROCESS

24.2.1 If DB Entity does not adhere strictly to the requirements of this Section 24 with respect to any Dispute, then DB Entity shall be deemed to have waived all rights, claims and remedies based on or relating to the subject matter of such Dispute.

24.2.2 Participation in and completion of the dispute resolution process in accordance with this Section 24 are conditions precedent to DB Entity's commencement of a legal action against the MBTA based on or arising out of the subject matter of a CO Request or a Dispute.

24.3 PARTNERING

24.3.1 The MBTA desires to establish a cohesive partnering process with DB Entity and its Key Subcontractors on the Project, so that such process can draw on the strengths of each organization in order to identify and pursue the Parties' mutual Project goals, including the effective and efficient completion of the Project within budget, on schedule, and in accordance with the Contract Documents. The Parties shall endeavor to have executive-level participation in the partnering sessions.

24.3.2 The MBTA and DB Entity shall engage in a formal partnering process. Each Party shall bear the costs of its own personnel to participate in the partnering process, and the Parties shall share equally the out-of-pocket costs of the partnering sessions. The partnering program is expected to assist in developing a highly functional and efficient Project team, and to assist in developing tools to help the team manage the identified issues.

24.3.3 The MBTA and DB Entity shall, within thirty (30) Days of NTP, select a third-party partnering facilitator ("Partnering Facilitator"). The Partnering Facilitator will be engaged to work with the MBTA and DB Entity to plan an initial partnering development and team-building workshop. After the initial meeting, the MBTA and DB Entity shall work with the Partnering Facilitator to determine the frequency and agenda for follow-up meetings.

24.3.4 The Partnering Facilitator shall be engaged to develop the GLX Partnering Program with the MBTA and DB Entity, which is expected to include the following:

- (a) the development of a Project charter and mission statement;
- (b) the development of an issue escalation model;
- (c) the development of effective team communication processes; and
- (d) the development of follow up and a "partnering maintenance" plan.



24.4 DISPUTE REVIEW BOARD

24.4.1 If DB Entity is not satisfied with an MBTA Determination issued pursuant to Section 15.4.5 and elects to further pursue the underlying CO Request, then DB Entity shall, no later than twenty (20) Days after the date of the MBTA Determination, notify the MBTA's Authorized Representative in writing that DB Entity is requesting a DRB Recommendation with respect to the CO Request. DB Entity's written notice that it is requesting a DRB Recommendation shall comply with the requirements of this Section 24.4 and Exhibit 1J and DB Entity shall send a copy of such notice to the Dispute Resolution Board ("DRB"). An MBTA Determination (including a deemed denial, if applicable) shall be deemed to conclusively resolve all issues that are the subject of a CO Request, unless DB Entity submits written notice of its request for a DRB Recommendation within thirty (30) Days after the MBTA Determination and such notice satisfies the requirements of Exhibit 1J, in which case the CO Request shall become a Dispute. An MBTA Determination is a condition precedent to DB Entity's submitting a CO Request to the DRB.

24.4.2 If DB Entity sends a timely written request to the DRB for a DRB Recommendation that conforms with the requirements set forth in Section 24.4.1 and Exhibit 1J, the DRB and the Parties shall follow the procedures set forth in Exhibit 1J, which shall culminate in the DRB sending a DRB Recommendation to the Program Manager, with copies to DB Entity and the MBTA. If DB Entity fails to send a timely written request to the DRB that conforms with the requirements set forth in Section 24.4.1 and Exhibit 1J, then the MBTA Determination shall be deemed to be final and conclusive as to all issues raised by the underlying CO Request and DB Entity shall be deemed to have waived all rights, claims and remedies associated with the underlying CO Request.

24.4.3 Without diminishing the MBTA's rights and authority under the Contract Documents and Laws, the MBTA may voluntarily elect to submit for the DRB's consideration any matter that is the subject of a disagreement or controversy between the MBTA and DB Entity, in which case the DRB shall issue a DRB Recommendation on the matter in accordance with Exhibit 1J. Any DRB Recommendation shall be subject to a Program Manager's Decision in accordance with Section 24.5.

24.4.4 In any judicial proceeding, the admissibility of the Parties' submittals to the DRB, and the DRB's official records (including the DRB Recommendations), shall be determined by the court in accordance with Law.

24.5 PROGRAM MANAGER'S DECISION

24.5.1 Within thirty (30) Days after the Program Manager's receipt of a DRB Recommendation, the Program Manager will either issue a Program Manager's Decision to decide the Dispute, or notify the Parties in writing of the date by which a Program Manager's Decision will be issued. If the Program Manager does not issue a Program Manager's Decision within the later of thirty (30) Days after receipt of the DRB Recommendation or the date by which the Program Manager informed the Parties that the Program Manager's Decision would be issued, then the MBTA Determination shall become and shall have the effect of a Program Manager's Decision.

