

**LAGUARDIA AIRPORT CENTRAL TERMINAL BUILDING REPLACEMENT
PROJECT**

DESIGN-BUILD CONTRACT

dated June 1, 2016

between

**LAGUARDIA GATEWAY PARTNERS, LLC,
as Developer**

and

**a joint venture among Skanska USA Building Inc., Skanska USA Civil Northeast Inc., and
Walsh Construction Company II, LLC,
as Design-Builder**

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THE LAGUARDIA AIRPORT CENTRAL TERMINAL BUILDING
DESIGN-BUILD CONTRACT

This DESIGN-BUILD CONTRACT (together with all exhibits and schedules hereto, and as the same may be amended or supplemented from time to time, this “**Design-Build Contract**”) dated June 1, 2016 is entered into by and between LaGuardia Gateway Partners, LLC (the “**Developer**”) and a joint venture among Skanska USA Building Inc., Skanska USA Civil Northeast Inc. and Walsh Construction Company II, LLC (collectively, the “**Design-Builder**”). The Developer and the Design-Builder are hereinafter sometimes referred to individually as a “**Party**” and collectively as the “**Parties**”.

RECITALS

(a) LaGuardia Airport (“**LGA Airport**”) is located on approximately 650 acres at Flushing Bay in the Borough of Queens in the State of New York, on the north shore of Long Island.

(b) The Existing Terminal B Facilities (as defined herein) located within the Premises (as defined herein) opened to the public in 1964 with a design capacity of 8 million annual air passengers (enplaned and deplaned), were expanded from approximately 750,000 to 835,000 square feet and otherwise modernized in the 1990s, but are currently inefficient based on current passenger and industry standards, past their useful life and undersized for current and projected passenger demand.

(c) The Port Authority of New York and New Jersey (the “**Port Authority**”) wishes to replace the Existing Terminal B Facilities with the New Terminal B Facilities (as defined herein) and make certain other modifications to the Premises as set forth more fully herein, and, on the date hereof, the Port Authority has entered into a Lease Agreement (together with all exhibits and schedules thereto, and as the same may be amended or supplemented from time to time in accordance with the terms thereof, the “**Lease**”) with the Developer for the primary purpose of letting the Premises to the Developer and in connection therewith, establishing the requirements for the design, construction and finance by the Developer of the Construction Project (as defined herein) and maintenance and operation of the Terminal B Facilities by the Developer.

(d) The Premises are leased to the Port Authority pursuant to the Amended and Restated Agreement of Lease of the Municipal Air Terminals, dated November 2004, between the City of New York, a municipal corporation of the State of New York (the “**City**”) and the Port Authority (the “**Basic Lease**”), as set forth more fully in the Basic Lease.

(e) On October 26, 2012, the Port Authority issued a Request for Qualifications (collectively with all subsequently issued addenda thereto, the “**RFQ**”) regarding a proposed future solicitation for the design, construction and finance by the Developer of the Construction Project and maintenance and operation of the Terminal B Facilities by the Developer.

(f) In July 2013, pursuant to the process outlined in the RFQ, the Port Authority selected four (4) respondents to be “**Prequalified Teams**” and “**Proposers**” that would be eligible to submit proposals in response to the Request for Proposals issued by the Port Authority based on their respective financial and technical qualifications as detailed in their responses to the RFQ.

(g) In August 2013, the Port Authority issued the Request for Proposals comprised of various documents and addenda thereto (as amended, supplemented or otherwise modified from time to time (including Post-Selection Phase Addendum No. 1 to the RFP dated June 24, 2015 (“**Post-Selection Phase Addendum No. 1**”))), collectively, the “**RFP**”) to the Prequalified Teams.

(h) Following the issuance of the RFP, an Airport Advisory Panel (the “**Advisory Panel**”) was created to advise the Governor of New York and the Port Authority on the modernization of LGA Airport. The Advisory Panel has made certain preliminary recommendations for future consideration regarding potential future improvements at LGA Airport, including an overarching vision to unify the current disparate central area terminals into a single, unified, architecturally consistent facade (the “**Advisory Panel’s Recommendations**”).

(i) On May 28, 2015, pursuant to the evaluation process outlined in the RFP, the Port Authority selected the consortium comprised of Vantage Airport Group Ltd., Skanska Infrastructure Development Inc. and Meridiam Infrastructure North America Corporation as the “**Preferred Proposer**” under the RFP. The Port Authority based its decision on the overall evaluation of the compliant proposals received from the Proposers and the Port Authority’s conclusion that the Preferred Proposer is best suited to meet the Port Authority’s objectives with respect to the Construction Project and the Terminal B Facilities.

(j) On June 24, 2015, January 27, 2016 and March 31, 2016, the Port Authority issued Post-Selection Phase Addendum #1 to the RFP (“**ITP Addendum #1**”), Post-Selection Phase Addendum #2 to the RFP (“**ITP Addendum #2**”) and Post-Selection Phase Addendum #3 to the RFP (“**ITP Addendum #3**”). Under ITP Addendum #1, ITP Addendum #2 and ITP Addendum #3, the Preferred Proposer agreed, among other things, to perform certain preliminary design and planning work to evaluate the incorporation of the Advisory Panel’s Recommendations and any cost and schedule impact on its proposal.

(k) NOT USED.

(l) On March 21, 2016, the Preferred Proposer submitted a Finalized Proposal setting forth its committed proposal with respect to the Construction Project and the Terminal B Facilities.

(m) On March 24, 2016, the Port Authority’s Board of Commissioners issued the “LaGuardia Airport Redevelopment Program – Authorization of the LaGuardia Redevelopment Program and Lease Agreement for the New Terminal B, Central Hall and

Supporting Infrastructure Project”, which authorizes the Port Authority, amongst other things, to enter into the Lease.

(n) On April 12, 2016, the Port Authority and the Preferred Proposer entered into the Interim Agreement.

(o) The Developer and the Design-Builder desire that the Design-Builder, on behalf of the Developer, perform the obligations imposed on the Developer in the Lease for the D&C Work, subject to the terms, conditions and limitations set forth in this Design-Build Contract.

(p) The Design-Builder has represented that it has the skills and abilities to perform the DB D&C Work and the Developer and the Design-Builder desire to enter into this Design-Build Contract to set out the terms and conditions under which the Design-Builder will perform the DB D&C Work.

NOW, THEREFORE, in consideration of the covenants and agreements set forth herein, the Parties hereby agree as follows:

ARTICLE 1

DEFINITIONS; PROJECT DOCUMENTS

Section 1.1 Definitions

The capitalized terms used in this Design-Build Contract or any other DB Project Document have the respective meanings set forth below or, if not so defined, in the Lease. Unless expressly provided otherwise, all references to Articles, Sections and Exhibits refer to the Articles, Sections and Exhibits of or attached to this Design-Build Contract, as applicable.

ACM has the meaning set forth in Section 16.4(b)(ii).

Additional ACM means (1) ACM in the roof of Building 30 (as described in Asbestos and Regulated Materials Inspection Report, Building 30, LaGuardia Airport, Queens, New York, by TRC Engineers, Inc., dated November 23, 2015) and any Unknown ACM in such Building 30, and (2) any ACM comprising or otherwise present in electric utility conduits or non-fiber-optic communications conduits that are Disclosed Facilities and are not expressly identified as containing ACM in the Available Documents. All such utility and non-fiber optic cable conduits shall be presumed to be Additional ACM without sampling or analysis.

Additional ACM Allowance means an amount of [REDACTED] to be allocated for Additional ACM Costs.

Additional ACM Costs means the Design-Builder’s costs and expenses directly related to the removal of Additional ACM, including costs and expenses for sampling, containment,

removal, abatement and disposal that are required by Environmental Law and necessary to complete the DB Construction Work.

Advisory Panel has the meaning set forth in the recitals to this Design-Build Contract.

Advisory Panel's Recommendations has the meaning set forth in the recitals to this Design-Build Contract.

Affiliate of any Person means any entity which, directly or indirectly, through one or more intermediaries, (a) has a ten percent (10%) or more voting or economic interest in such Person or (b) Controls, is Controlled by, or is Under Common Control With such Person.

Air Terminal Highway System shall mean those portions of LGA Airport designated and made available temporarily or permanently by the Port Authority to the public for general or limited highway use.

Aircraft means airplanes, helicopters and every other contrivance now or hereafter used for the navigation of or flight in air or space.

Aircraft Operator means (a) a Person owning one or more Aircraft which are not leased or chartered to any other Person for operation, or (b) a Person to whom one or more Aircraft are leased or chartered for operation whether the Aircraft so owned, leased or chartered are military or non-military, or are used for private business, pleasure or governmental business, or for carrier or non-carrier operations, or for scheduled or non-scheduled operations or otherwise. "Aircraft Operator" shall not mean the pilot of an Aircraft unless he or she is also the owner or lessee thereof or a Person to whom it is chartered.

Airline Requested Change means a request during the Construction Period by one or more Airline Sublessees or any Scheduled Aircraft Operator who is a prospective airline sublessee to modify the scope of any portion of the Construction Project or the performance of any portion of the D&C Work, including design changes and re-sequencing or re-phasing of the Construction Work.

Airline Sublessees has the meaning set forth in Section 5.1(h) of the Lease.

Airport Operating Certificate means the airport operating certificate issued by the FAA pursuant to 14 C.F.R. Part 139 with respect to LGA Airport.

Airport Performance Measurement Program means the Port Authority's Airport Performance Measurement Program established in the Customer Care Standards to measure performance by the Developer of the Operations and Maintenance Work, as described in more detail in Section 3.0 of the Operational Requirements.

Airport Premises means the land shown in stipple and stipple diagonal hatching on the LaGuardia Terminal B Site Diagram, situated at LGA Airport in the County of Queens, City and State of New York, together with (a) all buildings, structures, fixtures, improvements and other property and facilities of the Port Authority located therein, thereon or thereunder (including the

Existing Facilities), and (b) all structures, improvements, additions, buildings, installations and facilities to be located, constructed or installed, or which may be located, constructed or installed therein, thereon or thereunder (including the New Facilities), and (c) the equipment permanently affixed or permanently located therein, such as electrical, plumbing, sprinkler fire protection and fire alarm, heating, steam, sewage, drainage, cooling, refrigerating, telephone and other communications, gas and other systems, and their pipes, wires, mains, lines, tubes, conduits, equipment and fixtures and all paving, drains, culverts, ditches and catch basins (the items described in clauses (a), (b) and (c), collectively, the “**Assets**”); provided, however, that the Airport Premises shall not include the Utility Systems.

Airport Security Program or **ASP** has the meaning set forth in Section 15.6(a)(i).

AirTrain Station means a facility and its appurtenances used to load and unload passengers to and from light or heavy rail vehicles or its functional equivalent, which is, depending on the context, projected, designed, constructed and operated in or in the vicinity of the Central Hall.

Alternative Solutions Report has the meaning set forth in Sections 3.2.1 and 3.2.3 of the General Conditions.

Applicable Law means any statute, law, code, regulation, ordinance, rule, common law, judgment, judicial or administrative order, decree, directive, or other requirement having the force of law or other governmental restriction (including those resulting from the initiative or referendum process) or any similar form of decision of or determination by any Governmental Entity (including any applicable regulation, order or statement of policy of the Administrator of the FAA or any other governmental officer or body having jurisdiction over the enforcement of the obligations of the Port Authority under Federal law or arising from the applications described in Section 15.5(a) of the Lease), including any Environmental Law, which is applicable to the Construction Project, the Construction Site, the Premises, the Temporary Rights of Access, the Work or the relevant Person during the Term, whether taking effect before or after the DB Contract Effective Date, in each case, as amended, revised, supplemented or otherwise modified from time to time. For the avoidance of doubt, the term “Applicable Laws” includes FAA Grant Assurances and the Airport Operating Certificate but excludes the Applicable Standards.

Applicable Standards means all applicable codes, standards, regulations, manuals, references, guidelines, policies, specifications, recommendations, handbooks and advisory circulars referenced within the Lease, this Design-Build Contract and the Requirements and Provisions for Work, including the Rules and Regulations and other such codes, standards, regulations, manuals, guidelines, policies, specifications, recommendations, handbooks, advisory circulars, references and similar documents described in Part C of the Requirements and Provisions for Work, in each case, as amended, revised, supplemented or otherwise modified from time to time.

Applicable Standards Change means (a) any repeal (in whole or in part) of, amendment or modification to, or written change in interpretation of, any of the Applicable Standards, in each case, after the date that is thirty (30) days prior to the Proposal Due Date or (b) the

adoption or enactment of any new Applicable Standard after the date that is thirty (30) days prior to the Proposal Due Date, in each case in clauses (a) and (b), that materially alters the Applicable Standards in effect thirty (30) days prior to the Proposal Due Date; provided, that no Safety Compliance Order, Directive Letter, General Manager Directive or Change in Law shall constitute an Applicable Standards Change; and provided, further, that the issuance of any Lessee Governmental Approval is not an Applicable Standards Change unless and to the extent that a change in a Lessee Governmental Approval or a new Governmental Approval is required by an Applicable Standards Change in connection with the D&C Work.

Approved Alternative Cleanup Standard has the meaning set forth in Section 16.12(l).

Approved Disposal Location has the meaning set forth in Section 16.4(d). All Budgeted Disposal Locations are Approved Disposal Locations.

Archaeological Allowance means the amount of [REDACTED] to be allocated to the monitoring of Archaeological Remains within the Construction Site.

Archaeological Remains means antiquities, fossils, coins, articles of value, precious minerals, cultural artifacts, human burial sites, paleontological and human remains and other similar remains of archaeological or paleontological interest discovered on any part of the Premises or the areas subject to the Temporary Rights of Access.

Architect of Record or **AOR** means the licensed professional architect in the State of New York employed by the Lead Designer responsible for preparing Final Design Documents, all specifications, certification of all shop drawings and providing Record Documents with respect to the Construction Project.

Area-Wide Contamination has the meaning set forth in Section 16.12(e).

As-Built Drawings means the as-built drawings prepared by the Design-Builder in compliance with Sections 9.2, 9.5 and 9.6 of the Design and Construction Requirements.

Asset Preservation Work means all Operations and Maintenance Work described in Sections 2.0 and 2.1 of the Maintenance Requirements.

Assets has the meaning set forth in the definition of “**Airport Premises**.”

Available Documents means (i) the documents included in Part IV of the RFP, including the Disclosed Environmental Reports and the Disclosed Existing Facilities Operations and Maintenance Information and (ii) the documents listed in Exhibit 32. The Available Documents do not constitute Project Documents.

Basic Lease has the meaning set forth in the recitals to this Design-Build Contract.

Best Management Practice means the exercise of the degree of skill, diligence, prudence and foresight that would reasonably and ordinarily be expected from time to time from

a skilled and experienced designer, engineer, constructor, maintenance contractor, operator, consultant, analyst or the Design-Builder seeking in good faith to comply with its contractual obligations, complying with all Applicable Laws, Governmental Approvals and Applicable Standards, and engaged in the same type of undertaking under similar circumstances and conditions. Best Management Practice is not static but rather will change over time; provided, however, that Best Management Practice with respect to any particular activity will be determined at the time when such particular activity is performed.

Books and Records has the meaning set forth in Section 30.1(a).

Budgeted Disposal Locations means the locations identified in Exhibit 36 that are approved by the Port Authority for the disposal of Excavated Materials.

Building 30 Fit-Out has the meaning set forth in Section 10.1(a)(xiii).

Business Day means any day that is not a Saturday, Sunday or other day on which (a) the Port Authority is officially closed for business, (b) banks located in the City are required or authorized by law or executive order to close or (c) the New York Stock Exchange is closed.

Busing Support Payments has the meaning set forth in Section 10.12(b).

Bylaws means the By-Laws of the Port Authority in effect on the Lease Commencement Date, as may be amended from time to time.

Calendar Year means the consecutive twelve (12)-month period starting on January 1 and ending on December 31.

Capital Asset Management Plan means the Capital Asset Management Plan, subject to Port Authority Comment, as described in Section 2.1 of the Maintenance Requirements.

Central Electrical Substation means the existing central electrical substation, located north of the existing taxi hold areas between the Existing Terminal B Facilities and Terminal C, which will be decommissioned and demolished by the Design-Builder as part of the Construction Project after a new East End Substation is built and commissioned for operation by the Port Authority.

Central Hall means a non-exclusive, central arrivals/departure hall to be located between the New Terminal B Facilities and the future redeveloped Terminal C at LGA Airport that will not preclude the future development of one or more of the following: an automated people mover and/or moving walkway, an AirTrain Station, conference and meeting room capacity, retail, food and beverage space and a hotel and related facilities. The Central Hall is included in the Construction Project but it is not deemed a New Facility (nor a New Improvement) for the purposes of this Design-Build Contract or the Lease.

Central Hall Amendment has the meaning set forth in Section 2 of Exhibit 33.

Central Hall Design and Construction Requirements means those Design and Construction Requirements set forth as Section 1 of the Central Hall Technical Requirements.

Central Hall General Conditions means the General Conditions set out in Part A of the Requirements and Provisions for Work for the Central Hall.

Central Hall Milestone Payments has the meaning set forth in Section 9.4(a).

Central Hall Payment and Milestone Schedule means the payment and milestone schedule attached as Exhibit 26-B hereto setting forth the Milestones with respect to the Central Hall and the corresponding Central Hall Milestone Payments, as such schedule may be adjusted pursuant to this Design-Build Contract and the Lease.

Central Hall Site means the land on which the Central Hall will be constructed, located as indicated on Exhibit 28-F. Following Substantial Completion, Exhibit 28-F shall be amended (if necessary) to reflect the final design of the Construction Project and any revisions required with respect to the Central Hall Site or the Premises in connection therewith.

Central Hall Substantial Completion means the occurrence of all events and satisfaction of all conditions set forth in Section 10.6(b) with respect to the Central Hall, as evidenced by the issuance of a Certificate of Central Hall Substantial Completion by the Port Authority to the Developer.

Central Hall Substantial Completion Date means the date upon which the Developer achieves Central Hall Substantial Completion.

Central Hall Substantial Completion Notice has the meaning set forth in Section 10.6(c).

Central Hall Technical Requirements means the Technical Requirements set forth as Part B of the Requirements and Provisions for Work for the Central Hall.

Certificate of Central Hall Substantial Completion has the meaning set forth in Section 10.6(b).

Certificate of Final Acceptance has the meaning set forth in Section 10.7(a).

Certificate of Substantial Completion has the meaning set forth in Section 10.6(a).

C.F.R. means the Code of Federal Regulations.

Change in Control means, with respect to any specified Person, whether accomplished through a single transaction or a series of related or unrelated transactions and whether accomplished directly or indirectly, (i) a change in ownership so that 50% or more of the direct or indirect voting or economic interests in such Person is transferred to another Person or group of Persons, (ii) the power directly or indirectly to direct or cause the direction of management and policy of such Person, whether through ownership of voting securities, by contract or

otherwise, is transferred to another Person or group of Persons or lost by a Person or group of Persons, (iii) the power directly or indirectly to appoint or elect, whether through ownership of voting securities, by contract or otherwise, 50% or more of the board of directors (or other similar managing board) of such Person is obtained by any Person or (iv) the merger, consolidation, amalgamation, business combination or sale of substantially all of the assets of such Person.

Change in Law means (a) any repeal (in whole or in part) of, or amendment or modification to, any Applicable Law by the Federal government, the State of New York, the City or any respective agency or political subdivision thereof (any such Applicable Law, a “**Qualifying Applicable Law**”), or any written change in interpretation or application of, any Qualifying Applicable Law, in each case, after the date that is thirty (30) days prior to the Proposal Due Date, or (b) the adoption or enactment of any new Qualifying Applicable Law after the date that is thirty (30) days prior to the Proposal Due Date, in each case in clauses (a) and (b), that materially alters any existing Qualifying Applicable Law or any existing interpretation or application of, any such Qualifying Applicable Law in effect thirty (30) days prior to the Proposal Due Date; excluding, however, (i) any repeal of, or amendment or modification to, or written change in interpretation or application of, a Qualifying Applicable Law, or any new Qualifying Applicable Law, in each case, that is passed or adopted but not yet effective as of thirty (30) days prior to the Proposal Due Date, (ii) any repeal of, or amendment or modification to, or written change in interpretation or application of, or the adoption or enactment of, state tax laws of general application (it being understood that any change in state tax laws shall not be deemed of general application if it is solely directed at, and the effect of which is solely borne by, the Developer or non-airline terminal operators at airports operated by the Port Authority), (iii) any repeal of, or amendment or modification to, or written change in interpretation or application of, or adoption or enactment of, state labor laws and (iv) any Lessee Governmental Approval, unless and to the extent that a change in a Lessee Governmental Approval or a new Governmental Approval is required by a Change in Law in connection with the D&C Work.

Chief Engineer means the Chief Engineer of the Port Authority.

CHRP means, as the context requires, the Existing CHRP or the New CHRP.

City has the meaning set forth in the recitals to this Design-Build Contract.

Civil Aircraft Operator shall mean a Person engaged in civil transportation by Aircraft or otherwise operating Aircraft for civilian purposes, whether governmental or private. If any such Person is also engaged in the operation of Aircraft for military, naval or air force purposes, he or she shall be deemed to be a Civil Aircraft Operator only to the extent that he or she engages in the operation of Aircraft for civilian purposes.

Claim means any and all claims, disputes, allegations, causes of action, demands, suits or proceedings alleging or seeking damages, injuries, liabilities, obligations, losses, costs and expenses.

CM Agency Agreement has the meaning set forth in Part II of Exhibit 45.

Code means the Internal Revenue Code of 1986, as amended.

Collateral Agency Agreement or **CAA** means the Collateral Agency Agreement dated as of May 1, 2016 among the Developer, The Bank of New York Mellon, as Collateral Agent and securities intermediary, The Bank of New York Mellon, as bond trustee, and The Bank of New York Mellon, as Deposit Account Bank.

Collateral Agent means the financial institution listed or otherwise designated to act as trustee or agent on behalf of or at the direction of the Lenders pursuant to the Financing Documents with respect to any Lessee Debt or any financing documents relating to a Refinancing permitted under the Lease.

Compensation Event has the meaning set forth in Section 14.1(a).

Compensation Event Notice has the meaning set forth in Section 14.1(b)(i) of the Lease.

Comprehensive Concessions Plan has the meaning set forth in Section 5.3(b) of the Lease.

Concession Sublessees has the meaning set forth in Section 5.1(h) of the Lease.

Condemnation Termination Notice has the meaning set forth in Section 26.1 of the Lease.

Conformed Set of TAA Design Documents means, with respect to Partial Completion of any portion of the Construction Project, three (3)¹ sets of drawings and specifications to be submitted to the Port Authority with a request for Partial Inspection (for Occupancy) (as defined in the TCAP) incorporating all design changes (including any change orders resulting from Port Authority Changes, Lessee Changes and Developer Changes) and representing the “final design” condition that has received Port Authority Approval of all changes subsequent to the initial Released for Construction Documents.

Construction Documents means all shop drawings, working drawings, fabrication plans, material and hardware descriptions, specifications, test data, inspection reports, engineering reports, survey control data, safety records, construction quality control reports, construction quality assurance reports and samples necessary or desirable for the Construction Work in accordance with the Project Documents.

Construction NTP means any Full Construction NTP, Construction Segment NTP or Notice to Proceed issued by the Port Authority to the Developer to commence the Construction Work for a specific New Facilities Construction Milestone, as the case may be.

¹ The Port Authority may require additional sets as reasonably required depending on the size and complexity of the portion of the Construction Project proposed by the Lessee to be subject to Partial Completion.

Construction Period means the period from the issuance of the Design NTP until Final Acceptance.

Construction Plan means the plan developed by the Design-Builder pursuant to Section 3.3.2 of the Design and Construction Requirements and in accordance with Exhibit A-27, subject to Port Authority Approval, setting out the complete procedures for the implementation of the entire scope of the Construction Work and/or for each Element thereof, including coordination with the Construction Quality Control Plan.

Construction Project has the meaning set forth in Section 10.1(a). For the avoidance of doubt, the Construction Project includes the design and construction by the Design-Builder of the New Improvements and the Central Hall on behalf of the Port Authority.

Construction Quality Control Plan means the plan developed by the Design-Builder pursuant to Section 6.2 of the Design and Construction Requirements and in accordance with Exhibit A-27, subject to Port Authority Approval, that provides a defined approach to how the Design-Builder will ensure that the materials and the Construction Work comply with the requirements of the Project Documents and how the Design-Builder will monitor such compliance.

Construction Security means any D&C Guarantee, any D&C Letter of Credit and any other performance security provided under this Design-Build Contract.

Construction Segment means any segment or portion of the Construction Work that is designated as such in the Plan for New Improvements Construction Segments or which the Port Authority and the Developer with the consent of the Design-Builder have otherwise agreed to designate as a separate segment or portion of the Construction Work.

Construction Segment NTP means the Notice to Proceed issued by the Port Authority to the Developer to commence the Construction Work for a specific Construction Segment.

Construction Site means those portions of the Premises and the areas subject to the Temporary Rights of Access on which the Developer and the Design-Builder will perform the Construction Work during the Construction Period, all as indicated in diagonal hatching on Exhibit 28-A.

Construction Work means all D&C Work related to the building, constructing, making, forming, manufacturing, furnishing, installing, supplying, delivering, landscaping, equipping and completing the Construction Project (including the New Improvements and the Central Hall) and decommissioning, demolishing and removing the Demolition Facilities, all in accordance with the Project Documents, but excluding Design Work and Operations and Maintenance Work.

Contract means any agreement, and any supplement or amendment thereto, between the Developer, a Contractor or a Supplier and any other Person to perform any part of the Work or provide any materials, equipment or supplies for any part of the Work, at all tiers.

Contract Documents means the Lease and the other Project Documents (if any), any DB Direct Agreement and this Design-Build Contract.

Contract Price has the meaning set forth in Section 9A.1(a).

Contracted D&C Work Value means [REDACTED], as adjusted annually during the Construction Period within thirty (30) days after each anniversary of the Lease Commencement Date in an aggregate amount equal to (i) any increases to the contract price on account of change orders made under those Contracts for the D&C Work in the preceding year that have MBE and WBE participation, and (ii) the contract price for any new Contracts for the D&C Work entered into by the Developer in the preceding year and not otherwise accounted for in the Contracted D&C Work Value referenced above. For the avoidance of doubt, the Contracted D&C Work Value does not include any MBE and WBE participation of the Design-Builder and will not be included in the annual adjustment contemplated by Part II of Exhibit 13.

Contractor means any Person with whom the Developer has entered into any Contract to perform any part of the Work at or on the Premises and any other Person with whom any Contractor has further subcontracted to perform any part of the Work, at all tiers. The term “Contractor” includes the Design-Builder.

Control (including the terms “**Controlling**,” “**Controlled by**” and “**Under Common Control With**”) means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract or otherwise.

Corrective Action Plan means the Corrective Action Plan meeting the requirements of Section 3.3 of the General Conditions developed by the Developer or the Design-Builder, as applicable, with respect to any Nonconforming Work.

Covered Party has the meaning set forth in Section 21.2(c).

Critical Path means the longest (in terms of time) unbroken chain or path of logically connected activities in the Preliminary Project Baseline Schedule or, once in effect, the Project Baseline Schedule, ending with Substantial Completion or Final Acceptance, as applicable.

CRWD means the new consolidated receiving and warehouse distribution facility to be constructed by the Design-Builder and operated by the Developer.

Current Facilities means the equipment, structures, pipelines, foundations, roads and other improvements existing on the Premises on the Lease Commencement Date, including the Existing Terminal B Facilities, the Central Electrical Substation, the P2 Garage, Hangar 1, the Existing CHRP, the National Grid Gate and Governor Station and frontage roads associated therewith.

D&C Contractor means any counterparty to a D&C Contract.

D&C Contract means any Contract entered into by the Developer for third party management, direction, supervision or performance of the D&C Work or any significant portion thereof, including this Design-Build Contract. There may be more than one D&C Contract concurrently in effect.

D&C Guarantee means one or more guarantees delivered by a D&C Guarantor guaranteeing the performance of the Design-Builder's obligations under this Design-Build Contract.

D&C Guarantor means any Person providing a D&C Guarantee in respect of this Design-Build Contract.

D&C Letter of Credit means a standby letter of credit, in form and substance reasonably acceptable to the Port Authority, issued by an Eligible LC Issuer in favor of the Collateral Agent as security for the performance of the Design-Builder's obligations under this Design-Build Contract; provided, that the terms of the Lease provide that if the Lessee Debt incurred on the Lease Commencement Date has received a "BBB-" (or higher) or equivalent rating from at least one of the Rating Agencies, such standby letter of credit shall be deemed acceptable to the Port Authority if it is on terms that satisfy the requirements of such Rating Agency and the holders of such Lessee Debt, so long as it provides that it may be transferred by the Developer to the Port Authority as transferee beneficiary, with rights to draw upon or exercise other remedies thereunder if the Port Authority succeeds to the position of the Developer under this Design-Build Contract.

D&C Schedule of Submittals has the meaning set forth in Section 8.2(a).

D&C Work means the Design Work and the Construction Work.

Day or **day** means calendar days, unless otherwise expressly specified as a Business Day.

DB Compensation Event Notice has the meaning set forth in Section 14.1(b)(i).

DB Construction Work is the portion of the DB D&C Work relating to the Construction Work.

DB Construction Work NTP means the notice to proceed described herein that is issued by the Developer to the Design-Builder to commence the portion of the DB D&C Work relating to the DB Construction Work.

DB Contract Authorized Representative has the meaning set forth in Section 35.6.

DB Contract Effective Date has the meaning set forth in Article 2.

DB D&C Work means (1) the D&C Work and all work related thereto required under the Project Documents, except that any D&C Work relating to matters specifically identified as constituting a Developer responsibility within the various sub-exhibits to Exhibit A hereto shall not constitute DB D&C Work, and (2) the work set out in Exhibit A which is specifically

included as the responsibility of the Design-Builder and which may be additional to the D&C Work. The Design-Builder shall have no responsibility to perform any Operations and Maintenance Work.

DB Delay Event Notice has the meaning set forth in Section 14.2(b)(i).

DB Design Work is the portion of the DB D&C Work relating to the Design Work.

DB Design Work NTP means the notice to proceed described herein that is issued by the Developer to the Design-Builder to commence the DB Design Work.

DB Direct Agreement means a direct agreement entered into by the Design-Builder, the Developer and the Port Authority, if any.

DB Disbursement Request has the meaning set forth in Section 9A.1(c).

DB Disbursement Request Certificate has the meaning set forth in Section 9A.1(c).

DB Dispute Resolution Procedure has the meaning set forth in Section 33A.1.

DB Environmental Status Report means a report submitted to the Developer by the Design-Builder for submission to the Port Authority once per calendar month or quarter, as required and including the information required by Section 16.15(b), and such other information as the Port Authority shall reasonably request.

DB Final Acceptance Deadline means the Guaranteed Final Acceptance Date, as such Guaranteed Final Acceptance Date may be adjusted in accordance with this Design-Build Contract.

DB HASP has the meaning set forth in Section 16.3(d).

DB Indoor Air Quality Management Plan has the meaning set forth in Section 16.8.

DB Lenders' Direct Agreement has the meaning set forth in Section 18.1.

DB LNTP has the meaning set forth in Section 10.4A.

DB Long Stop Deadline means the date that is 90 days prior to the Long Stop Deadline, as such Long Stop Deadline may be adjusted in accordance with this Design-Build Contract.

DB New Facilities Construction Milestone Deadline means the Guaranteed New Facilities Construction Milestone Completion Date (as such Guaranteed New Facilities Construction Milestone Completion Date may be adjusted in accordance with the Lease), subject to additional adjustment of such DB New Facilities Construction Milestone Deadline as provided in this Design-Build Contract.

DB Party means:

(i) the Design-Builder, any DB Subcontractor and any person engaged by the Design-Builder from time to time as may be permitted by this Design-Build Contract to procure or manage the provision of the DB D&C Work (or any of them); and

(ii) in respect of each of the above, their subcontractors of any tier, agents, employees, officers and directors,

and **DB Parties** shall be construed accordingly.

DB PNTP Work means the PNTP Work and all work related thereto to the extent required under the PNTP Agreement, except that any PNTP Work relating to matters identified in Exhibit A-4 (for which the Developer is responsible) or Exhibit A-37 thereto shall not constitute DB PNTP Work, all of which PNTP Work will be performed in accordance with Exhibit A thereto, to the extent applicable to the PNTP Work.

DB Project Documents means the Contract Documents, the DB Lenders' Direct Agreement, extracts of the Financing Documents provided to the Design-Builder before Financial Close and listed in an exhibit to this Design-Build Contract, each D&C Guarantee, the D&C Letter of Credit and any other documents provided to the Design-Builder (based on further due diligence) and which are (per mutual agreement of the Parties) listed in an exhibit to this Design-Build Contract.

DB Punch List means an itemized list of the items on the Punch List (other than any item on any such Punch List that is the responsibility of the Developer), plus any additional items of DB Construction Work that remain to be completed, corrected, adjusted, or modified by the Design-Builder in order to comply with the requirements of this Design-Build Contract, the existence, correction and completion of which will have no material or adverse effect on the normal, uninterrupted and safe use and operation of the Premises, as agreed between the Design-Builder and the Developer.

DB Punch List Items means items on the DB Punch List.

DB Requested Submission Date means, with respect to any Submittal, the date for submission of such Submittal to the Port Authority that establishes a time frame that will allow the Design-Builder to perform the activity that is the subject of the Submittal within the time periods required by the DB Project Documents, taking into account the time allowed for Port Authority Comment or Port Authority Approval, as applicable.

DB SPCC Plan has the meaning set forth in Section 16.3(a).

DB Subcontract has the meaning set forth in Section 12.1(c)(i).

DB Subcontractor has the meaning set forth in Section 12.1(c)(i).

DB Substantial Completion Deadline means the Guaranteed Substantial Completion Date (as such Guaranteed Substantial Completion Date may be adjusted in accordance with the

Lease), subject to additional adjustment of such DB Substantial Completion Deadline as provided in this Design-Build Contract.

DB Termination Transition Plan has the meaning set forth in Section 27A.2(a).

DB Work and Staging Area means, collectively, the areas within the Construction Site, including those necessary to accommodate laydown, staging, drainage and other construction methods in connection with the construction of the Construction Project, but, with respect to all such areas, only with respect to the periods of time during which the Design-Builder is performing the DB D&C Work in, or is otherwise responsible for, such areas.

DB Work Defect means any Defect with respect to the DB D&C Work attributable to the Design-Builder, except any such Defect due to improper Operations and Maintenance Work by or on behalf of the Developer or the Developer's failure to perform any such Operations and Maintenance Work or due to any wear with respect to a portion of the Construction Project following Partial Completion of such portion to the extent such wear constitutes normal wear and tear.

Debarment Regulations means (a) Federal Executive Order no. 12549 (Feb. 18, 1986), (b) Federal Executive Order no. 12689 (Aug. 16, 1989), (c) 31 U.S.C. § 6101 note (Section 2455, Pub. L. 103-355, 108 Stat. 3327) and (d) 49 C.F.R. Part 29 "Government-wide Debarment and Suspension (Nonprocurement)."

Default Interest Rate means the default interest rate payable under the Financing Documents.

Defect means a defect or deficiency in the condition or performance of any component of the Construction Project, whether by design, construction, installation, damage or wear, affecting the condition, use, functionality or operation of any component of the Construction Project, that would cause or have the potential to cause one or more of the following:

- (a) a hazard, nuisance or other risk to public or worker health or safety, including the health and safety of Patrons;
- (b) a structural deterioration of the affected Asset or any other component of the Construction Project;
- (c) damage to a third party's property or equipment;
- (d) damage to the Environment to the extent arising from a breach of the Lease by the Developer arising from a breach of this Design-Build Contract by the Design-Builder; or
- (e) failure of the affected Asset or any component of the Construction Project to meet any of the requirements or standards referred to in Section 11.2 of the Lease, including the requirements of the Airport Performance Measurement Program, by reason of a breach of this Design-Build Contract by the Design-Builder.

Delay Event has the meaning set forth in Section 14.2(a).

Delay Event Notice has the meaning set forth in Section 14.2(b)(i) of the Lease.

Delta means Delta Air Lines, Inc.

Delta Airside Reconfiguration Project means the redevelopment of Terminals C and D.

Delay LDs means liquidated damages payable in the amounts and at the times set forth in Section 14B.4 for failure to achieve Partial Completion with respect to the New Facilities Construction Milestones or Substantial Completion by the applicable Delay LDs Date.

Delay LDs Date means, with respect to (1) any New Facilities Construction Milestone, the date identified on Exhibit 35-A or (2) Substantial Completion, July 8, 2022, in each case as such date may be adjusted only as expressly permitted under this Design-Build Contract in connection with a Developer Act, a Developer Suspension, a Lessee Change, a Developer Change or a Port Authority Change. For the avoidance of doubt, such dates shall not be adjusted in connection with a Compensation Event or a Delay Event.

Demolition Debris means the solid waste that is created by the demolition, crushing, breaking, excavation, removal, disposal or destruction of the Current Facilities.

Demolition Facilities shall mean (a) the Existing Terminal B Facilities, (b) the Existing CHRP, (c) the Central Electric Substation, (d) the P2 Garage, (e) Hangar 1, (f) the National Grid Gate and Governor Station, (g) frontage roads associated with the P2 Garage, Hangar 1 and the Existing Terminal B Facilities, (h) temporary facilities to support passenger services during construction of the New Terminal B Facilities and (i) other ancillary facilities required to be demolished in accordance with the Requirements and Provisions for Work.

Deposit Account Bank means The Bank of New York Mellon, a New York banking corporation, in its capacity as deposit account bank.

Design-Build Contract has the meaning set forth in the preamble.

Design-Builder has the meaning set forth in the introductory paragraph of this Design-Build Contract.

Design-Builder Act has the meaning set forth in Section 21.1A.

Design-Builder Event of Default has the meaning set forth in Section 23.1.

Design-Builder Governmental Approvals has the meaning set forth in Section 15.1(a).

Design-Builder Occupants has the meaning set forth in Section 16.1(f).

Design-Builder-Provided Insurance has the meaning set forth in Section 20.1(l)(i).

Design-Builder's Representative has the meaning set forth in Section 33A.2.

Design and Construction Requirements means the Terminal B Facilities Design and Construction Requirements, the New Improvements Design and Construction Requirements and the Central Hall Design and Construction Requirements.

Design Documents means all Record Documents, all drawings (including plans, profiles, cross-sections, notes, elevations, typical sections, details and diagrams), design criteria, specifications, reports, studies, calculations, electronic files, records and submittals necessary for, or related to, the design of the Construction Project. Design Documents include the Final Design Documents.

Design Guidelines means the LaGuardia Airport Redevelopment Program Design Guidelines (Stage 1 Documents – March 6, 2014).

Design NTP means the Notice to Proceed issued by the Port Authority to the Developer authorizing the Developer to proceed with Design Work.

Design Plan means the plan developed by the Design-Builder pursuant to Section 3.3.2 of the Design and Construction Requirements and in accordance with Exhibit A-27, subject to Port Authority Approval, that provides complete procedures for the implementation of the entire Design Work.

Design Quality Control Plan means the plan developed by the Design-Builder pursuant to Section 6.1 of the Design and Construction Requirements and in accordance with Exhibit A-27, subject to Port Authority Approval, that provides a defined approach for how the Design-Builder will ensure that the Design Work complies with the requirements of the Project Documents and monitor such compliance.

Design Work means all D&C Work related to the design, redesign, engineering and architecture for the Construction Project (including the New Improvements and the Central Hall) in accordance with the Project Documents, but excluding Construction Work and Operations and Maintenance Work.

Developer has the meaning set forth in the introductory paragraph of this Design-Build Contract.

Developer Act means (1) any breach of this Design-Build Contract by the Developer; (2) any breach of this Design-Build Contract by the Design-Builder directly caused by the acts or omissions of the Developer or any Contractor retained by the Developer to perform any obligation of the Developer with respect to the D&C Work or the Operations and Maintenance Work (but specifically excluding, in all cases, any act or omission of any Sublessee or Scheduled Aircraft Operator or the Port Authority) or (3) gross negligence, willful misconduct or actual fraud of the Developer. For the avoidance of doubt, the reference to Contractors in clause (2) of this definition shall exclude the Design-Builder and the DB Parties.

Developer Change has the meaning set forth in Section 13.3(a).

Developer DB Event of Default has the meaning set forth in Section 24.1(a).

Developer Payment Default has the meaning set forth in Section 24.1(a)(i).

Developer-Provided Insurance has the meaning set forth in Section 20.1(k)(i)

Developer Suspension has the meaning set forth in Section 10.9(c) and, for the avoidance of doubt, does not include any suspension initiated by the Port Authority.

Developer's Representative has the meaning set forth in Section 33A.2.

Dewatering Plan has the meaning set forth in Section 16.5(a).

Directive Letter has the meaning set forth in Section 13.2 of the Lease.

Direct Losses means all damage, losses, liabilities, penalties, fines, assessments, claims, actions, costs, expenses (including the reasonable cost of legal or professional services), proceedings, demands and charges, whether arising under statute, contract or at common law, except Indirect Losses.

Disbursement Request has the meaning set forth in Section 9.2(a) of the Lease.

Disbursement Request Certificate has the meaning set forth in Section 9.2(b) of the Lease.

Disclosed Environmental Reports means the reports set forth on Exhibit 5.

Disclosed Existing Facilities Operations and Maintenance Information has the meaning set forth in Section 22.2(k) of the Lease.

Disclosed Facilities means Current Facilities that are identified in or on, or are apparent upon inspection of, drawings, documents, photographs and other materials included within the Available Documents, or which can reasonably be inferred from the Available Documents, including the presence of wiring, piping, paint, batteries, mobile equipment and storage tanks.

Disclosing Party has the meaning set forth in Section 35.18(d).

Discriminatory Applicable Standards Change means an Applicable Standards Change which applies, or could reasonably be expected to apply, in a manner materially adverse to the Developer or the Work, or non-airline terminal operators at the airports for which the Port Authority is the airport operator or the terminal operations of such non-airline terminal operators, and does not apply, or could not reasonably be expected to apply, to other Persons.

Discriminatory Change in Law means a Change in Law which applies, or could reasonably be expected to apply, in a manner materially adverse to the Developer or the Work, or non-airline terminal operators at the airports for which the Port Authority is the airport operator or the terminal operations of such non-airline terminal operators, and does not apply, or could not reasonably be expected to apply, to other Persons.

Dispute means any dispute, disagreement or controversy between the Port Authority and the Developer concerning their respective rights and obligations under any Project Document, or between the Developer and the Design-Builder concerning their respective rights and obligations under any DB Project Document, in each case including in respect of any Claim, alleged breach or failure to perform and any remedy.

Dispute Board has the meaning set forth in Exhibit 43.

Dispute Board Rules has the meaning set forth in Section 33A.3.

Dollars or \$ refers to the lawful money of the United States of America.

Early Termination means the termination of the Lease for any reason prior to the Expiry Date (other than any Partial Termination pursuant to Section 2.2 of the Lease).

Early Termination Date means the effective date of Early Termination.

East End Substation means a new substation, to be constructed by the Port Authority as a Supporting Project on the east side of LGA Airport, to serve the New Terminal B Facilities, the Central Hall and the East End Terminals.

East End Terminals means Terminal C and Terminal D located at LGA Airport.

East Garage means a new five (5)-story garage on the P4 lot located to the east of the New Terminal B Facilities and south of Terminal C. The East Garage provides approximately 1,100 new parking places.

EDC means the New York City Economic Development Corporation, a local development corporation formed pursuant to Section 1411 of the Not-for-Profit Corporation Law of the State of New York, or such successor entity as may be designated by the City under the Basic Lease.

Element means an individual component, system or subsystem of the Terminal B Facilities or the Demolition Facilities, as applicable.

Eligible LC Issuer means a financial institution that has (a) long-term unsecured debt ratings of at least the following, from at least two (2) of the Rating Agencies: (i) "A" by Standard & Poor's Ratings Services, (ii) "A2" by Moody's Investor Service, Inc. or (iii) "A" by Fitch Ratings, and (b) an office in New York, New York at which a letter of credit issued by it can be presented for payment.

Emergency means any unplanned event affecting the Premises that:

- (a) presents an immediate or imminent hazard to Patrons, or a risk of immediate or imminent structural failure, or an immediate or imminent risk of material damage to a third party's property or equipment, or an immediate or imminent risk of a

Hazardous Materials Release or a threat to the long-term integrity of any part of the Premises;

- (b) has jeopardized the safety of Patrons using the New Terminal B Facilities;
- (c) is a declared state of emergency pursuant to state or Federal law; or
- (d) is recognized or declared by the Port Authority Police or any Governmental Entity as an Emergency.

Endangered Species means any animal or plant species listed as endangered or threatened under an Environmental Law or that is protected from harm or harassment under an Environmental Law.

Engineer of Record or **EOR** means the licensed professional engineer in the State of New York employed by the Lead Designer responsible for preparing Final Design Documents, all specifications, certification of all shop drawings and providing Record Documents with respect to the Construction Project.

Environment means air, soils, surface waters, groundwater, land, stream sediments, surface or subsurface strata, biological resources, including endangered, threatened and sensitive species and natural systems, including ecosystems.

Environmental Law shall mean Federal, state, and local laws, statutes, ordinances, rules, regulations, judgments, guidance documents, Governmental Approvals, licenses, authorizations, registrations, plans, directives, agreements, consent orders or consent decrees, and other requirements of Governmental Entities, whether now existing or hereafter enacted or promulgated, as the same have been or may be amended from time to time, including common law causes of action and all applicable judicial and administrative decisions, orders, and decrees, arising out of, relating to or imposing liability or standards of conduct concerning protection of human health, safety or the Environment or Hazardous Materials including the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. § 9601 *et seq.*), the Hazardous Materials Transportation Act (49 U.S.C. § 5101 *et seq.*), the Resource Conservation and Recovery Act (42 U.S.C. § 6901 *et seq.*), the Federal Water Pollution Control Act (33 U.S.C. § 1251 *et seq.*), the Clean Air Act (42 U.S.C. § 7401 *et seq.*), the Toxic Substances Control Act (15 U.S.C. § 2601 *et seq.*), the Occupational Safety and Health Act (29 U.S.C. § 651 *et seq.*), the Oil Pollution Act (33 U.S.C. § 2701 *et seq.*), the Emergency Planning and Community Right-to-Know Act (42 U.S.C. § 11001 *et seq.*), the National Environmental Policy Act (42 USC § 4321 *et seq.*), the State Environmental Quality Review Act (SEQRA) (NY ECL § 8-0101 *et seq.*) and any analogous current or future Federal, state, municipal, city or local laws, including newly-enacted Applicable Laws concerning the Environment or Hazardous Materials, and any amendments or modifications as may be adopted or promulgated from time to time.

Environmental Liabilities means all liabilities and obligations of whatever kind or nature imposed by Environmental Law or arising as a result of a Claim under Environmental Law, whether contingent or otherwise, matured or unmatured, foreseeable or unforeseeable, including for investigation, sampling, monitoring, Remedial Action or defense of any Claim,

whether or not such is ultimately dismissed, and of any settlement or judgment, any of which arise or are incurred at any time in connection with (a) any actual or alleged violation of any Environmental Law, (b) any actual or alleged use, manufacture, possession, storage, holding, presence, existence, location, release, threatened release, discharge, placement, generation, handling or disposal of Hazardous Materials, or (c) any actual or alleged damage, injury, threat or harm to health, safety, natural resources or the Environment, excluding obligations of the Design-Builder to perform Work or Remedial Action under this Design-Build Contract.

Environmental Management Plan means the plan prepared by the Developer in accordance with Section 16.1(b) and approved by the Port Authority.

Environmental Requirements means all requirements under Environmental Laws and under the Applicable Standards pertaining to the protection of the Environment, including the NEPA Documents, together with the other requirements, policies and guidelines of the Port Authority set forth in Exhibit 6, which are applicable to (a) the Premises, (b) the Work performed by the Developer, the Contractors (including the Design-Builder and any DB Subcontractors) or others with the consent of the Developer at the Premises or the Developer's operations at LGA Airport, (c) the occupancy and use of the Premises by the Developer, the Sublessees or by others with the Developer's consent or (d) any Hazardous Material on, in, under or originating from the Premises, in each case without regard to any exemption from Applicable Law that the Port Authority may be subject to as a result of its status as multi-jurisdictional agency. For the avoidance of doubt, Environmental Requirements include the requirements of Port Authority Governmental Approvals applicable to the Premises or the Work.

Environmental Status Report means a report submitted to the Port Authority by the Developer once per calendar month or quarter, as required by the Project Documents, and including the information required by Section 16.15(b), and such other information as the Port Authority shall reasonably request.

Equity Member means any Person that directly holds an equity interest in the Developer. As of the Lease Commencement Date, the Equity Members are Vantage Airport Group (New York) LLC, Skanska ID LGP, LLC and MI LaGuardia CTB, LLC, as reflected in Exhibit 22 of the Lease.

Equivalent Project Relief has the meaning set forth in Section 14A.1.

Event of Default has the meaning set forth in Section 23.1 of the Lease.

Excavated Materials means all soil, rock, debris, trash and other solid material excavated from beneath the Premises, as required to complete the Work, but not when excavated outside of the Excavated Zone as part of a Remedial Action that the Design-Builder is required to perform pursuant to this Design-Build Contract in order to remove or remediate a Hazardous Environmental Condition.

Excavation Zone means (a) prior to the Final Acceptance Date, the areas excavated in connection with the performance of the Construction Work, plus a buffer zone of up to ten (10) feet outside such area; provided, that (i) the buffer zone will be limited to five (5) feet on either

side of an excavation that is less than ten (10) feet wide, (ii) the buffer zone will be to the nearest property boundary, building or structure if that distance is less than ten (10) feet from the excavation (or five (5) feet if clause (i) above is applicable), and (iii) the depth of the buffer zone is the shallower of average groundwater depth or one (1) foot below the intended bottom depth of the excavation or (b) after the Final Acceptance Date, the areas excavated in connection with the performance of the Construction Work.

Excepted Contractor means a Contractor performing Work under a Contract with a value of Five Hundred Thousand Dollars (\$500,000) or less, individually or in the aggregate.

Excepted DB Subcontractor means a DB Subcontractor performing DB D&C Work under a DB Subcontract with a value of Five Hundred Thousand Dollars (\$500,000) or less, individually or in the aggregate.

Excepted Supplier means a Supplier that supplies machinery, equipment, materials, hardware, software, systems or any other appurtenance under a Contract with a value of Five Hundred Thousand Dollars (\$500,000) or less, individually or in the aggregate.

Excess Parking Deficiency has the meaning set forth in Section 10.12(b).

Excluded Liabilities has the meaning set forth in Section 3.2(b) of the Lease.

Existing CHRP means the existing central heating and refrigeration plant serving LGA Airport. The general location of the Existing CHRP at LGA Airport is shown in Exhibit 1.

Existing Facilities means the Existing Terminal B Facilities and the Existing CHRP.

Existing Leased Property means the Existing Facilities, together with all structures, fixtures and improvements located therein or thereon and the equipment permanently affixed or permanently located therein (but excluding the land on which such facilities are located), located as indicated on Exhibit 28-B.

Existing Terminal B Facilities means the LaGuardia Airport Central Terminal Building (also known as “Terminal B”), including contiguous aircraft ramp areas as shown on Exhibit 1.

Exit Baseline Report has the meaning set forth in Section 16.13(b) of the Lease.

Expected Central Hall Substantial Completion Date has the meaning set forth in Section 10.6(c)

Expected Final Acceptance Date has the meaning set forth in Section 10.7(b).

Expected Partial Completion Date has the meaning set forth in Section 10.5(d).

Expected Substantial Completion Date has the meaning set forth in Section 10.6(c).

Expiry Date has the meaning set forth in the Lease.

FAA means the Federal Aviation Administration established under 49 U.S.C. § 101 *et seq.*, or any successor agency thereto.

FAA Grant Assurances means certain obligations with respect to the maintenance and operation of airport facilities required by the FAA in connection with any FAA-administered airport financial assistance programs.

Facilities Incidental to the Runways, Ramp and Apron Area, Aircraft Parking and Storage Area and Taxiways means facilities for the purpose of controlling or assisting arrivals, departures and operation of Aircraft using LGA Airport, such as control towers, signals, beacons, wind indicators, flood lights, landing lights, boundary lights, obstruction lights, navigation lights, radio and electronic aids, or other aids to operation, navigation or ground control of Aircraft, whether or not of a type hereinbefore enumerated, and even though located at sites away from the other Public Aircraft Facilities or outside LGA Airport.

Federal means of or relating to the central government of the United States of America.

Final Acceptance means the occurrence of all the events and satisfaction of all the conditions set forth in Section 10.7(a).

Final Acceptance Date means the date upon which the Developer achieves Final Acceptance of the entire Construction Project.

Final Crane Directive means RCNY (“Rules of the City of New York”) 33190-01(s)(2), as amended pursuant to an order to be issued by the Commissioner of the New York City Department of Buildings regarding crawler crane safety requirements.

Final Design means, depending on the context: (a) the Final Design Documents; (b) the design concepts set forth in the Final Design Documents; or (c) the process of developing the Final Design Documents.

Final Design Documents means the complete final construction drawings, including plans, profiles, cross-sections, notes, elevations, typical sections, details and diagrams, design criteria, specifications, reports, studies, calculations, electronic files, records and submittals prepared by the Design-Builder and approved by the Port Authority, necessary or related to construction and maintenance of the Construction Project.

Finalized Proposal has the meaning set forth in the ITP.

Financial Close means the date on which the initial funding under the Financing Documents occurs.

Financing Documents means, collectively, the Funding Agreements and the Security Documents.

Finding of No Significant Impact means a determination by the FAA that the FAA’s approval of modifications to the Airport Layout Plan (as defined under Applicable Law

administered by the FAA) and Federal funding of such modifications, which are necessary for the Construction Work to proceed, are not likely to have a significant effect on the human environment and therefore an environmental impact statement for the Construction Project does not need to be prepared, as provided in 40 C.F.R. § 1508.13.

Float means the amount of time that any given activity or logically connected sequence of activities shown on the Project Baseline Schedule may be delayed before it will affect any Guaranteed New Facilities Construction Milestone Completion Date or the Guaranteed Substantial Completion Date. Such Float is generally identified as the difference between the early completion date and late completion date for all activities as shown on the Project Baseline Schedule.

Force Majeure Event shall have the meaning set forth in the Lease, which is as follows: with respect to each of the Port Authority and the Developer, the occurrence and continuing impact of an event, act, omission, condition, or circumstance beyond such party's reasonable control and due to no fault or negligence of such party or the Persons for whom such party is responsible, that prevents or delays such party from performing any of its obligations pursuant to the Lease, including, subject to the succeeding sentence, (i) war (including civil war and revolution), invasion, armed conflict, violent act of foreign enemy, military or armed blockade, or military or armed takeover of LGA Airport; (ii) any act of riot, insurrection, civil commotion, act of terror or sabotage; (iii) nuclear explosion or radioactive contamination of the Premises or the areas subject to the Temporary Rights of Access; (iv) fire, explosion, earthquake; (v) hurricane force winds, tornadoes, floods, tsunami, Named Windstorms or snow or ice storms that are not ordinarily encountered at LGA Airport; or (vi) any event as a result of which a state of Emergency has been declared. With respect to the Developer, an event is not a Force Majeure Event if such event is otherwise specifically dealt with in the Lease or arises by reason of any of the following:

- (a) the negligence or willful misconduct of any Lessee-Related Entity;
- (b) any act or omission by any Lessee-Related Entity in breach of the provisions of the Lease (including the standards required by the Requirements and Provisions for Work);
- (c) Delay Events, other than Force Majeure Events with respect to any Lessee-Related Entity;
- (d) lack or insufficiency of funds or failure to make required payment of monies or provide required security on the part of any Lessee-Related Entity;
- (e) any strike, labor dispute or labor protest directed solely at any Lessee-Related Entity or caused by or attributable to any act (including any pricing or other practice or method of operation) or omission of any Lessee-Related Entity;
- (f) an earthquake after Substantial Completion that affects the Premises and that causes ground accelerations below the standards required by the Requirements and Provisions for Work;

(g) floods after Substantial Completion that affect the Premises below the base flood levels specified in the Requirements and Provisions for Work;

(h) market conditions and economic conditions affecting the availability, supply, or cost of labor, equipment and materials, construction equipment and supplies, or commodities, other than as a result of the events described in clauses (i) through (vi) above;

(i) market conditions and economic conditions affecting the Developer's ability to meet its financial obligations; or

(j) weather conditions, other than the events described in clauses (v) and (vi) above.

Frontage Roads means those roads within LGA Airport that are adjacent or parallel to the New Terminal B Facilities as shown in Figure 3.3-2 of the Design Guidelines.

Full Construction NTP means the Notice to Proceed issued by the Port Authority authorizing the Developer to commence Construction Work on the entire Construction Project.

Funding Agreements means, collectively, the Indenture, any Supplemental Indenture executed with respect to the Bonds, the 2016 Bonds, any Additional Bonds, the Series 2016 Notes, any Notes relating to the Additional Bonds, the Building Loan Agreement, the Project Loan Agreement, any Additional Bonds Loan Agreement Supplement, the Collateral Agency Agreement, the DB Direct Agreement, the Manager Direct Agreement, the Equity Contribution Agreement, the D&C Guarantees, the D&C Letter of Credit, and the Manager Guarantee. Solely for purposes of this definition, capitalized terms used herein but not otherwise defined in this Design-Build Contract shall have the respective meanings set forth in the Collateral Agency Agreement.

GAAP means U.S. generally accepted accounting principles.

General Conditions means the Terminal B Facilities General Conditions, the Central Hall General Conditions and the New Improvements General Conditions, as appropriate.

General Manager means the person or persons from time to time designated by the Port Authority to exercise the powers and functions vested in such General Manager by the Lease; but until further notice from the Port Authority to the Developer it shall mean the General Manager (or the temporary or acting General Manager) of LGA Airport, or any replacement thereof, or his duly designated representative or representatives.

General Manager Directive has the meaning set forth in Section 15.3.

Governmental Approval means all approvals, permits, permissions, consents, licenses, certificates (including sales tax exemption certificates), registrations, notices, exemptions, exceptions, waivers, filings and authorizations (whether statutory or otherwise), which are required from time to time under Applicable Law in order to authorize the Port Authority, the Developer or the Design-Builder to perform all or any part of the Work or take actions required to complete obligations in connection with the Construction Project, the Operations and

Maintenance Work or the lease and management of the Premises and that are issued or authorized by any Governmental Entity, including Port Authority Governmental Approvals but excluding, for the avoidance of doubt, any Port Authority Approval.

Governmental Entity or Governmental Agency means Federal, state, municipal and other governmental authorities, boards and agencies of any state, nation or government, except that such term shall not be construed to include the Port Authority.

Groundwater is groundwater occurring beneath the Premises or the areas subject to the Temporary Rights of Access, including groundwater flowing onto or under the Premises or the areas subject to the Temporary Rights of Access, during or as a result of the Work.

Guaranteed Final Acceptance Date means the later of (i) November 5, 2022, as such date may be adjusted only as expressly permitted under the Lease, and (ii) the date that is three (3) months after the Substantial Completion Date.

Guaranteed New Facilities Construction Milestone Completion Date means, with respect to any New Facilities Construction Milestone, the date identified on Exhibit 35-A by which the Developer guarantees to achieve Partial Completion of such New Facilities Construction Milestone pursuant to the Lease, as such date may be adjusted only as expressly permitted under the Lease.

Guaranteed Substantial Completion Date means July 8, 2022, as such date may be adjusted only as expressly permitted under the Lease.

Handback Environmental Report has the meaning set forth in Section 16.13(a) of the Lease.

Handback Requirements has the meaning set forth in Section 11.12(a) of the Lease.

Hangar 1 means the hangar that currently houses American Airlines' baggage handling system. The general location of Hangar 1 at LGA Airport is shown in Exhibit 1.

Hangar 2 means the hangar identified as Hangar 2 at LGA Airport shown in Exhibit 1.

Hangar 4 means the hangar identified as Hangar 4 at LGA Airport shown in Exhibit 1.

HASP has the meaning set forth in Section 16.3(d) of the Lease.

Hazardous Environmental Condition means the presence of any Hazardous Materials on, in or under the Premises or the areas subject to the Temporary Rights of Access in soil or Groundwater, in concentrations or in quantities that are required to be removed or remediated under Environmental Law or by a Governmental Entity pursuant to Environmental Law, or otherwise in accordance with the requirements of the Contract Documents, but excludes Hazardous Materials in the Current Facilities, Excavated Materials or Demolition Debris.

Hazardous Materials means (a) any toxic substance or hazardous waste, hazardous substance or hazardous material, or any pollutant or contaminant; (b) radon gas, asbestos in any form which is or could become friable, urea formaldehyde foam insulation, transformers or other equipment which contain dielectric fluid containing levels of polychlorinated biphenyls in excess of Federal, state or local safety guidelines, whichever are more stringent; (c) petroleum and any by-products, fractions, derivatives and constituents thereof, of any kind and in any form, including oil, petroleum, fuel, fuel oil, sludge, crude oil, gasoline, kerosene, and mixtures of, or waste materials containing, any of the foregoing; and (d) any other gas, material or chemical which is or may hereafter be defined as or included in the definition of “hazardous substances,” “toxic substances,” “hazardous materials,” “hazardous wastes” or words of similar import under any Environmental Law.

Hazardous Materials Release means any spill, leak, emission, release, discharge, injection, escape, leaching, dumping or disposal of Hazardous Materials into the soil, air, surface water, Groundwater or indoor or outdoor environment.

Incremental Environmental Damages has the meaning set forth in the Lease, which is as follows: the additional out-of-pocket costs, expenses and lost revenues meeting the requirements of Section 14.1 of the Lease and any adjustments to the Project Baseline Schedule authorized with respect to a Delay Event under Section 14.2 of the Lease arising as a result of the performance by the Developer of its obligations under Article 16 of the Lease, in excess of the costs, expenses, lost revenue and time that would have been incurred in the absence of the occurrence of specific conditions or events for which Incremental Environmental Damages are authorized under the Lease, subject in all respects to the conditions and limitations set forth in Article 14 of the Lease.

Indemnified Party has the meaning set forth in the Lease.

Indemnity Payment has the meaning set forth in Section 21.4(b).

Indicative Termination Notice has the meaning set forth in Section 24.2(d).

Indirect Losses means the following losses, whether arising in tort or on any other basis whatsoever:

- (i) punitive, exemplary or aggravated damages;
- (ii) loss of profits, loss of use, loss of production, loss of business or loss of business opportunity; or
- (iii) consequential loss or indirect loss of any nature suffered or allegedly suffered by either Party.

Initial O&M Period means the period from the Lease Commencement Date continuing until commencement of operation of any portion of the New Facilities.

Insolvency Event means, with respect to a given Party, that (1) such Party shall commence any case, proceeding or other action (A) under any existing or future law of any jurisdiction, domestic or foreign, relating to bankruptcy, moratorium, insolvency, reorganization or relief of debtors, seeking to have an order for relief entered with respect to it, or seeking to adjudicate it as bankrupt or insolvent, or seeking reorganization, arrangement, adjustment, winding up, liquidation, dissolution, composition or other relief with respect to it or its debts or (B) seeking appointment of a receiver, trustee, custodian, conservator or other similar official for it or for all or any substantial part of its assets, or such Party shall make a general assignment for the benefit of its creditors; (2) there shall be commenced against such Party any case, proceeding or other action of a nature referred to in clause (1) above which (A) results in the entry of an order for relief or any such adjudication or appointment or (B) remains undismissed, undischarged or unbonded for a period of 60 days; (3) there shall be commenced against such Party any case, proceeding or other action seeking issuance of a warrant of attachment, execution, distraint or similar process against all or any substantial part of its assets which results in the entry of an order for any such relief which shall not have been vacated, discharged, or stayed or bonded pending appeal within sixty (60) days from the entry thereof; (4) such Party shall take any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the acts described in clauses (1), (2), or (3) above, or (5) such Party shall generally not or shall be unable to, or shall admit in writing its inability to, pay its debts as they become due.

Intellectual Property means any and all patents, trademarks, service marks, copyright, database rights, moral rights, rights in a design, know-how, confidential information and all or any other intellectual or industrial property rights whether or not registered or capable of registration and whether subsisting in the United States or any other part of the world together with all or any goodwill relating or attached thereto, which is created, brought into existence, acquired, used or intended to be used by any Lessee-Related Entity for the purposes of carrying out the Work and/or otherwise for the purposes of the Lease.

Interim Agreement means the Interim Agreement, dated April 12, 2016, by and between the Port Authority and the Preferred Proposer.

IRS means the U.S. Internal Revenue Service or any successor agency.

ITP means the Instructions to Proposers, forming Part I of the RFP.

ITP Addendum #1 has the meaning set forth in the recitals to this Design-Build Contract.

ITP Addendum #2 has the meaning set forth in the recitals to this Design-Build Contract.

ITP Addendum #3 has the meaning set forth in the recitals to this Design-Build Contract.

Known ACM means ACM, as indicated by sampling results, estimated quantities and locations provided in the Available Documents, including any “presumed” or assumed quantities and locations identified in the Available Documents.

Known Hazardous Materials means Known ACM, Known LCP and Known PCB within or comprising a component of the Current Facilities; any other Hazardous Materials contained in or comprising a component of Disclosed Facilities; Hazardous Materials existing in soil or Groundwater and disclosed or identified in the Available Documents; and any Demolition Debris or Excavated Materials originating from any of the foregoing. For purposes of Sections 16.5 and 16.12, and notwithstanding Section 16.17(b)(i), Known Hazardous Materials include any Hazardous Materials disclosed in the Available Documents as being present in soil or Groundwater, at concentrations anywhere within the range between the lowest and highest concentrations detected at any location, regardless of the proximity of such sampling to the area where such soil or Groundwater is located. Notwithstanding the foregoing, any Hazardous Materials present in Excavated Materials or Demolition Debris that may lawfully be disposed of at the Budgeted Disposal Locations shall be considered Known Hazardous Materials for which Incremental Environmental Damages are not authorized under any Section of this Design-Build Contract.

Known LCP means LCP that is identified in the Available Documents, plus all paint that is present on any painted metal surface, *except* paint that has been sampled and determined to be free of lead, as disclosed in the Available Documents.

Known PCB means oil or other materials in equipment that is disclosed in the Available Documents as containing or likely to contain polychlorinated biphenyls in excess of 50 ppm, plus any PCBs in ballasts or light fixtures identified in the Available Documents.

Labor Troubles has the meaning set forth in Section 12.4(a).

LaGuardia Terminal B Site Diagram means the diagram attached hereto as Exhibit 10.

LCP has the meaning set forth in Section 16.4(b)(i).

Lead Contractor means the entity, whether a single entity or a joint venture, that will be primarily responsible for performing the Construction Work. As of the execution of this Design-Build Contract, the Design-Builder is the Lead Contractor.

Lead Designer means the entity, whether a single entity or a joint venture, that will be primarily responsible for the completion of the Design Work and ensuring conformance with the design criteria, if these tasks are not the responsibility of the Lead Contractor.

Lead Personnel has the meaning set forth in Section 12.2(a).

Lease has the meaning set forth in the recitals.

Lease Commencement Date means June 1, 2016.

LEED or Leadership in Energy & Environmental Design means an internationally recognized program that provides building owners and operators with a framework, developed by the USGBC, for identifying and implementing practical and measurable green building design, construction, operations and maintenance solutions and third-party verification of green

buildings based on the satisfaction of certain prerequisites and earned points required to achieve different levels of certification.

LEED Gold Certification is the gold certification established by the LEED Rating System for New Construction & Major Renovation.

LEED Silver Certification is the silver certification established by the LEED Rating System for New Construction & Major Renovation.

Lenders means, collectively, each bank or financial institution, or any other Person that has provided a commitment to underwrite or provide Lessee Debt or any guaranty (excluding any guaranty of Lessee Debt provided by an Equity Member or an Affiliate thereof) or credit enhancement in respect thereof, together with their respective successors and assigns.

Lenders' Technical Advisor means the technical advisor selected by the Lenders.

Lenders' Technical Advisor Certificate means, with respect to a particular DB Disbursement Request, a certificate that (i) complies as to form and substance with the requirements of the Collateral Agency Agreement; (ii) has been certified by the Lenders' Technical Advisor as to all amounts requested therein by the Design-Builder pursuant to Article 9 or Article 9A and (iii) includes the Lenders' Technical Advisor's accompanying report.

Lessee has the meaning set forth in the Lease.

Lessee Change has the meaning set forth in Section 13.3(a) of the Lease.

Lessee Change Request has the meaning set forth in Section 13.3(a) of the Lease.

Lessee Damages means the amount calculated pursuant to Section 14.1(c).

Lessee Debt has the meaning set forth in the Lease.

Lessee Governmental Approvals means any Governmental Approval required for the performance of the Work that is not a Port Authority Governmental Approval, including any amendment or modification to, or plan submitted under, a Port Authority Governmental Approval.

Lessee-Related Entity means (a) the Developer, (b) Equity Members, (c) Contractors and Suppliers, (d) any other Persons performing any of the Work for or on behalf of the Developer, (e) any other Persons for whom the Developer may be legally or contractually responsible, and (f) the employees, agents, officers, directors, shareholders, managers and members (if the Developer is a limited liability company), partners (if the Developer is a limited partnership or a general partnership), authorized representatives, consultants, successors, assigns and invitees of any of the foregoing.

Lessee Termination Notice has the meaning set forth in Section 24.2(a) of the Lease.

Lessee's Impact Statement has the meaning set forth Section 13.1(c).

Lessee's Proposal Commitments means those commitments made by the Developer and attached as Exhibit 21 to this Design-Build Contract.

LGA Airport has the meaning set forth in the recitals to this Design-Build Contract.

Lien means any pledge, lien, security interest, mortgage, deed of trust or other charge or encumbrance of any kind, or any other type of preferential arrangement (including any agreement to give any of the foregoing, any conditional sale or other title retention agreement, any lease in the nature of a security instrument and the filing of or agreement to file any financing statement under the applicable State's Uniform Commercial Code).

Local Business Enterprise means a business entity located within the County of Queens in the State of New York.

Long Stop Deadline means the date that is 365 days after the Guaranteed Substantial Completion Date (as such date may be adjusted only as expressly permitted under the Lease).

Losses means any loss, damage, injury, liability, obligation, cost, response cost, expense (including the fees and expenses of attorneys (whether those of the Port Authority Law Department or otherwise), accountants and expert witnesses incurred in connection with the enforcement of any provision of the Lease or of this Design-Build Contract), fee, charge, judgment, penalty, or fine, including as a result of any injury to or death of persons, or damage or loss of property.

Maintenance Requirements means those Maintenance Requirements set forth as Section 3 of the Terminal B Facilities Technical Requirements and Section 3 of the Central Hall Technical Requirements, as appropriate.

Major Maintenance has the meaning set forth in the Lease.

MBE has the meaning set forth in Section 15.10(a).

Milestone means each of the payment milestones set forth on (i) the New Improvements Payment and Milestone Schedule with respect to each of the New Improvements and (ii) the Central Hall Payment and Milestone Schedule with respect to the Central Hall, unless expressly specified that it relates to only one of the foregoing items.

Milestone Payments has the meaning set forth in Section 9.4(a).

Month or **month** means a time period comprised of one calendar month and pertaining to the invoice period defined for that period.

Named Windstorm means a storm or weather disturbance that is named by the National Oceanic and Atmospheric Administration's National Hurricane Center of the National Weather Service (or similar body) as a "Tropical Storm," "Hurricane" or "Major Hurricane" until such

time as the storm or weather disturbance is downgraded by such body to a “Tropical Depression” or less severe category of storm or weather disturbance.

National Grid means The Brooklyn Union Gas Company d/b/a National Grid NY, or any successor entity.

National Grid Gate and Governor Station means the gate and governor station at LGA Airport operated by National Grid. The general location of the National Grid Gate and Governor Station is shown on Map CP062 provided as a Reference Document (as defined in the Terminal B Facilities General Conditions).

NEPA Documents means the following:

1. Department of Transportation, Federal Aviation Administration, Eastern Region, Written Reevaluation and Record of Decision for the Environmental Assessment for the Central Terminal Building Redevelopment Program at LaGuardia Airport, Queens New York, December 30, 2015;

2. Department of Transportation, Federal Aviation Administration, Finding of No Significant Impact, Record of Decision, December 10, 2015; and

3. Central Terminal Building Redevelopment Program at LaGuardia Airport, Final Environmental Assessment and Section 4(f) Evaluation, prepared for U.S. Department of Transportation, Federal Aviation Administration, November 2014 (signed December 9, 2014).

Net Cost Impact has the meaning set forth in the Lease.

Net Revenue Impact has the meaning set forth in the Lease.

New CHRP means the new central heating and refrigeration plant to be constructed by the Developer (or by the Design-Builder pursuant to the terms hereof).

New Facilities has the meaning set forth in Section 10.1(a)(x).

New Facilities Construction Milestone means each of the milestones with respect to the Construction Work for the New Facilities that is identified on Exhibit 35-A.

New Facilities Construction Milestone Completion Date means, with respect to any New Facilities Construction Milestone, the date on which Partial Completion is actually achieved with respect to such New Facilities Construction Milestone.

New Facilities Construction Milestone Default Date means, with respect to each of the first, second and third New Facilities Construction Milestones, the date that is 12 months after the DB New Facilities Construction Milestone Deadline for the third New Facilities Construction Milestone (Headhouse); with respect to the fourth New Facilities Construction Milestone, the date that is 18 months after the corresponding DB New Facilities Construction Milestone

Deadline; and with respect to the fifth New Facilities Construction Milestone, the date that is 17 months after the corresponding DB New Facilities Construction Milestone Deadline.

New Facilities Sites means the land on which the New Facilities will be constructed, all located as indicated on Exhibit 28-D. Following Substantial Completion, Exhibit 28-D shall be amended (if necessary) to reflect the final design of the Construction Project and any revisions required with respect to the New Facilities Sites or the Premises in connection therewith.