24.5.2 Within ninety (90) Days after receipt of the Program Manager's Decision, DB Entity may file a lawsuit concerning the Dispute in the Superior Court Department of the Commonwealth of Massachusetts in Suffolk County. This ninety (90) Day appeal period may be extended if, prior to the expiration of the ninety (90) Day period, DB Entity obtains the Program Manager's approval in writing to extend the appeal period to a date certain not to exceed one hundred twenty (120) Days from the expiration of the original ninety (90) Day appeal period. If DB Entity does not file suit within such ninety (90) Day period (or as otherwise extended), the Program Manager's Decision shall be final and binding, and any judicial review concerning the Dispute shall be barred.

24.5.3 The Program Manager's Decision shall be admissible in any judicial proceeding relating to the Contract Documents or the Project.

24.6 MEDIATION

By mutual agreement, the Parties may submit a CO Request or a Dispute to mediation at any time during the processes described in Section 15.4 and this Section 24. If the Parties submit a CO Request or a Dispute to mediation, the Parties shall agree on the process and procedures for selecting a mediator, conducting the mediation, and tolling the deadlines established in this Section 24. Any agreement to toll any deadline established in this Section 24 shall be valid and enforceable only if it is in writing and signed by the MBTA's Authorized Representative

24.7 DB ENTITY SUBCONTRACTORS

24.7.1 DB Entity shall require in all Subcontracts that all Subcontractors: (a) agree to submit Subcontractor CO Requests to DB Entity in a proper form and in sufficient time to allow processing by DB Entity in accordance with Section 15 and this Section 24; (b) agree to be bound by the terms of this Section 24 to the extent applicable to Subcontractor CO Requests; (c) agree that, to the extent a Subcontractor CO Request is involved, completion of all steps required under Section 15 and this Section 24 shall be a condition precedent to pursuit by the Subcontractor of any remedies permitted by Law, including institution of a lawsuit against DB Entity; (d) agree that any Subcontractor CO Requests brought against a bonding company, that also are actionable through DB Entity, shall be stayed until completion of all steps required under this Section 24; and (e) agree that the existence of a dispute resolution process for CO Requests and Disputes involving Subcontractor CO Requests and Disputes shall not be deemed to create any claim, right or cause of action by any Subcontractor against the MBTA.

24.7.2 Notwithstanding the foregoing, this Section 24 shall not apply to: (a) any Subcontractor CO Request between the Subcontractor and DB Entity that is not actionable by DB Entity against the MBTA; (b) any Subcontractor CO Request that is based on or arises out of personal injury, wrongful death or property damage; or (c) any Subcontractor CO Request that is actionable only against a bonding company.

24.8 CONTINUATION OF WORK

At all times during this dispute resolution process and during any administrative proceeding or lawsuit, DB Entity and all Subcontractors shall proceed with the Work diligently, without delay, in accordance with the Contract Documents, and as directed by the MBTA.

24.9 RECORDS RELATED TO DISPUTES

DB Entity shall keep complete records of the extra costs and time incurred for and relating to any Work that is the subject of any CO Request or Dispute for a period of not less than six (6) years from the date of resolution of the CO Request or Dispute, or for such longer period of time as is required by other provisions of the Contract Documents or by Law.

24.10 SUBSEQUENT PROCEEDINGS; EXCLUSIVE JURISDICTION AND VENUE

DB Entity agrees that the exclusive jurisdiction and venue for any lawsuit, at law or in equity, arising out of or relating to the Contract Documents or the Project, shall be the Superior Court Department of the Commonwealth of Massachusetts in Suffolk County. DB Entity waives all objections it might have to the jurisdiction or venue of such court and hereby consents to such jurisdiction and venue regardless of DB Entity's residence or domicile. If DB Entity is a partnership or a joint venture, each of its partners and/or members binds itself to and agrees and consents to the jurisdiction and venue provisions of this Section 24.10.

SECTION 25. DOCUMENTS, RECORDS AND REPORTING

25.1 OWNERSHIP OF DOCUMENTS

Design Documents, Construction Documents and information obtained or produced by DB Entity in connection with the performance of its obligations under the Contract Documents, including studies, technical and other reports and the like (collectively "Work Product"), shall become the property of the MBTA upon DB Entity's preparation or receipt thereof. Copies of all Work Product shall be furnished to the MBTA upon preparation or receipt thereof by DB Entity. DB Entity shall furnish the MBTA with the original working drawings and final Record Drawings for the Project, warranties, shop drawings, test reports and operating manuals in conformance with the Project Standards and the provisions of the Technical Provisions as a condition of Contract Final Acceptance.