New Improvements has the meaning set forth in Section 10.1(a)(xvii).

New Improvements Design and Construction Requirements means those Design and Construction Requirements set forth as Section 1 of the New Improvements Technical Requirements.

New Improvements General Conditions means the General Conditions set out in Part A of the Requirements and Provisions for Work for the New Improvements.

New Improvements Milestone Payments has the meaning set forth in Section 9.4(a).

New Improvements Payment and Milestone Schedule means the payment and milestone schedule attached as Exhibit 26-A hereto setting forth the Milestones with respect to the New Improvements and the corresponding New Improvements Milestone Payments, as such schedule may be adjusted pursuant to this Design-Build Contract.

New Improvements Specifications has the meaning set forth in the ITP.

New Improvements Technical Requirements means the Technical Requirements set forth as Part B of the Requirements and Provisions for Work for the New Improvements.

New Pedestrian Walkway has the meaning set forth in Section 10.1(a)(vi).

New Terminal B Facilities means the new LaGuardia Airport Central Terminal Building (also known as “Terminal B”) to be constructed by the Developer (or by the Design-Builder pursuant to the terms hereof) (the “**New Terminal B**”), including contiguous aircraft ramp and apron areas, new contiguous Frontage Roads and supporting buildings and site Utilities.

New Terminal B has the meaning set forth in the definition of “New Terminal B Facilities.”

NOI has the meaning set forth in Section 16.3(b).

Nonconforming Work means any DB D&C Work that does not conform to the requirements of the Contract Documents.

Non-Qualifying Safety Compliance means any and all improvements, repair, reconstruction, rehabilitation, restoration, renewal, replacement and changes in configuration or procedures with respect to the Construction Project or the Premises to correct a specific safety

condition of the Construction Project or the Premises that (a) a Governmental Entity has reasonably determined to exist by investigation or analysis (for greater clarity, including such conditions that exist despite compliance by the Developer with the relevant Safety Standards) or (b) the Port Authority has reasonably determined to be required by the then-current Safety Standards, but in the case of this clause (b), excluding any conditions the remediation of which would constitute Qualifying Safety Compliance.

Non-Qualifying Safety Compliance Order means a written order or directive issued by the Port Authority to the Developer pursuant to Section 13.5 of the Lease to implement Non-Qualifying Safety Compliance.

Notice has the meaning set forth in Section 35.12(a).

Notice to Proceed or **NTP** means any written notice issued by the Port Authority to the Developer, in accordance with the Lease, authorizing the Developer to proceed with the Work described therein.

NYCDEP means the New York City Department of Environmental Protection, or any successor.

NYSDEC means the New York State Department of Environmental Conservation, or any successor.

O&M Manual means the “Operations and Maintenance Manual” to be prepared by the Developer and submitted to the Port Authority as set forth in Section 3.2 of the Maintenance Requirements.

O&M Period means the period (a) commencing when both (i) the New Facilities are in full operation and (ii) operation of all portions of the Existing Facilities has permanently ceased, and (b) continuing until the first to occur of the Expiry Date or the Early Termination Date.

O&M Schedule of Submittals has the meaning set forth in Section 8.2(b) of the Lease.

OFAC has the meaning set forth in Section 15.7 of the Lease.

OIG has the meaning set forth in Section 19.1(d).

Operational Readiness and Transition Plan means the operational readiness and transition plan prepared by the Developer in accordance with Section 3.3.11 of the Terminal B Facilities Design and Construction Requirements, as such plan may be further revised and updated, in each case, subject to Port Authority Approval.

Operational Requirements means the Operational Requirements set forth in Section 2 of the Terminal B Facilities Technical Requirements and Section 2 of the Central Hall Technical Requirements, as appropriate.

Operations and Maintenance Work means all Work related to the operation, management, administration, and maintenance of the Terminal B Facilities and the Central Hall, including Asset Preservation Work and Major Maintenance and any repair, modification, reconstruction, rehabilitation, restoration, renewal and replacement of the Terminal B Facilities and the Central Hall, all as required under the Lease, the Requirements and Provisions for Work and the other Project Documents, but excluding the D&C Work. Operations and Maintenance Work includes the operation and maintenance of (a) the Existing Terminal B Facilities prior to demolition thereof, (b) temporary facilities to support passenger services during construction of the New Terminal B Facilities, (c) the New Terminal B Facilities, (d) the New Pedestrian Walkway, (e) the Existing CHRP prior to demolition thereof, (f) the New CHRP, (g) the CRWD, (h) the portion of the new hydrant aircraft fueling infrastructure located within the New Terminal B Facilities' ramp and (i) the Central Hall.

OSHA means the United States Occupational Safety and Health Administration.

Other Redevelopments has the meaning set forth in Section 8.6(a).

Other Party has the meaning set forth in Section 35.18(d).

Oversight means any monitoring, inspecting, sampling, measuring, administering, spot checking, attending, observing, testing, investigating, auditing, reviewing any Submittal and conducting any other oversight by the Port Authority respecting any part or aspect of the Work, the Lease, or this Design-Build Contract.

P2 Garage means the existing five-story P2 parking lot containing approximately 2,700 parking spaces serving the Existing Terminal B Facilities, scheduled for demolition by the Developer (or by the Design-Builder pursuant to the terms hereof) in accordance with the Requirements and Provisions for Work for the Terminal B Facilities upon completion of the East Garage by the Port Authority. The general location of the P2 Garage at LGA Airport is shown in Exhibit 1.

PAF Account has the meaning set forth in Section 9.1(c) of the Lease.

Parking Deficiency Plan of Action has the meaning set forth in Section 10.12(b).

Parking Plan has the meaning set forth in Section 10.12(a).

Partial Completion means the occurrence of all events and satisfaction of all conditions set forth in Section 10.5(c) of the Lease with respect to a Construction Segment or a New Facilities Construction Milestone, as applicable, as evidenced by the issuance of a Temporary Certificate of Authorization to Occupy or Use by the Port Authority to the Developer for such portion of the Construction Project.

Partial Termination has the meaning set forth in Section 2.2 of the Lease.

Partial Termination Date has the meaning set forth in Section 2.2 of the Lease.

Partial Termination Notice has the meaning set forth in Section 2.2 of the Lease.

Party and **Parties** have the respective meanings set forth in the introductory paragraph to this Design-Build Contract.

Passenger Facility Charges or **PFCs** means passenger facility charges governed by 14 C.F.R. Part 158, imposed by a public agency on passengers enplaned at a commercial service airport it controls.

Patron means (a) any user of LGA Airport, including (i) passengers of planing and deplaning Aircraft and (ii) employees of any of the Sublessees and Scheduled Aircraft Operators who have arrangements with Airline Sublessees and (b) any other user of or service provider to LGA Airport.

Payment Matrix means the Design-Build Contract Disbursement Request Payment Matrix set forth in Exhibit 47, as the same may be amended on agreement of the Parties and the Lenders' Technical Advisor.

PCB has the meaning set forth in Section 16.4(b)(i).

Performance Standards and Measurement Provisions has the meaning set forth in the Lease.

Perimeter Intrusion Detection System (PIDS) means the multi-sensor, layered security system, designed to protect airport perimeters against unauthorized entry twenty-four hours a day, seven days a week, in all weather conditions. The Perimeter Intrusion Detection System (PIDS) is currently installed and operational at LGA Airport and will, in accordance with Section 10.11(b), either be replaced by the Design-Builder as part of the DB D&C Work, as described in Section 24.0 of the Design and Construction Requirements, or by the Port Authority.

Permanent Rights of Access means those certain easements, rights of way and other agreements for access and use of those portions of the Airport Premises shown on Exhibit 28-C for ingress and egress on foot and in vehicles, Utilities and other purposes during the term of the Lease and as set forth in the Lease or otherwise granted by the Port Authority to the Developer. Following Substantial Completion, Exhibit 28-C shall be amended (if necessary) to reflect the final design of the Construction Project and any revisions required with respect to the Permanent Rights of Access or the Premises in connection therewith.

Person or **Persons** means any natural person, corporation, joint venture, limited liability company, company, voluntary association, partnership, trust, unincorporated organization or Governmental Entity or other type of entity.

PFC Applications has the meaning set forth in Section 9.1(b) of the Lease.

PFC Eligible D&C Work has the meaning set forth in Section 9.1(b) of the Lease.

PFC Eligible Project Costs means costs identified in the PFC Funding Plan (as agreed between the Port Authority and the Developer) that are expected to be “Allowable Costs” (as such term is defined in 14 C.F.R. Part 158) in connection with the D&C Work with respect to New Facilities and the Demolition Facilities.

PFC Funding means amounts received by the Port Authority from Passenger Facility Charges to be used for the purpose of funding PFC Eligible Project Costs as set forth in Article 9 of the Lease that have been approved by the FAA in connection with a PFC Application.

PFC Funding Plan has the meaning set forth in Section 9.1(b).

PFC Regulations means all Federal regulations and requirements applicable to Passenger Facility Charges, including 14 C.F.R. Part 158.

Phased Construction O&M Period means the period from commencement of operation of any portion of the New Facilities (i.e., from the end of the Initial O&M Period) and continuing until such time as both (a) the New Facilities are in full operation and (b) operation of all portions of the Existing Facilities has permanently ceased (i.e., until the commencement of the O&M Period).

Phased Occupancy Area means any one or more spaces that is or are the subject of a separate TAA package and which area is to be handed over to any Sublessee for the purposes of tenant fit-out upon satisfaction by the Developer of the requirements set forth in Section 10.5(c)(ii) of the Lease, upon satisfaction by the Design-Builder of the requirements set forth in Section 10.5(c)(ii).

PIDS Work has the meaning set forth in Section 9.6(b).

Plan for New Improvements Construction Segments has the meaning set forth in Section 10.5(i).

PNTP Agreement means the Preliminary Notice to Proceed Agreement, dated as of July 15, 2015, by and between the Developer and the Port Authority (as amended by Amendment No. 1 to Preliminary Notice to Proceed Agreement, dated as of October 21, 2015, and as further amended by Amendment No. 2 to Preliminary Notice to Proceed Agreement, dated as of April 12, 2016), with respect to the PNTP Work.

PNTP DB Contract means the PNTP Design-Build Contract, dated July 15, 2015, by and between the Developer and the Design-Builder (as amended by Amendment No. 1 to PNTP Design-Build Contract, dated as of October 21, 2015, and as further amended by Amendment No. 2 to PNTP Design-Build Contract, dated as of April 12, 2016).

PNTP Work has the meaning set forth in the PNTP Agreement.

Port Authority has the meaning set forth in the Recitals to this Design-Build Contract.

Port Authority Approval means the right, pursuant to the procedures set forth in Section 8.4(a) of the Lease, of the Port Authority to review and approve or disapprove (or partially approve or disapprove) Submittals requiring the approval of the Port Authority as set forth in the Lease, the D&C Schedule of Submittals, the O&M Schedule of Submittals or as provided in the Requirements and Provisions for Work or the other Project Documents. Except as expressly provided, any reference in the Project Documents to a matter requiring approval or consent of, or a signature from, the Port Authority shall be deemed to provide that the matter is subject to Port Authority Approval.

Port Authority Change means any change in the Work (but, for clarity, not any change to any Rules and Regulations) by the Port Authority that the Developer is required to implement pursuant to Section 13.1 and Section 13.2 of the Lease and that the Design-Builder is required to implement pursuant to Section 13.1 and Section 13.2 hereof.

Port Authority Comment means the right, pursuant to the procedures set forth in Section 8.4(b) of the Lease, of the Port Authority to review and comment on the Submittals as to which such review and comment is permitted as set forth in the Lease, the D&C Schedule of Submittals, the O&M Schedule of Submittals or as provided in the Requirements and Provisions for Work or the other Project Documents. Any reference in the Project Documents to a matter requiring or permitting a Submittal to the Port Authority that is not subject to Port Authority Approval shall be deemed to provide that the matter is subject to Port Authority Comment, except (i) where such reference expressly provides that the Submittal is for informational purposes only (or words of similar effect); (ii) with respect to any Submittal required to be provided by the Developer to the Port Authority under the Lease that (A) by its nature would not customarily be expected to warrant a response from the Port Authority or (B) the Design-Builder has expressly designated in writing to be for informational purposes only and is not otherwise subject to Port Authority Comment or Port Authority Approval under the Lease, unless in the case of clause (A) or (B), the Port Authority, as permitted by the Lease, in its reasonable discretion, informs the Developer within fifteen (15) days of receipt of the applicable Submittal that it intends to respond to such Submittal, or has previously responded to the same or a substantially similar Submittal; (iii) as provided in Sections 8.3(c) and 8.4(d) of the Lease; or (iv) as otherwise expressly provided in the Lease or the other Project Documents with respect to a specific item.

Port Authority Dispute Resolution Procedures has the meaning set forth in Section 33.1.

Port Authority Funding means funding provided by the Port Authority, whether PFC Funding or amounts from other sources available to the Port Authority, to be applied to the payment of, as applicable, (a) PFC Eligible Project Costs incurred in connection with the performance of PFC Eligible D&C Work with respect to the improvements identified in the PFC Funding Plan and (b) costs incurred in connection with the performance of D&C Work for the New Improvements and the Central Hall.

Port Authority Governmental Approvals has the meaning set forth in the Lease.

Port Authority Indemnified Party(ies) means the City, EDC and the Port Authority, each Commissioner of the Port Authority and each officer, director, agent, employee and authorized representative of the City, EDC and the Port Authority.

Port Authority Police means the public safety staff employed by the Port Authority responsible for the safety and security of travelers and tenants in all of the Port Authority land, sea, air and rail facilities.

Port Authority Termination Notice has the meaning set forth in Section 23.3(a) of the Lease.

Port Authority's Authorized Representative means the person designated in Exhibit 9 of the Lease or any replacement of such person as notified in writing to the Design-Builder.

Port of New York District means the area of about 1,500 square miles in the States of New York and New Jersey centering about New York Harbor. The Port of New York District includes the Cities of New York and Yonkers in the State of New York, and the Cities of Newark, Jersey City, Bayonne, Hoboken and Elizabeth in the State of New Jersey, and over 200 other municipalities including all or part of seventeen (17) counties, in the States of New York and New Jersey.

Post-Selection Phase Addendum No. 1 has the meaning set forth in the recitals to this Design-Build Contract.

Potential Design-Builder Event of Default means an act or omission that, with the delivery of notice or the passage of time, (i) with respect to Section 23.3(a)(iii), is likely to result in a Design-Builder Event of Default, and (ii) with respect to Section 9A.1(f)(vi), is likely both to result in a Design-Builder Event of Default and to cause the Developer to incur Direct Losses in excess of two million dollars (\$2,000,000.00), in each case as determined by the Developer in its reasonable discretion.

Pre-Existing Hazardous Materials means Hazardous Materials existing on the Lease Commencement Date on, in or under the Premises (including in the Current Facilities or, as applicable, Excavated Materials and Demolition Debris) or on, in or under the areas subject to the Temporary Rights of Access.

Preferred Proposer has the meaning set forth in the recitals to this Design-Build Contract.

Preliminary Project Baseline Schedule means the logic-based critical path schedule for all D&C Work attached hereto as Exhibit 31, as required by the Requirements and Provisions for Work, that is submitted with the Preferred Proposer's Technical Proposal and updated prior to the Lease Commencement Date as part of the Finalized Proposal, and is the basis of the Project Baseline Schedule. For the avoidance of doubt, the Preliminary Project Baseline Schedule will include the scheduled New Facilities Construction Milestone Completion Dates, the scheduled Substantial Completion Date and the scheduled Final Acceptance Date.

Premises means those portions of the Airport Premises consisting of:

- (a) the New Facilities Sites;
- (b) the New Facilities and all other structures, improvements, additions, buildings, installations and facilities which may be located, constructed or installed on the New Facilities Sites, and the equipment permanently affixed or permanently located therein;
- (c) prior to the Partial Termination Date (if applicable), the Central Hall and the Central Hall Site; and
- (d) the Permanent Rights of Access;

provided, however, that during the Initial O&M Period and the Phased Construction O&M Period, in addition to those portions of the Airport Premises set forth above, the “Premises” shall also include those portions of the Airport Premises consisting of the Existing Leased Property.

Prequalified Teams or **Proposers** has the meaning set forth in the recitals to this Design-Build Contract.

Primary Project Relief has the meaning set forth in Section 14A.1.

Prohibited Party means any Person who is:

- (a) debarred, suspended, proposed for debarment with a final determination still pending, declared ineligible or voluntarily excluded (as such terms are defined in any of the Debarment Regulations) from participating in procurement or nonprocurement transactions with the Federal government or any department, agency or instrumentality thereof pursuant to any of the Debarment Regulations;
- (b) indicted, convicted or had a civil or administrative judgment rendered against such Person for any of the offenses listed in any of the Debarment Regulations and no event has occurred and no condition exists that is likely to result in the debarment or suspension of such Person from contracting with the Federal government or any department, agency or instrumentality thereof;
- (c) listed on the “Lists of Parties Excluded from Federal Procurement and Nonprocurement Programs” issued by the U.S. General Services Administration;
- (d) located within, or doing business or operating from, a country or other territory subject to a general embargo administered by OFAC;
- (e) designated on the OFAC list of “Specially Designated Nationals”;

- (f) otherwise targeted under economic or financial sanctions administered by the United Nations, OFAC or any other Federal economic sanctions authority or any divestment or sanctions program of the State of New York or New Jersey;
- (g) a banking institution chartered or licensed in a jurisdiction against which the United States Secretary of the Treasury has imposed special measures under Section 311 of the USA PATRIOT Act;
- (h) located within or is operating from a jurisdiction that has been designated as non-cooperative with international anti-money laundering principles by the Financial Action Task Force on Money Laundering;
- (i) a financial institution against which the United States Secretary of the Treasury has imposed special measures under Section 311 of the USA PATRIOT Act;
- (j) a “senior foreign political figure” or a prohibited “foreign shell bank” within the meaning of 31 C.F.R. § 103.175; or
- (k) an entity with whom the Port Authority is engaged in litigation relating to performance of contract or business practices (unless the Port Authority has first waived (in the Port Authority’s sole discretion) by written notice to the transferring equity holder, with a copy to the Developer, the prohibition on a transfer to such Person during the continuance of the relevant litigation).

Project Baseline Schedule means the logic-based critical path schedule for all D&C Work as required by the Requirements and Provisions for Work, as the same is revised and updated in accordance with the Project Documents. Any reference in this Design-Build Contract to the Project Baseline Schedule shall mean any Project Baseline Schedule then in effect or the Preliminary Project Baseline Schedule if the initial Project Baseline Schedule is not yet in effect. For the avoidance of doubt, the Project Baseline Schedule will include the scheduled New Facilities Construction Milestone Completion Dates, the scheduled Substantial Completion Date and the scheduled Final Acceptance Date.

Project Director means the individual designated and employed or otherwise retained by the Developer, as approved in writing by the Port Authority, in the position to take full day-to-day responsibility for the prosecution of the Work and who will act as a single point of contact on all matters of behalf of the Developer.

Project Documents means the Lease, with all the exhibits and forms (including the Requirements and Provisions for Work and the Lessee’s Proposal Commitments), any amendments to or replacement of the foregoing undertaken in accordance with the terms hereof or thereof and any other document that the Port Authority and the Developer may deem to be a “**Project Document**” from time to time after the date hereof, provided that the Developer shall not agree to deem any document a “Project Document” without the prior agreement of the Design-Builder if the addition of such document as a “Project Document” would affect the DB D&C Work. The Available Documents do not constitute Project Documents.

Project Integrity Monitor means a private independent organization with legal, auditing, accounting, engineering and investigative expertise (and its subcontractors and sub-consultants) hired by the Port Authority to assist the Port Authority in its fraud prevention efforts pursuant to Section 1.7 of the General Conditions.

Project Management and Execution Plan means the document prepared by the Developer in accordance with Section 3.3.1 of the Design and Construction Requirements and approved by the Port Authority describing the D&C Work necessary to manage the development, design and construction of the Construction Project, and containing the component parts, plans and documentation required under the Project Documents.

Project Plan for Safety Management means the plan prepared by the Developer in accordance with Section 3.3.4 of the Design and Construction Requirements and approved by the Port Authority.

Project Plan for Security Management means the plan prepared by the Developer in accordance with Section 3.3.5 of the Design and Construction Requirements and approved by the Port Authority.

Project Specific Constraints means the project specific constraints applicable to the Construction Project with which the Developer's Final Design shall comply, as described in Section 14.3 of the Design and Construction Requirements.

Projected Parking Deficiencies has the meaning set forth in Section 10.12(a).

Proposal Due Date means May 20, 2014.

Public Aircraft Facilities means the following facilities, as they may from time to time be provided and maintained by the Port Authority at LGA Airport for public and common use, including use by Civil Aircraft Operators, for the following purposes and which (except during the continuation of a Force Majeure Event) are usable for such purpose regardless of whether or not they are actually used or usable in whole or in part by the Developer:

- (a) Public Aircraft Parking and Storage Area;
- (b) Public Ramp and Apron Area;
- (c) Runways;
- (d) Taxiways; and
- (e) Facilities Incidental to the Runways, Ramp and Apron Area, Aircraft Parking and Storage Area and Taxiways.

Public Aircraft Parking and Storage Area means areas at LGA Airport for public and common use for the purpose of parking and storing Aircraft, for the purpose of servicing Aircraft

with fuel and lubricants and other supplies for use thereon, and for the purpose of making minor or emergency repairs to Aircraft.

Public Landing Area means the area of land at LGA Airport including Runways, Taxiways and the areas between and adjacent to Runways and Taxiways, designated and made available from time to time by the Port Authority for the landing and taking off of Aircraft.

Public Ramp and Apron Area shall mean the area adjacent to the Public Landing Area designated and made available from time to time by the Port Authority for common use for the loading or unloading of passengers or cargo to or from Aircraft using the Public Landing Area.

Punch List means any itemized list of Construction Work which remains to be completed, corrected, adjusted, or modified, the existence, correction and completion of which will have no material or adverse effect on the normal, uninterrupted and safe use and operation of the New Facilities, the New Improvements or the Central Hall, as agreed between the Design-Builder, the Developer and the Port Authority.

Punch List Items means items on the Punch List.

Qualified Disposal Locations means, with respect to any waste material containing Hazardous Materials and shipped off the Premises or the areas subject to the Temporary Rights of Access for disposal, a disposal location that is (a) regulated by a state or Federal agency and subject to licensing or permit requirements and regulatory oversight, and is authorized to receive the specific wastes that are transported to it, (b) not subject to material notices of violation of Environmental Laws or pending litigation concerning Environmental Liabilities, and (c) not listed on the “National Priorities List” established pursuant to CERCLA.

Qualifying Applicable Law has the meaning set forth in the definition of “**Change in Law.**”

Qualifying Safety Compliance means any and all improvements, repair, reconstruction, rehabilitation, restoration, renewal, replacement and changes in configuration or procedures with respect to the Construction Project or the Premises to correct a specific safety condition of the Construction Project or the Premises that the Port Authority has reasonably determined (by investigation or analysis) to exist despite the Developer’s compliance with the Safety Standards.

Qualifying Safety Compliance Order means a written order or directive issued by the Port Authority to the Developer pursuant to Section 13.5 to implement Qualifying Safety Compliance.

Rating Agency means any of Standard & Poor’s Corporation, Moody’s Investor Services, Inc., Fitch Investors Services, Inc. or any of their respective successors.

RCRA means the Resource Conservation and Recovery Act (42 U.S.C. § 6901 *et seq.*), and any analogous state law or regulation implementing RCRA, including any state law or regulation that regulates wastes as “hazardous wastes” under state law or regulations that are not Federal “hazardous wastes.”

RCRA Allowance means the amount of [REDACTED] included in the Soil Disposal Cost Budget, representing the assumed cost of transportation and disposal of Excavated Materials that are regulated as hazardous wastes under RCRA.

RCRA Soil Disposal Costs means Soil Disposal Costs for the transportation and off-site disposal of Excavated Materials that are regulated as hazardous wastes under RCRA.

Reasonable DB Claim means a claim for Equivalent Project Relief provided by the Design-Builder in accordance with the Contract Documents, which claim is submitted to the Developer within a reasonable period and sets forth a reasonable basis for such claim.

Reasonable Efforts means all those steps in the power of the relevant Party that are capable of producing the desired result, and which a prudent, determined and reasonable person desiring to achieve that result would take; provided, that subject to its other express obligations under this Design-Build Contract, the relevant Party shall not be required to expend funds except for those necessary to meet the reasonable costs reasonably incidental or ancillary to the steps to be taken by the relevant Party (including its reasonable travel expenses, correspondence costs and general overhead expenses).

Record Documents has the meaning as set forth in the TCAP.

Recoverable Costs means an amount equal to one hundred fifteen percent (115%) of:

- (a) the costs of any assistance, action, activity or work undertaken by the Port Authority in connection with its exercise of Oversight for which the Developer is liable or is required to reimburse the Port Authority under the Lease, including the charges of third-party experts, consultants and contractors;
- (b) third-party costs the Port Authority incurs to procure any such third-party experts, consultants or contractors; and
- (c) reasonable fees and costs of attorneys, financial advisors, engineers, architects, insurance brokers and advisors, investigators, airline and airport consultants, risk management consultants, other consultants, and expert witnesses, as well as court costs and other litigation costs, in connection with any such assistance, action, activity or work, including in connection with investigating and defending claims by, and resolving disputes with, and enforcing or pursuing remedies against, third-party contractors.

Recovery Schedule means the recovery schedule prepared by the Design-Builder in accordance with Section 10.1(f)(vi) and (vii).

Refinancing has the meaning set forth in the Lease.

Regulatory Manifest means a document identified as a “manifest” that is required to be completed and provided to transporters of regulated hazardous waste materials pursuant to an RCRA.

Released For Construction Documents means all drawings, specifications, revisions thereto and any other items necessary to construct the Construction Project, Signed and Sealed, and, to the extent required by the Lease, this Design-Build Contract, the other Contract Documents or the D&C Schedule of Submittals, have received Port Authority Approval.

Remaining Service Life has the meaning set forth in Section 3.1 of the Maintenance Requirements.

Remedial Action means any response action pursuant to the Environmental Requirements to investigate, contain, remove, remediate or abate a Hazardous Environmental Condition, including the transport, processing, storage, handling and disposal of any Hazardous Materials, together with any reporting, record keeping and restoration associated with such activities; provided, however, that “Remedial Action” shall not include actions by Developer or the Design-Builder to satisfy the requirements of the Lease or this Design-Build Contract with respect to Excavated Material, Demolition Debris or Hazardous Materials in the Current Facilities that are removed, handled, generated and disposed of in performing Construction Work or the generation, handling, treatment or disposal of Hazardous Materials in connection with Operations and Maintenance Work.

Remedial Action Debris means all soil, rock, debris, trash and other material excavated or removed from the Premises or the areas subject to the Temporary Rights of Access as a result of a Remedial Action, including any liquid waste materials that cannot be treated and disposed of under the SPDES Permit, but not including Demolition Debris or Excavated Materials.

Remedial Action Plan means the plan developed by the Developer, or by the Design-Builder pursuant to the terms hereof, outlining Remedial Actions to be taken by the Developer or the Design-Builder, as applicable.

Remedial Plan means any remedial plan developed by the Developer pursuant to Section 23.2 of the Lease with respect to an Event of Default thereunder or any remedial plan developed by the Design-Builder with respect to a corresponding Design-Builder Event of Default under this Design-Build Contract.

Remediation Completion Report has the meaning set forth in Section 16.12(i).

Requirements and Provisions for Work means the Requirements and Provisions for Work for the Terminal B Facilities, the Requirements and Provisions for Work for the Central Hall and the Requirements and Provisions for Work for the New Improvements.

Requirements and Provisions for Work for the Central Hall means the Requirements and Provisions for Work for the Central Hall attached as Exhibit 19-C.

Requirements and Provisions for Work for the New Improvements means the Requirements and Provisions for Work for the New Improvements attached as Exhibit 19-B.

Requirements and Provisions for Work for the Terminal B Facilities means the Requirements and Provisions for Work for the Terminal B Facilities attached as Exhibit 19-A.

Retained Water System Property has the meaning set forth in Section 7.4(a) of the Lease.

RFP has the meaning set forth in the recitals to this Design-Build Contract.

RFQ has the meaning set forth in the recitals to this Design-Build Contract.

Risk Management Plan means the plan prepared by the Developer in accordance with Section 3.3.6 of the Design and Construction Requirements and approved by the Port Authority.

Roadway Network has the meaning set forth in Section 10.1(a)(xiv).

Routine Maintenance means the maintenance required to preserve the current condition of assets that is routine in nature and includes matters that are typically included as an annually recurring cost in airport and terminal buildings maintenance budgets, as more particularly described in Section 2.1 of the Maintenance Requirements and in the System-by-System Maintenance Requirements.

Rules and Regulations means the rules, regulations, policies, manuals and publications, standards, practices or guidelines issued or published by the Port Authority, with which the Developer and the Design-Builder (but only to the extent related to the DB D&C Work or otherwise applicable to the Design-Builder) are required to comply (including any of the foregoing resulting from any directive or requirement by the FAA, the TSA or any other Governmental Entity), that are referenced within the Lease, this Design-Build Contract and the Requirements and Provisions for Work, including those described in Part C of the Requirements and Provisions for Work, in each case, as may be amended, revised, supplemented or otherwise modified from time to time.

Runways (including approaches thereto) means the portion of LGA Airport used for the purpose of the landing and taking off of Aircraft.

Safety Compliance means Qualifying Safety Compliance and Non-Qualifying Safety Compliance.

Safety Compliance Order means Qualifying Safety Compliance Orders and Non-Qualifying Safety Compliance Orders.

Safety Standards means those standards referenced in Section 4.0 of the General Conditions and the other provisions of the Requirements and Provisions for Work that the Port Authority considers to be important measures to protect public safety or worker safety. As a matter of clarification, provisions of the Requirements and Provisions for Work primarily directed at durability of materials or equipment, where the durability is primarily a matter of life cycle cost rather than protecting public or worker safety, are not Safety Standards.

Scheduled Aircraft Operator means a Civil Aircraft Operator engaged in transportation by an Aircraft operated wholly or in part on regular flights to and from LGA Airport in accordance with published schedules, but so long as the Federal Aviation Act of 1958, or any

similar Federal statute providing for the issuance of Foreign Air Carrier Permits or Certificates of Public Convenience and Necessity or substantially similar permits or certificates, is in effect, no Person shall be deemed to be a Scheduled Aircraft Operator within the meaning of this Design-Build Contract unless it also holds such a permit or certificate.

Security Documents means, collectively, any agreement, document or instrument entered into or delivered by the Developer that creates a Security Interest in favor of the Collateral Agent for the benefit of the Secured Parties (including, without limitation, the Project Leasehold Mortgage, the Building Leasehold Mortgage, the Borrower Security Agreement, the Assignment of Leases and Rents, the Account Control Agreement, the Assignment of Building Loan Agreement and Project Loan Agreement, and the Assignment of Project Documents). Solely for purposes of this definition, capitalized terms used herein but not otherwise defined in this Design-Build Contract shall have the respective meanings set forth in the Collateral Agency Agreement.

Senior Representatives has the meaning set forth in Section 33A.2.

Service Line means (a) a Utility line, the function of which is to directly connect the improvements on an individual property to another Utility line located off such property, which other Utility line connects more than one such individual line to a larger system, or (b) any cable or conduit that supplies an active feed from a Utility owner's facilities to activate or energize the Port Authority's or a local agency's lighting and electrical systems, communications systems and/or irrigation systems.

Signed and Sealed means the signature and seal of the Engineer of Record or the Architect of Record, as appropriate, on a document indicating that the licensee takes professional responsibility for the work and, to the best of the licensee's knowledge and ability, the work represented in the document is accurate, in conformance with applicable codes at the time of submission and has been prepared in conformity with normal and customary standards of practice and with a view to the safeguarding of life, health, property and public welfare. The Engineer of Record or the Architect of Record, as applicable, certifies that the documents have been signed and sealed in accordance with laws, rules and regulations of the State of New York.

Soil Disposal Cost means direct, out-of-pocket Project Costs that are reasonably and necessarily paid or incurred by the Design-Builder exclusively for the transportation and off-site disposal of Excavated Materials that are required to be excavated and disposed of off-Premises to complete the DB Construction Work, and not for other purposes, including Remedial Action, by assigning such Excavated Materials to the appropriate Material Category (as set forth in Exhibit 36 as such Exhibit may be modified by the Developer and the Port Authority) and applying the Budgeted Tipping Fees (as set forth in Exhibit 36 as such Exhibit may be modified by the Developer and the Port Authority) to actual amounts of Excavated Materials transported and disposed of off-site.

Soil Disposal Cost Budget means the amount of [REDACTED], which includes the RCRA Allowance of [REDACTED].

Soil Erosion and Sediment Control Plan has the meaning set forth in Section 16.3(c).

SPDES Permit means the state pollution discharge elimination system permit identified as New York State Department of Environmental Conservation (NYSDEC) State Pollution Discharge Elimination System (SPDES) Permit for Storm Water Discharges at LGA (Permit No. NY-0008133/DEC No. 2-6301-00106/00023), including the NYSDEC-approved Best Management Practice Plan prepared pursuant thereto, as amended.

Special Inspection has the meaning set forth in the TCAP.

Sponsors means, collectively, Skanska Infrastructure Development Inc., Meridiam Infrastructure North America Corporation, and Vantage Airport Group Ltd.

Subcontracting Restrictions has the meaning set forth in Section 10.3.

Sublease means any sublease, use agreement, license or other agreement between the Developer and a Sublessee with respect to the use or occupancy of the Premises.

Sublessee has the meaning set forth in Section 5.1(h) of the Lease.

Submittal means any document, work product, request, notice or other written or electronic product or item required under the Lease, the Requirements and Provisions for Work or other Project Documents to be delivered or submitted to the Port Authority for Port Authority Approval or Port Authority Comment.

Substantial Completion means the occurrence of all events and satisfaction of all conditions set forth in Section 10.6(a) of the Lease with respect to the entire Construction Project other than the Central Hall, as evidenced by the issuance of a Certificate of Substantial Completion by the Port Authority to the Developer.

Substantial Completion Date means the date upon which the Developer achieves Substantial Completion.

Substantial Completion Notice has the meaning set forth in Section 10.6(c).

Supplier means any Person not performing work at or on the Premises or the areas subject to the Temporary Rights of Access who supplies machinery, equipment, materials, hardware, software, systems or any other appurtenance to the Premises or the areas subject to the Temporary Rights of Access to the Developer or to any Contractor in connection with the performance of the Work. Persons who merely transport, pick up, deliver or carry materials, personnel, parts or equipment or any other items or persons to or from the Premises or the areas subject to the Temporary Rights of Access shall not be deemed to be performing Work on the Premises or the areas subject to the Temporary Rights of Access.

Supporting Project Milestone means, with respect to each Supporting Project, the date identified on Exhibit 18 by which the Port Authority must complete such Supporting Project.

Supporting Projects means, collectively, the following projects to be performed by the Port Authority:

- (a) the demolition of Hangars 2 and 4;
- (b) the design and construction of a new East End Substation serving the New Terminal B Facilities and East End Terminals;
- (c) the design and construction of a new East Garage; and
- (d) the design and construction of the electrical and communication Utility trunk lines as shown on the Contract No. LGA-124.223 Drawings, dated December 20, 2013 – Work Order No. 103.

Sustainability Lead has the meaning set forth in Section 16.2(a).

Sustainable Design Guidelines means (a) the “Sustainable Building Guidelines” issued by the Engineering Department of the Port Authority, dated August 15, 2007 and (b) the “Sustainable Infrastructure Guidelines” issued by the Engineering Department of the Port Authority, dated March 23, 2011 (to the extent applicable to the Construction Project).

SWPPP has the meaning set forth in Section 16.3(b).

System-by-System Maintenance Requirements means the System-by-System Maintenance Requirements set forth in Section 3.1 of the Terminal B Facilities Technical Requirements.

TAA has the meaning set forth in Section 8.6(a).

Tank has the meaning set forth in Section 16.11(a).

Tank System has the meaning set forth in Section 16.11(a).

Taxes means Federal, state, local or foreign income, gross receipts, sales, use, excise, transfer, consumer, license, payroll, employment, severance, stamp, business, occupation, premium, windfall profits, environmental (including taxes under Section 59A of the Internal Revenue Code of 1986, as amended), customs, permit, capital stock, franchise, profits, withholding, social security (or similar), unemployment, disability, real property, personal property, registration, value added, alternative or add-on minimum, estimated or other taxes, levies, imposts, duties, fees or charges imposed, levied, collected, withheld or assessed at any time, whether direct or indirect, relating to, or incurred in connection with, the Construction Project, the performance of the Work or act, business, status or transaction of the Developer, including any interest, penalty or addition thereto, and including Utility rates or rents, in all cases whether disputed or undisputed.

Taxiways means the portion of LGA Airport used for the purpose of the ground movement of Aircraft to, from and between the Runways, the Public Ramp and Apron Area, the

Public Aircraft Parking and Storage Area and other portions of LGA Airport (not including, however, any taxi lanes, the exclusive use of which is granted to any other Person by lease, permit or otherwise).