25.2 FINANCIAL REPORTING REQUIREMENTS

25.2.1 DB Entity shall deliver to the MBTA financial and narrative reports, statements, certifications, budgets and information as and when required under the Contract Documents. In addition, DB Entity shall furnish or cause to be furnished to the MBTA such information as the MBTA may reasonably request from time to time for any purpose related to the Project or the Work.

25.2.2 Pursuant to Mass. Gen. Laws, ch. 30, § 39R(b)(5) and § 39R(d), annually during the term of this DB Contract, DB Entity shall file with the MBTA and the commissioner of capital asset management and maintenance an audited financial statement for the most recent completed fiscal year, prepared by an independent certified public accountant on the basis of an audit by such accountant. The final statement filed shall include the date of Final Payment. All statements shall be accompanied by an accountant's report.

25.3 MAINTENANCE OF, ACCESS TO AND AUDIT OF RECORDS

25.3.1 DB Entity shall maintain a complete set of all books and records prepared or employed by DB Entity in its management, scheduling, cost accounting and other activities related to the Project. DB Entity shall grant to the MBTA such audit rights and shall allow the MBTA such access to and the right to copy such books and records as the MBTA may request in connection with the issuance of Change Orders and the resolution of Disputes as the MBTA may reasonably deem necessary for purposes of verifying compliance with the Contract Documents and Law.

25.3.2 Where the payment method for any Work is on a time and materials basis, such examination and audit rights shall include all books, records, documents and other evidence and accounting principles and practices sufficient to reflect properly all direct and indirect costs of whatever nature claimed to have been incurred and anticipated to be incurred for the performance of such Work. If an audit indicates DB Entity has been over paid for such Work, such overpayment will be credited against payments owed to DB Entity under this DB Contract.

25.3.3 For cost and pricing data submitted in connection with pricing Change Orders, (unless such pricing is based on adequate price competition, established catalog or market prices of commercial items sold in substantial quantities to the public, or prices set by Law or regulation), the MBTA and its representatives shall have the right to examine all books, records, documents and other data of DB Entity related to the negotiation of or performance of Work under such Change Orders for the purpose of evaluating the accuracy, completeness and currency of the cost or pricing data submitted. Such right of examination shall extend to all documents deemed necessary by the MBTA and its representative to permit adequate evaluation of the cost or pricing data submitted, along with the computations and projections used therein.

25.4 RETENTION OF RECORDS

25.4.1 Record Retention under Massachusetts Law

DB Entity shall maintain and retain records relative to its performance of the Work in accordance with the provisions of Mass. Gen. Laws. ch. 30, § 39R, as follows:

- (a) DB Entity shall make, and keep for at least six (6) years after Final Payment, books, records, and accounts which in reasonable detail accurately and fairly reflect the transactions and dispositions of DB Entity;
- (b) until the expiration of six (6) years after Final Payment, the office of inspector general, and the commissioner of capital asset management and maintenance shall have the right to examine any books, documents, papers or records of DB Entity or of its Subcontractors that directly pertain to, and involve transactions relating to, DB Entity or its Subcontractors; and
- (c) DB Entity shall describe any change in the method of maintaining records or recording transactions which materially affect any statements filed with the MBTA, including in its description the date of the change and reasons therefore, and shall accompany said description with a letter from DB



Entity's independent certified public accountant approving or otherwise commenting on the changes.

25.4.2 Retention of Payroll Records

In accordance with Mass. Gen. Laws, ch. 149, § 27B, DB Entity and all Subcontractors shall preserve their payroll records maintained pursuant to Section 20.2.1.2 for a period of three (3) years from the date of execution of the Certificate of Contract Final Acceptance.

25.5 PUBLIC RECORDS ACT

25.5.1 DB Entity acknowledges and agrees that all records, documents, drawings, plans, specifications and other materials that may come into the MBTA's possession, including materials submitted by DB Entity, are subject to the provisions of the Massachusetts Public Records Law (Mass. Gen. Laws. ch. 66, § 10).

25.5.2 In the event of litigation concerning the disclosure of any material submitted by DB Entity to the MBTA, the MBTA's sole involvement will be as stakeholder retaining the material until otherwise ordered by a court and DB Entity shall be fully responsible for otherwise prosecuting or defending any action concerning the materials at its sole cost and risk; provided, however, that: (a) the MBTA shall not be required to violate the Massachusetts Public Records Law or other Laws; and (b) the MBTA reserves the right, in its sole discretion, to intervene or participate in the litigation in such manner as it deems necessary or desirable. All costs and fees (including attorneys' fees and costs) incurred by the MBTA in connection with any litigation, proceeding or request for disclosure shall be reimbursed and paid by DB Entity.

25.6 ESCROWED PROPOSAL DOCUMENTS

DB Entity and the MBTA have entered into an Escrow Agreement with respect to Escrowed Proposal Documents. DB Entity and the MBTA shall be bound by and comply with all requirements of the Escrow Agreement.