TCAP means The Port Authority of New York and New Jersey's Tenant Construction and Alteration Process Manual (July 2013), and any subsequent edition or replacement thereof.

Technical Proposal means the technical proposal submitted by the Preferred Proposer to the Port Authority in response to the RFP and updated as part of the Finalized Proposal.

Technical Requirements means the Terminal B Facilities Technical Requirements, the New Improvements Technical Requirements and the Central Hall Technical Requirements.

Temporary Certificate of Authorization to Occupy or Use has the meaning set forth in the TCAP.

Temporary Crane Directive means the Rules of the City of New York 33190-01(s)(2), as amended by (i) the Mayoral directive on February 7, 2016, effective on February 8, 2016, and (ii) the temporary order issued by the Commissioner of the New York City Department of Buildings on March 15, 2016 regarding crawler crane safety requirements.

Temporary Rights of Access means those certain rights of way and other agreements for access and use of those portions of the Airport Premises shown on Exhibit 28-E for ingress and egress, on foot and in vehicles, storage of materials, staging of construction, support, drainage, temporary Utilities and other purposes necessary for the performance by the Developer (or by the Design-Builder, pursuant to the terms hereof) of the Construction Work during the Construction Period and consistent with the purposes of the Lease and this Design-Build Contract, including:

- (a) the right of access to the New Improvements until such New Improvements are completed and turned over to the Port Authority; and
- (b) the right of access to the land on which the Demolition Facilities are located for purposes of demolishing and removing the Demolition Facilities from the Airport Premises .

Temporary Rights of Access also include any other temporary rights or easements which may be granted by the Port Authority to the Developer from time to time during the term of the Lease.

Term has the meaning set forth in Article 2.

Terminal B Facilities means, as the context requires, the Existing Facilities and the New Facilities.

Terminal B Facilities Design and Construction Requirements means those Design and Construction Requirements set forth as Section 1 of the Terminal B Facilities Technical Requirements.

Terminal B Facilities General Conditions means the General Conditions set out in Part A of the Requirements and Provisions for Work for the Terminal B Facilities.

Terminal B Facilities Technical Requirements means the Technical Requirements set forth as Part B of the Requirements and Provisions for Work for the Terminal B Facilities.

Terminal C means the existing terminal known as “Terminal C” at LGA Airport. The general location of Terminal C at LGA Airport is shown in Exhibit 1.

Terminal D means the existing terminal known as “Terminal D” at LGA Airport. The general location of Terminal D at LGA Airport is shown in Exhibit 1.

Terminal Security Program or **TSP** has the meaning set forth in Section 15.6(a)(ii).

Termination Notice means any Lessee Termination Notice, Port Authority Termination Notice or Condemnation Termination Notice, as the case may be.

Termination Transition Plan has the meaning set forth in Section 27.2(a).

Third-Party Claims means any Claim asserted against an Indemnified Party by any Person who is not a party to the Lease.

Time Impact Analysis means a time impact analysis prepared in accordance with Section 3.2 of the General Conditions.

Tribunal means a court, tribunal, agency, special district, commission or other authority exercising judicial or regulatory functions.

TSA means the Transportation Security Administration created under the Aviation and Transportation Security Act, 49 U.S.C. § 40101 *et seq.*, or any successor agency thereto.

Uniform Commercial Code or **UCC** means the Uniform Commercial Code as in effect from time to time in the State of New York; provided, however, that in the event that, by reason of mandatory provisions of law, any or all of the perfection or priority of, or remedies with respect to, any collateral is governed by the Uniform Commercial Code as enacted and in effect in a jurisdiction other than the State of New York, the term “UCC” shall mean the Uniform Commercial Code as enacted and in effect in such other jurisdiction solely for the purposes of the provisions hereof relating to such perfection, priority or remedies.

Unknown ACM means ACM that is not Known ACM or Additional ACM.

Unknown Archaeological Remains means any Archaeological Remains that were neither (a) known to the Developer nor (b) could reasonably have been identified by an appropriately qualified and experienced contractor or engineer exercising due care and skill and Best Management Practice in the same or equivalent circumstances through review and analysis of the Available Documents or publicly available information.

Unknown Endangered Species means any Endangered Species discovered on the Premises: (a) the continual or habitual presence of which was not identified or described in the Available Documents or publicly available information, or (b) which could not reasonably be expected to be found continually or habitually on the Premises or the areas subject to the Temporary Rights of Access based on a review and analysis of the Available Documents or publicly available information.

Unknown Facility means a Utility, Tank or Tank System present on the Premises or the areas subject to the Temporary Rights of Access which is not identified in the Utility Data or the other Available Documents, excluding any Utility, Tank or Tank System that:

- (a) was installed on a part of the Premises or the areas subject to the Temporary Rights of Access after the Developer was provided with access to the relevant part of the Premises or the areas subject to the Temporary Rights of Access in accordance with the terms of the Lease;
- (b) is a Service Line;
- (c) is a Disclosed Facility; or
- (d) could reasonably have been identified or discovered by an appropriately qualified and experienced contractor or engineer exercising due care and skill and Best Management Practice in the same or equivalent circumstances, including through review and analysis of the Utility Data or the other Available Documents and the investigations and assumptions on the basis of which the Utility Data or the other Available Documents were prepared;

provided, that any Utility for which the actual centerline location is located at, or less than twenty (20) feet distant from, the horizontal centerline location indicated therefor (without regard to vertical location) in the Utility Data or the other Available Documents, shall in no event constitute an Unknown Facility.

Unknown Geotechnical Conditions means any actual geotechnical, subsurface or latent physical conditions that were neither (a) known to the Developer nor (b) could reasonably have been identified by an appropriately qualified and experienced contractor or engineer exercising due care and skill and Best Management Practice in the same or equivalent circumstances through review and analysis of the Available Documents or publicly available information.

Unknown Hazardous Materials means Hazardous Materials that are Pre-Existing Hazardous Materials, whether in soil, Groundwater, in the Current Facilities or in Excavated Materials or Demolition Debris, that in any such case are not Known Hazardous Materials.

USGBC means the U.S. Green Building Council, a private 501(c)3, membership-based non-profit organization that promotes sustainability in how buildings are designed, built and operated. USGBC led the effort to develop LEED rating systems and oversees the LEED programs.

Utilities Replacement has the meaning set forth in Section 10.1(a)(xiv).

Utility means a privately, publicly, or cooperatively owned line, facility, or system (including conduits and concrete structures in which utility lines are contained) for transmitting or distributing communications, power, electricity, light, heat, gas, oil, crude products, water, steam, waste, storm water not connected with the highway drainage, or other similar commodities, including wireless telecommunications, television transmission signals and publicly owned fire and police signal systems, which directly or indirectly serve the public. The necessary appurtenances to each Utility facility shall be considered part of such Utility.

Utility Data means the data relating to Utilities set out in Exhibit 20 attached to this Design-Build Contract.

Utility Relocation means the removal, relocation and/or protection in place (including provision of temporary services, as necessary) of any and all Utility facilities that must be removed, relocated and/or protected in place in order to permit construction of the Construction Project.

Utility Restoration has the meaning set forth in Section 7.3(a) of the Lease.

Utility Servicing has the meaning set forth in Section 7.3(a) of the Lease.

Utility Systems has the meaning set forth in Section 7.3(a) of the Lease.

UW has the meaning set forth in Section 16.4(b)(i).

Warranty has the meaning set forth in Section 10.8(a).

Warranty Period has the meaning set forth in Section 10.8(b).

WBE has the meaning set forth in Section 15.10(a).

West Garage has the meaning set forth in Section 10.1(a)(xvi).

Witness and Hold Point Program means the program developed by the Developer pursuant to Section 6.2 of the Design and Construction Requirements, subject to Port Authority Approval.

Work means the D&C Work and the Operations and Maintenance Work. For the avoidance of doubt, all work and services required to be furnished, performed and provided by the Developer under the Project Documents shall constitute either D&C Work or Operations and Maintenance Work.

Wrap has the meaning set forth in Section 20.1(k)(ii).

Section 1.2 Construction and Interpretation of Design-Build Contract

(a) The language in all parts of this Design-Build Contract shall in all cases be construed simply, as a whole and in accordance with its fair meaning and not strictly for or against any Party. The Parties hereto acknowledge and agree that this Design-Build Contract has been the subject of arms' length and careful negotiation over a considerable period of time, that each Party has been given the opportunity to independently review this Design-Build Contract with legal counsel, and that each Party has the requisite experience and sophistication to understand, interpret and agree to the particular language of the provisions hereof. Accordingly, in the event of an ambiguity in or Dispute regarding the interpretation of this Design-Build Contract, this Design-Build Contract shall not be interpreted or construed against the Party preparing it.

(b) Any references to any covenant, condition, obligation and/or undertaking "**herein**," "**hereunder**" or "**pursuant hereto**" (or language of like import) mean, refer to and include the covenants, conditions, obligations and undertakings existing in this Design-Build Contract and any Exhibits, addenda, attachments or other documents affixed to or expressly incorporated by reference in this Design-Build Contract. The words "**herein**," "**hereof**" and "**hereunder**" and any other words of similar import shall be construed to refer to this Design-Build Contract in its entirety and not to any particular provision of this Design-Build Contract. All terms defined in this Design-Build Contract shall be deemed to have the same meanings in all Exhibits, addenda, attachments or other documents affixed to or expressly incorporated by reference in this Design-Build Contract, unless the context thereof clearly requires the contrary. All references to this Design-Build Contract or any other agreement shall include all exhibits, forms, appendices, addenda, attachments or other documents affixed to or expressly incorporated herein or therein by reference. Unless expressly provided otherwise, all references to Articles, Sections, subsections, clauses and Exhibits refer to the Articles, Sections, subsections, clauses and Exhibits set forth in or attached to this Design-Build Contract, as applicable. Unless otherwise stated in this Design-Build Contract, words which have well-known technical or construction industry meanings are used in this Design-Build Contract in accordance with such recognized meanings. All references to a subsection or clause "**above**" or "**below**" refer to the denoted subsection or clause within the Section in which the reference appears. Wherever the word "**including**," "**includes**" or "**include**" is used in this Design-Build Contract, it shall be deemed to be followed by the words "without limitation." In the computation of periods of time from a specified date to a later specified date, the word "**from**" means "from and including" and the words "**to**" and "**until**" mean "to but excluding."

(c) As used in this Design-Build Contract and as the context may require, (i) the singular includes the plural and vice versa, and the masculine gender includes the feminine and vice versa; (ii) any definition of or reference to any agreement, instrument or other document shall be construed as referring to such agreement, instrument or other document as amended, supplemented or otherwise modified from time to time (subject to any restrictions on such amendments, supplements or modifications set forth herein); and (iii) any reference to a Person shall be construed to include such Person's successors and assigns.

(d) The use of Section, Article and paragraph headings and a table of contents, and the organization of the various provisions of this Design-Build Contract thereunder, are for convenience of reference only and in no way define, limit or describe the scope or intent of any provision hereof.

(e) Any reference to the Developer's "**discretion**" in this Design-Build Contract (other than when the term "reasonable discretion" is used), shall be deemed to mean the Developer's sole and absolute discretion, which discretion shall not be subject to the DB Dispute Resolution Procedures set forth in Article 33A.

(f) Any reference to "sampling" for purposes of assessing chemical or physical characteristics shall be interpreted to include the chemical and/or physical analysis and reporting or presentation of data.

(g) Any reference to a day as it relates to any payment to be made hereunder shall, if such day is not a Business Day, mean the next succeeding Business Day.

Section 1.3 Documents; Order of Precedence; Relationship to PNTP DB Contract

(a) The Design-Builder acknowledges that it is (and the Design-Builder shall be deemed to be) on notice as to the terms of the DB Project Documents, including the obligations and potential liabilities of the Developer arising under them. In the event of any conflict, ambiguity or inconsistency governed by Section 1.3 of the Lease, the order of precedence set forth in Section 1.3 of the Lease shall apply. In the event of any conflict, ambiguity or inconsistency between any terms or provisions of this Design-Build Contract (including any exhibits hereto), the order of precedence, from highest to lowest, shall, except as provided otherwise in this Section 1.3, be as follows:

(i) the main body of this Design-Build Contract;

(ii) Exhibits to this Design-Build Contract that are also exhibits to the Lease (including but not limited to the Requirements and Provisions for Work), the order of precedence of which shall be established by Section 1.3 of the Lease;

(iii) Exhibit A hereto (which represents the basis on which the Design-Builder intends to achieve its obligations for the DB D&C Work consistent with the DB Project Documents); and

(iv) any other Exhibits to this Design-Build Contract.

(b) This Design-Build Contract supersedes and replaces the PNTP DB Contract, and all DB PNTP Work performed by the Design-Builder under the PNTP DB Contract, and all amounts paid thereunder, shall each be deemed to have been performed or paid, respectively, under this Design-Build Contract.

(c) If any portion of the Applicable Standards conflicts with or is less stringent than Applicable Laws, such conflicting or less stringent portions of Applicable Standards shall

not be deemed “applicable.” If any of the Applicable Standards (other than a Rule and Regulation) conflicts with or is less stringent than a Rule and Regulation, such Rule and Regulation will prevail. If any of the provisions of the Lease or this Design-Build Contract conflicts or is inconsistent with any Rule and Regulation, such provision of the Lease or this Design-Build Contract, as applicable, will prevail; provided, that with respect to any conflict or inconsistency directly bearing on public health, welfare or safety, the applicable Rule and Regulation will prevail.

(d) In the event of any conflict, ambiguity or inconsistency between or among any of the provisions in this Design-Build Contract, or between two (2) or more Contract Documents having the same order of precedence, the more stringent standard will prevail.

(e) Where one provision of the Contract Documents imposes a standard, duty, obligation, statement, term, concept or design that is more onerous than, or additional to, or require a higher quality than, that imposed by another provision, this shall not be treated as an inconsistency. Rather, the relevant standards, duties, obligations, statements, terms, concepts or designs shall, so far as possible, be treated as cumulative, failing which the more onerous standard, duty, obligation, statement, term, concept or design will prevail.

(f) Additional or supplemental details or requirements in a lower priority Contract Document shall be given effect except to the extent they irreconcilably conflict with requirements, provisions and practices contained in the higher priority Contract Document. For the avoidance of doubt, requirements or details in a lower priority Contract Document shall not, in any event, modify or reduce any requirements or obligations set forth in any higher priority Contract Document.

(g) NOT USED.

Section 1.4 Responsibility for Related Parties

Subject to the provisions of this Design-Build Contract, in respect of the Design-Builder’s performance or non-performance of its obligations under the Contract Documents, the Design-Builder shall be responsible for the acts and omissions of DB Parties, and shall be liable for any breaches of this Design-Build Contract and the other Contract Documents or other obligations arising under this Design-Build Contract and the other Contract Documents as a result of such acts or omissions of DB Parties, as if they were the acts and omissions of the Design-Builder. The Design-Builder shall be responsible for the selection of and pricing by any DB Subcontractor and Supplier.

ARTICLE 2

TERM

Section 2.1 Term, Generally.

The term of this Design-Build Contract shall commence on the date hereof (the “**DB Contract Effective Date**”) and will continue until all of the Design-Builder’s and the

Developer's respective obligations under this Design-Build Contract have been fully discharged, unless earlier terminated in accordance with the termination provisions set forth herein (the "Term"); provided, however, that the obligations of the Design-Builder with respect to the commencement and performance of the DB D&C Work and the payment obligations of the Developer under this Design-Build Contract (in each case, other than the DB D&C Work that is governed by the PNTP Agreement) shall be subject to the occurrence of Financial Close, unless otherwise agreed by the Parties.

Section 2.2 NOT USED.

ARTICLE 3

ACCESS TO AND USE OF THE PREMISES

Section 3.1 Access to the DB Work and Staging Area

(a) The Design-Builder shall be entitled to access to and the right to use the DB Work and Staging Area (including the Permanent Rights of Access and the Temporary Rights of Access) in accordance with the access rights granted to the Developer under Article 3 of the Lease with respect to such area (subject to the Port Authority and the Developer having issued any required Notice to Proceed and the Design-Builder therefore being authorized to proceed). The Design-Builder shall have no greater rights of access to such area than are available to the Developer under the Lease. Once the Port Authority grants access to any such area to the Developer under the Lease, the Developer shall grant access to the Design-Builder at the times set out in Section 3.1(e) below subject to the Port Authority and the Developer having issued any required Notice to Proceed and the Design-Builder therefore being authorized to proceed. The Parties acknowledge and agree that the Developer in granting such right is in no way assigning, transferring or otherwise conveying any real property interest in the DB Work and Staging Area to the Design-Builder. The Developer shall also comply with the requirements of Section 3.1(e) with respect to the DB Construction Work.

(b) NOT USED.

(c) NOT USED.

(d) Nothing contained in this Design-Build Contract shall grant to the Design-Builder any rights whatsoever in the air space above the DB Work and Staging Area above the heights of the structures thereon as set forth in the Final Design Documents or as otherwise required for the performance of any of the obligations of the Design-Builder hereunder.

(e) Subject to the provisions of Section 3.1(a) hereof, forthwith upon the Developer being granted access under the Lease and thereafter no later than thirty (30) days after acceptance of each of the New Facilities Construction Milestones (or, in every case, such other dates as may have been agreed upon by the Parties as set forth in Exhibit A-13 or otherwise agreed upon in writing), the Developer shall make each subsequent applicable portion of the Construction Site necessary for proceeding with the Project Baseline Schedule

available to the Design-Builder with respect to DB Construction Work to be performed on such portion of the Construction Site and, in each case, such applicable portion of the Construction Site shall be free and clear of all occupants (including the Sublessees).

(f) NOT USED.

Section 3.2 Condition of Premises

(a) The Design-Builder shall, subject to the terms of the DB Project Documents, be deemed to have satisfied itself at or prior to submission of the Finalized Proposal as to (i) the assets to which it will receive rights (including each part of the Premises, and, where applicable, any existing structures, Utilities or work on, over or under such part of the Premises), (ii) the nature of the geotechnical, climactic, hydrological, ecological, environmental and general conditions of each part of the Premises, the risk of injury or damage to property near to or affecting each part of the Premises and to occupiers of such property, the nature of the materials (whether natural or otherwise) to be excavated, and the nature of the design, work, materials, plant, machinery or equipment necessary for the purpose of carrying out its obligations under the DB Project Documents, (iii) the access to and through each part of the Premises and the adequacy of the access in respect thereof for the purpose of carrying out its obligations under the DB Project Documents, (iv) the precautions and times and methods of working necessary to prevent or (if it is not possible to prevent) to mitigate or reduce any nuisance or interference, whether public or private, being caused to any third parties, (v) the scope of the Geotechnical Reports and the Utility Data and (vi) the Hazardous Materials existing at the Premises. Nothing in this Section 3.2(a) is intended to deprive the Design-Builder of any other rights or remedies it has under this Design-Build Contract, whether through Equivalent Project Relief or otherwise.

(b) Pursuant to Section 3.2(b) of the Lease, except with respect to any Excluded Liabilities arising due to any act or omission of any Lessee-Related Entity, the liabilities assumed by the Developer shall not include any debts, liabilities and obligations, whether such debts, liabilities or obligations are initially charged to the Port Authority, the Developer or any other Person, with respect to any of the Excluded Liabilities identified in such Section 3.2(b). The Design-Builder shall have the benefit of the same Excluded Liabilities under this Design-Build Contract except to the extent such liabilities arise due to any act or omission of any DB Party. Further, an Excluded Liability arising due to any act or omission of any Lessee-Related Entity (other than an act or omission of a DB Party) shall constitute a breach of this Design-Build Contract by the Developer.

(c) Without limiting any obligation of the Design-Builder to commence the DB D&C Work hereunder at the time and in the manner stated elsewhere in this Design-Build Contract, the Design-Builder agrees that no portion of the DB Work and Staging Area will be used by any DB Party, initially or at any time during the term hereof, which is in a condition unsafe or improper for the conduct of the DB D&C Work hereunder so that there is possibility of injury or damage to life or property. The Design-Builder understands that it will be the Design-Builder's responsibility to furnish and install (subject to the provisions of Article 10) all pumps, trade fixtures, accessories, equipment and other property including any necessary

removal and demolition, except to the extent any such furnishing, installation, removal or demolition is specifically stated to be a responsibility of the Developer pursuant to Exhibit A, and to perform all DB D&C Work as may be necessary to put the New Facilities in first-class operating condition in comparison to similar facilities at airports of similar size for the purposes set forth in Section 3.4 of the Lease; provided, that the Design-Builder shall not be deemed to be in breach of its obligations set forth in this sentence if the Design-Builder is otherwise in compliance with this Design-Build Contract, the other Contract Documents, Applicable Law and Applicable Standards.

(d) Available Documents.

(i) Except as expressly provided in Section 16.1(h), and without prejudice to the Design-Builder's rights and remedies in connection with a breach of the representation in such Section, the Developer does not give any representation, warranty or guarantee as to the relevance, completeness, accuracy or fitness for any purpose of any of the Available Documents and reliance by the Design-Builder or any DB Party, as applicable, on any of the Available Documents is at its sole risk, provided that nothing in this Section 3.2(d)(i) shall limit the Design-Builder's rights to Equivalent Project Relief in accordance with Section 14A.1, if applicable.

(ii) Without limiting the generality of Section 35.15, none of the Developer, its officers, directors, agents or employees shall have any liability in respect of any:

(A) inaccuracy, omission, unfitness for any purpose or inadequacy of any kind whatsoever in any Available Document;

(B) (1) failure to make available to the Design-Builder any materials, documents, drawings, plans or other information relating to the Work or the Premises arising out of a failure of the Port Authority to provide any such materials, documents, drawings, plans or other information to the Developer or (2) failure to make available to the Design-Builder any materials, documents, drawings, plans or other information relating to the Work or the Premises other than as required by this Design-Build Contract or the Contract Documents; or

(C) Claims or Losses whatsoever suffered by any DB Party by reason of any use of information contained in, or any action or forbearance in reliance on, any of the Available Documents.

(iii) The Design-Builder shall not in any way be relieved from any obligation under the Contract Documents nor shall the Design-Builder be entitled to claim against the Developer on grounds that any information included in the Available Documents is incorrect or insufficient.

(iv) Nothing in this clause (d) shall limit any of the Design-Builder's rights and remedies (including any such rights and remedies related to Equivalent Project Relief pursuant to Article 14A hereto) and any of the Developer's obligations otherwise expressly provided in this Design-Build Contract.

Section 3.3 Liens

The Design-Builder shall not do any act or thing that will create, and will not permit any other DB Party to do any act or thing that will create, any Lien against the Premises, the areas subject to the Temporary Rights of Access or LGA Airport. Subject to Sections 9.2(b)(v), 9.2(f) and 10.7(a)(xi), the Design-Builder shall, by the date that is five (5) Business Date prior to the deadline established by the Lease (i.e., thirty (30) days after the Developer's receipt of notice of the filing of any Lien against the Premises, the areas subject to the Temporary Rights of Access, LGA Airport or any part thereof arising in connection with the DB D&C Work (other than as a result of the Developer's failure to pay an undisputed amount under this Design-Build Contract)), cause the Lien to be discharged of record by payment, deposit bond, order of a court of competent jurisdiction or otherwise and may in good faith contest any such Lien (subject to providing any necessary bond or other security required by Applicable Law), provided, however, that if the Design-Builder discharges or bonds over any such Lien during the pendency of a dispute regarding whether such amount is payable by the Developer, the Design-Builder shall be reimbursed for its out-of-pocket costs associated with such discharge or bond if the payment ultimately is determined to have been payable by the Developer as asserted by the Design-Builder. The Design-Builder has no right or claim to any Lien with respect to the DB D&C Work or the Premises for failure of the Developer to pay amounts due the Design-Builder, and the Design-Builder hereby waives any such right or claim that may exist at law or in equity.

Section 3.4 Use of DB Work and Staging Area

(a) NOT USED.

(b) NOT USED.

(c) NOT USED.

(d) NOT USED.

(e) It is understood and agreed that the DB Work and Staging Area (other than the Central Hall) may be used by the Design-Builder, the other DB Parties, and its authorized representatives in the performance of the DB D&C Work.

(f) NOT USED.

(g) The Design-Builder may use the DB Work and Staging Area (other than the Central Hall) for any other purpose or activity, in addition to those specified in this Section 3.4, for which the DB Work and Staging Area is expressly authorized to be used by any other provision of this Design-Build Contract, including for activities reasonably required for purposes of performing the DB D&C Work, and for such purposes and activities only.

(h) No greater rights or privileges with respect to the use of the Premises or any part thereof are granted or intended to be granted to the Design-Builder by this Design-Build Contract, or by any provision thereof, than the rights and privileges expressly and specifically granted hereby.

(i) Neither this Design-Build Contract, nor anything contained herein, including this Section 3.4, shall or shall be deemed to grant to the Design-Builder any right, privilege or permission to perform any sale, service or any other activity other than as is expressly provided herein and upon the terms and conditions hereof.

(j) NOT USED.

(k) NOT USED.

Section 3.5 Rights of Entry and Oversight by the Port Authority

(a) Pursuant to Section 3.5 of the Lease, the Port Authority, by its officers, employees, agents, authorized representatives, designees, designers and contractors, shall have the right at all reasonable times upon reasonable prior notice (which may be given orally) to enter upon the Premises and the areas subject to the Temporary Rights of Access for, among other things, the purpose of conducting Oversight (including performing periodic evaluations of, *inter alia*, any aspect of the D&C Work and condition and code conformance of electrical, mechanical, structural and fire and life safety systems) and observing the performance by the Design-Builder of its obligations under this Design-Build Contract and the other Contract Documents (including the Design-Builder's obligations to comply with the Requirements and Provisions for Work and Rules and Regulations); provided that (1) in the case of an Emergency, the Port Authority shall not be required to give either the Developer or the Design-Builder prior notice of its intention to enter any area of the Premises or the areas subject to the Temporary Rights of Access; and (2) the Port Authority's Oversight will not excuse, or affect the Port Authority's right to rely on, the Developer's performance of its obligations pursuant to the Lease (which includes the Design-Builder's performance of its obligations pursuant to this Design-Build Contract). The Design-Builder shall grant the Port Authority and such other authorized Persons entry to the DB Work and Staging Area as and when required by, and for the purposes set forth in, Section 3.5 of the Lease.

(b) As provided by Section 3.5 of the Lease, (i) nothing in this Section 3.5 shall or shall be construed to impose upon the Port Authority any obligation to construct or maintain or to make repairs, replacements, alterations or additions, or shall create any liability for any failure to do so and (ii) the Port Authority shall not in any event be liable for any injury or damage to any property or to any person occurring on or about the Premises or the areas subject to the Temporary Rights of Access or for any injury or damage to the Premises or the D&C Work (except as expressly provided in the Lease and other than those injuries or damages occasioned by the willful misconduct or gross negligence of the Port Authority, its employees, agents and authorized representatives).

(c) NOT USED.

(d) NOT USED.

(e) NOT USED.

(f) Pursuant to Section 3.5(f) of the Lease, the Port Authority, in the Port Authority's capacity as landlord under the Lease, has agreed that it will not, and will cause each director, officer, employee, agent or contractor not to, unreasonably interfere with the Work or the use and occupancy of the Premises in the course of performing Oversight and otherwise exercising the Port Authority's rights of entry under the Lease and that the Port Authority will use Reasonable Efforts to minimize the effect and duration of any disruption to or impairment of the Work or the use and occupancy of the Premises; provided, that the Port Authority's exercise of its rights in accordance with the terms and conditions of the Lease shall not by itself constitute interference with the Work or the use and occupancy of the Premises. The Design-Builder shall cooperate fully with the Port Authority to facilitate the entry of the Port Authority to the DB Work and Staging Area and the exercise by the Port Authority of its rights with respect thereto.

(g) Nothing in this Section 3.5 is intended to derogate from either the Port Authority's or the Developer's rights under Section 10.10.

(h) Pursuant to Section 3.5 of the Lease, (1) the Port Authority has the right to be compensated for the Oversight services and functions it has the right or obligation to perform or cause to be performed under the Lease, including the monitoring, review, approval, administration and audit of the D&C Work and (2) such compensation shall be in an amount equal to Three Million Dollars (\$3,000,000) per Calendar Year during the Construction Period, which amount shall be pro-rated for the first and last years of the Construction Period based on the ratio of the number of days in such year that fall within the Construction Period to the total number of days in such Calendar Year; provided, that (i) any Oversight costs associated with any Port Authority Change or Directive Letter shall be for the account of the Port Authority only. Such compensation shall be paid by the Developer, subject to this Section 3.5 and Section 8.4(c) hereof.

(i) Pursuant to Section 3.5 of the Lease (1) if, at any time, the Developer has failed to perform any of the Work in any material respect (individually or in the aggregate), then, in addition to and without limiting any other remedies available pursuant to the Lease and the other Project Documents, but subject to Section 3.5(j) of the Lease and without duplication, the Port Authority, with prior written notice to the Developer, shall be entitled to increase the Port Authority's Oversight of the Work in such manner and to such level as the Port Authority deems appropriate, until such time as the Developer has demonstrated to the Port Authority's reasonable satisfaction that the Developer will resume performance of, and is capable of performing, the Work in compliance with the Lease and (2) if the Port Authority increases or otherwise changes the manner of its Oversight pursuant to Section 3.5(i) of the Lease, then the Developer shall be required to pay and reimburse the Port Authority within thirty (30) days after receipt of written demand therefor and reasonable supporting documentation, all Recoverable Costs associated with the increased or changed level of Oversight. In the event a Developer Act has caused the need for increased Oversight, the Developer shall be responsible for payment of any Oversight costs for which the Port Authority may be compensated as established by Section 3.5 of the Lease, and the Developer shall reimburse the Design-Builder for any such costs the Design-Builder has incurred. In all other cases, the Design-Builder shall be responsible for payment of any Oversight costs (other

than those described in Section 3.5(h) above) for which the Port Authority may be compensated as established by Section 3.5 of the Lease, and the Design-Builder shall reimburse the Developer for any such costs the Developer has incurred.

(j) Prior to any increase in the Port Authority's Oversight of the Work permitted by Section 3.5(i) of the Lease, Section 3.5(j) of the Lease (1) permits the Developer to submit a cure plan describing specific actions that the Developer will undertake to improve its performance and avoid the need for increased Oversight, which cure plan the Port Authority is permitted to accept or reject at its sole discretion and (2) provides that, if the Port Authority accepts any such cure plan, the Port Authority shall not increase its Oversight of the Work that is the subject of the cure plan so long as the Developer is in compliance with such cure plan. If the Developer is permitted to submit a cure plan pursuant to Section 3.5(j) of the Lease to avoid the need for increased Oversight pursuant to the Lease, both Parties (including the Party that is not responsible for causing the need for increased Oversight) will be required to use Reasonable Efforts to prepare and submit such cure plan to the Port Authority pursuant to the Lease, and, pursuant to Section 3.5 of the Lease, the Port Authority shall have sole discretion in the approval of such cure plan (without any further approval rights granted to the non-responsible Party under this Design-Build Contract).

(k) FAA Reimbursement Agreement. The Design-Builder shall enter into a reimbursement agreement with the FAA relating to the Construction Project; however, the Design-Builder shall have no responsibility or liability for any and all management or administration charges, fees, costs or expenses whatsoever imposed, or sought to be reimbursed, by the FAA pursuant to such reimbursement agreement other than (i) any such amounts up to the allowance for such amounts set forth on Exhibit A-12 hereto and (ii) any such amounts that are the result of a failure by the Design-Builder to comply with its obligations in this Design-Build Contract.

(l) Traffic Mitigation Obligations. The Design-Builder's responsibility for traffic mitigation measures shall be limited to those mitigation measures required in connection with the Design-Builder's occupation of a particular DB Work and Staging Area or otherwise required in connection with and required for its DB D&C Work.

Section 3.6 Ingress to and Egress from the Premises

(a) The Design-Builder and its officers, authorized representatives, employees, invitees, designees, DB Subcontractors and Suppliers, shall have the right of ingress and egress between the Premises, the areas subject to the Temporary Rights of Access, the Air Terminal Highway System and city streets or public ways outside the Premises by means of roadways existing on the Lease Commencement Date or roadways to be built as part of the Construction Project, the Supporting Projects or otherwise, in each case, which may be provided in common with others having rights of passage to the Premises from the city streets or public ways outside the Premises; provided, however, that, pursuant to Section 3.6(a) of the Lease, the Port Authority may, upon reasonable prior notice to the Developer, from time to time substitute other reasonably equivalent means of ingress and egress that do not materially and adversely affect the Developer's performance of the Work; and provided, further,

however, that the foregoing right of ingress and egress shall not apply to the areas between the Premises, the areas subject to the Temporary Rights of Access, the Air Terminal Highway System and the city streets or public ways outside the Premises by means of any mode of transportation or any vehicle which may be otherwise limited or restricted by any Applicable Laws, Governmental Approvals or Applicable Standards, it being understood that the foregoing restriction regarding modes of transportation or vehicles shall not apply to modes of transportation or vehicles used for reasons of safety or health. The Developer will provide the Design-Builder with notice of any substitution notice delivered by the Port Authority pursuant to Section 3.6 of the Lease.

(b) NOT USED.

(c) The use of all roadways and Taxiways shall be subject to Applicable Law and Applicable Standards. Pursuant to Section 3.6(c) of the Lease, in addition to the rights of closure granted the Port Authority in Section 3.6(a) of the Lease, the Port Authority may, at any time, temporarily or permanently close, or consent to or request the closing of, any such roadway, Taxiway and any other area at LGA Airport presently or hereafter used as such, so long as (i) a means of ingress and egress reasonably equivalent to that provided in Sections 3.6(a) of the Lease remains available to the Developer and (ii) such closure, taking into account the availability of reasonably equivalent means of ingress and egress, does not materially and adversely affect the performance of the Work. The Design-Builder hereby releases and discharges the Port Authority, and their respective successors and assigns, of and from any and all Claims concerning the adequacy of ingress or egress which the Design-Builder may now or at any time hereafter have against any of the foregoing, arising or alleged to arise out of the closing of any street, roadway, Taxiway or other area used as such, whether within or outside LGA Airport; provided, that a reasonably equivalent means of ingress and egress is available to the Design-Builder and such closure, taking into account the availability of reasonably equivalent means of ingress and egress, does not materially and adversely affect the performance of the DB D&C Work, in which event the Design-Builder's rights shall be determined pursuant to the Equivalent Project Relief provisions set out in Article 14A.

(d) Nothing in this Section 3.6 shall limit the Design-Builder's right to make a claim for Equivalent Project Relief pursuant to Article 14A, if applicable.

Section 3.7 NOT USED.

Section 3.8 NOT USED.

Section 3.9 NOT USED.

Section 3.10 NOT USED.

ARTICLE 4

NOT USED.

ARTICLE 5

NOT USED.

ARTICLE 6

NOT USED.

ARTICLE 7

UTILITIES; SERVICES TO THE DESIGN-BUILDER

Section 7.1 Services to the Design-Builder

(a) Pursuant to Section 7.1(a) of the Lease, except as expressly provided in Section 7.1 of the Lease, the Port Authority shall not be obligated to perform or furnish to the Developer any Utilities or Utility services whatsoever in connection with the Construction Project or the use and occupancy of the Premises and the areas subject to the Temporary Rights of Access. Except as expressly provided in this Section 7.1 or in Section 7.2, the Developer shall not be obligated to perform or furnish to the Design-Builder any Utilities or Utility services whatsoever in connection with the Construction Project or the use and occupancy of the DB Work and Staging Area or any other portion of the Premises or the areas subject to the Temporary Rights of Access.

(b) Pursuant to Section 7.1(b) of the Lease, the Port Authority has provided to the Developer as part of the Available Documents known existing Utility information that shows the approximate location of known Utilities. The Design-Builder acknowledges that it has been granted access to and the opportunity to review such information. Without limiting the provisions of Section 14.1 and Section 14.2 with respect to Unknown Facilities, the Design-Builder shall verify existing Utilities affected by the Construction Project in accordance with the requirements of Section 10 of the Design and Construction Requirements before commencing any DB D&C Work relating to the Utilities described in Section 7.2.

(c) Pursuant to Section 7.1(c) of the Lease, the Port Authority has agreed to sell, furnish and supply to the Developer for use on the Premises and the Construction Site, and the

Developer has agreed to take from the Port Authority and pay for electricity of the same voltage, phase and cycle as provided to other tenants at LGA Airport by the public utility in the vicinity, but limited however, to a maximum of the installed transformer capacity serving each portion of the Premises on the Lease Commencement Date, at a cost equal to the same charge (including demand and similar charges) that would be made by such public utility for the same quantity under the same conditions and in the same service classification. The Developer shall make such electricity available to the Design-Builder as necessary or appropriate in connection with the performance of the DB D&C Work, at no cost to the Design-Builder.

(d) Pursuant to Section 7.1(d) of the Lease, the Port Authority has agreed to sell, furnish and supply to the Developer for use on the Premises and the Construction Site potable water (of the character furnished by the City) in reasonable quantities as requested by the Developer through existing and new pipes, mains and fittings at a cost equal to the same charge (including demand and similar charges) that would be made by the City for the same quantity. The Developer shall make such potable water available to the Design-Builder as necessary or appropriate in connection with the performance of the DB D&C Work, at no cost to the Design-Builder.

(e) The Developer shall make available to the Design-Builder without charge such sewerage services as are furnished by the City in respect of the Premises and the Construction Site.

(f) NOT USED.

(g) Pursuant to Section 7.1(g) of the Lease, the Port Authority shall be under no obligation to supply Utility services to the Developer if and to the extent and during any period that the supplying of any such service or the use of any component necessary therefor shall be prohibited or rationed by any Applicable Law. The Developer shall be under no obligation hereunder to supply Utility services to the Design-Builder pursuant to this Section 7.1 in any circumstance in which Utilities are not provided to the Developer by the Port Authority or the City as contemplated in the Lease, unless such Utilities are not provided to the Developer as a result of a Developer Act or the Developer's failure to pay for such Utilities. No failure, delay or interruption in supplying agreed services (unless resulting from (1) the gross negligence or willful misconduct of the Port Authority, in which event the Design-Builder's rights shall be determined pursuant to the Equivalent Project Relief provisions set out in Article 14A, or (2) a Developer Act or non-payment for such Utilities by the Developer) shall be grounds for any claim by the Design-Builder for damages, consequential or otherwise. Where the Developer has been informed of any failure, delay or interruption in provision of the agreed services, the Developer shall provide the Design-Builder written notice thereof.

(h) NOT USED.

Section 7.2 Developer's and Design-Builder's Respective Obligations Relating to Utilities

(a) In addition to the provisions set forth in Section 7.1, the Developer shall be responsible for providing to the Design-Builder, at no cost to the Design-Builder, all other Utilities (including natural gas) that are necessary for the DB D&C Work, except that the Design-Builder shall be responsible for obtaining (including arranging for any necessary hookups) and paying utility usage charges for any gas needed for temporary heating in connection with the performance of the DB D&C Work. Utilities provided to the Design-Builder by the Developer shall be at no cost to the Design-Builder. Notwithstanding the foregoing, the Developer shall be under no obligation hereunder to supply Utility services to the Design-Builder pursuant to this Section 7.2(a) in (1) any circumstance in which the applicable Utilities are not provided to the Developer by the provider thereof, unless such Utilities are not provided to the Developer as a result of a Developer Act or the Developer's failure to pay for such Utilities or (2) any circumstance in which Utility capacity is insufficient to meet all demand therefor with respect to the DB D&C Work (it being understood that priority for allocation of capacity shall be as follows: (i) first to operation of the Existing Facilities and to operation and commissioning of the New Facilities, (ii) to the DB D&C Work and (iii) to operation and commissioning of the Central Hall). No failure, delay or interruption in supplying the agreed services under this Section 7.2(a) (unless resulting from a Developer Act or non-payment for such Utilities by the Developer) shall be grounds for any claim by the Design-Builder for damages, consequential or otherwise. Where the Developer has been informed of any failure, delay or interruption in provision of the agreed services, the Developer shall provide the Design-Builder written notice thereof.

(b) The Design-Builder shall (i) design and construct all required new Utilities and install all necessary electrical and communication wires, cables, conduit and duct banks, and all lines, connections and meters within the DB Work and Staging Area, (ii) be responsible for all necessary Utility Relocations, (iii) coordinate with all third-parties owning Utilities affected by the DB Construction Work (including National Grid with respect to natural gas, the FAA and telecommunication service providers) and execute required agreements with each such third party, and (iv) perform all other Work relating to the Utilities, in each case, as set forth in the Requirements and Provisions for Work but only to the extent applicable to or required in connection with the performance of the DB D&C Work. Pursuant to Section 7.2(b) of the Lease, the Port Authority has agreed to cooperate as reasonably requested by the Developer, and to provide its reasonable assistance in good faith in connection with the negotiation of any agreements for Utility Relocation and the resolution of any disputes with all third-parties owning Utilities in connection with such agreements. If the Design-Builder reasonably requests the Developer to exercise such rights, then the Developer shall do so.

(c) The Parties and the Port Authority anticipate that from time to time during the Construction Period, new Utilities may be installed that would cross or longitudinally occupy areas of the Premises, or modifications, repairs, upgrades, relocations or expansions of existing Utilities within the Premises may be required. The Design-Builder shall assist the Developer and the Port Authority in coordinating with each Utility owner with respect to the installation of new Utilities or the modification, repair, upgrade, relocation or expansion of

existing Utilities. Further, the Design-Builder shall (i) make available upon request the most recent Construction Project design information and/or Record Documents, as applicable, (ii) assist each Utility owner with information regarding the location of other proposed and existing Utilities within the DB Work and Staging Area, (iii) insofar as it relates to the DB D&C Work within the DB Work and Staging Area, coordinate work schedules with each Utility owner as appropriate to avoid interference with the operation of the Premises, and (iv) at the request of the Developer following a request by the Port Authority to the Developer pursuant to Section 7.2(c) of the Lease, cooperate and otherwise act in any manner reasonably necessary to facilitate the installation of new Utilities or the modification, repair, upgrade, relocation or expansion of existing Utilities. Any cost or schedule impact of any of the activities described in this Section 7.2(c) to the DB Construction Work during the Construction Period shall be determined pursuant to the Equivalent Project Relief provisions set out in Article 14A and the procedures set forth in Section 13.1 for a Port Authority Change.

(d) NOT USED.

Section 7.3 Utility Rights Reserved to the Port Authority

(a) Pursuant to Section 7.3(a) of the Lease, the Port Authority, by its officers, employees, agents, authorized representatives, contractors and furnishers of Utilities and other services, has the right, for its own benefit, for the benefit of the Developer, or for the benefit of others than the Developer at LGA Airport, to maintain the Utility Systems (which exclude the CHRP and other Utility and other systems for which the Developer is responsible pursuant to the Project Documents) and to enter upon the Premises at all reasonable times for Utility Servicing. The Design-Builder agrees to permit the Port Authority, by such Persons, entry to the DB Work and Staging Area as and when required by, and for the purposes set forth in, Section 7.3(a) of the Lease; provided, however, that such entry shall be subject to the Port Authority's compliance with the requirements of such Lease provision, which include that, in the conduct of such Utility Servicing the Port Authority shall (i) not unreasonably interfere with the Work or the use and occupancy of the Premises by the Developer, its Contractors (including the Design-Builder), or their respective invitees, (ii) provide reasonable notice of any Utility Servicing (except in cases of Emergency), (iii) perform Utility Restoration within a commercially reasonable period and (iv) not hold the Developer responsible for the cost of any Utility Servicing or Utility Restoration. The Developer shall not hold the Design-Builder responsible for the cost of any Utility Servicing or Utility Restoration.

(b) In the event that any personal property or trade fixtures of the Design-Builder shall obstruct the access of the Port Authority, its officers, employees, agents, authorized representatives, contractors or furnishers of Utilities and other services to any of the Utility Systems, and thus shall interfere with the inspection, maintenance or repair of any Utility System, the Design-Builder shall move such personal property or trade fixtures, as directed by the Developer or the Port Authority, in order that access may be had to the Utility System or part thereof for its inspection, maintenance or repair, and, if the Design-Builder shall fail to so move such property (i) as promptly as possible in the event of an Emergency or (ii) within a reasonable period of time after direction from the Developer or the Port Authority to do so,

the Developer or the Port Authority may move it and the Design-Builder hereby agrees to pay the Developer the cost of such moving upon demand, whether such moving was performed by the Developer or the Port Authority, provided that, in the event such moving was performed by the Port Authority, the Developer shall provide such payments to the Port Authority. Nothing in this Section 7.3(b) shall limit the Design-Builder's right to make a claim for Equivalent Project Relief pursuant to Article 14A, if applicable.

Section 7.4 Utility Rights Reserved to the City

(a) Each of the Parties acknowledges that (1) within LGA Airport there are currently located Retained Water System Property (i.e., sewers, water mains, water and wastewater conduits, wastewater treatment facilities, sludge lines, a sludge dock and a sludge tank, power lines, telephone and signal lines, meters and other facilities to which the City retains ownership and control pursuant to the Basic Lease and which will not be part of the Premises and are not subject to the Lease) and (2) if in the future the City (i) installs any additional meter or meters on the Premises to measure the amount of water and wastewater consumed, or (ii) relocates or extends the Retained Water System Property, or constructs new sewers to serve areas or property outside of the Premises, the additional meters and the relocated, extended and new portions of the water system will become part of the Retained Water System Property.

(b) Each of the Parties acknowledges and agrees that the City has the right under the Basic Lease to maintain, repair, restore and replace all portions of the Retained Water System Property. For that purpose, the Design-Builder agrees to permit the City and its duly designated officials and employees at all reasonable times and on reasonable notice (provided, that, in the event of an Emergency, the City and its duly designated officials and employees will have the right at all times and without prior notice), to enter the DB Work and Staging Area with personnel, equipment, trucks and vehicles for the purpose of making inspections, repairs, replacements and restorations of the Retained Water System Property as shall be necessary in the opinion of the City.

(c) Each of the Parties acknowledges that, during the Term, the City may find it necessary, not only to maintain the existing Retained Water System Property, but also to relocate and extend the Retained Water System Property and to construct and maintain new sewers within the Premises to serve areas or property outside of the Premises. The Design-Builder shall permit the City to enter the DB Work and Staging Area in order to perform such relocation or extension of the existing Retained Water System Property or the construction or extension of new sewers to serve areas or property outside of the Premises, in each case, at the City's cost and in accordance with the approval of the Port Authority and the Developer (after consultation with the Design-Builder) as to the proposed timing and location and in accordance with plans and specifications approved by the Port Authority and the Developer (after consultation with the Design-Builder).

(d) The Design-Builder shall not, without the prior written approval and supervision of NYCDEP and any other applicable Governmental Entity, construct or demolish or permit the construction or demolition of any building or structure or make or permit the

making of any excavation which will interfere with or affect the usefulness of any Retained Water System Property or any other City-owned sewer, water main, water or wastewater conduit, or facility related to a wastewater treatment plant owned and operated by the City or any appurtenant facility thereof or similar facility. In the event it is necessary to extend or relocate any portion of the Retained Water System Property as a result of any construction, fill or excavation done or to be done by the Design-Builder as part of the DB Construction Work or on or under the Premises or because any improvement requires additional water and wastewater services, any such extension or relocation shall be done or caused to be done at the sole cost of the Design-Builder and upon plans and specifications and timelines approved by, and under the supervision of, NYCDEP or the agency of the City succeeding to NYCDEP's jurisdiction. The Design-Builder shall submit to the Developer any request for the approval of NYCDEP required in accordance with this Section 7.4(d). The Developer will forward such request to the Port Authority in order for the Port Authority to forward such request to the NYCDEP pursuant to Section 7.4(d) of the Lease, and the Developer will forward to the Design-Builder any response the Developer receives from NYCDEP or the Port Authority.

ARTICLE 8

SUBMITTALS; OPEN DIALOGUE AND COOPERATION; OTHER REDEVELOPMENTS

Section 8.1 Submittals Generally

(a) Sections 8.1 through 8.4(c) set forth procedures governing those Submittals with respect to the DB D&C Work (including plans, schedules, designs, Design Documents and Construction Documents) that require or permit an approval, review, comment, consent, notification, determination, decision or other response from the Developer pursuant to this Design-Build Contract or Port Authority Approval or Port Authority Comment pursuant to the Lease or, in either case, pursuant to the other DB Project Documents. Section 8.4(d) sets forth procedures with respect to those Submittals with respect to the DB D&C Work that require action by the Port Authority, including signatures, or the supply of information within the possession of the Port Authority regarding Port Authority personnel, operations or history that is not otherwise available to the Developer or the Design-Builder. Without limiting the provisions of Section 10.1(a) hereof, the Design-Builder shall be responsible for the provision to the Developer of all notices, reports, submissions, approvals and other matters (including any necessary updates to the D&C Schedule of Submittals pursuant to Section 8.2 below) required to be provided by the Developer to the Port Authority or other third parties in accordance with the Lease or any other DB Project Document insofar as they relate to the DB D&C Work. The Design-Builder shall be responsible for the content it provides in respect of such documentation and for satisfying the requirements set forth in the Lease or such other DB Project Document relating to any such documentation; provided, however, that any such documentation that addresses or contains information regarding matters required by the Developer as identified in Exhibit A hereto shall be subject to the review and approval of the Developer, in its reasonable discretion, to confirm conformance of such information and matters with the requirements of this Design-Build Contract. In the case of Submittals

relating to DB Design Work, the Developer's review shall be in accordance with the design coordination process set out in Section 10A.1.

(b) All Submittals by the Design-Builder to the Developer will be made in the form and in the number of originals and copies required by, and otherwise in conformity with, the requirements set forth herein, in the Requirements and Provisions for Work and other DB Project Documents.

(c) The Design-Builder shall work with the Developer to schedule, prioritize and coordinate all Submittals with respect to the DB D&C Work to allow an efficient and orderly review and/or approval process of such Submittals. Pursuant to Section 8.4 of the Lease, to the extent that the Design-Builder exceeds or causes the Developer to exceed any of the time and quantity limits on Submittals set forth herein, in the D&C Schedule of Submittals, the Requirements and Provisions for Work or the other provisions of the Project Documents, the Port Authority's time to respond as set forth in Section 8.4 of the Lease, the D&C Schedule of Submittals, the Requirements and Provisions for Work or the other provisions of the Project Documents shall be extended by a reasonable time such that the Port Authority may conduct a diligent and thorough review. The Design-Builder may, in any instance described above, request the Developer to seek the agreement of the Port Authority to process Submittals in the priority specified by the Design-Builder. The Developer shall forward to the Port Authority any such reasonable request received from the Design-Builder as soon as practicable and in any case within five (5) days of receipt thereof, and the priority of processing of Submittals shall be revised to the extent agreed by the Port Authority.

(d) NOT USED.

Section 8.2 Schedules of Submittals

(a) The Design-Builder has developed and delivered to Developer, for submission to the Port Authority, and the Design-Builder and the Developer have received Port Authority Approval of, a schedule of its proposed Submittals of Design Documents, Construction Documents and other Submittals required by (i) the Lease with respect to the D&C Work, (ii) the General Conditions and (iii) the Design and Construction Requirements (which schedule will be updated periodically as necessary, each such updated schedule being subject to Port Authority Approval), including deadlines for submission of each such proposed Submittal and time periods by which the Port Authority will approve or comment on such Submittal, as the case may be, so as to facilitate the Port Authority's coordination and review of such documents (the "**D&C Schedule of Submittals**").

(b) NOT USED.

(c) In the event of any conflict, ambiguity or inconsistency between or among deadlines for the delivery of a Submittal to the Port Authority or response time periods by the Port Authority provided therefor in the D&C Schedule of Submittals, on the one hand, and in any provision of this Design-Build Contract, any other DB Project Document (including the

Lease) or the TCAP, on the other hand, the deadlines and response time periods in the D&C Schedule of Submittals, as applicable, shall take precedence and prevail.

Section 8.3 Time for Submittals

(a)

(i) Except as otherwise explicitly provided in the D&C Schedule of Submittals or this Design-Build Contract, the Design-Builder will obtain and submit to the Developer all documentation required to make the Submittals as described under Section 8.1 to the Developer (1) where a time is prescribed in the Lease or such other DB Project Document to make such Submittal, within no more than eighty percent (80%) of the time period provided to the Developer, or (2) where no time period is prescribed, in a timely fashion to permit Developer review, but, in the case of clauses (1) and (2), in any event no later than five (5) Business Days prior to the date such Submittal is due under the Lease or such other DB Project Document, as applicable; provided, however, if any Submittals are required to be delivered to the Port Authority within less than five (5) Business Days of the occurrence of the event that gives rise to such Submittals, the Developer shall authorize the Design-Builder to deliver such Submittals to the Developer and, on behalf of the Developer, to the Port Authority concurrently to ensure timely receipt by the Port Authority thereof. The Parties shall agree and maintain a list of the type of Submittals which are so authorized.

(ii) If no time period is specified in the Lease or such other DB Project Document with respect to submission of a Submittal, the Design-Builder shall (1) designate in writing to the Developer a DB Requested Submission Date for such Submittal, and (2) obtain and submit to the Developer all documentation required to make the applicable Submittal as described under Section 8.1 by the date no later than five (5) Business Days prior to the DB Requested Submission Date. The Submittal shall be made by the Developer to the Port Authority no later than the DB Requested Submission Date or, if no date is stipulated, within five (5) Business Days.

(iii) Subject to receipt of timely Submittals from the Design-Builder pursuant to this Section 8.3(a) and as required by this Design-Build Contract and the other DB Project Documents, the Developer will submit each Submittal made under the Project Documents to the Port Authority or the Lenders, as applicable, (1) within the time period required, if any, by the provisions of the Lease, the D&C Schedule of Submittals, the Requirements and Provisions for Work and the other provisions of the DB Project Documents or (2) if no time period is specified in the Lease, the D&C Schedule of Submittals, the Requirements and Provisions for Work or the other provisions of the DB Project Documents with respect to a given Submittal, on or before the DB Requested Submission Date.

(iv) Except as otherwise explicitly provided in this Design-Build Contract, the Developer shall deliver to the Design-Builder copies of any notice, approval, directive or other document received by the Developer from the Port Authority related to the DB

D&C Work as soon as practicable and in any event no later than five (5) Business Days after the Developer's receipt of the same; provided, however, that in the event that the Port Authority delivers or makes available any notice, approval, directive or other document to the Developer and the Design-Builder simultaneously, the Developer shall be deemed to have satisfied its delivery obligation pursuant to this Section 8.3(a).

(b) Pursuant to Section 8.3(b) of the Lease, (1) except as otherwise set forth in the Lease (including in Section 8.3(c) thereof), any Submittal (including any resubmittal of a Submittal) submitted or made to the Port Authority will be deemed complete and ready for substantive review by the Port Authority at 5:30 p.m. prevailing Eastern time on the tenth (10th) day following its receipt by the Port Authority, unless the Port Authority notifies the Developer in writing prior to 5:30 p.m. prevailing Eastern time on such tenth (10th) day that such Submittal or resubmittal is incomplete, based on its preliminary non-substantive review, according to the standards set forth in the Project Documents, and sets forth in reasonable detail the incomplete elements of the Submittal or resubmittal, (2) if any Submittal or resubmittal is deemed complete by operation of Section 8.3(b) of the Lease, such result shall not in any way limit the Port Authority's right to disapprove the same Submittal or resubmittal pursuant to Section 8.4(a) of the Lease and (3) when a Submittal or resubmittal is deemed complete as provided in Section 8.3(b) of the Lease, the Port Authority will, subject to Section 8.3(c) of the Lease, review and respond to such Submittal or resubmittal as provided in Section 8.4 of the Lease.

(c) Pursuant to Section 8.3(c) of the Lease, (1) notwithstanding anything to the contrary in Article 8 of the Lease and without limiting anything provided in the definition of "Port Authority Comment," the Port Authority may, in its sole discretion, notify the Developer in writing, within fifteen (15) days of the receipt of a Submittal or resubmittal, that the Port Authority elects not to undertake a review of such Submittal or resubmittal, (2) in such event, the Developer may proceed to implement the Work that is the subject of such Submittal or resubmittal but without prejudice to the Port Authority's rights to later object to, reject or disapprove such Work on the basis that the Work does not comply with the requirements of the Project Documents and (3) in no event shall such Port Authority election affect the Developer's obligation to perform the Work in accordance with the requirements of the Project Documents, change the scope of the Work, otherwise reduce or increase the Developer's obligations under the Project Documents or constitute a waiver of the Port Authority's rights with respect thereto. If the Developer proceeds to implement the Work that is the subject of such Submittal or resubmittal, the Design-Builder shall implement any DB D&C Work related to such Submittal or resubmittal, without prejudice to the Port Authority's rights to later object to, reject or disapprove such DB D&C Work on the basis that the DB D&C Work does not comply with the requirements of the Project Documents. In no event shall the Port Authority's election not to undertake a review of such Submittal or resubmittal affect the Design-Builder's obligation to perform the DB D&C Work in accordance with the requirements of this Design-Build Contract and the other Contract Documents, change the scope of the DB D&C Work, otherwise reduce or increase the Design-Builder's obligations under the Contract Documents or constitute a waiver of the Port Authority's rights with respect thereto.

Section 8.4 Review Process

(a) The review process for each Submittal shall, in addition to the provisions set forth herein regarding such review process, be subject to the Port Authority's review process established by Section 8.4 of the Lease, which provides that (1) in the case of Submittals that are subject to Port Authority Approval, the Port Authority will, subject to Section 8.3(c) of the Lease, respond to the Developer, within the time period specified in the Lease, the D&C Schedule of Submittals, the Requirements and Provisions for Work or in the other Project Documents with respect to such Submittal or, if no time period is specified, within thirty (30) days after the date on which such Submittal has been deemed complete as described in Section 8.3(b) above, by (i) approving (in whole or in part), certifying, or taking other appropriate action with respect to, the Submittal, as applicable or (ii) disapproving (in whole or in part) such Submittal and providing written notice to the Developer specifying in reasonable detail the reasons for which the Port Authority has disapproved the Submittal; (2) grounds for disapproval by the Port Authority may include that (A) the Work that is the subject of the Submittal fails to comply with any applicable covenant, condition, requirement, term or provision of the Project Documents, (B) the Work that is the subject of the relevant Submittal is not to a standard equal to or exceeding Best Management Practice, or (C) the Developer has not provided all content or information required in respect of the Submittal. If the Port Authority disapproves any Submittal (or a portion thereof) related to the DB D&C Work pursuant to the Lease, the Design-Builder will revise and resubmit the entire Submittal to the Developer as promptly as reasonably possible (but in any event such resubmission to the Developer shall occur no later than five (5) Business Days prior to the deadline for submission to the Port Authority established by the Lease (i.e., thirty (30) days from the Port Authority's disapproval); and (3) following receipt by the Port Authority of any resubmittal, and provided that such resubmittal has been deemed complete as described under Section 8.3(b) above, the Port Authority will review and respond to such resubmittal by approving or disapproving it (in whole or in part) within the same time period applicable to the initial Submittal, and in the event of disapproval, the process described in this Section 8.4(a) shall recommence until the Port Authority approves the entire resubmittal.

(b) With respect to any Submittal that is subject to Port Authority Comment, the Port Authority will, subject to Section 8.3(c) of the Lease, review and provide comments, or notify the Developer that the Port Authority has no comments, to such Submittal within the relevant time period specified in the other provisions of the Lease, the D&C Schedule of Submittals, the Requirements and Provisions for Work or in the other Project Documents with respect to such Submittal or, if no time period is specified, within thirty (30) days after the date on which such Submittal has been deemed complete as described in Section 8.3(b) above. The Design-Builder shall be required to resolve all of the Port Authority's comments that are necessary to bring any Submittal related to the DB D&C Work into compliance with Applicable Law and/or Applicable Standards. The Design-Builder shall also endeavor to accommodate other of the Port Authority's comments unrelated to compliance with Applicable Law or Applicable Standards; provided, however, that the Design-Builder may (after providing notice to the Developer) proceed to implement the Submittal at its sole election and risk without incorporating all or any portion of such Port Authority comments unrelated to compliance with Applicable Law or Applicable Standards, but without prejudice

to the Port Authority's rights to later object to, reject or disapprove the DB D&C Work on the basis that the DB D&C Work does not comply with the requirements of the Project Documents. If the Design-Builder revises the Submittal to address any of the Port Authority's comments, the Design-Builder shall deliver such resubmittal to the Developer no later than five (5) Business Days prior to the deadline for submission to the Port Authority established by the Lease (i.e., the date that is thirty (30) days after the Developer's receipt of the Port Authority's comments) and, as provided in Section 8.4(b) of the Lease, the Port Authority may, within the same review period allotted for the initial Submittal, (i) notify the Developer in writing that the Port Authority has no further comments to the resubmittal or (ii) provide comments to such resubmittal, and in the latter case, the process described in this Section 8.4(b) shall recommence.

(c) Pursuant to Section 8.4(c) of the Lease, if the Developer must submit a Submittal to the Port Authority more than three (3) times due to the Developer's failure to comply with the requirements of (i) with respect to Port Authority Approval, the Lease, the other Project Documents, Applicable Law or Applicable Standards, or (ii) with respect to Port Authority Comment, Applicable Law or Applicable Standards, the Port Authority may seek reimbursement from the Developer for its costs incurred thereafter in reviewing such Submittal (and such reimbursement shall be in addition to the compensation payable by the Developer to the Port Authority in accordance with clauses (h) and (i) of Section 3.5 of the Lease). The Design-Builder shall be responsible for reimbursing the Developer for any costs incurred by the Developer pursuant to this Section 8.4(c) relating to any Submittal required to be submitted by the Design-Builder hereunder, unless such costs are the result of a Developer Act.

(d) With respect to such Submittals that require action by the Port Authority, including signatures, or the supply of information within the possession of the Port Authority regarding Port Authority personnel, operations or history that is not otherwise available to the Developer or the Design-Builder, the Design-Builder shall identify such requested action or information in a cover letter accompanying the Submittal. Pursuant to Section 8.4 of the Lease, (1) the Port Authority shall not be obligated to respond to such requests for information that is otherwise reasonably available to the Developer or to which the Port Authority does not have reasonable access; provided, that if the Port Authority does not have reasonable access to the requested information, it will inform the Developer thereof within thirty (30) days after receipt of the relevant Submittal; and (2) to the extent that any Submittal by the Developer requires the Port Authority to obtain an approval (including any signature) or other response from Governmental Entities that the Developer cannot independently obtain in its own name without Port Authority participation, the Port Authority shall inform the Developer thereof within thirty (30) days after receipt of such Submittal, and the date by which the Port Authority's response to such Submittal is due pursuant to the Lease, the other Project Documents, the D&C Schedule of Submittals or the O&M Schedule of Submittals, shall be extended by such time as is necessary to obtain such approval. Nothing in this Section 8.4 or in the corresponding Lease provisions described herein shall relieve the Design-Builder from its obligation to obtain the Design-Builder Governmental Approvals required by this Design-Build Contract.

(e) Nothing in this Section 8.4 shall limit the Design-Builder's right to request that the Developer challenge the Port Authority's conclusions or input or make any other claim for Equivalent Project Relief pursuant to Article 14A, if applicable.

Section 8.5 Open Dialogue and Cooperation; Design and Construction Working Group

(a) Pursuant to Section 8.5 of the Lease, the Developer and the Port Authority have agreed to cooperate with each other and engage at all times in an open dialogue with respect to the Work, the Premises, the Supporting Projects and the Perimeter Intrusion Detection System (PIDS). To assist in such cooperation by the Developer, the Developer and the Design-Builder shall work in a diligent and expeditious manner to actively seek to prevent, avoid and mitigate potential impacts to construction schedules, scope of Work and increased costs of construction for the Construction Project, the Supporting Projects and the Perimeter Intrusion Detection System (PIDS), as well as such impacts on the increased costs of Operations and Maintenance Work. Such efforts may include, as appropriate, providing prompt updates to one another regarding possible changes to construction progress, seeking acceptable work-arounds to construction activities, identifying new or improved areas of coordination involving construction activities, and considering in good faith any proposed changes to the scope of work for the Construction Project, the Supporting Projects and the Perimeter Intrusion Detection System (PIDS), as the case may be. In addition, each Party shall provide prior written notice to the other Party as promptly as reasonably possible after becoming aware that an event or a condition has occurred or is likely to occur that could reasonably be expected to have such impacts, including any such event or condition that could reasonably be expected to become a Compensation Event or a Delay Event.

(b) Pursuant to Section 8.5 of the Lease, the Developer and the Port Authority have agreed to establish a design and construction working group to review the development of the Construction Project and all drawings, specifications, calculations, reports and other relevant documentation prior to the submission of any Submittals to the Port Authority with respect to the D&C Work and have provided that (1) the working group shall meet on a regular basis in order that the Port Authority will generally be informed of all aspects of the design and construction of the Construction Project and all approval dates for all Submittals with respect to the D&C Work; (2) the meetings shall be on an informal basis to encourage a full discussion of all appropriate issues and shall not supersede the Submittal process set forth in Article 8 of the Lease, the D&C Schedule of Submittals or in the other Project Documents; and (3) the working group shall meet in the manner required above until the Construction Project has achieved Final Acceptance. Such working group shall be separate from and in addition to any standing group or committee established between the Developer and the Design-Builder pursuant to Section 10A.2 hereof to promote cooperation and coordination between such Parties.

(c) The Design-Builder shall be advised of meetings between the Developer and the Port Authority (pursuant to Section 8.5(b) and otherwise) concerning matters pertaining to the Design-Builder, the DB D&C Work or the coordination of the DB D&C Work with other Contractors and the contractors working on the Supporting Projects and of the matters to be

addressed at such meetings. If participation is requested by the Port Authority or the Developer, the Design-Builder shall participate in such meetings or otherwise shall provide such input as may be necessary or desirable; provided, that all direction to the Design-Builder shall be provided by the Developer; and provided, further, that nothing in this Section 8.5(c) shall limit the authority of the Developer or the Port Authority to give such direction or take such action as in their respective opinions is necessary to remove an immediate and present threat to the safety of life or property.

Section 8.6 Other Redevelopments

(a) The Parties understand that Delta has initiated preliminary planning and design activities to explore the redevelopment of Terminals C and D at LGA Airport (the “**Other Redevelopments**”). Pursuant to Section 8.6 of the Lease, in connection with the advancement of such Other Redevelopments, Delta is expected to submit certain Tenant Alteration Applications (“**TAA**s”) to the Port Authority for the Port Authority’s review and approval, in accordance with established Port Authority policy and practice.

(b) Pursuant to Section 8.6(b) of the Lease, (1) the Port Authority has agreed that it will in good faith consider and take into account the impacts (including cost, revenue, schedule and the NEPA Documents) that the issuance of any permit pursuant to a TAA submitted by Delta may have on the implementation of the Work, including construction phasing and related activities for the Project and (2) if so requested by the Port Authority, the Developer will provide an advance analysis as to such impacts to facilitate the Port Authority’s review. If requested by the Developer in connection with any Other Redevelopments, the Design-Builder shall provide an advance analysis as to the impact of such Other Redevelopments on the DB D&C Work to enable the Developer to comply with Section 8.6(b)(2) above. In the event the Developer requests that the Design-Builder provide such advance analysis, the Design-Builder shall be responsible (subject to the Developer using Reasonable Efforts to assist the Design-Builder) for the preparation of any such advance analysis (or portion thereof) that relates to the DB D&C Work, including providing the Developer with a Contract Price and Project Schedule impact estimate, which advance analysis (or portions thereof) the Design-Builder shall deliver to the Developer no later than five (5) Business Days before the date on which the advance analysis is due to the Port Authority. Each advance analysis shall include, among other things, the impacts (including cost, revenue and schedule) that the issuance of any permit pursuant to a TAA submitted by Delta may have on the implementation of the Design-Builder’s construction phasing and related activities for the Construction Project.

(c) Pursuant to Section 8.6(c) of the Lease, (1) the Port Authority may not approve any such TAA if the Port Authority reasonably determines that the work proposed to be performed by Delta or its contractors at LGA Airport pursuant to such TAA is reasonably likely to materially interfere with the Work performed or to be performed by the Developer or its Contractors in accordance with the NEPA Documents, the approved Construction Plan or any other Submittal approved by the Port Authority, or any Submittal consistent with the Construction Plan, the Schedule of Submittals and the terms of the Lease that is scheduled or expected to be submitted by the Developer during the Construction Period; provided, that the Port Authority may approve such TAA notwithstanding its likelihood of interfering with the

Work if, as a condition to such approval, the Port Authority and the Developer shall have agreed to the terms of a change order pursuant to the procedures set forth in Section 13.1 of the Lease, which terms are required to reflect an agreement between the Port Authority and the Developer addressing the related impacts to the Work and in the event no agreement is reached between the Port Authority and the Developer, the Port Authority shall issue a Directive Letter pursuant to Section 13.2 of the Lease and (2) in negotiating any such change order, the Port Authority, in its capacity as the airport operator, has the right to require the Developer and its Contractors to execute workarounds, re-sequence work activities, deploy or re-deploy labor forces and implement other mitigation measures as part of such change order. If the Port Authority exercises such right, the Design-Builder and the DB Subcontractors shall be required to execute any such workarounds re-sequencing of work activities, deployment or re-deployment of labor forces and implementation of other mitigation measures as part of such change order.

(d) Pursuant to Section 8.6(d) of the Lease, the Port Authority has included in its agreement with Delta for the Other Redevelopments the following: (i) the requirement that Delta undertake the same obligations with respect to co-operation and co-ordination with the Developer that the Developer has pursuant to Section 10.11 of the Lease, (ii) a covenant by Delta that it will not claim against the Port Authority, the Developer or any of their contractors any indirect, incidental or consequential damages of any nature, whether arising in contract, tort (including negligence) or other legal theory for any damage or disruption in connection with any interference or alleged interference of the Work with the Other Redevelopments, (iii) an indemnity in writing for the benefit of the Port Authority on terms and conditions substantially similar to the terms and conditions applicable to the Developer's indemnity for the benefit of the Port Authority set forth in the Lease, and otherwise acceptable to the Port Authority, (iv) an acknowledgement by Delta and the Port Authority that no provisions of the agreement between the Port Authority and Delta for the Other Redevelopments are intended to or shall create any contractual or third party beneficiary rights between Delta and its contractors, on the one hand, and the Developer and its Contractors, on the other, and (v) an agreement from Delta to submit to the terms that are substantially similar to the terms set forth in Sections 33.4(a), (b), (c), (d) and (e) of the Lease (including an acknowledgement by Delta that Delta shall have no right of recovery against the Developer or its Contractors in contract, tort (including negligence) or any other legal theory as a result of or in connection with the Chief Engineer's decision). The obligations of the Parties under this Design-Build Contract with respect to the Other Redevelopments shall be as set forth in this Design-Build Contract, including Exhibit 46 hereto.

(e) Neither Party will claim against the Port Authority, Delta, the other Party or any of their contractors any indirect, incidental or consequential damages of any nature, whether arising in contract, tort (including negligence) or other legal theory for any damage or disruption in connection with any interference or alleged interference of the Other Redevelopments with the DB D&C Work; provided, further, however, that to the extent the Developer and the Port Authority agree to a change order, or the Port Authority issues a Directive Letter, pursuant to the provisions of Section 33.4 of the Lease, in connection with any interference or alleged interference of the Other Redevelopments with the DB D&C Work, such change order or Directive Letter, as applicable, will represent the sole right to

compensation and damages against the Port Authority and the Developer for the adverse effects of such event of interference or alleged interference.

(f) Pursuant to Section 8.6(f) of the Lease, the Developer and the Port Authority acknowledge and agree that nothing in the Lease is intended to or will create any contractual or third party beneficiary rights between the Developer and its Contractors, on the one hand, and Delta and its contractors, on the other. The Developer and the Design-Builder acknowledge and agree that nothing in this Design-Build Contract is intended to or shall create any contractual or third party beneficiary rights between the Developer, the Design-Builder and their respective Contractors, on the one hand, and Delta and its contractors, on the other.

(g) Pursuant to Section 8.6(g) of the Lease, (1) the Developer agrees to exercise Reasonable Efforts to execute a multi-party interface agreement with the Port Authority and Delta to practically implement the provisions of Sections 8.6 and 33.4 of the Lease relating to the Other Redevelopments; provided, however, that the failure of any party to execute a multi-party interface agreement shall not in any way diminish, extinguish or waive the Developer's obligations, rights and entitlements with respect to the Other Redevelopments and (2) the Developer's execution of a multi-party interface agreement with the Port Authority and Delta will not in any way alter or diminish the Port Authority's obligations pursuant to the Lease with respect to the Other Developments including Sections 8.6, 14.2 and 33.4 of the Lease.

Section 8.7 Community Relations

The Design-Builder shall use Reasonable Efforts to support the efforts of the Developer to perform all community consultation and liaison and to cooperate with the Developer in connection with the response to any complaints relating to construction on the DB Work and Staging Area. The Design-Builder acknowledges and agrees that the Developer or its designee shall have overall responsibility for the management and performance of community relations (and responsibility for the Design-Builder's out-of-pocket costs associated therewith that are approved in advance by the Developer), including for maintaining signage on the Premises, and that all media interface, press releases and similar public statements shall be managed by the Developer or its designee.

ARTICLE 9

PORT AUTHORITY FUNDING

Section 9.1 Port Authority Funding for New Facilities and the Demolition Facilities

(a) Pursuant to Section 9.1(a) of the Lease, the Port Authority is required to make available Port Authority Funding, whether from PFC Funding or from other sources available to the Port Authority, in an aggregate amount set forth in the PFC Funding Plan, up to One Billion Dollars (\$1,000,000,000), and such Port Authority Funding shall be available solely to pay for PFC Eligible Project Costs incurred to perform the D&C Work for the Demolition Facilities and the New Facilities, in amounts and within the time periods set forth in the PFC

Funding Plan, and for no other purpose; and (2) such Section states that, for the avoidance of doubt, the terms and conditions set forth in Sections 9.1 through 9.3 of the Lease address only Port Authority Funding to be made available for the purposes set forth in Section 9.1 of the Lease relating to Port Authority Funding for New Facilities and the Demolition Facilities.