SECTION 26. GOVERNING LAW; COMPLIANCE WITH LAW; PAYMENT OF TAXES

26.1 MASSACHUSETTS LAW

This DB Contract and other Contract Documents shall be governed by and construed in accordance with the Laws of the Commonwealth of Massachusetts, excluding its choice of law principles, and all claims relating to or arising out of the Contract Documents, or the breach thereof, whether sounding in contract, tort or otherwise, shall likewise be governed by the laws of the Commonwealth of Massachusetts, excluding its choice of law principles.

26.2 FEDERAL LAW AND REGULATION

26.2.1 This DB Contract is further governed by and shall be construed in accordance with the laws and regulations of the United States, including the provisions of the Copeland Anti-Kickback Act (18 U.S.C. s. 874 and 40 U.S.C. s. 276(c)), Buy America and Fly America

requirements, and the Davis-Bacon Act, all as more particularly identified in U.S. DOT FEDERAL TRANSIT ADMINISTRATION CONTRACT REQUIREMENTS attached as Exhibit 1F.

26.2.1.1 Attention is directed to the provisions of the Federal Transportation Act of 1964 (U.S. Public Law 88-365), as modified or amended, and any other provisions of law, or amendments thereto whereby such federal participation is authorized, and any regulations properly and lawfully promulgated thereunder, under which the United States shall aid the individual states in the development of efficient and coordinated mass transportation systems. When the United States government is to pay any portion of the cost of this DB Contract, the above act of Congress provides that the construction Work and labor in each state shall be done in accordance with the laws of that state and applicable federal laws. The Work embraced in the Contract Documents will, therefore, be subject to such inspection by representatives of the U.S. Department of Transportation or other such federal agency as may be necessary to meet the above requirements. Such inspection shall, however, in no sense make the United States government a party to this DB Contract, and will in no way interfere with the rights of either party hereunder.

26.2.1.2 DB Entity shall comply, and require its Subcontractor to comply, with 49 CFR Part 219 requiring all employees that qualify as a "roadway worker" be subject to certain testing as defined by and specified in 49 CFR Part 219. DB Entity and its Subcontractors shall implement a compliance plan and submit certifications to the MBTA evidencing DB Entity's and its Subcontractors' compliance with 49 CFR Part 219. DB Entity's and its Subcontractors' compliance with 49 CFR Part 219 shall be a requirement for performing any Work on the affected areas of the Site.

26.3 COMPLIANCE WITH LAWS

DB Entity shall comply with, and ensure that all Subcontractors comply with, all requirements of all Laws, including those set forth in Exhibit 1F. If a Change in Law adversely impacts the cost and/or time of performing the Work, DB Entity shall have a right to request a Change Order pursuant to Section 15.4 to the extent such Change in Law impacts the cost and/or time of performing the Work.

26.4 PAYMENT OF TAXES

26.4.1 DB Entity shall be solely responsible for all taxes which DB Entity is required to pay whether imposed by federal, state, or local government, including, without being limited to, federal excise tax.

26.4.2 Attention is directed to Mass. Gen. Laws, ch. 64H, § 6, and the Mass. Gen. Laws, ch. 64I, § 7, which state that these taxes are not applicable to the sales of construction materials and supplies incorporated, consumed, employed or expended in Construction Contracts of the MBTA. This exemption is also applicable to rental charges for construction vehicles, equipment and machinery rented, specifically for use on the Site of the MBTA's construction projects. DB Entity agrees that it has excluded any allowance for Sales or Use Tax from its Price Proposal as said



tax would relate to the foregoing specific categories. The MBTA sales tax exemption Number is E-042-323-989.

SECTION 27. MISCELLANEOUS

27.1 AMENDMENTS TO CONTRACT DOCUMENTS AND CONTRACTING AUTHORITY LEVELS

27.1.1 The Contract Documents may be amended only by a written instrument duly executed by duly authorized representatives of the Parties with the appropriate level of contracting authority or their respective successors or assigns. No oral contract or implied covenant shall be held to vary the terms hereof, any statute, Law or custom to the contrary notwithstanding. The MBTA's Authorized Representative will have and delegate the authority pursuant to the MBTA delegation of authority.

27.1.2 If any provisions of the Contract Documents are rendered obsolete or ineffective in serving their purpose by a change in Law, passage of time, financing requirements or other future events or circumstances, the MBTA and DB Entity agree to negotiate in good faith appropriate amendments to or replacements of such provisions in order to restore and carry out the original purposes thereof to the extent practicable; provided, however, that neither party is obligated to agree to any amendment or replacement that would reduce its rights or enlarge its responsibilities under the Contract Documents in any material respect. The provisions of this Section 27.1.2 shall not excuse DB Entity from complying with the requirements of Section 15.4.