(b) Pursuant to Section 9.1(b) of the Lease, as of the Lease Commencement Date, the Developer and the Port Authority shall have developed and mutually agreed to a plan (as amended from time to time as permitted under Section 9.1(b) of the Lease, the “**PFC Funding Plan**”), which includes the information required to be set forth in such plan as contemplated by Section 9.1(b) of the Lease. The Developer has provided a copy of such PFC Funding Plan (which includes a detailed breakdown of the Elements of the DB D&C Work for the Demolition Facilities and the New Facilities that constitute PFC Eligible D&C Work, to enable the Design-Builder to comply with its obligations under this Design-Build Contract with respect to such PFC Eligible D&C Work) and will provide copies of any subsequent amendments thereto to the Design-Builder.

(c) The Design-Builder agrees and acknowledges that information provided in the PFC Funding Plan will be used to prepare and submit PFC Applications. As between the Developer and the Design-Builder, the Design-Builder is solely responsible for the completeness and accuracy of information and data relating to the Construction Project that the Design-Builder or any of its consultants, DB Subcontractors, advisors or any other person acting on behalf of the Design-Builder, has provided or provides in order for the Developer and the Port Authority to develop a PFC Funding Plan that complies with the PFC Regulations in all respects, and for the Port Authority to prepare responsive PFC Applications. The Design-Builder shall not be responsible for the completeness and accuracy of any information and data directly provided by, or (other than the Design-Builder or any of its consultants, DB Subcontractors, advisors or any other person acting on behalf of the Design-Builder) on behalf of, the Port Authority, the Developer, the Airline Sublessees or their respective consultants and, except as provided in this Section 9.1(c), the Design-Builder shall not be responsible for the Developer’s and the Port Authority’s development or preparation of the PFC Funding Plan or the PFC Applications, or for the compliance of the PFC Funding Plan and PFC Applications with PFC Regulations. Further, the Design-Builder shall cooperate and coordinate with the Developer and the Port Authority and (at the request of the Port Authority) the FAA, in a timely manner, in the preparation, submission and processing of any PFC Application, and the Design-Builder shall promptly provide further information or data that is required by the Developer, the Port Authority or the FAA, and be available as and when needed, to process, renew, amend, supplement or otherwise modify any PFC Application. The Design-Builder’s right to receive Port Authority Funding pursuant to this Article 9 (or payments from the Developer in lieu thereof as set forth in this Section 9.1(c)) with respect to the New Facilities or the Demolition Facilities shall be contingent upon the Design-Builder’s full compliance with its obligations under this Article 9 and under Article 9A. If the conditions in the immediately preceding sentence have been satisfied, the Developer shall be required to (i) pay the Design-Builder any and all such amounts certified by the Lenders’ Technical Advisor and not paid by the Port Authority and/or (ii) provide the Design-Builder a written certification, in lieu of all or a portion of such payment required by clause (i), to the effect that that the Developer is not paying all or a designated portion of such

payment because the Port Authority, due to no fault, act, breach or omission of the Developer, has refused to make payment of amounts that the Lenders' Technical Advisor had certified as being due and payable pursuant to such DB Disbursement Request. The Developer will be required to pay the Design-Builder any and all amounts due under clause (i) of this Section 9.1(c) and/or deliver the written certification under clause (ii) of this Section 9.1(c) on or before the later of (x) five (5) Business Days of receipt by the Developer of notification from the Port Authority that the Port Authority has disapproved, in whole or in part, a Disbursement Request under Section 9.2(d) of the Lease and (y) the date upon which the payment with respect to the New Facilities to be made by the Developer to the Design-Builder pursuant to Article 9A is due.

(d) In addition, the Design-Builder shall be solely responsible for any delay in the performance of the DB D&C Work in accordance with the Project Baseline Schedule, including any delay in achieving any Guaranteed New Facilities Construction Milestone Completion Date, the Guaranteed Substantial Completion Date and/or the Guaranteed Final Acceptance Date, and any increase in costs and loss in revenues to the Design-Builder or any of its DB Subcontractors or Suppliers to the extent resulting from the failure of the Design-Builder to comply with its obligations under Section 9.1(c). The Developer shall be solely responsible for any delay in the performance of the DB D&C Work in accordance with the Project Baseline Schedule, including any delay in achieving any Guaranteed New Facilities Construction Milestone Completion Date, the Guaranteed Substantial Completion Date and/or the Guaranteed Final Acceptance Date, and any increase in costs and loss in revenues to the Developer or any of its contractors to the extent resulting from the failure of the Developer to comply with its obligations under Section 9.1(c).

(e) NOT USED.

(f) Pursuant to Section 9.1(f) of the Lease, (1) if the Port Authority makes any amount of Port Authority Funding available from sources other than PFCs to fund PFC Eligible Project Costs incurred in connection with PFC Eligible D&C Work for the Demolition Facilities and the New Facilities, the Port Authority will be entitled to retain the proceeds of PFC Funding for such PFC Eligible Project Costs subsequently received from the FAA as reimbursement for any such amounts; (2) if, subsequent to any disbursement of Port Authority Funding, the Port Authority or the Developer determines that Port Authority Funding has been made available in an erroneous amount, the party that made such determination is required to inform the other party thereof as promptly as possible and (3) in the case of an overfunding, the Developer is required, as promptly as possible, to cause payment to be returned, to the Port Authority in the amount of such overfunding, and in the case of an underfunding, the Port Authority shall, as promptly as possible but in any case, not later than the next disbursement date, make payment in the amount of such underfunding into the PAF Account for disbursement to the Design-Builder or other specified Contractors. In the event any such erroneous overfunding or underfunding affects amounts of Port Authority Funding paid to or to be reimbursed by the Design-Builder, the Design-Builder shall, as promptly as possible, return payment to the PAF Account, in the event of an erroneous overfunding, or be entitled to receive payment in the amount of the erroneous underfunding from the Port Authority via the PAF Account pursuant to Section 9.1(f) of the Lease, in the

event of an erroneous underfunding. If, subsequent to any disbursement of Port Authority Funding pursuant to this Section 9.1 and Section 9.2, the Developer or the Design-Builder determines that Port Authority Funding has been paid in an erroneous amount (whether below or above the requisitioned amount), such Party shall inform the other Party (and the Developer shall, in turn, inform the Collateral Agent and the Port Authority) as promptly as possible.

(g) For purposes of the PFC Applications, the Developer and the Port Authority will be entitled to rely upon the truth and accuracy of information, estimates, drawings and other data provided by the Design-Builder; provided, that (i) the use of such information, estimates, drawings and other data will not constitute a waiver by the Developer of any breach of this Design-Build Contract by the Design-Builder or relieve the Design-Builder of any of its obligations hereunder, and (ii) the Developer acknowledges that the information, estimates, drawings and other data may be preliminary when provided and will be accurate to the best of the Design-Builder's knowledge at the time it is provided.

Section 9.2 Disbursement Procedures for Port Authority Funding for New Facilities and the Demolition Facilities

(a) Pursuant to Section 9.2(a) of the Lease, as a condition to any payment by the Port Authority of Port Authority Funding for PFC Eligible Project Costs incurred in connection with PFC Eligible D&C Work for the Demolition Facilities and the New Facilities the Developer shall be obligated to first submit to the Port Authority a Disbursement Request (i.e., a request for reimbursement with respect to such PFC Eligible Project Costs, inclusive of such back-up documentation and detail as shall be acceptable to the Port Authority). The Developer shall submit such Disbursement Requests based on corresponding DB Disbursement Requests made by the Design-Builder pursuant to this Section 9.2 and complying with the provisions hereof and of Article 9A. The Design-Builder shall be responsible for the preparation of DB Disbursement Requests with respect to the DB D&C Work that constitutes PFC Eligible Project Costs incurred in connection with PFC Eligible D&C Work for the Demolition Facilities and the New Facilities (as such PFC Eligible D&C Work has been identified in the PFC Funding Plan pursuant to Section 9.1(b)), including all certifications, affidavits, documents and information required to satisfy the requirements for any Disbursement Request under the Lease or any requirement of the Lenders' Technical Advisor pursuant to the Payment Matrix or otherwise reasonably requested by the Lenders' Technical Advisor, except in each case for any such items that are identified as being the responsibility of the Developer pursuant to Section 9.2(b) below. Unless a DB Disbursement Request for a specified payment at a specified time is expressly contemplated by this Design-Build Contract, the Design-Builder may submit a DB Disbursement Request to the Developer and the Lenders' Technical Advisor, for submission by the Developer to the Port Authority and the Collateral Agent, at a frequency not to exceed once every month during the period from the issuance of the Design NTP until three (3) months after Final Acceptance. Such DB Disbursement Requests and supporting information required hereby or reasonably requested by the Lenders' Technical Advisor must be submitted to the Developer, in draft and subsequently in final form, as applicable, on or before the applicable date set forth in the Payment Matrix.

(b) The following conditions to payment shall apply with regard to each DB Disbursement Request. Each final DB Disbursement Request shall be evidenced by a DB Disbursement Request Certificate, which certificate shall be accompanied by the following (each to be provided on or before the applicable date set forth in the Payment Matrix):

(i) a progress report on the activities performed during the period covered by the DB Disbursement Request;

(ii) a detailed list of PFC Eligible Project Costs incurred in connection with PFC Eligible D&C Work for the Demolition Facilities and the New Facilities that will be paid with the amount requested in the DB Disbursement Request, set forth in reasonable detail, and the amounts to be paid to the Design-Builder, and including reproduction copies or duplicate originals of the invoices and other documentation supporting such costs;

(iii) a detailed description of the categories of such PFC Eligible Project Costs incurred (e.g., apron, roadway, terminal headhouse, etc.) that will be reimbursed with the amount requested in the DB Disbursement Request, together with a further breakdown of each such category that describes the Elements of the PFC Eligible D&C Work;

(iv) subject to Section 9.2(f), a certification by the Design-Builder that the Construction Project and the Premises, and any and all interests and estates therein, and all improvements and materials placed on the Premises, for which payment has been received by the Design-Builder, are free and clear of any and all Liens or Claims arising out of or in connection with the performance of the DB D&C Work by the Design-Builder or any of the DB Subcontractors;

(v) a copy of a release and waiver of Liens, in the form attached hereto as Exhibit 16-C-1, from each DB Subcontractor with a Contract of Five Hundred Thousand Dollars (\$500,000) or more in value, individually or in the aggregate, or, subject to Section 9.2(f), if the Design-Builder is unable to obtain all such waivers, a letter of credit or bond that has received Port Authority Approval and is acceptable to the Developer in its reasonable discretion, to protect the Port Authority, the Developer, the Construction Project, the Construction Site and the Premises from any and all Claims or Liens; and

(vi) NOT USED.

(c) Pursuant to Section 9.2(c) of the Lease, subject to the provisions set forth in Section 9.2(f) of the Lease, no Disbursement Request will be reviewed or processed by the Port Authority until the Port Authority receives a Disbursement Request that complies with Sections 9.2(a) and 9.2(b) of the Lease. The Developer shall submit each Disbursement Request to the Collateral Agent and the Port Authority for payment no later than two (2) Business Days after the Developer receives (x) a DB Disbursement Request that, subject to Section 9.2(f), complies with Sections 9.2(a) and 9.2(b) above and Section 9A.1 below, and (y) the related Lenders' Technical Advisor Certificate.

(d) Pursuant to Section 9.2(d) of the Lease, (1) the Port Authority is required to notify the Developer (with a copy to the Collateral Agent) of its approval or disapproval of the Disbursement Request that complies with Sections 9.2(a) and 9.2(b) of the Lease within thirty (30) days following receipt by the Port Authority of such request, and (2) within fifteen (15) Business Days after approval by the Port Authority of a Disbursement Request, the Port Authority is required to pay the amount specified in such Disbursement Request into the PAF Account for disbursement to the Design-Builder. The Developer will, as soon as practicable and in no event more than two (2) Business Days thereafter, notify the Design-Builder of any disapproval received from the Port Authority under clause (1) above. The Developer will ensure that, pursuant to the Collateral Agency Agreement, any amount paid by the Port Authority into the PAF Account with respect to amounts that remain due and payable to the Design-Builder pursuant to this Section 9.2 will be disbursed to the Design-Builder within five (5) Business Days of receipt thereof from the Port Authority. The Developer agrees that it is required to pay the Design-Builder any and all amounts due under clause (i) of Section 9.1(c) and/or deliver the written certification under clause (ii) of Section 9.1(c) on or before the later of (x) five (5) Business Days of receipt by the Developer of notification from the Port Authority that the Port Authority has disapproved, in whole or in part, a Disbursement Request under Section 9.2(d) of the Lease and (y) the date upon which the payment with respect to the New Facilities to be made by the Developer to the Design-Builder pursuant to Article 9A is due.

(e) Pursuant to Section 9.2(e) of the Lease, (1) if the Port Authority determines that a PFC Eligible Project Cost for which payment is requested pursuant to a Disbursement Request is not identified as a PFC Eligible Project Cost in the PFC Funding Plan, the Port Authority may disapprove the requested funds corresponding to such portion of the Disbursement Request; (2) the Port Authority is required to notify the Developer (with a copy to the Collateral Agent) of the reasons for such disapproval, and pay undisputed amounts into the PAF Account within fifteen (15) Business Days after the Port Authority approves the undisputed amounts and (3) any such disapproved amounts will be made available in a subsequent payment if the reasons for disapproval are satisfied or if it is determined, pursuant to the Port Authority Dispute Resolution Procedures, that the Port Authority was not entitled to disapprove such Disbursement Request, or a portion thereof (if applicable), in accordance with Section 9.2(e) of the Lease. The Developer will notify the Design-Builder within two (2) Business Days after receipt of notice of any such disapproval by the Port Authority; will use Reasonable Efforts to assist the Design-Builder with respect to its revisions, if any, that are required with respect to the related DB Disbursement Request to ensure that the reasons for disapproval are satisfied; and will pursue resolution of any disputes with respect to any such Port Authority disapproval pursuant to the Port Authority Dispute Resolution Procedures if the Design-Build presents a Reasonable DB Claim with respect to such disapproval. The Developer shall be required to (i) pay the Design-Builder any and all amounts certified by the Lenders' Technical Advisor as set forth in such DB Disbursement Request but that are not paid by the Port Authority pursuant to this Section 9.2(e) and/or (ii) provide the Design-Builder a written certification, in lieu of all or a portion of such payment required by clause (i), to the effect that that the Developer is not paying all or a designated portion of such payment because the Port Authority, due to no fault, act, breach or omission of the Developer, has refused pursuant to Section 9.2(e) of the Lease to make payment of amounts that the

Lenders' Technical Advisor had certified as being due and payable pursuant to such DB Disbursement Request. The Developer will be required to pay the Design-Builder any and all amounts due under clause (i) of this Section 9.2(e) and/or deliver the written certification under clause (ii) of this Section 9.2(e) on or before the later of (x) five (5) Business Days of receipt by the Developer of notification from the Port Authority that the Port Authority has disapproved, in whole or in part, a Disbursement Request under Section 9.2(e) of the Lease and (y) the date upon which a payment with respect to the New Facilities to be made by the Developer to the Design-Builder in relation to such DB Disbursement Request is due pursuant to Article 9A.

(f) Pursuant to Section 9.2(f) of the Lease, if the Developer fails to furnish a satisfactory letter of credit or bond as required by Section 9.2(b)(v) of the Lease, the Port Authority may withhold from any amount payable under the Lease, an amount reasonably sufficient to discharge any or all applicable Liens or Claims, and the Port Authority may, in its discretion, (i) with ten (10)-days' prior written notice to the Developer (upon receipt of which the Developer will provide such notice to the Design-Builder within two (2) Business Days), discharge any such Lien or Claim with the moneys withheld, whereupon for purposes of the Lease, such moneys shall be deemed to have been paid thereunder) or (ii) keep such withheld amount until the statutory period has expired by which any Lien may be created; (2) if the Lessee has furnished a satisfactory letter of credit or bond as required by Section 9.2(b)(v) of the Lease, the Port Authority is required to return to the Developer (and the Developer shall thereafter as soon as practicable return to the Design-Builder) such letter of credit or bond once the Lien or Claim it secures has been satisfied in full or if such Lien or Claim has not been satisfied in full, upon the expiration of the applicable statutory period (unless the Port Authority, in its discretion, following ten (10)-days' prior written notice to the Developer (upon receipt of which the Developer will provide such notice to the Design-Builder with two (2) Business Days), has used such letter of credit or bond to discharge such Lien or Claim in order to protect the Port Authority, the Construction Project and the Premises); and (3) the provisions of such Section 9.2(f) of the Lease shall also apply if the Developer fails to provide a satisfactory letter of credit or bond as required by Section 10.7(a)(xi) of the Lease as a condition to achieving Final Acceptance of the Construction Project. If the Design-Builder fails to furnish a satisfactory letter of credit or bond as required by Section 9.2(b)(v) or Section 10.7(a)(xi), any withholding rights of the Port Authority and other provisions of Section 9.2(e) of the Lease, as described above, will apply to the Design-Builder pursuant to this Section 9.2(e).

(g) NOT USED.

(h) The Design-Builder shall keep and maintain, and cause its DB Subcontractors to keep and maintain, all records, documentation and other supporting information evidencing the application of Port Authority Funding to the Construction Project in accordance with Section 30.1(b).

(i) NOT USED.

(j) For the avoidance of doubt, the provisions of Sections 8.1 through 8.4 shall not apply to any DB Disbursement Request or other submittal described in this Section 9.2.

Section 9.3 Application and Availability of Port Authority Funding for New Facilities and the Demolition Facilities

The proceeds of Port Authority Funding paid by the Port Authority pursuant to Sections 9.1 and 9.2 shall be applied by the Design-Builder to pay or reimburse the Design-Builder or its DB Subcontractors for PFC Eligible Project Costs incurred by the Design-Builder or its DB Subcontractors in connection with the performance of PFC Eligible D&C Work for the Demolition Facilities and the New Facilities as such PFC Eligible D&C Work has been identified in the PFC Funding Plan.

Section 9.4 Port Authority Funding for New Improvements and the Central Hall

(a) Pursuant to Section 9.4(a) of the Lease, (1) subject to Section 9.4 of the Lease, the Port Authority shall make payments to the Developer for the performance by the Developer of the D&C Work with respect to (i) the New Improvements in accordance with the New Improvements Payment and Milestone Schedule (the “**New Improvements Milestone Payments**”) and (ii) the Central Hall in accordance with the Central Hall Payment and Milestone Schedule (the “**Central Hall Milestone Payments**”) and together with the New Improvements Milestone Payments, the “**Milestone Payments**”); and (2) any payment by the Port Authority to the Developer for the PNTP Work related to the New Improvements completed under the PNTP Agreement (excluding amounts paid by the Port Authority in respect of Port Authority Changes undertaken pursuant to the PNTP Agreement and any Lessee Damages paid in respect of any Compensation Event in connection with the PNTP Work) will be deducted from the amount payable by the Port Authority to the Developer with respect to the New Improvements under the Lease. The Developer shall pay or cause to be paid all such Port Authority Funding with respect to the DB D&C Work related to the New Improvements or the Central Hall, as applicable, to the Design-Builder within five (5) Business Days of receipt thereof by the Collateral Agent or the Developer from the Port Authority.

(b) The Parties acknowledge and agree that design drawings, cost information (aggregate and itemized) and other information provided in the Finalized Proposal or otherwise provided to the Port Authority from time to time with respect to the design and construction of the New Improvements or the Central Hall (as such information may have been modified from time to time with the agreement of the Developer, the Design-Builder (if required hereunder) and the Port Authority) will be used to prepare and submit PFC Applications for PFC Funding for the New Improvements or the Central Hall, as the case may be. The Design-Builder represents that any such design drawings, cost information and such other information provided (as may have been modified) by the Design-Builder will be updated, complete and accurate when provided to the Developer for submission to the Port Authority. Further, the Design-Builder shall cooperate and coordinate with the Developer and the Port Authority and (at the request of the Port Authority) the FAA, in a timely manner, in the preparation, submission and processing of any PFC Application for PFC Funding of the

New Improvements or the Central Hall, as the case may be, and the Design-Builder shall promptly provide to the Developer, for submission to the Port Authority, updates to previously submitted information, and shall provide further information or data that is required by the Port Authority or the FAA, and be available as and when needed, to process, renew, amend, supplement or otherwise modify any PFC Application. Pursuant to Section 9.4 of the Lease, (1) notwithstanding anything to the contrary, the Port Authority's obligation to make Milestone Payments pursuant to Section 9.4 of the Lease shall not be affected by any FAA decision with respect to a PFC Application for the New Improvements or the Central Hall, as the case may be, that disapproves the application in whole or in part, or authorizes PFC Funding on terms that deviate from the New Improvements Payment and Milestone Schedule or the Central Hall Payment and Milestone Schedule, whether the deviation is in amounts authorized, allocation of funding, timing or otherwise and (2) for greater clarity, so long as the Developer is in compliance with its obligations under Section 9.4(b) of the Lease, it is not a condition to the submission of a written request for any of the Milestone Payments that the PFC Application relevant to such Milestone Payment for which payment is being requested be submitted to or approved by the FAA at the time of such request. So long as the Design-Builder is in compliance with its obligations under this Section 9.4(b), the provisions of the previous sentence shall also apply to the Design-Builder and its written requests for any of the Milestone Payments hereunder.

(c) Any payments made by or on behalf of the Developer to the Design-Builder pursuant to this Section 9.4 shall be separate from and in addition to the Port Authority Funding made available to the Design-Builder for the payment of PFC Eligible Project Costs incurred in connection with DB D&C Work constituting PFC Eligible D&C Work for the New Facilities and the Demolition Facilities described in Section 9.1.

(d) The Design-Builder may submit to the Developer, for submission to the Port Authority, a written request for the Milestone Payments due based upon the Design-Builder's achievement of specified Milestones, at a frequency not to exceed once every month, all in accordance with the New Improvements Payment and Milestone Schedule and the Central Hall Payment and Milestone Schedule, as applicable. Such request for Milestone Payments shall be submitted concurrently with and as part of the monthly DB Disbursement Request described in Section 9.2 above and in Section 9A.1 below. Each such request for Milestone Payments shall include the form attached hereto as Exhibit 16-B and shall be for the specified Milestone(s) that have been achieved during the immediately preceding month. With each such request for payment, the Design-Builder shall include, for submission by the Developer to the Port Authority and the Collateral Agent, the monthly progress report for the month for which payment is requested, together with such additional certifications and information reasonably requested by the Developer hereunder or required by the Port Authority pursuant to the Lease relating to such payment request or required by Lenders' Technical Advisor pursuant to the Payment Matrix or otherwise reasonably requested by the Lenders' Technical Advisor, and shall otherwise meet all the conditions to payment set forth in Section 9.2(b) to the extent they relate to the New Improvements or the Central Hall, as the case may be. For avoidance of doubt, each such request for payment shall constitute part of the monthly DB Disbursement Request submitted by the Design-Builder in compliance with this Article 9 and Section 9A.1 and shall be subject to the procedures set forth herein and therein. ████████████████████

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This amount shall be in addition to any other Milestone Payments the Design-Builder is entitled to request for payment.

(e) Pursuant to Section 9.4(e) of the Lease, (1) the Port Authority is required to notify the Developer of its approval or disapproval of the request for payment within thirty (30) days following receipt by the Port Authority of a complete and correct request for payment; (2) within fifteen (15) Business Days after approval by the Port Authority of such request, the Port Authority is required to pay such amount (i) to, or to the order of, the Developer, by payment into one or more Developer accounts established with the Deposit Account Bank as set forth in the Financing Documents and identified to the Port Authority by the Developer, or (ii) if the Developer so requests in writing, directly to the Design-Builder (as designated by the Developer in accordance with Section 9.4(e) of the Lease); provided, that notwithstanding such direct payment to the Design-Builder by the Port Authority, such payment shall be deemed to have been made to the Developer for the purposes of the Lease and nothing therein or herein shall be construed to entitle such Design-Builder to any rights whatsoever under the Lease or relieve the Developer from its obligations thereunder or hereunder; (3) if the Port Authority disapproves such request in whole or in part, the Port Authority is required to notify the Developer of the reasons of such disapproval, and pay undisputed amounts within fifteen (15) Business Days after the Port Authority approves the undisputed amounts; and (4) any such disapproved amounts will be available in a subsequent payment if the reasons for disapproval are satisfied or if it is determined, pursuant to the Port Authority Dispute Resolution Procedures, that the Port Authority was not entitled to disapprove such request, or a portion thereof (if applicable) pursuant to Section 9.4(e) of the Lease. The Developer will notify the Design-Builder within two (2) Business Days after receipt of notice of any such disapproval by the Port Authority; will use Reasonable Efforts to assist the Design-Builder with respect to its revisions, if any, that are required with respect to the related request for payment to ensure that the reasons for disapproval are satisfied; and will pursue resolution of any disputes with respect to any such Port Authority disapproval pursuant to the Port Authority Dispute Resolution Procedures if the Design-Build presents a Reasonable DB Claim with respect to such disapproval.

(f) [Reserved]

(g) Without limiting any of the other provisions of this Section 9.4, to the extent any Milestones included as part of the DB PNTP Work have not been completed or, if completed, have not been invoiced by the Design-Builder to the Developer and submitted to the Port Authority prior to the Lease Commencement Date, the Design-Builder shall complete or invoice, as applicable, such Milestones in accordance with this Design-Build Contract and, pursuant to Section 9.4(f) of the Lease, payment therefor will be made by the Port Authority in accordance with Section 9.4 of the Lease (it being understood that such DB PNTP Work that has been performed by the Design-Builder and invoiced to the Developer (for subsequent invoicing to the Port Authority) but not paid by the Port Authority prior to the execution of this Design-Build Contract shall be payable by the Port Authority at or following the Lease

Commencement Date, subject to the requirements set forth in Section 9.4(e)). In addition, the Parties agree that the Design-Builder's first request for the Milestone Payments hereunder may include an invoice for the full amount that would have been due under the PNTP DB Contract for any DB PNTP Work performed but not invoiced to the Port Authority prior to the Lease Commencement Date.

(h) For the avoidance of doubt, the provisions of Sections 8.1 through 8.4 shall not apply to any request for payment or other submittal described in this Section 9.4.

Section 9.5 Application and Availability of Port Authority Funding for New Improvements and the Central Hall

Pursuant to Section 9.5 of the Lease, the proceeds of Port Authority Funding received pursuant to Section 9.4 of the Lease are required to be applied to pay the Developer or its Contractors and Suppliers for costs incurred or paid by the Developer or its Contractors or Suppliers in connection with the performance of the D&C Work for the New Improvements and the Central Hall. The Design-Builder shall not submit any requisition for payment from Port Authority Funding pursuant to Section 9.4 in violation of such requirement.

Section 9.6 Adjustments for Contract Compensation

(a) Pursuant to Section 9.6(a) of the Lease, compensation adjustment relating to the asphalt or cement testing referred to in Part A of Exhibit 27 of the Lease may be made either as an additional payment or as a deduction from a payment by the Port Authority to the Developer (or to the Design-Builder), all as described in more detail in the New Improvements Specifications.

(b) Pursuant to Section 9.6(b) of the Lease, solely to the extent that the Perimeter Intrusion Detection System (PIDS) is subcontracted by the Developer or the Design-Builder to the Port Authority's PIDS provider, as described in Section 24 of the Design and Construction Requirements and the documents referenced therein (the "**PIDS Work**") in accordance with Section 10.11(b) of the Lease, the compensation adjustment relating to the Developer's scope of the D&C Work with respect to the Perimeter Intrusion Detection System (PIDS) shall be as set forth on Part B of Exhibit 27 of the Lease. The Design-Builder's obligations with respect to the PIDS work shall be as set forth in Section 8.5, Section 10.11(b) and Part B of Exhibit 27.

(c) Any payment by the Port Authority pursuant to Section 9.6(a) or Section 9.6(b) of the Lease shall be included in the DB Disbursement Request submitted by the Design-Builder in accordance with Section 9.4(d) for any month in which such DB D&C Work was performed by the Design-Builder.

(d) Pursuant to Section 9.6(d) of the Lease, the compensation adjustment relating to the actual cost of monitoring Archaeological Remains may be made either as an additional payment, where such actual costs exceed the Archaeological Allowance, or as a deduction from a payment, where such actual costs are less than the Archaeological Allowance, by the

Port Authority to the Developer (or to the Design-Builder as designated by the Developer in accordance with Section 9.4(e) of the Lease).

Section 9.7 Maintaining of Records; Accounting of Payments Received

(a) The Design-Builder shall keep and maintain, and cause its DB Subcontractors and Suppliers, to keep and maintain, all records, documentation and other supporting information evidencing the requests for payment to the Construction Project in accordance with Section 30.1.

(b) No later than one hundred and fifty (150) days after Final Acceptance, the Design-Builder will provide a final accounting to the Developer, for submission to the Port Authority, that includes supporting documentation regarding the application of Port Authority Funding to the Construction Project, and the Design-Builder shall cooperate with the Developer and the Port Authority to assist the Port Authority with administering the close-out of the Construction Project.

Section 9.8 No Waiver

No approvals by the Port Authority or the Developer, or payments or disbursements by the Port Authority or the Developer, will be construed as an acceptance of any DB D&C Work that is not in accordance with the requirements of the Contract Documents.

ARTICLE 9A

ADDITIONAL PROVISIONS REGARDING PRICE AND TERMS OF PAYMENT

Section 9A.1 Contract Price and Payment

(a) In consideration of the Design-Builder carrying out its obligations under this Design-Build Contract, (x) the Design-Builder shall be paid the amount of [REDACTED]

[REDACTED] (as the same may be adjusted pursuant to this Design-Build Contract, the “**Contract Price**”), inclusive of: (i) the allowances set forth in Exhibit A-12 and A-46, and (ii) the DB D&C Work required to be funded by the Port Authority pursuant to the PNTF DB Contract, and (y) except as expressly set forth herein, the Design-Builder shall not be entitled to any payment other than the Contract Price for its performance of the DB D&C Work. The Design Builder will request reimbursement for the allowance amounts set forth in Exhibits A-12 and A-46 consistent with the terms of those Exhibits, which reimbursement requests shall be included in each monthly DB Reimbursement Request (to the extent applicable in a particular month).

(b) Subject to the limitations on the Developer’s payment obligations with respect to Port Authority Funding as set forth in Section 9A.4, payments by the Developer to the Design-Builder shall be made monthly based on performance of the DB D&C Work set forth on payment and values schedules, subject to the applicable maximum cumulative drawdown schedules with respect to the New Facilities, the New Improvements and the Central Hall, as

set forth in Exhibits 26-A, 26-B and 26-C attached hereto, respectively, which the Parties may alter by mutual agreement (subject to Port Authority Approval, if applicable), together with any additional sums due to the Design-Builder pursuant to the terms of this Design-Build Contract, and the delivery of a DB Disbursement Request pursuant to and in compliance with the provisions of Article 9 hereof and this Section 9A.1. Except as expressly set forth herein or otherwise mutually agreed upon by the Parties, the Design-Builder will not be required to accelerate the DB D&C Work or perform other mitigation efforts that would result in projected payments ahead of the maximum cumulative drawdown schedule or be responsible for the consequences of failing to pursue any such acceleration or other mitigation efforts.

(c) The Design-Builder shall submit (1) a monthly requisition to the Developer, (a “**DB Disbursement Request**”) and (2) an accompanying certificate (a “**DB Disbursement Request Certificate**”) of an authorized fiscal officer of the Design-Builder, in the form attached hereto as Exhibit 16-A and sworn to before a notary public and delivered to the Developer and the Lenders’ Technical Advisor, in each case on or before the applicable date set forth in the Payment Matrix. The Developer shall pay any amounts payable to the Design-Builder pursuant to a DB Disbursement Request with respect to the New Facilities (or cause such amounts to be paid by the Collateral Agent) within thirty (30) days after receipt of the final form of such DB Disbursement Request and the related Lenders’ Technical Advisor Certificate, except for amounts that are payable by the Port Authority as Port Authority Funding for New Facilities and the Demolition Facilities or that are payable by the Developer pursuant to Section 9.1 or Section 9.2, which shall in each case be governed by Article 9 and shall be payable by the Port Authority or the Developer, as applicable, to the Design-Builder as and when set forth therein. In addition to a DB Disbursement Request Certificate, each DB Disbursement Request must include (i) all information required by Article 9, (ii) reasonable substantiation of all amounts claimed under such DB Disbursement Request and (iii) any other information justifying payment as the Developer and/or the Lenders’ Technical Advisor may reasonably require, in the case of each of clauses (ii) and (iii), taking into account the documentation that customarily accompanies requisitions related to lump sum contracts.

(d) The Design-Builder shall use Reasonable Efforts to cooperate and coordinate with the Developer and (at the request of the Developer) the Collateral Agent, in a timely manner, in the preparation, submission and processing of any Disbursement Request for funds from the Collateral Agent, and the Design-Builder shall promptly provide further information or data that is reasonably required by the Developer or the Collateral Agent in connection therewith or with any DB Disbursement Request hereunder.

(e) The Developer may withhold payment of any amount payable pursuant to a DB Disbursement Request that it disputes in good faith as not being due and payable based on the progress of the DB D&C Work. Further, whenever any amount becomes payable by the Design-Builder to the Developer under this Design-Build Contract, the Developer shall be entitled to set such amount off against any amount then due, or which at any time thereafter may become due, from the Developer to the Design-Builder under this Design-Build Contract. Any payment withheld or offset hereunder shall be subject to the DB Dispute Resolution Procedure set forth in Article 33A hereof in the event of a Dispute, unless the Lease requires resolution of such dispute pursuant to Article 33 of the Lease.

(f) In particular, but not by way of limitation of Section 9A.1(e) above, the Developer shall be entitled to withhold from any payment to be made by the Developer to the Design-Builder (with written notice of such withholding to the Design-Builder) such amounts as are reasonably necessary for so long as is reasonably necessary to protect itself, acting in good faith, against any losses, claims or issues arising from any of the following, provided that the Developer shall promptly pay the Design-Builder any amount so withheld where such losses, claims or issues are rectified or satisfied:

(i) failure to cure any DB Work Defect or to pay amounts due to the Port Authority with respect thereto;

(ii) any third party claims for which the Developer reasonably believes that the Design-Builder is required to indemnify the Developer but has not yet done so, but only to the extent that insurance proceeds from the insurance policies required to be maintained by the Design-Builder or the Developer are not available;

(iii) any damages to property for which the Design-Builder is responsible, but only to the extent that insurance proceeds from the insurance policies required to be maintained by the Design-Builder or the Developer are not available;

(iv) liens arising in connection with the DB D&C Work (other than as a result of the Developer's failure to pay an undisputed amount hereunder) and for which the Design-Builder has not discharged or bonded over pursuant to Section 3.3;

(v) failure to pay any accrued and unpaid Delay LDs as and when required by this Design-Build Contract; or

(vi) the occurrence of a Potential Design-Builder Event of Default or a Design-Builder Act.

(g) Without limiting the foregoing, the Developer will be entitled to deduct from any payment to be made to the Design-Builder under this Design-Build Contract (or recover as a debt from the Design-Builder to the extent that the amounts required to be withheld are greater than the amounts payable to the Design-Builder), an amount equivalent to any amount deducted by the Port Authority pursuant to the Lease to the extent attributable to the Design-Builder's failure to satisfy its obligations under this Design-Build Contract.

(h) The Financing Documents provide to the Lenders' Technical Advisor certain rights of review, inspection, certification and consultation with the Developer concerning the Construction Project and the D&C Work in order that the Lenders' Technical Advisor may regularly and completely apprise the Lenders of the progress and other aspects of the Construction Project and the D&C Work. The Design-Builder shall fully and promptly cooperate with the Lenders' Technical Advisor as reasonably requested by the Developer. Any acceptance or comment by the Lenders' Technical Advisor, the Developer or the Lenders shall not be construed to impose on the Lenders' Technical Advisor, the Developer or the Lenders any control of any portion of the DB D&C Work, or relieve the Design-Builder of any of its duties, liabilities or obligations under this Design-Build Contract. The Developer

shall be copied on all communications to and from the Lenders' Technical Advisor regarding the DB D&C Work.

[REDACTED]

Section 9A.3 Taxes

(a) Except as set forth in Section 9A.3(b) below, the Design-Builder shall be responsible for all taxes imposed on the DB D&C Work, including any equipment, materials, labor or services by any Governmental Entity having jurisdiction over the DB D&C Work.

(b)

(i) Subject to Section 9A.3(b)(ii) below, the Developer does not anticipate that any New York (State or City) sales or use taxes will be assessed against the Design-Builder with respect to the DB D&C Work. If any such sales or use taxes are assessed against the Design-Builder, the Contract Price shall be increased to account for such assessment (unless such assessment of sales or use tax occurred as a direct result of an act or omission of the Design-Builder). To assist in maintaining the sales and use tax exemption, the Design-Builder shall, when purchasing materials for use in connection with the DB D&C Work, provide to the seller of such materials a complete and accurate Form ST-120.1. The Developer agrees to exercise all Reasonable Efforts with the Port Authority to the extent necessary to obtain the exemption status.

(ii) The Design-Builder shall be responsible for any New York (State or City) sales or use taxes with respect to "movable, tangible property" (or equipment) purchased or rented by the Design-Builder assessed with respect to the DB D&C Work.