27.2 WAIVER

27.2.1 No waiver by any Party of any right or remedy under any Contract Document shall be deemed to be a waiver of any other or subsequent right or remedy under the other Contract Documents. The consent by one Party to any act by the other Party requiring such consent shall not be deemed to render unnecessary the obtaining of consent to any subsequent act for which consent is required, regardless of whether similar to the act for which consent is given.

27.2.2 No act, delay or omission done, suffered or permitted by one Party or its agents shall be deemed to relieve the other Party from the full performance of its obligations under the Contract Documents. No custom or practice between the Parties in the administration of the terms of the Contract Documents shall be construed to waive or lessen the right of a Party to insist upon performance by the other Party in strict compliance with the terms of the Contract Documents.

27.2.3 No waiver of any term, covenant or condition of the Contract Documents shall be valid unless in writing and signed by the obligee Party.

27.2.4 The MBTA shall not be precluded or stopped by any measurement, estimate or certificate made either before or after the completion and acceptance of the Work and payment therefor, from showing the true amount and character of the Work provided and materials furnished by DB Entity, nor from showing that any such measurement, estimate or certificate is untrue or is incorrectly made, nor that the Work does not in fact conform to the Contract Documents. The MBTA shall not be precluded or stopped, notwithstanding any such

measurement, estimate or certificate and payment in accordance therewith, from recovering from DB Entity or DB Entity's Sureties and/or Guarantors, or all of them, such damage as it may sustain by reason of DB Entity's failure to comply with the terms of the Contract Documents. Neither the acceptance by the MBTA, or any representative of the MBTA, nor any payment for or acceptance of the whole or any part of the Work, nor any extension of time, nor any possession taken by the MBTA, shall operate as a waiver of any portion of the Contract Documents or of any power herein reserved, or of any right to damages. A waiver of any breach of the Contract Documents shall not be held to be a waiver of any other or subsequent breach. Any remedy provided in the Contract Documents shall be taken and construed as cumulative, that is, in addition to each and every other remedy herein provided; and the MBTA shall also be entitled as of right to writ of injunction against any breach of any of the provisions of the Contract Documents.

27.3 RELATIONSHIP OF PARTIES; CONFLICT OF INTEREST

27.3.1 Relationship of Parties

The relationship of DB Entity to the MBTA shall be one of an independent contractor, not an agent, partner, joint venture or employee. Officials, employees and agents of DB Entity shall in no event be considered employees, agents, partners or representatives of the MBTA.

27.3.2 Conflicts of Interest

27.3.2.1 DB Entity acknowledges and agrees as follows:

- (a) no Board Member, officer or employee of the MBTA, officer or employee of any independent authority or political subdivision of the Commonwealth of Massachusetts, officer, employee or elected official of the Commonwealth of Massachusetts, officer, employee or elected official of any city, county or town within the Commonwealth of Massachusetts, officer, employee or elected official of any city, county or town authority within the Commonwealth of Massachusetts, during his/her tenure and for one year thereafter shall have any interest, direct or indirect, in this DB Contract or the proceeds thereof. DB Entity shall not employ any employee, agent, or officer of the MBTA. No renting, leasing, or purchasing of equipment, supplies, or materials shall be arranged or made with or through any employee, agent, or officer of the MBTA by DB Entity;
- (b) no member of or delegate to the Congress of the United States shall be admitted to any share or part of this DB Contract or to any benefit arising therefrom;
- (c) no consultant, architect, attorney, engineer, or inspector for the MBTA performing services for the MBTA on the Project, shall become directly or indirectly interested personally in this DB Contract or in any part thereof, any material supply contract, subcontract, insurance contract, or any other contract pertaining to the Project;



- (d) DB Entity may not knowingly contract with a supplier or manufacturer if the individual or entity who prepared the Contract Documents has a corporate or financial affiliation with the supplier or manufacturer;
- (e) the Owner's Representative engaged by the MBTA under Mass. Gen. Laws, ch. 149A, § 15 ½ as set forth in Section 2.10 shall be wholly independent of DB Entity and all Subcontractors and shall be subject to Mass. Gen. Laws, ch. 268A;
- (f) the design professional retained by the MBTA to provide technical assistance and consulting services shall not be eligible to participate in any way as a member of DB Entity;
- (g) DB Entity shall not enter into any Subcontracts with precluded firms and their respective affiliates as set forth in Section 2.12.5 and Section 2.12.6;
- (h) the officers, employees, or agents of the MBTA shall not engage in the award or administration of this DB Contract if a conflict of interest, real or apparent, may be involved. Such a conflict may arise when: (i) the employee, officer or agent; (ii) any member of their immediate family; (iii) their partner; or (iv) an organization that employs, or is about to employ, any of the above, has a financial interest in DB Entity. The officers, employees, or agents of the MBTA shall neither solicit nor accept gratuities, favors, or anything of monetary value from DB Entity or any of its subcontractors;
- (i) if the MBTA finds after a notice and hearing that DB Entity, or any of DB Entity's agents or representatives, offered or gave gratuities (in the form of entertainment, gifts, or otherwise) to any official, employee, or agent of the MBTA in an attempt to secure this DB Contract or favorable treatment in awarding, amending, or making any determinations related to the performance of this DB Contract, the MBTA may, by written notice to DB Entity, terminate this DB Contract for DB Entity Default. The MBTA may also pursue other rights and remedies that the Laws or this DB Contract provides; and
- (j) in the event this DB Contract is terminated as provided in Section 27.3.1(i), the MBTA may pursue the same remedies against DB Entity as it could pursue in the event of a breach of this DB Contract by DB Entity. As a penalty, in addition to any other damages to which it may be entitled by law, the MBTA may pursue exemplary damages in an amount (as determined by the MBTA) which shall not be less than three nor more than ten times the costs DB Entity incurs in providing any such gratuities to any such officer or employee.

27.3.2.2 DB Entity is advised that its performance of the Work for the MBTA may, at any time, raise questions about real or perceived conflicts of interest because of it or a team member's relationship to other entities or individuals, including: (a) private and public owners of



properties that abut or may be affected by the Project, and/or (b) other MBTA projects and other state-created entities with potentially conflicting interests and/or concerns. Accordingly, MBTA reserves the right to require DB Entity or any team member to take any action or supply any information necessary to remove the conflict, including obtaining an opinion from the State Ethics Commission.

27.3.2.3 Representatives and/or employees of DB Entity, its Major Participants and Key Subcontractors shall be required to certify from time to time, in a form approved by the MBTA that in connection with the Work under the Contract Documents, they are in full compliance with the provisions of the OCI Guidance, any provisos contained in any conflict determination issued by the MBTA, any mitigation plan accepted by the MBTA, Mass Gen. Laws, ch. 268A and any other applicable conflict of interest laws. DB Entity agrees to disclose and require its Major Participants and Key Subcontractors to disclose in writing any conflicts of interest occurring during the period of performance hereunder and, upon request of MBTA, supply a full and complete list of its relationships to other entities and individuals. In any such event, DB Entity shall consult with the MBTA to learn what action shall be taken to resolve such conflicts and comply with all Laws and policies.

27.4 ASSIGNMENT; CHANGE IN CONTROL

27.4.1 Subject to the limitations of this Section 27.4, the Contract Documents shall be binding upon and shall inure to the benefit of the Parties hereto and their respective legal representatives, successors and permitted assigns, and wherever a reference in any Contract Document to any of the Parties thereto, such reference also shall be deemed to include, wherever applicable, a reference to the legal representatives, successors and permitted assigns of such Party, as if in every case so expressed.

27.4.2 DB Entity shall not, without the prior written consent of the MBTA, voluntarily or involuntarily assign, convey, transfer, pledge, mortgage or otherwise encumber its rights or interests under the Contract Documents. Further, DB Entity shall not, without prior written consent of the MBTA, make any assignment, sale or transfer that results in a Change in Control

27.4.3 The MBTA may transfer and assign its interests in the Project, this Contract and any other Contract Document to any other public agency or private entity as permitted by Law, provided that the successor or assignee has assumed all of the MBTA's obligations, duties and liabilities under the Contract Documents then in effect, and has provided DB Entity with reasonable assurance of its legal and financial authority to honor and perform the same.

27.5 DESIGNATION OF REPRESENTATIVES AND PERSONAL LIABILITY OF MBTA OFFICIALS

27.5.1 The MBTA and DB Entity shall each designate an Authorized Representative who shall be authorized to make decisions and bind the MBTA and DB Entity on all matters relating to the Contract Documents, except insofar as such authority may be limited by the particular provision or the delegation of contracting authority in accordance with Section 27.1. The initial designations of Authorized Representatives are as follows:

For the MBTA:

John Dalton
Program Manager, Green Line Extension
Massachusetts Bay Transportation Authority
GLX Project Office
200 Innerbelt, Third Floor
Somerville, MA 02143-4456
Email: jdalton@mbta.com

For DB Entity:

Clyde Joseph
Project Executive
GLX Constructors
200 Innerbelt Road
Second Floor
Somerville, MA 02143-4456
Email: Clyde.Joseph@GLXConstruct.com

Such designations may be changed by a subsequent writing delivered to the other party in accordance with Section 27.11.