Section 9A.4 Port Authority Payments

To the extent not governed by the Collateral Agency Agreement with respect to the PAF Account (for which the payment timing mechanics are described in Article 9 above), the Developer will remit or cause to be remitted any Port Authority Funding or Lessee Damages amounts that are due and payable to the Design-Builder within five (5) Business Days of receipt thereof from the Port Authority by the Developer or the Collateral Agent, as the case may be, but the Developer shall not otherwise be responsible for making payments to the Design-Builder pursuant to the payment provisions of this Design-Build Contract with respect to any DB D&C Work or other amounts to be paid for by the Port Authority for the benefit of the Design-Builder pursuant to this Design-Build Contract until such amounts are received by the Developer or the Collateral Agent from the Port Authority; provided, however, if an aggregate of at least \$25 million of Port Authority Funding or Lessee Damages payments continue to be delinquent from the Port Authority for a period of six (6) months, the Developer shall be responsible for making payment to the Design-Builder for such aggregate delinquent amount no later than five (5) Business Days thereafter, regardless of whether the Developer or the Collateral Agent has received sufficient funds from the Port Authority by such date. For the avoidance of doubt, this Section 9A.4 shall not apply to any amounts required to be paid by the Developer as set forth in Section 9.1(c), Section 9.2(d) or Section 9.2(e).

Section 9A.5 Central Hall and Central Hall Impact Allocation

The Developer and the Design-Builder agree that, due to the inter-relationship and inter-dependence of the Central Hall, the New Facilities, and the New Improvements, certain values relating to the Central Hall and the Central Hall impact have been allocated to the New Facilities and the New Improvements, as reflected (together with the Central Hall values allocated directly to the Central Hall) in the payment and milestone schedules set forth in Exhibits 26-A, 26-B, and 26-C hereto.

Section 9A.6 Payment of Initial Professional Liability Insurance Premium

The Developer and the Design-Builder acknowledge and agree that the Developer shall be responsible for payment of the initial premium in the amount of [REDACTED] for the professional liability insurance to be procured by the Design-Builder or its DB Subcontractor. The Developer shall pay such premium on the later of (i) thirty (30) days after presentation by the Design-Builder to the Developer of the invoice for such premium and (ii) June 30, 2016.

ARTICLE 10

DESIGN AND CONSTRUCTION

Section 10.1 Obligations of the Design-Builder

(a) Performance of the DB D&C Work. This Design-Build Contract is a lump-sum fixed price, date certain, design-build contract for the DB D&C Work, subject to adjustment only in accordance with the provisions of this Design-Build Contract. The Developer and the Design-Builder agree that this Design-Build Contract is, subject to the terms and conditions set forth herein (including such terms and conditions that explicitly

impose an obligation on the Developer), “back-to-back” with the obligations and liabilities imposed on the Developer in the Lease that are related to the D&C Work, and such obligations and liabilities shall be imposed on the Design-Builder hereunder only to the extent of the DB D&C Work. The Design-Builder acknowledges and agrees that it is familiar with and also shall comply with all other obligations and liabilities imposed by the Port Authority under the Lease that are applicable to the Design-Builder due to its status as the Lead Contractor, a D&C Contractor, a Contractor or a party to a Key Contract (as defined in the Lease).

In connection with the rights of access granted to the Design-Builder pursuant to Section 3.1, the Developer hereby grants to the Design-Builder the exclusive right to, and the Design-Builder accepts such right and acknowledges its obligation to, design and construct the Construction Project, in accordance with and subject to the terms and conditions of this Design-Build Contract, the Lease and other Contract Documents and so as to enable the Developer to discharge its obligations to the Port Authority under the Lease with respect to the DB D&C Work. The Design-Builder will perform its obligations under this Design-Build Contract so as not to cause the Developer, or any party carrying out any work or operation on behalf of the Developer pursuant to the Lease, any loss or damage.

Insofar as it relates to the DB D&C Work, the Design-Builder shall not act or omit to act (and shall cause the DB Parties not to act or omit to act) in any manner that would place the Developer in breach of any of the Developer’s obligations under the Project Documents.

The scope of the DB D&C Work includes, but it not limited to, the following:

- (i) the decommissioning and demolition of the Existing Terminal B Facilities;
- (ii) the demolition of P2 Garage, Hangar 1 and frontage roads associated therewith and with the Existing Terminal B Facilities;
- (iii) the decommissioning and demolition of the Central Electrical Substation;
- (iv) the design, construction and demolition of temporary facilities to support passenger services during construction of the New Facilities;
- (v) the design and construction of the New Terminal B Facilities replacing the Existing Terminal B Facilities;
- (vi) the design and construction of the elevated and at-grade pedestrian walkway connection between the New Terminal B Facilities and the new West Garage (the “**New Pedestrian Walkway**”);
- (vii) the decommissioning and demolition of the Existing CHRP;
- (viii) the design and construction of the New CHRP;

- (ix) the design and construction of the CRWD;
- (x) the design and construction of such portion of the hydrant aircraft fueling infrastructure that will be located within the contiguous aircraft ramp areas included in the New Terminal B Facilities (such portion of the hydrant aircraft fueling infrastructure, together with the New Terminal B Facilities, the New Pedestrian Walkway, the New CHRP and the CRWD, the “**New Facilities**”);
- (xi) the demolition and removal of the below grade vaults and above grade masonry walls of the National Grid Gate and Governor Station following National Grid’s decommissioning thereof;
- (xii) the design and construction of the Central Hall;
- (xiii) the fit-out of Building 30 and relocation of Port Authority staff from the Existing Terminal B Facilities to Building 30 (the “**Building 30 Fit-Out**”);
- (xiv) the design and construction of improvements to the public airport roads and utilities associated with such roadway improvements (the “**Roadway Network**”);
- (xv) the design and construction of replacement Utilities and new Utilities serving the Existing Facilities and, when constructed, the Existing Facilities and the New Facilities (the “**Utilities Replacement**”);
- (xvi) the design and construction of a new West Garage and associated toll plaza serving the New Terminal B Facilities (the “**West Garage**”); and
- (xvii) airfield modifications between the New Terminal B Facilities contiguous aircraft ramp and apron area and the adjacent taxiways, as depicted on Exhibit 28-E (together with the Building 30 Fit-Out, the design and construction of the West Garage and the Roadway Network, and the Utilities Replacement, the “**New Improvements**”);

all, as described in more detail in the Requirements and Provisions for Work (collectively, the “**Construction Project**”).

Except as otherwise expressly provided in the Lease or in the Requirements and Provisions for Work, the Construction Project (or any Construction Segment or New Facilities Construction Milestone), once completed, shall become a part of the Premises; provided, that the New Improvements shall not form a part of the Premises. Any DB PNTP Work performed by the Design-Builder under the PNTP DB Contract prior to the DB Contract Effective Date shall, upon execution of this Design-Build Contract, be deemed to have been performed by the Design-Builder pursuant to, and subject to the terms and conditions of, this Design-Build Contract.

(b) General Duties. In addition to performing all other requirements of the Contract Documents related to the DB D&C Work, and without limiting the provisions of Section 10.1(a), the Design-Builder shall:

(i) furnish all design and other services, provide all materials, equipment and labor and undertake all efforts necessary or appropriate in relation to the DB D&C Work to construct the Construction Project and to maintain it during construction and to achieve Substantial Completion by the DB Substantial Completion Deadline and Final Acceptance by the DB Final Acceptance Deadline;

(ii) ensure that all DB D&C Work is performed in accordance with the Requirements and Provisions for Work, the Released For Construction Documents and the other Contract Documents;

(iii) ensure that the Project Director, or a designated person thereof previously approved by the Port Authority, is present at all times during the performance of any DB Construction Work to perform the obligations required under the DB Project Documents;

(iv) comply with, and require that all DB Subcontractors, Suppliers and other Persons performing any of the DB D&C Work comply with, all requirements of all Applicable Laws, Applicable Standards and Governmental Approvals;

(v) cooperate with the Port Authority, the Developer and Governmental Entities with jurisdiction in all matters relating to the DB D&C Work, including their review, inspection, testing and oversight of the design and construction (including demolition activities) of the Construction Project as required herein or by Applicable Law, Applicable Standards and Governmental Approvals, and use Reasonable Efforts to assist the Developer in complying with the Developer's obligations under Section 10.1(b)(v) of the Lease;

(vi) in relation to the DB D&C Work, exercise Reasonable Efforts to mitigate any delay and any damages due to delay regardless of the cause of the delay, including by re-sequencing, reallocating, or redeploying the Design-Builder's and its DB Subcontractors' and Suppliers' employees to other work, as appropriate, and to comply with any steps reasonably requested by the Developer to mitigate such delay and damages (subject to the right to compensation for such mitigation efforts in the event such delay or damages are attributable to a Developer Act or a Developer Suspension, or entitle the Design-Builder to Equivalent Project Relief, in each case pursuant to Articles 14A or 14B);

(vii) give all notices to the Developer for submission to the FAA, and obtain all determinations required to be given or obtained from the FAA, with respect to construction, construction equipment and improvements on the Premises, and prepare and submit to the Developer for submission to the FAA all materials required to update and maintain such notifications and determinations as needed;

(viii) install, maintain and operate (or cause its DB Subcontractors to install, maintain and operate) at its own expense such obstruction lights on the Premises as required by the FAA or as the General Manager of LGA Airport may direct, and energize such lights daily as required or advisable by the FAA and for such other period as may be directed or requested by the air-traffic control tower of LGA Airport;

(ix) undertake works or activities associated with the correction of any DB Work Defects as described in Section 10.8 below;

(x) keep the DB Work and Staging Area clean and orderly;

(xi) ensure that the airport operational parameters set forth on Exhibit A hereto are satisfied throughout the Construction Period in relation to the DB D&C Work, except as may be authorized with the prior written approval of the Developer;

(xii) to the extent not inconsistent with its other rights and obligations under this Design-Build Contract (and without expanding its liability thereunder), comply with Part 2 of the Skanska HSE Standards attached to this Design-Build Contract as Exhibit 41;

(xiii) in addition to the responsibilities set forth in Article 8, provide (upon reasonably sufficient prior written notice from the Developer) such further information as the Developer may reasonably request (or otherwise cooperate with the Developer in a manner consistent with and reasonably inferable from this Design-Build Contract or the Lease), at the Design-Builder's sole cost, to enable the Developer to exercise its rights under the Lease with respect to the DB D&C Work; provided that the Design-Builder shall not be required to take any action that constitutes a breach of this Design-Build Contract; and

(xiv) [REDACTED]

(c) DB Subcontract(s). The Design-Builder may cause the DB D&C Work to be performed and completed by one (1) or more qualified DB Subcontractors pursuant to one (1) or more DB Subcontracts, in accordance with the provisions set forth in Article 12.

(d) [Reserved].

(e) Performance, Design and Construction Standards. With respect to the Design-Builder's performance of the DB D&C Work, subject to the terms and conditions of this Design-Build Contract, (i) the Design-Builder shall comply with, and shall cause the DB D&C Work and the Construction Project and all components thereof (including the design, engineering, construction, commissioning and completion of the Construction Project, each Construction Segment and each New Facilities Construction Milestone and all facilities and equipment included within the Construction Project) to comply with, and shall require that all DB Subcontractors and other Persons performing any of the DB D&C Work comply with, all requirements of Best Management Practices, Applicable Laws, Applicable Standards,

Governmental Approvals and Safety Compliance Orders, the Requirements and Provisions for Work and the other Contract Documents, and the Developer's Code of Conduct (set forth in Exhibit 40), (ii) all engineering and design services shall be provided in accordance with Best Management Practices, Applicable Laws, Applicable Standards, Governmental Approvals, the Requirements and Provisions for Work and the other Contract Documents, and (iii) to the extent relating to the DB D&C Work, the Construction Project shall be constructed and erected in a good and workmanlike manner in accordance with the preceding clauses (i) and (ii). Except as otherwise expressly provided in this Design-Build Contract, the standard of performance set forth in this Section 10.1(e) shall apply to all aspects of the DB D&C Work, and this Section 10.1(e) shall be deemed to be incorporated by reference into each provision of the Contract Documents describing the DB D&C Work, the Design-Builder's obligations to perform and cause to be performed the DB D&C Work, or referring to the "requirements of this Design-Build Contract," "requirements of the Contract Documents" or words of similar effect. Without limiting the foregoing, the Design-Builder shall carry out and complete the DB D&C Work so as to enable the Developer to discharge its obligations to the Port Authority under the Lease with respect to the DB D&C Work. Except as otherwise set forth in this Article 10, all Submittals required to be made by the Design-Builder to the Developer for submission to the Port Authority pursuant to this Article 10, all submissions by the Developer to the Port Authority of Submittals received by the Design-Builder pursuant to this Article 10 (subject to the Developer's rights of review as provided herein), and all deliveries by the Developer to the Design-Builder of notices, approvals, or other documents received from the Port Authority related to the DB D&C Work as described in this Article 10, shall be made in accordance with the timing provisions set forth in Section 8.3.

(f) DB D&C Work and Project Schedule.

(i) The Preliminary Project Baseline Schedule will be the basis for monitoring the Design-Builder's performance of the DB D&C Work until such time as the initial Project Baseline Schedule has been approved by the Port Authority. Until the Project Baseline Schedule is agreed upon by the Parties, references to the Project Baseline Schedule in this Design-Build Contract shall be deemed to be references to the Preliminary Project Baseline Schedule.

(ii) Pursuant to Section 10.1(f) of the Lease, (1) the Port Authority is required to conduct progress and other meetings in accordance with Section 3.1 of the General Conditions; (2) as part of, and in conjunction with, such meetings, the Developer is required to provide the Port Authority with any proposed update of the Project Baseline Schedule in accordance with the Requirements and Provisions for Work and (3) the Developer is required to timely submit such reports, plans, updates, records and other items during the course of performing DB Construction Work as are required by the Requirements and Provisions for Work and the other Project Documents. The Design-Builder shall participate in any such meetings concerning matters related to the Design-Builder or the DB D&C Work to the extent such participation may be permitted pursuant to Section 8.5(c) and shall provide to the Developer (for submission to the Port Authority) in a timely fashion, so as to allow review by the Developer prior to transmission to the Port Authority in accordance with the Project Documents, the

materials required under clauses (2) and (3) above to the extent such materials are required with respect to matters related to the DB D&C Work, and the Developer shall submit such materials to the Port Authority in accordance with the Lease. Without limiting the provisions of Sections 8.1(a) and 10.1(e) above, during the Construction Period, the Design-Builder shall deliver to the Developer (A) monthly progress reports with respect to its performance of the DB D&C Work, which reports shall contain details of any material events and developments or circumstances arising in relation to the DB D&C Work since the preceding monthly report, in a form to be agreed by the Developer and the Design-Builder, which form shall at a minimum contain all information concerning the DB D&C Work required to be provided in the monthly Work progress reports to be delivered by the Developer to the Port Authority pursuant to the Requirements and Provisions for Work (which progress reports the Developer shall deliver to the Port Authority in accordance with the Lease) and all reasonable information requirements that originate from the Lenders and are consistent with the Design-Builder's obligations under this Design-Build Contract and (B) a list of all DB Subcontracts and the DB Subcontractors thereunder with each monthly progress report. If necessary to comply with its report requirements hereunder, the Design-Builder shall allow the Developer reasonable access to DB Subcontracts and the Design-Builder's records regarding the DB Subcontractors. The Design-Builder shall also provide, or cause to be provided, until the expiration of the Warranty Period:

(1) [REDACTED];

(2) (A) information with respect to the DB D&C Work required by the FAA or any other regulatory authority and (B) information requested by the Developer for provision to the airlines in connection with rates and charges (whether to be provided pursuant to airline agreements or imposition of rates and charges), so long as the substance of such information is of the nature that would be necessary for the Developer to meet its responsibility to provide relevant information to the airlines with respect to a unilateral imposition of rates and charges; and

(3) such additional information as may be reasonably requested by the Developer, the Port Authority or the Lenders in relation to the Design-Builder's performance of this Design-Build Contract or otherwise in connection with the DB D&C Work or relating to the Design-Builder, its members or any D&C Guarantor.

To the extent any reporting requirement or access right under this Section 10.1(f) includes reporting of or access to documents or other information that include commercially sensitive, proprietary or confidential financial information, the Design-Builder may (Y) redact such commercially sensitive, proprietary and confidential financial information or (Z) elect to make such information available for inspection by the Developer, the Lenders or the Port Authority, as the case may be, expressly in

confidence and marked as confidential; provided, in each case, that such redaction or election is not disallowed by the Lease, the DB Direct Agreement or the DB Lenders' Direct Agreement. In the event of circumstances arising which could lead the Port Authority, pursuant to Article 27, or the Developer, pursuant to Article 27A, being entitled to take an assignment of such documents however, the Design-Builder shall be required to provide a non-redacted copy of such documents in such circumstances. Insofar as it relates to the DB D&C Work, the Parties further agree to abide by the terms and procedures set forth in the Requirements and Provisions for Work and this Design-Build Contract pertaining to project management and coordination matters.

(iii) NOT USED.

(iv) Whenever required by the Port Authority, the Design-Builder will provide to the Developer in writing a general description of the arrangements and methods that the Design-Builder proposes to adopt for the execution of the DB D&C Work, and the Developer will submit such description to the Port Authority.

(v) The Design-Builder will not significantly alter the Project Baseline Schedule, including altering any scheduled New Facilities Construction Milestone Completion Date, the scheduled Substantial Completion Date or the schedule Final Acceptance Date, or such arrangements and methods described in clause (iv) above, without first informing the Developer (who shall inform the Port Authority), and the Design-Builder will coordinate any such alterations to take into account the Port Authority's resources and the work to be carried out by the Port Authority's separate contractors, if any. If any alteration to the Project Baseline Schedule affects the Critical Path or any scheduled New Facilities Construction Milestone Completion Date, adversely or materially affects the Port Authority's Oversight resources or the work carried out by the Port Authority's separate contractors, if any, the Design-Builder will not make such alteration without Port Authority Approval. Any change or alteration to the Project Schedule shall comply with the requirements of Section 3.1(e) hereof.

(vi) If the progress of the DB D&C Work is more than ninety (90) days behind the then-current Project Baseline Schedule, the Design-Builder will develop and submit to the Developer (for submission to the Port Authority), and the Developer will submit to the Port Authority, an Alternative Solutions Report in accordance with Section 3.2.3 of the General Conditions that includes a Recovery Schedule, and the Design-Builder will reasonably consider revisions to the Project Baseline Schedule proposed by the Port Authority to achieve completion within the timeframe set forth in the Lease. Further, upon the written request of the Developer, if the Design-Builder is more than thirty (30) days late in achieving any DB New Facilities Construction Deadline or the DB Substantial Completion Deadline, the Design-Builder will develop and submit to the Developer such an Alternative Solutions Report. In each such case, the Design-Builder will also certify in writing to the Developer at the time of submission of such Alternative Solutions Report that the Recovery Schedule set forth therein enables the Design-Builder to reach Substantial Completion by the DB Long Stop Deadline.

(vii) (A) Whenever Section 10.1(f)(vii) of the Lease requires submission of an Alternative Solutions Report (including, for the avoidance of doubt, when any such report is required as a result of a delay caused by a Developer Act or Developer Suspension), the Design-Builder shall, within seven (7) days of the occurrence of any such event set forth in Section 10.1(f)(vii) of the Lease clause (A) or (B) above, submit to the Developer (for submission to the Port Authority) an Alternative Solutions Report that includes a Recovery Schedule. Such Recovery Schedule shall be subject to Port Authority Approval and shall set forth a reasonably detailed description of the steps which the Design-Builder intends to take to achieve the affected New Facilities Construction Milestone(s) by the applicable Guaranteed New Facilities Construction Milestone Completion Date(s) or an alternative date or dates. Notwithstanding anything in this Section 10.1(f)(vii), no extension of or delay to the Guaranteed Substantial Completion Date shall be permitted, except as otherwise expressly provided for in this Design-Build Contract. Pursuant to Section 10.1(f)(vii) of the Lease, (1) the Port Authority is required to respond within fifteen (15) days of the receipt of such Recovery Schedule, (2) if the Port Authority disapproves the submitted Recovery Schedule (or a portion thereof), the Developer is required to resubmit a revised Recovery Schedule within seven (7) days of the disapproval and (3) the Developer is required to diligently implement each approved Recovery Schedule and provide to the Port Authority monthly updates thereto and if the Developer can demonstrate that, despite use of diligent efforts, the Developer cannot achieve the Guaranteed New Facilities Construction Milestone Completion Date(s) or such alternative date(s) in accordance with the applicable approved Recovery Schedule, the Developer will submit to the Port Authority an amended Alternative Solutions Report and Recovery Schedule for Port Authority Approval and will diligently implement such Recovery Schedule, in each case, in accordance with Section 10.1(f)(vii) of the Lease. If the Port Authority disapproves any submitted Recovery Schedule (or a portion thereof) as described in (2) above, the Design-Builder shall resubmit a revised Recovery Schedule to the Developer (for submission to the Port Authority) within five (5) days of such disapproval. The Design-Builder shall diligently implement each approved Recovery Schedule and provide to the Developer (for submission to the Port Authority) monthly updates thereto and if the Design-Builder can demonstrate to the satisfaction of the Developer and the Port Authority that, despite use of diligent efforts, the Design-Builder cannot achieve such Guaranteed New Facilities Construction Milestone Completion Date(s) (as such dates are determined pursuant to the Lease) or such alternative date(s) in accordance with the applicable approved Recovery Schedule, the Design-Builder shall submit to the Developer (for submission to the Port Authority) an amended Alternative Solutions Report and Recovery Schedule for Port Authority Approval and shall diligently implement such Recovery Schedule, in each case, in accordance with this Section 10.1(f)(vii).

(viii) NOT USED.

(g) The Design-Builder shall, during the performance of the DB D&C Work in the vicinity of any ground monitoring wells installed by or on behalf of the Port Authority with respect to the Hangar 2 site, take care not to disturb, damage or destroy such ground monitoring wells. However, given the proximity of the ground monitoring wells to the DB

D&C Work, neither the Design-Builder nor its DB Subcontractors shall have any liability for any disturbance, damage or destruction of such ground monitoring wells unless due to the Design-Builder's or its DB Subcontractors' gross negligence or intentional misconduct.

Section 10.2 Nonconforming Work

(a) The Design-Builder shall be responsible for the rectification of all Nonconforming Work, including, to the extent necessary, through removal and/or replacement, whether discovered by the Design-Builder, the Developer or by the Port Authority.

(b) With respect to any Nonconforming Work for which a Corrective Action Plan is not required pursuant to the Lease, the Design-Builder shall promptly and diligently take all necessary and appropriate actions that are consistent with the terms of this Design-Build Contract to rectify such Nonconforming Work, and shall notify the Developer in writing when the Nonconforming Work has been fully rectified. If the Design-Builder fails to commence and diligently continue correction of such Nonconforming Work, the Developer may, without prejudice to any other remedy the Developer may have hereunder or under Applicable Law, correct the same or cause it to be corrected in accordance with Section 28.1 hereof. Where a Corrective Action Plan is required pursuant to the Lease with respect to any Nonconforming Work, the Design-Builder shall prepare and submit to the Developer, for submission to the Port Authority for Port Authority Approval, such a Corrective Action Plan in accordance with the requirements of Section 3.3 of the General Conditions, and the Developer will submit such Corrective Action Plan to the Port Authority. Approval of the Corrective Action Plan shall be solely in the Port Authority's discretion, without any further right of the Developer to approve such Corrective Action Plan. The Design-Builder shall promptly implement the Corrective Action Plan approved by the Port Authority. If the Design-Builder fails, by the date that is five (5) Business Days prior to the date that is thirty (30) days after delivery by the Port Authority to the Developer of a notice of any Nonconforming Work, to provide a Corrective Action Plan acceptable to the Port Authority regarding correction of such Nonconforming Work or thereafter fails to commence and diligently continue correction of such Nonconforming Work pursuant to such Corrective Action Plan, the Developer or the Port Authority may, without prejudice to any other remedy the Developer or the Port Authority, as applicable, may have hereunder or under the Lease, respectively, or under Applicable Law, correct the same or cause it to be corrected. If the Port Authority or the Developer corrects, or causes to be corrected, any Nonconforming Work in accordance with Section 28.1 (including, with respect to the Developer, in circumstances in which no Corrective Action Plan was required to be delivered pursuant to this Section 10.2), the Design-Builder shall reimburse the Port Authority for an amount equal to one hundred fifteen percent (115%), in the case of a correction by the Port Authority, or shall reimburse the Developer for an amount equal to one hundred percent (100%), in the case of a correction by the Developer, of all out-of-pocket costs, expenses, damages, penalties and other charges directly paid or incurred by the Port Authority or the Developer, as applicable, in connection therewith (together with, but without duplication of, late charges calculated pursuant to Section 35.16(a) in accordance with Section 28.2).

(c) Subject to Section 34.1, nothing contained in the Contract Documents shall in any way limit the right of the Developer (whether arising out of claims of the Port Authority or otherwise) to assert claims for damages resulting from Nonconforming Work for the period of limitations prescribed by Applicable Law, and the foregoing shall be in addition to any other rights or remedies the Developer may have hereunder, under the Lease or under Applicable Law.

Section 10.3 Conditions to DB Design Work NTP

Pursuant to Section 10.3 of the Lease, (1) as of the Lease Commencement Date, the Developer has satisfied all of the conditions set forth in Section 10.3 of the Lease and the Port Authority has issued the Design NTP to the Developer, authorizing commencement of the Design Work, and (2) notwithstanding the Port Authority's issuance of the Design NTP, any Design Work (other than the Design Work included in the PNTP Work) undertaken prior to the issuance of the Design NTP will be at the Developer's sole risk and expense. Further, the Design-Builder has satisfied all of the conditions with respect to the DB Design Work NTP and the Developer has issued the DB Design Work NTP and, notwithstanding the Developer's issuance of the DB Design Work NTP, any Design Work (other than Design Work included in the DB PNTP Work and eligible for payment under the PNTP DB Contract) undertaken prior to the issuance of the DB Design Work NTP shall be at the Design-Builder's sole risk and expense. In particular, the conditions to the issuance of the Design NTP and/or DB Design Work NTP that are the Design-Builder's responsibility include the following items, in each case to the extent required in connection with the DB D&C Work, provided that the Design-Builder shall not be responsible for any obligations that are required by the Lease to be performed specifically by the Developer (and are not permitted to be subcontracted by the Developer to any other party), including the obligation to appoint the Commissioning Agent under Section 25.2 of the Requirements and Provisions for Work for the Terminal B Facilities (all such restrictions on the Developer's ability to subcontract are referred to herein as "**Subcontracting Restrictions**"):

(a) the Design-Builder shall have complied with the insurance requirements identified as applying to the Design-Builder pursuant to Article 20 of this Design-Build Contract, and delivered to the Developer verification of such insurance coverage sufficient to satisfy the requirements of Article 20;

(b) the Design-Builder (1) has developed and delivered to the Developer for submission to the Port Authority, and Port Authority Approval has been obtained for (i) the Preliminary Project Baseline Schedule in accordance with the requirements set forth in Section 3.2 of the General Conditions, (ii) the Design Plan in accordance with Section 3.3.2 of the Design and Construction Requirements and (iii) the Design Quality Control Plan in accordance with Section 6.1 of the Design and Construction Requirements, and (2) has provided such input to the Developer regarding the Project Management and Execution Plan as is required pursuant to Exhibit A-27 and as is sufficient as it relates to the DB D&C Work to enable Developer to fulfill its obligation to develop and deliver to the Port Authority such Project Management and Execution Plan;

(c) the Design-Builder has satisfied all other requirements of the Contract Documents that are required to be satisfied prior to commencement of the DB Design Work, except with respect to any such requirements specifically identified as responsibilities of the Developer pursuant to Exhibit A-34, including delivery to the Developer for submission to the Port Authority (and receipt, if applicable, of Port Authority Approval or addressing comments provided pursuant to Port Authority Comment) of all Submittals relating to the DB Design Work required by the Project Management and Execution Plan or the Project Documents, in the form and content required by such Project Management and Execution Plan or the Project Documents;

(d) NOT USED.

(e) the Design-Builder has certified to the Developer that the Design-Builder's representations and warranties set forth in Section 22.1 hereof, remain true and correct in all material respects (except for such representations and warranties made as of a specified date, which representations and warranties shall remain true and correct as of such specified date); and

(f) the Design-Builder has certified to the Developer that, to the Design-Builder's knowledge, there exists no Design-Builder Event of Default, and there exists no condition that with the lapse of time or delivery of notice to the Design-Builder, or both, would constitute a Design-Builder Event of Default, under this Design-Build Contract that constitutes or, with the lapse of time or delivery of notice by the Port Authority, or both, would result in an Event of Default under the Lease.

Section 10.4 Conditions to DB Construction Work NTPs

In addition to the conditions set forth in Section 10.3 being and remaining satisfied and except as permitted by the PNTP DB Contract, the Design-Builder shall not commence or permit commencement of the DB Construction Work (i) with respect to any New Facilities Construction Milestone until (1) the Developer has notified the Design-Builder of the Port Authority's issuance of an individual Construction NTP with respect to that New Facilities Construction Milestone or a Full Construction NTP authorizing the commencement of Construction Work (including DB Construction Work) (it being understood that, in the case of a Full Construction NTP, no separate or additional notice to proceed shall be required for the commencement of Construction Work (including DB Construction Work) with respect to subsequent New Facilities Construction Milestones) or (ii) with respect to a Construction Segment, until the Port Authority's issuance of a Construction Segment NTP in respect of such Construction Segment (it being understood that the commencement of Construction Work (including DB Construction Work) with respect to each Construction Segment, if any, shall be required to be separately authorized by the Port Authority's issuance of a Construction Segment NTP for the relevant Construction Segment, except where a Full Construction NTP has been issued), and (2) the Developer's issuance of a DB Construction Work NTP with respect to all or the applicable portion of the Construction Project, which issuance shall be subject to the Developer's receipt of an individual Construction NTP, a Full Construction NTP or a Construction Segment NTP, respectively, from the Port Authority and shall occur as soon as practicable and in any event, as

soon as reasonably practicable after the date of receipt of such individual Construction NTP, Full Construction NTP or Construction Segment NTP, as applicable, from the Port Authority. Pursuant to Section 10.4 of the Lease, the Port Authority is required to issue the Full Construction NTP or a Construction Segment NTP, as the case may be, within fifteen (15) days after request by the Developer; provided, that all the conditions of Section 10.4 of the Lease have been and remain satisfied. The Parties shall coordinate with each other and the Port Authority in accordance with this Section 10.4 in satisfying the conditions to the Port Authority's issuance of the Full Construction NTP or a Construction Segment NTP, including providing such assistance and documentation to each other as may be reasonably required to enable the Parties to satisfy such conditions as must be satisfied by each such Party. In particular, the Design-Builder shall be responsible for the following items, in each case to the extent required in connection with the DB D&C Work, and subject to the Subcontracting Restrictions:

(a) (1) the Design-Builder has developed and delivered to the Developer for submission to the Port Authority, and Port Authority Approval has been obtained for (i) the Released For Construction Documents, (ii) the Construction Plan in accordance with Section 3.3.2 of the Design and Construction Requirements, (iii) the SWPPP in accordance with Section 16.3(b) and Section 7.7 of the Design and Construction Requirements, (iv) the Construction Quality Control Plan and the Witness and Hold Point Program in accordance with Sections 6.2 and 6.9 of the Design and Construction Requirements, and (v) unless otherwise allocated to the Developer pursuant to Exhibit A, each other Submittal required to be submitted to, and approved by, the Port Authority prior to commencement of the Construction Work as described in the Design and Construction Requirements and the other Contract Documents, in each case, for the entire Construction Project, the applicable New Facilities Construction Milestone or the applicable Construction Segment, as the case may be, and (2) the Design-Builder has provided input and assistance to the Developer, in accordance with Exhibit A-20, Exhibit A-24 and Exhibit A-27, as reasonably required to enable the Developer to develop (i) the Project Plan for Safety Management in accordance with Section 3.3.4 of the Design and Construction Requirements, (ii) the Project Plan for Security Management in accordance with Section 3.3.5 of the Design and Construction Requirements, (iii) the Risk Management Plan in accordance with Section 3.3.6 of the Design and Construction Requirements, (iv) the Environmental Management Plan in accordance with Section 16.1(b) and Section 7.8 of the Design and Construction Requirements and (v) roadway circulation diagrams in accordance with Section 6.2.1 of the Operational Requirements;

(b) (i) the Design-Builder shall have prepared, completed, and submitted to the Developer for submission to the Port Authority for approval any such plans, procedures, manuals (including relevant portions of the O&M Manual) and reports, or relevant portions thereof, as may be the responsibility of the Design-Builder hereunder; and (ii) the Design-Builder shall have provided such other assistance and documentation as may reasonably be requested by the Developer in order to facilitate the Developer's preparation, completion and submission to the Port Authority for approval of the remainder of all such plans, procedures, manuals and reports, including relevant portions of the O&M Manual, for performing Operations and Maintenance Work during the Phased Construction O&M Period as required by the Lease (which other assistance and documentation shall not relieve the Developer of its

obligation to prepare, complete and submit the remainder of such information in order to comply with Section 10.4(b) of the Lease);

(c) all Design-Builder Governmental Approvals necessary to begin the DB Construction Work for the entire Construction Project, the applicable New Facilities Construction Milestone or the applicable Construction Segment, as the case may be, shall have been obtained, and the Design-Builder shall have obtained and furnished to the Developer for submission to the Port Authority fully executed copies of such Design-Builder Governmental Approvals;

(d) the Design-Builder has satisfied all conditions set forth in applicable Governmental Approvals for the DB Construction Work for the entire Construction Project, the applicable New Facilities Construction Milestone or the applicable Construction Segment, as the case may be, that are required to be so satisfied at such time, except with respect to any such conditions specifically identified as responsibilities of the Developer pursuant to Exhibit A;

(e) NOT USED;

(f) the Design-Builder has satisfied all other requirements of the Contract Documents that are required to be satisfied prior to commencement of the DB Construction Work for the entire Construction Project, the applicable New Facilities Construction Milestone or the applicable Construction Segment, as the case may be; except with respect to any such requirements specifically identified as responsibilities of the Developer pursuant to Exhibit A; and

(g) the Design-Builder has provided the facilities to be provided for the Port Authority's use, as set forth in Section 1.12 of the General Conditions, and such facilities are operational.

If the Design-Builder seeks a Construction Segment NTP or an individual Construction NTP for a New Facilities Construction Milestone without first obtaining a Full Construction NTP, the Design-Builder may at any time thereafter seek a Full Construction NTP subject to satisfying the applicable conditions under this Design-Build Contract for the issuance of a Full Construction NTP. Pursuant to Section 10.4 of the Lease, if the Design-Builder requests the Developer to seek a Full Construction NTP, the Port Authority may, as a condition to the issuance thereof, require the Developer (which may then require the Design-Builder, to the extent related to the DB Construction Work) to provide additional information or obtain subsequent approval from the Port Authority with respect to discrete portions of the Construction Work that the Port Authority determines are not adequately addressed in the materials provided in the request for a Full Construction NTP. In such event, the Design-Builder shall provide to the Developer any such additional information requested by the Port Authority and take such steps as may be necessary to obtain such additional approvals from the Port Authority, in each case to the extent related to the DB Construction Work, and the Developer shall submit such additional information to the Port Authority.

Section 10.4A Limited Notices to Proceed

Notwithstanding Section 10.3 and Section 10.4 above, the Developer shall have the right to issue one or more limited notices to proceed (“**DB LNTP**”) with respect to DB D&C Work other than DB D&C Work included in the scope of the PNTP Agreement prior to the issuance by the Port Authority of the Design NTP, an individual Construction NTP, the Full Construction NTP or a Construction Segment NTP, to authorize the Design-Builder to perform certain activities in preparation for beginning the DB D&C Work, to the extent not prohibited under the Lease, the PNTP Agreement or the Financing Documents from occurring prior to the issuance by the Port Authority of the Design NTP, an individual Construction NTP, the Full Construction NTP or a Construction Segment NTP, as applicable. Any such DB LNTP shall specify the DB D&C Work to be undertaken, the compensation the Design-Builder and the Developer have agreed upon for such DB D&C Work and evidence satisfactory to the Design-Builder of the Developer’s (or another responsible party’s) ability to pay for such DB D&C Work (if not otherwise contemplated as a part of the Design-Build cost curve). The Design-Builder may request that the Developer issue one or more DB LNTPs and shall provide information with respect to the applicable scope, schedule and payment terms as the Developer may request. The Developer shall have the right, in its sole discretion, to approve or reject the Design-Builder’s price and schedule estimate for any work to be conducted pursuant to a DB LNTP, and the Design-Builder shall not be obligated to proceed with any work under a DB LNTP absent agreement on such terms.

Section 10.5 Partial Completion

(a) Without affecting the obligations of the Design-Builder under Section 10.6 to achieve Substantial Completion as evidenced by the Port Authority’s issuance of the Certificate of Substantial Completion, in the event the Design-Builder contemplates, in the sequencing of its DB Construction Work, that it will complete all of the DB D&C Work in connection with any portion of the Construction Project prior to completing all of the DB D&C Work required to achieve Substantial Completion, the Design-Builder shall inform the Developer in writing of such contemplated partial completion and coordinate with the Developer in accordance with this Section 10.5 to seek the issuance by the Port Authority of a Temporary Certificate of Authorization to Occupy or Use with respect to the New Facilities Construction Milestone or any Construction Segment, as applicable.