27.5.2 The MBTA's Authorized Representative will decide all questions relating to interpretation of the Contract Documents, and may alter, adjust, and approve same when necessary; all questions relating to quality, quantity, value, and acceptability of materials to be furnished and Work provided or to be provided; all questions relating to progress of the Work and need for and manner of correcting same, and also the need for and terms of delays and suspensions; all questions relating to the need for and terms of extra Work or changes in the Work; all questions relating to the supervision, control and direction of Work on the Site and the use thereof; and all questions as to the acceptable fulfillment of the Contract Documents by DB Entity.

27.5.3 The MBTA's Authorized Representative may appoint assistants and representatives. The assistants and representatives are authorized to inspect Work, to give directions pertaining to the Work or pertaining to the safety and convenience of the public, and to reject materials. In case of any dispute arising between DB Entity and the MBTA's Authorized Representative's assistants, as to materials furnished or the manner of providing Work, the MBTA's Authorized Representative's assistants are authorized to reject materials or to suspend Work. The MBTA's Authorized Representative's assistants are not authorized to revoke, alter, enlarge, relax, or release any requirements of the Contract Documents or to issue instructions contrary to the Contract Documents.

27.6 NO GIFT OR DEDICATION

27.6.1 Nothing contained in the Contract Documents shall be deemed to be a gift or dedication of any portion of the Project, Site or Work to the MBTA or the general public or for



any public use or purpose whatsoever, or be deemed to create any rights in the Project, Site or Work except as expressly set forth herein.

27.6.2 DB Entity shall not, other than as provided by Law, directly or indirectly, give, offer or promise anything of value, as defined in Mass. Gen. Laws, ch. 268A to any present or former Commonwealth employee or any present or former municipal employee, for or because of any official act performed or to be performed by such employee or person selected to be such employee.

27.6.3 DB Entity acknowledges that certain of its employees may be deemed to be special state employees under the applicable provisions of Mass. Gen. Laws, ch. 268A, and that such employees shall be subject to the standards of conduct and conflict of interest provisions which pertain to such employees as set forth herein.

27.6.4 DB Entity warrants that it has not employed or retained any company or person other than a bona fide employee working solely for DB Entity, to solicit or secure this DB Contract, and that it has not paid or agreed to pay any company or person, other than a bona fide employee working solely for DB Entity any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award of this DB Contract. For breach or violation of this warranty, the MBTA shall have the right to terminate this DB Contract for DB Entity Default without liability, or in its discretion, to deduct from payments owed to DB Entity without liability, or otherwise recover the full amount of the commission.

27.7 USE OF POLICE AND OTHER POWERS

Nothing in the Contract Documents limits the authority of the MBTA to exercise its regulatory, statutory and police powers granted by Law, including its powers of eminent domain with respect to all or any part of the Project, the Site and any of DB Entity's rights hereunder.

27.8 PATENT RIGHTS

Patent rights to any patentable result arising out of the Work, as well as information, designs, specifications, know-how, data and findings, shall be made available to the Commonwealth, the MBTA and FTA for public use.

27.9 SURVIVAL

All covenants, agreements, representations and warranties made in or pursuant to the Contract Documents shall be deemed continuing and made at and as of the date of each such document and at and as of all other applicable times during the course of the Project. All covenants, agreements, representations and warranties made in or pursuant to the Contract Documents shall survive the expiration or earlier termination thereof and shall not be waived by the execution and delivery of the Contract Documents, by completion of construction, by any investigation by the MBTA or by any other event except a specific written waiver by the Party against whom waiver is asserted.

27.10 NO THIRD PARTY BENEFICIARIES

Nothing contained in the Contract Documents is intended or shall be construed as creating or conferring any rights, benefits or remedies upon, or creating any obligations of the Parties hereto toward, any person or entity that is not a party to the Contract Documents.

27.11 NOTICES AND COMMUNICATIONS

27.11.1 Notices under the Contract Documents shall be in writing and (a) delivered personally; (b) sent by certified mail, return receipt requested; or (c) sent by a recognized overnight mail or courier service, with delivery receipt requested; to those persons designated by DB Entity and the MBTA from time to time in accordance with Section 27.5.1 (or to such other persons as may from time to time be specified in writing by such Person). In addition, copies of all Notices to Proceed and suspension, termination and default notices forwarded by the MBTA or DB Entity shall be delivered to the following persons:

DB Entity

Clyde Joseph
Project Executive
GLX Constructors
200 Innerbelt Road
Second Floor
Somerville, MA 02143-4456

Email: Clyde.Joseph@GLXConstruct.com

The MBTA

John Dalton
Program Manager, Green Line Extension
Massachusetts Bay Transportation Authority
GLX Project Office
200 Innerbelt, Third Floor
Somerville, MA 02143-4456

Email: jdalton@mbta.com

With copies to:

General Counsel
MassDOT and MBTA
Ten Park Plaza
Boston, MA 02116

27.11.2 All communications to the MBTA shall be clearly marked to identify this DB Contract and the Project name and location.

27.11.3 Notices shall be deemed received when actually received in the office of the addressee (or by the addressee if personally delivered) or when delivery is refused, as shown on the receipt of the U.S. Postal Service, private carrier or other Person making the delivery. Notwithstanding the foregoing, notices received after 5:00 p.m. shall be deemed received on the first (1st) Business Day following delivery. DB Entity's representatives shall be available at all reasonable times for consultation with the MBTA.

27.11.4 DB Entity shall forward a copy of all written correspondence pertaining to the Project between DB Entity and any Utility Owner and any representative of any Governmental Entity to the Person or Persons designated by the MBTA.

27.12 FURTHER ASSURANCES

Each Party hereto shall promptly execute and deliver to other Party all such instruments and other documents and assurances as are reasonably requested by the other Party to further evidence the obligations of the Parties hereunder.

27.13 SEVERABILITY

If any term or provision of the Contract Documents, the deletion of which would not adversely affect the receipt of any material benefit by either Party hereunder, shall be held by a court of competent jurisdiction to be invalid or unenforceable, the remainder of the Contract Documents shall not be affected thereby and each other term and provision of the Contract Documents shall be valid and enforceable to the fullest extent permitted by Law. It is the intention of the Parties to this DB Contract, and the Parties agree, that in lieu of each clause or provision of the Contract Documents that is illegal, invalid or unenforceable, the Parties in good faith shall (a) promptly meet and negotiate a substitute therefore which shall, to the greatest extent legally permissible, effect the original intent of the Parties; and (b) if necessary or desirable, apply to the court which declared such invalidity for a judicial construction of the invalidated portion to guide the negotiations.

27.14 HEADINGS

The captions of the sections of the Contract Documents identified therein are inserted solely for convenience. Under no circumstances is any heading to be treated or construed to limit any of the rights or obligations expressed in the Contract Documents.

27.15 INTERPRETATION OF CONTRACT DOCUMENTS

27.15.1 In the Contract Documents, where appropriate and unless otherwise specified, the singular includes the plural and vice versa; references to statutes or regulations include all statutory or regulatory provisions consolidating, amending or replacing the statute or regulation referred to; the words "including," "includes" and "include" shall be deemed to be followed by the words "without limitation"; references to sections, appendices or schedules are to the document in which they are contained; words such as "herein," "hereof" and "hereunder" shall

refer to the entire document in which they are contained and not to any particular provision or section; the words "and," "or," and "and/or" are often used interchangeably and shall be construed in the manner that is most favorable to the rights and interests of the MBTA; words not otherwise defined which have well-known technical or construction industry meanings, are used in accordance with such recognized meanings; references to Persons include their respective permitted successors and assigns and, in the case of Governmental Entities, Persons succeeding to their respective functions and capacities; and words of either gender used herein shall include each other gender where appropriate.

27.15.2 DB Entity acknowledges and agrees that it had the opportunity and obligation, prior to submission of its Proposal to review the terms and conditions of the Contract Documents and to bring to the attention of the MBTA any conflicts or ambiguities contained therein. DB Entity further acknowledges and agrees that it has independently reviewed the Contract Documents with legal counsel, and that it has the requisite experience and sophistication to understand, interpret and agree to the particular language of the provisions of the Contract Documents. Accordingly, in the event of an ambiguity in or dispute regarding the interpretation of the Contract Documents, they shall not be interpreted or construed against the party which prepared them, and instead other rules of interpretation and construction shall be utilized.

27.16 APPROVALS UNDER CONTRACT DOCUMENTS

In all cases where acceptances, decisions, determinations, approvals or consents are required to be provided under the Contract Documents by the MBTA, DB Entity or other parties in any way bound to perform under the terms of the Contract Documents, such acceptances, decisions, determinations, approvals or consents shall not be withheld unreasonably, except that a "reasonableness" standard shall not apply in cases where a different standard (such as sole discretion) is specified.

27.17 TIMELINESS OF DECISIONS BY MBTA

All decisions required to be made under the Contract Documents by the MBTA shall be made promptly and, in any event, no later than thirty (30) Days after the written submission for the decision. If the MBTA requires additional time, the MBTA shall, within thirty (30) Days after the receipt of the submission, give the party making the submission written notice of the reasons why the decision cannot be made within the thirty (30) Day period and the date by which the decision will be made.

27.18 COUNTERPARTS

This instrument may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

27.19 ENTIRE CONTRACT

The Contract Documents constitute the entire and exclusive contract between the Parties relating to the specific matters covered herein and therein. All prior or contemporaneous verbal or written agreements, understandings, representations and/or practices relative to the foregoing are hereby superseded, revoked and rendered ineffective for any purpose.



g