(b) If the Design-Builder subsequently makes any additional, material modifications (other than tenant fit-out) to such portion of the Construction Project referenced in Section 10.5(a) above, a new Temporary Certificate of Authorization to Occupy or Use will be required pursuant to this Section 10.5 before such additional modifications may be brought into use by the Developer, Patrons, the Port Authority and other third parties. Notwithstanding the foregoing, the Design-Builder, its DB Subcontractors and Suppliers may continue to use the DB Work and Staging Area and the areas subject to the Temporary Rights of Access to perform the DB D&C Work or tenant fit-out, exercise their rights hereunder and fulfill the Design-Builder’s other obligations hereunder; provided, that the Design-Builder shall comply with the provisions of Section 10.11(d)(ii) in conducting all remaining DB D&C Work.

(c) Pursuant to Section 10.5(c) of the Lease, the Port Authority is required, following the Developer's request, to issue a Temporary Certificate of Authorization to Occupy or Use:

(i) with respect to the applicable New Facilities Construction Milestone or the applicable Construction Segment, as the case may be, and within the time periods set forth in Sections 10.5(d) through 10.5(g) of the Lease, at such time as the Port Authority has determined in accordance with Section 10.5 of the Lease that the Developer has satisfied all of the conditions to Partial Completion set forth in Section 10.5(c) of the Lease. The Design-Builder shall be responsible for the following items, in each case to the extent required in connection with the DB D&C Work, and subject to the Subcontracting Restrictions (as defined in Section 10.3):

(A) all equipment and systems shall have been installed, commissioned and activated by the Design-Builder as required for the applicable portion of the Construction Project in accordance with Section 25 of the Design and Construction Requirements and the TCAP and such applicable portion is otherwise complete for purposes of tenant fit-out in compliance with a Phasing Plan (as defined in the TCAP) approved by the Port Authority; it being understood that, solely with respect to the individual tenant spaces in the New Facilities intended to be subleased to Concession Sublessees or Airline Sublessees (to the extent of any Subleases for portions of the New Facilities related to airline passenger services), the Design-Builder shall only be required to install the basic infrastructure and equipment for the supply of necessary Utilities to such tenant spaces and shall be required to provide fire alarm, fire protection and space separation between occupied and construction sites (it being further understood and agreed that, pursuant to Section 10.5(c)(i)(A) of the Lease, nothing in the Lease (and, in accordance with Section 10.5(c)(i)(A) of the Lease, nothing in this Design-Build Contract) will prevent the Design-Builder from performing the DB D&C Work in said individual tenant spaces concurrently with the performance of tenant fit-out; provided, that, except as otherwise set out in the Lease (and, in accordance with Section 10.5(c)(i)(A) of the Lease, except as otherwise set out in this Design-Build Contract) the Port Authority will have no liability to the Developer or the Design-Builder performing the DB D&C Work concurrently with the performance of tenant-fit out in connection with such DB D&C Work), but shall not be required to install the fit-out of such tenant spaces to the individual specifications and needs of each Sublessee in order to satisfy the requirements of this clause (A);

(B) the Design-Builder shall have completed the relevant DB D&C Work in accordance with the Construction Documents, the Released for Construction Documents and the requirements of the Contract Documents, excluding only Punch List Items and, if any, additional DB Punch List Items;

(C) (x) the Design-Builder shall have provided all necessary Design-Builder Governmental Approvals and shall have obtained and furnished to the

Developer for submission to the Port Authority accurate and complete copies of such Design-Builder Governmental Approvals, and such Design-Builder Governmental Approvals shall be final and non-appealable, and there shall exist no uncured violation of the terms and conditions of any such Design-Builder Governmental Approval and (y) the Design-Builder shall cooperate with the Developer as set forth in Section 15.1(d)(vi) with respect to all other Governmental Approvals required by Section 10.5(c)(i)(C) of the Lease;

(D) with respect to the applicable portion of the Construction Project, all applicable conditions set forth in Sections 4.3.2.1, 4.3.2.2 and 6.2.2 of the TCAP (including (1) acceptance by the Port Authority of the Engineer of Record or the Architect of Record's certification of completion and a Conformed Set of TAA Design Documents of the D&C Work, which is the subject of the request for the Temporary Certificate of Authorization to Occupy or Use, for the respective portion of the Construction Project and (2) satisfactory Port Authority inspections) shall have been satisfied and the Design-Builder shall be required to cooperate and coordinate its efforts in all respects to facilitate the Port Authority's inspection of such portion of the Construction Project (including any portion that is otherwise complete for purposes of tenant fit-out) and the Port Authority's audit review of all compliance related documents in accordance with the TCAP;

(E) all certifications for (1) the relevant parts of the Final Design Documents and (2) all mechanical, electrical, electronics and other systems, in each case, for the applicable portion of the Construction Project shall have been made by the Design-Builder and delivered to the Developer (for submission to the Port Authority) in accordance with the requirements of the Contract Documents;

(F) (x) the Design-Builder shall have provided the Developer with copies of any training records and course completion certificates issued to any of the relevant personnel by the Design-Builder or its DB Subcontractors; and (y) the Design-Builder shall have provided assistance and documentation as may be reasonably requested by the Developer in order to facilitate the Developer's certification that the Developer has completed necessary training of personnel that will be performing the Operations and Maintenance Work associated with the applicable portion of the Construction Project and other necessary personnel (which assistance and documentation shall not relieve the Developer of its obligation to make such certification under this clause (y) to comply with Section 10.5(c)(i)(F) of the Lease);

(G) the Design-Builder shall have complied with all other aspects of the Contract Documents with respect to completion of the relevant DB D&C Work;

(H) all Submittals with respect to the relevant portion of the DB D&C Work (including the reports of Special Inspection) required to be submitted by the Contract Documents shall have been submitted to the Developer for submission to

the Port Authority and, if required under the Contract Documents, approved by the Port Authority;

(I) (x) the Design-Builder shall have prepared, completed, and submitted to the Developer for submission to the Port Authority for approval any such plans, procedures, manuals (including relevant portions of the O&M Manual), reports, or relevant portions thereof, and Submittals as may be the responsibility of the Design-Builder hereunder; and (y) with respect to the New Facilities, the Design-Builder shall have provided such other assistance and documentation as may reasonably be requested by the Developer in order to facilitate the Developer's preparation, completion and submission to the Port Authority for approval of the remainder of all such plans, procedures, manuals and reports, including applicable portions of the O&M Manual, and other Submittals required for performing the Operations and Maintenance Work associated with the applicable portion of the Premises during the O&M Period and/or performing tenant fit-out (if such fit-out has not commenced as at the date of the request) as required by the Lease (which other assistance and documentation shall not relieve the Developer of its obligation to prepare, complete and submit the remainder of such information in order to comply with Section 10.5(c)(i)(I) of the Lease);

(J) NOT USED;

(K) the Design-Builder shall have prepared, (A) in consultation with the Developer and the Port Authority, and submitted to the Developer, for submission to the Port Authority, the Punch List in respect of the applicable portion of the Construction Project in accordance with the procedures and schedules set forth in the Project Management and Execution Plan and such Punch List shall have received Port Authority Approval and (B) in consultation with the Developer, the DB Punch List in respect of the applicable portion of the Construction Project and such DB Punch List shall have been approved by the Developer; and

(L) subject to the Plan for New Improvements Construction Segments, any New Improvements or any portion of the New Improvements that constitutes a Construction Segment that is necessary for the normal use, operation and maintenance of the applicable portion of the Construction Project, shall have been completed by the Design-Builder and the Design-Builder shall have satisfied all applicable conditions to Partial Completion set forth in this Section 10.5(c) with respect to such New Improvements or Construction Segment, as the case may be; and

(ii) with respect to a Phased Occupancy Area, upon the satisfaction by the Design-Builder of all applicable conditions and requirements set forth in Sections 4.3.2 (Close-Out and Occupancy Activities) and 6.2 (Phased Construction and Occupancy Procedure) of the TCAP. In accordance with the requirements of the TCAP, the Design-

Builder's AOR or EOR shall request a partial inspection of any Phased Occupancy Area and the Design-Builder shall be required to cooperate and coordinate its efforts in all respects to facilitate the Port Authority's inspection of any Phased Occupancy Area and the Port Authority's audit review of all compliance related documents in accordance with the TCAP.]

(iii) The Parties shall coordinate with each other and the Port Authority in accordance with this Section 10.5 in satisfying the conditions to the Port Authority's issuance of the Temporary Certificate of Authorization to Occupy or Use set forth in Sections 10.5(c)(i) and (ii), including providing such assistance and documentation to each other as may be reasonably required to enable the Parties to satisfy such conditions as must be satisfied by each such Party, subject to the Subcontracting Restrictions (as defined in Section 10.3).

(d) The Design-Builder shall provide the Developer with not less than sixty-five (65) days' prior written notice of the date the Design-Builder expects to complete all conditions that are the responsibility of the Design-Builder for the achievement of Partial Completion with respect to any New Facilities Construction Milestone or Construction Segment, as applicable (the "**Expected Partial Completion Date**"). The Design-Builder's notification shall include a list of all specific requirements that the Design-Builder has achieved or will achieve to allow the Port Authority's issuance of a Temporary Certificate of Authorization to Occupy or Use. Upon receipt of the Design-Builder's notice regarding the Expected Partial Completion Date, the Developer will (i) provide the Port Authority with not less than sixty (60) days' prior written notification that the Developer expects to achieve Partial Completion on the Expected Partial Completion Date, so as to allow the Port Authority to commence its review of the satisfaction of the conditions to Partial Completion and such notification shall include the list of all such specific requirements identified by the Design-Builder and (ii) provide each applicable Airline Sublessee with notice of such Expected Partial Completion Date sixty (60) days in advance of such Expected Partial Completion Date.

(e) No later than forty (40) days prior to the Expected Partial Completion Date, the Design-Builder (unless excluded by the Port Authority) and the Developer shall meet and confer with the Port Authority, pursuant to Section 10.5(e) of the Lease, with respect to the list of requirements provided by the Developer pursuant to Section 10.5(d). Subsequent to this initial meeting, the Design-Builder (unless excluded by the Port Authority), the Developer and the Port Authority shall meet, confer and exchange information on a regular basis with the goal being to facilitate the Port Authority's and the Developer's timely inspection and determination of whether all of the conditions required to achieve Partial Completion have been satisfied. If at any time the Design-Builder anticipates completing all conditions for Partial Completion for which the Design-Builder is responsible prior to the Expected Partial Completion Date and the Design-Builder desires to change the Expected Partial Completion Date to an earlier date, then, with the written approval of the Developer and, if required, the Port Authority, the Expected Partial Completion Date may be changed to such earlier date.

(f) The Design-Builder shall thereafter provide written notification to the Developer of the date the Design-Builder has satisfied all conditions for Partial Completion of

the applicable New Facilities Construction Milestone or Construction Segment for which the Design-Builder is responsible, together with the relevant supporting documentation. The Developer will thereafter provide written notification to the Port Authority of the date all conditions for Partial Completion of the applicable portion of the Construction Project have been satisfied, together with the relevant supporting documentation. Pursuant to Section 10.5(f) of the Lease, the Port Authority is required, within thirty (30) days of receipt of the Developer's written notification and all required documentation and Submittals per the Project Documents, to conduct an inspection of the applicable portion of the Construction Project, a review of the applicable Final Design Documents and Construction Documents or the applicable portions thereof and such other investigation as may be necessary to evaluate whether Partial Completion of the applicable New Facilities Construction Milestone or Construction Segment has been achieved.

(g) Pursuant to Section 10.5(g) of the Lease, within the thirty (30)-day period referenced in Section 10.5(f), the Port Authority shall either (i) issue a Temporary Certificate of Authorization to Occupy or Use regarding the applicable New Facilities Construction Milestone or Construction Segment, effective as of the date that the Port Authority accepts that all conditions to Partial Completion were satisfied or (ii) notify the Developer in writing of the reasons why the conditions to Partial Completion have not been satisfied; provided, that in the event that any condition has not been satisfied, the Lease provides that the Developer shall be entitled to resubmit the notification provided pursuant to Section 10.5(f) of the Lease (together with the relevant supporting documentation and inspection verification) once the Developer believes that the relevant condition has been satisfied, whereupon, if the Port Authority agrees that such condition has been satisfied, the Port Authority is required to issue a Temporary Certificate of Authorization to Occupy or Use in accordance with Section 10.5(g) of the Lease. If the Developer receives the notification described in clause (ii) above in connection with a condition to Partial Completion that is the responsibility of the Design-Builder to satisfy, the Design-Builder shall be entitled to resubmit the notification required of the Design-Builder pursuant to Section 10.5(f) above (together with the relevant supporting documentation and inspection verification) once the Design-Builder believes that the relevant condition has been satisfied, in which event the Developer will resubmit such information to the Port Authority. If any of the Developer, the Design-Builder or the Port Authority cannot agree as to the occurrence of Partial Completion, the matter shall be subject to dispute resolution pursuant to Article 33 or Article 33A, as applicable; provided, that there may be no extension of the fifteen (15)-day negotiation period pursuant to Section 33.1(b) and after the conclusion of such fifteen (15)-day period, any Dispute of a technical nature shall be determined by the Chief Engineer, in his or her sole discretion, as set forth in Section 33.3.

(h) Pursuant to Section 10.5(h) of the Lease, once the Port Authority issues a Temporary Certificate of Authorization to Occupy or Use with respect to Partial Completion of any of the New Improvements (or any portion of the New Improvements that constitutes a Construction Segment), upon such issuance, (i) the Developer is required to promptly transfer control of the applicable New Improvement or Construction Segment, as the case may be, to the Port Authority for the permanent operation and maintenance by the Port Authority and (ii) the Developer shall have no further obligations to the Port Authority with respect to such New Improvement or Construction Segment and the associated Temporary Rights of Access except

(A) as required to satisfy the conditions to Final Acceptance set forth in Section 10.7 of the Lease (provided, that solely for the purpose of processing such Final Acceptance, all reference to the Construction Project shall be changed to reference the applicable New Improvement or Construction Segment, as the case may be) and (B) as required by Sections 10.8, 21.1 and 31.3 of the Lease. The Design-Builder shall take all steps necessary to enable the Developer to comply with clause (i) in the preceding sentence, and upon such transfer to the Port Authority, the Design-Builder shall have no further obligations with respect to such New Improvement or Construction Segment, as the case may be, and the associated Temporary Rights of Access except (A) as required to satisfy the conditions to Final Acceptance set forth in Section 10.7 (provided, that solely for the purpose of processing such Final Acceptance, all reference to the Construction Project shall be changed to reference the applicable New Improvement or Construction Segment, as the case may be) and (B) as required by Sections 10.8, 21.1 and 31.3. The Design-Builder shall also provide to the Developer As-Built documents for the applicable scope of work no later than sixty (60) days after issuance of the Temporary Certificate of Occupancy and Authorization of a particular New Facilities Construction Milestone.

(i) Following the DB Contract Effective Date, the Design-Builder shall prepare and submit to the Developer (for submission to the Port Authority for Port Authority Approval), a plan that (a) sets forth the Construction Segments, together with a written narrative describing in reasonably sufficient detail the Design-Builder's plans with respect to Partial Completion with respect to such Construction Segments and (b) provides a reasonably detailed description of any portion of the New Improvements that constitutes a Construction Segment, that is necessary for the normal use, operation and maintenance of any portion of the Construction Project, including any New Facilities Construction Milestone, and is required to be completed in connection with Partial Completion of such portion of the Construction Project or will be required to be completed as set out in Exhibit A-13 in order that any subsequent Work can be carried out in order to allow the normal use, operation or maintenance of the New Facilities, or the progression of the Construction Work in accordance with the Project Baseline Schedule, by the relevant milestone dates (the "**Plan for New Improvements Construction Segments**").

Section 10.6 Substantial Completion

(a) Pursuant to Section 10.6(a) of the Lease:

the Port Authority is required to issue, following the Developer's request and within the time periods set forth in Sections 10.6(b) through 10.6(g) of the Lease, a written certificate that the Developer has achieved Substantial Completion (the "**Certificate of Substantial Completion**") after the Port Authority has determined that the Developer has satisfied all of the conditions for Substantial Completion set forth in Section 10.6(a) of the Lease with respect to the entire Construction Project (other than with respect to (1) the Central Hall, (2) except for the condition set forth in Section 10.6(a)(x) of the Lease, which the Developer shall be required to satisfy, (x) such New Improvements or portions thereof corresponding to any Construction Segments, that achieved Partial Completion prior to the date of the Substantial Completion Notice and

have been transferred to the Port Authority in accordance with Section 10.5(h) of the Lease and (y) such New Facilities, or portions thereof corresponding to New Facilities Construction Milestones that achieved Partial Completion prior to the date of the of the Substantial Completion Notice; provided, that notwithstanding this clause (y), the Port Authority may review and inspect the status of any Punch List items (that have not been completed) with respect to any New Facilities, or any portions thereof corresponding to New Facilities Construction Milestones, that achieved Partial Completion prior to the date of the Substantial Completion Notice and may also review and inspect any equipment or systems that (A) achieved Partial Completion prior to the date of the Substantial Completion Notice for the purpose of determining that said equipment or systems operate and function properly in light of subsequent New Facilities Construction Milestones for which the Developer is seeking Partial Completion or for Substantial Completion, or (B) that did not achieve Partial Completion prior to the date of the Substantial Completion Notice, and the Port Authority determines that it is necessary to inspect the integrity and functionality of such equipment or systems as a whole; and

the Port Authority and the Developer agree that it is understood, however, that notwithstanding anything in the Lease, including the right of the Port Authority to review and inspect previously accepted equipment or systems that achieved Partial Completion, nothing in Section 10.6 of the Lease will in any way increase or expand the Warranty pursuant to Section 10.8 of Lease.

Nothing in this Design-Build Contract (including, but not limited to, this Section 10.6) shall in any way increase or expand the Warranty provided pursuant to Section 10.8. The Parties shall coordinate with each other and the Port Authority in accordance with this Section 10.6 in satisfying the conditions to the Port Authority's issuance of the Certificate of Substantial Completion, including providing such assistance and documentation to each other as may be reasonably required to enable the Parties to satisfy such conditions as must be satisfied by each such Party. In particular, the Design-Builder shall be responsible for the following items, to the extent required in connection with the DB D&C Work, and subject to the Subcontracting Restrictions (as defined in Section 10.3):

(i) other than Punch List Items and, if any, additional DB Punch List Items, the Design-Builder shall have completed all DB D&C Work in accordance with the requirements of the Construction Documents, the Released for Construction Documents and the other Contract Documents (including installation, commissioning and activation of all equipment and systems required to be installed, commissioned and activated by the Design-Builder in accordance with Section 25 of the Design and Construction Requirements, except to the extent specifically identified as a responsibility of the Developer pursuant to Exhibit A); it being understood that, solely with respect to the individual concession spaces in the New Facilities intended to be subleased to Concession Sublessees or Airline Sublessees (to the extent of any Subleases for portions of the New Facilities related to airline passenger services), the Design-Builder shall only be required to install the basic infrastructure and equipment for the supply of necessary Utilities to such concession spaces, and shall not be required to install the fit-out of such

concession spaces to the individual specifications and needs of each Sublessee in order to satisfy the requirements of this clause (i);

(ii) (A) all certifications for the Final Design Documents and all mechanical, electrical, electronics and other systems shall have been received in accordance with the requirements of the Contract Documents (provided, that for the avoidance of doubt, LEED Silver Certification or LEED Gold Certification shall not be a condition to Substantial Completion); and (B) inspection reports for the New Facilities shall have been made in accordance with the requirements of the Contract Documents;

(iii) the Design-Builder shall have certified to the Developer that all DB D&C Work (other than Punch List Items and, if any, additional DB Punch List Items) has been completed in accordance with the requirements of the Contract Documents;

(iv) (x) the Design-Builder shall have certified that the Design-Builder has received, and paid all associated fees due and owing for, all Design-Builder Governmental Approvals relating to the New Facilities and shall have obtained and furnished to the Developer for submission to the Port Authority accurate and complete copies of such Design-Builder Governmental Approvals, and such Design-Builder Governmental Approvals shall be final and non-appealable, and there shall exist no uncured violation of the terms and conditions of any such Design-Builder Governmental Approval and (y) the Design-Builder shall cooperate with the Developer as set forth in Section 15.1(d)(vi) with respect to all other Governmental Approvals required by Section 10.6(a)(iv) of the Lease;

(v) (x) the Design-Builder shall have prepared, completed, and submitted to the Developer for submission to the Port Authority for approval any such plans, procedures, manuals (including relevant portions of the O&M Manual), reports, or relevant portions thereof, and Submittals as may be the responsibility of the Design-Builder hereunder; and (y) the Design-Builder shall have provided such other assistance and documentation as may reasonably be requested by the Developer in order to facilitate the Developer's preparation, completion and submission to the Port Authority for approval of the remainder of all such plans, procedures, manuals and reports, including the O&M Manual, for Operations and Maintenance Work to be performed during the O&M Period as required by the Lease (which other assistance and documentation shall not relieve the Developer of its obligation to prepare, complete and submit the remainder of such information in order to comply with Section 10.6(a)(v) of the Lease);

(vi) all other Submittals required to have been provided by the Design-Builder with respect to the DB D&C Work prior to or on the Substantial Completion Date as set forth in this Design-Build Contract, the D&C Schedule of Submittals, the applicable Requirements and Provisions for Work or the other Contract Documents shall have been submitted by the Design-Builder to the Developer for submission to the Port Authority, and, if required under the Contract Documents, approved by the Developer and/or the Port Authority;

(vii) the Design-Builder shall have prepared, (A) in consultation with the Developer and the Port Authority (including as contemplated in Section 10.6(f)), and submitted to the Developer, for submission to the Port Authority, the Punch List in respect of the New Facilities in accordance with the procedures and schedules set forth in the Project Management and Execution Plan, and such Punch List shall have received Port Authority Approval, which Punch List shall include any remaining items (if any) from the respective Punch Lists related to the New Facilities Construction Milestones that achieved Partial Completion prior to the date of the Substantial Completion Notice and (B) in consultation with the Developer, and submitted to the Developer, the DB Punch List in respect of the New Facilities and such DB Punch List shall have been approved by the Developer, which DB Punch List shall include any remaining items (if any) from the respective DB Punch Lists related to the New Facilities Construction Milestones that achieved Partial Completion prior to the date of the Substantial Completion Notice;

(viii) NOT USED;

(ix) (x) the Design-Builder shall have provided the Developer with copies of any training records and course completion certificates issued to any of the relevant personnel by the Design-Builder or its DB Subcontractors; and (y) the Design-Builder shall have provided assistance and documentation as may be reasonably requested by the Developer in order to facilitate the Developer's certification that the Developer has completed necessary training of personnel that will be performing the Operations and Maintenance Work at the New Facilities and other necessary personnel (which assistance and documentation shall not relieve the Developer of its obligation to make such certification under this clause (y) to comply with Section 10.6(a)(ix) of the Lease);

(x) any DB Work Defects in any portion of the Construction Project, including any Construction Segment or New Facilities Construction Milestone, existing during the applicable Warranty Period, the repair and rehabilitation of which is the responsibility of the Design-Builder (or a DB Subcontractor on its behalf) pursuant to the obligations set forth in Section 10.8 shall have been rectified in full, or are in the process of being rectified, in each case, to the Developer's and the Port Authority's satisfaction.

(b) Pursuant to Section 10.6(b) of the Lease, the Port Authority is required to issue, following the Developer's request and within the time periods set forth in Sections 10.6(c) through 10.6(g) of the Lease, a written certificate that the Developer has achieved Central Hall Substantial Completion (the "**Certificate of Central Hall Substantial Completion**") after the Port Authority has determined that the Developer has satisfied all of the conditions for Central Hall Substantial Completion set forth in Section 10.6(b) of the Lease. The Parties shall coordinate with each other and the Port Authority in accordance with this Section 10.6 in satisfying the conditions to the Port Authority's issuance of the Certificate of Central Hall Substantial Completion, including providing such assistance and documentation to each other as may be reasonably required to enable the Parties to satisfy such conditions as must be satisfied by each such Party. In particular, the Design-Builder shall be responsible for the following items, to the extent required in connection with the DB

D&C Work with respect to the Central Hall, and subject to the Subcontracting Restrictions (as defined in Section 10.3):

(i) other than Punch List Items and, if any, DB Punch List items, the Design-Builder shall have completed all DB D&C Work with respect to the Central Hall in accordance with the requirements of the Construction Documents, the Released for Construction Documents and the other Contract Documents (including installation, commissioning and activation of all equipment and systems required to be installed, commissioned and activated by the Design-Builder in accordance with Section 25 of the Design and Construction Requirements, except to the extent specifically identified as a responsibility of the Developer pursuant to Exhibit A); it being understood that, solely with respect to the individual concession spaces in the Central Hall intended to be subleased to Concession Sublessees or Airline Sublessees (to the extent of any Subleases for properties related to airline passenger services), the Design-Builder shall only be required to install the basic infrastructure and equipment for the supply of necessary Utilities to such concession spaces, and shall not be required to install the fit-out of such concession spaces to the individual specifications and needs of each Sublessee in order to satisfy the requirements of this clause (i);

(ii) all inspection reports with respect to the Central Hall shall have been made in accordance with the requirements of the Contract Documents;

(iii) the Design-Builder shall have certified to the Developer that all DB D&C Work with respect to the Central Hall (other than Punch List Items and, if any, additional DB Punch List Items) has been completed in accordance with the requirements of the Contract Documents;

(iv) (x) the Design-Builder shall have certified that the Design-Builder has received, and paid all associated fees due and owing for, all Design-Builder Governmental Approvals relating to the Central Hall and shall have obtained and furnished to the Developer for submission to the Port Authority accurate and complete copies of such Design-Builder Governmental Approvals, and such Design-Builder Governmental Approvals shall be final and non-appealable, and there shall exist no uncured violation of the terms and conditions of any such Design-Builder Governmental Approval and (y) the Design-Builder shall cooperate with the Developer as set forth in Section 15.1(d)(vi) with respect to all other Governmental Approvals required by Section 10.6(b)(iv) of the Lease;

(v) all Submittals required to have been provided by the Design-Builder with respect to the DB D&C Work with respect to the Central Hall prior to the date of the Central Hall Substantial Completion as set forth in this Design-Build Contract, the Central Hall Requirements and Provisions for Work or the other Contract Documents shall have been submitted by the Design-Builder to the Developer for submission to the Port Authority and, if required under the Contract Documents, approved by the Developer and/or the Port Authority;

(vi) the Design-Builder shall have prepared, (A) in consultation with the Developer and the Port Authority (including as contemplated in Section 10.6(g)), and submitted to the Developer, for submission to the Port Authority, the Punch List with respect to the Central Hall in accordance with the procedures and schedules set forth in the Project Management and Execution Plan and such Punch List shall have received Port Authority Approval and (B) in consultation with the Developer, and submitted to the Developer, the DB Punch List with respect to the Central Hall and such DB Punch List shall have been approved by the Developer; and

(vii) (x) the Design-Builder shall have provided the Developer with copies of any training records and course completion certificates issued to any of the relevant personnel by the Design-Builder or its DB Subcontractors; and (y) the Design-Builder shall have provided assistance and documentation as may be reasonably requested by the Developer in order to facilitate the Developer's certification that the Developer has completed necessary training of personnel that will be performing the Operations and Maintenance Work at the Central Hall (which assistance and documentation shall not relieve the Developer of its obligation to make such certification under this clause (y) to comply with Section 10.6(b)(vii) of the Lease).

(c) The Design-Builder shall provide the Developer with approximately ninety-five (95) days' prior written notice of the date the Design-Builder expects to complete all conditions that are the responsibility of the Design-Builder for the achievement of (i) Substantial Completion (the "**Expected Substantial Completion Date**") or (ii) Central Hall Substantial Completion (the "**Expected Central Hall Substantial Completion Date**"). The Design-Builder's notification shall include a list of all requirements that the Design-Builder has achieved or will achieve to allow the Port Authority's issuance of a Certificate of Substantial Completion. The Developer will then provide the Port Authority with approximately ninety (90) days' prior written notification that the Developer expects to achieve (i) Substantial Completion on the Expected Substantial Completion Date (the "**Substantial Completion Notice**") or (ii) Central Hall Substantial Completion on the Expected Central Hall Substantial Completion Date (the "**Central Hall Substantial Completion Notice**"), in each case so as to allow the Port Authority to commence its review of the satisfaction of those conditions to Substantial Completion or Central Hall Substantial Completion, as applicable, amenable to being reviewed at the time of such notice and such notification shall include the list of all such requirements identified by the Design-Builder.

(d) No later than sixty (60) days prior to the Expected Substantial Completion Date or Expected Central Hall Substantial Completion Date, as applicable, the Design-Builder (unless excluded by the Port Authority) and the Developer shall meet and confer with the Port Authority, pursuant to Section 10.6(c) of the Lease, with respect to the list of requirements provided by the Developer pursuant to Section 10.6(b). Subsequent to this initial meeting, the Design-Builder (unless excluded by the Port Authority), the Developer and the Port Authority will meet, confer and exchange information on a regular basis with the goal being the Port Authority's timely inspection of the Construction Project, review of the Final Design Documents and final Construction Documents and determination of whether all of the conditions required for the Port Authority's issuance of a Certificate of Substantial

Completion or Certificate of Central Hall Substantial Completion, as applicable, or otherwise required by this Design-Build Contract to be satisfied by the Design-Builder prior to Substantial Completion or Central Hall Substantial Completion, as applicable, have been satisfied. If at any time the Design-Builder anticipates completing all conditions for Substantial Completion or Central Hall Substantial Completion, as applicable, for which the Design-Builder is responsible prior to the Expected Substantial Completion Date or Expected Central Hall Substantial Completion Date, as applicable, and the Design-Builder desires to change the Expected Substantial Completion Date or Expected Central Hall Substantial Completion Date, as applicable, to an earlier date, then, with the written approval of the Developer and, if required, the Port Authority, the Expected Substantial Completion Date or Expected Central Hall Substantial Completion Date, as applicable, may be changed to such earlier date.

(e) The Design-Builder shall thereafter provide written notification to the Developer of the date the Design-Builder has satisfied all conditions for Substantial Completion or Central Hall Substantial Completion, as applicable, for which the Design-Builder is responsible, together with the relevant supporting documentation. The Developer will thereafter provide written notification to the Port Authority of the date all conditions for Substantial Completion or Central Hall Substantial Completion, as applicable, have been satisfied, together with the relevant supporting documentation. Pursuant to Section 10.6(d) of the Lease, the Port Authority is required, within thirty (30) days of receipt of the Developer's written notification, all required supporting documentation and all Submittals required to be provided in accordance with the Project Documents, to conduct an inspection of the Construction Project and its components, a review of the Final Design Documents, final Construction Documents, other Submittals and reports, and such other investigation as may be necessary to evaluate whether Substantial Completion or Central Hall Substantial Completion, as applicable, has been achieved.

(f) Pursuant to Section 10.6(e) of the Lease, the Port Authority is required, within the thirty (30)-day period referenced in Section 10.6(d), to either (i) issue the Certificate of Substantial Completion or Certificate of Central Hall Substantial Completion, as applicable, effective as of the date the Port Authority accepts that all the conditions to Substantial Completion or Central Hall Substantial Completion, as applicable, were satisfied or (ii) notify the Developer in writing of the reasons why the conditions to Substantial Completion or Central Hall Substantial Completion, as applicable, have not been satisfied; provided, that, in the event that any condition has not been satisfied, the Lease provides that the Developer shall be entitled to resubmit the notification provided pursuant to Section 10.6(d) of the Lease (together with the relevant supporting documentation and inspection verification) once the Developer believes that the relevant condition has been satisfied, whereupon, if the Port Authority agrees that such condition has been satisfied, the Port Authority will be required to issue a Certificate of Substantial Completion or Certificate of Central Hall Substantial Completion, as applicable, in accordance with Section 10.6(e) of the Lease. If the Developer receives the notification described in clause (ii) above in connection with a condition to Substantial Completion or Central Hall Substantial Completion, as applicable, that is the responsibility of the Design-Builder to satisfy, the Design-Builder will be entitled to resubmit the notification required of the Design-Builder pursuant to Section 10.6(d) above (together

with the relevant supporting documentation and inspection verification) once the Design-Builder believes that the relevant condition has been satisfied, in which event the Developer will resubmit such information to the Port Authority. If any of the Developer, the Design-Builder or the Port Authority cannot agree as to the occurrence of Substantial Completion, the matter shall be subject to dispute resolution pursuant to Article 33 or Article 33A, as applicable.

(g) Pursuant to Section 10.6(f) of the Lease, in connection with the Port Authority's issuance of the Certificate of Substantial Completion or Certificate of Central Hall Substantial Completion, as applicable, the Port Authority shall have the right in its reasonable discretion to add or remove items to or from the Punch List.

(h) With respect to the New Facilities, the Design-Builder shall comply with the provisions of Section 10.11(d) with respect to all remaining DB D&C Work.

Section 10.7 Final Acceptance

(a) Pursuant to Section 10.7(a) of the Lease, the Port Authority is required to issue, following the Developer's request and within the time periods set forth in Sections 10.7(b) through 10.7(e) of the Lease, a written certificate that the Developer has achieved Final Acceptance (the "**Certificate of Final Acceptance**") after the Port Authority has determined that the Developer has satisfied all of the conditions for Final Acceptance set forth in Section 10.7(a) of the Lease with respect to the entire Construction Project. The Parties shall coordinate with each other and the Port Authority in accordance with this Section 10.7 in satisfying the conditions to the Port Authority's issuance of the Certificate of Final Acceptance, including providing such assistance and documentation to each other as may be reasonably required to enable the Parties to satisfy such conditions as must be satisfied by each such Party. In particular, the Design-Builder shall be responsible for the following items, to the extent required in connection with the DB D&C Work, and subject to the Subcontracting Restrictions (as defined in Section 10.3):

(i) all conditions to Substantial Completion or Central Hall Substantial Completion related to the DB D&C Work shall have remained satisfied;

(ii) all Punch List Items and, unless agreed in writing to the contrary between the Design-Builder and the Developer, DB Punch List Items, in each case related to the DB D&C Work, shall have been completed in accordance with the requirements of the Contract Documents;

(iii) the Design-Builder shall have certified to the Developer that the Design-Builder has acquired and delivered to the Developer all spare parts, resources and equipment required by the Requirements and Provisions for Work and/or Exhibit A with respect to the DB D&C Work;

(iv) all Submittals for the DB D&C Work (including (A) those required pursuant to Section 8 of the Design and Construction Requirements relating to sustainable design and (B) the reports of Special Inspection) that the Design-Builder is

required by the Contract Documents to submit after Substantial Completion or Central Hall Substantial Completion, as applicable, but before Final Acceptance shall have been submitted to the Developer for submission to the Port Authority and, if required under the Contract Documents, approved by the Port Authority;

(v) the Developer shall have received from the Design-Builder, for submission to the Port Authority, a complete set of the Record Documents for the DB D&C Work related to the entire Construction Project, including two (2) sets of As-Built Drawings of the DB Construction Work in an electronic CADD data file in a format to be designated by the Port Authority, all of which shall have conformed to the specifications of the Port Authority in the Contract Documents (the receipt of a copy of said specifications prior to the execution of this Design-Build Contract being hereby acknowledged by the Design-Builder), together with two (2) complete hard copies of such drawings, all engineering reports, engineering analysis, boring logs, survey information, and engineering design calculations and the relevant portions of the O&M Manual in a comprehensive, coordinated package;

(vi) if any Governmental Entity with jurisdiction requires any form of certification of design, engineering or construction with respect to the Construction Project or any portion thereof, including any certifications from the Engineer of Record or the Architect of Record, as applicable, for the Construction Project and certificates of occupancy, the Design-Builder shall have concurrently issued identical certificates to the Developer and Port Authority;

(vii) subject to clause (viii) below, the Design-Builder shall have restored to their original condition any lands to which the Design-Builder was granted access hereunder for temporary access and other activities not part of the permanent work;

(viii) all aesthetic and landscaping work, with the exception of vegetative ground covering, shall have been completed and is operational, including aesthetic lighting;

(ix) all demobilization from relevant parts of the Construction Project shall have been completed, including the removal of temporary work and equipment used in performance of the DB Construction Work but not required for the Operations and Maintenance Work;

(x) the Design-Builder shall have certified to the Developer in writing that no overdue amounts owing to any DB Subcontractor or Supplier remain unpaid (except disputed amounts for which the Design-Builder or the DB Subcontractor, as applicable, has established adequate reserves);

(xi) subject to Section 9.2(f), the Design-Builder shall have (A) certified to the Developer in writing that the Premises are free and clear of all Liens or Claims arising out of or in connection with the performance of the DB D&C Work by the Design-Builder or any of the DB Subcontractors, and (B) delivered to the Developer final Lien

waivers, in form and substance satisfactory to the Developer and the Port Authority, from each the Design-Builder and each DB Subcontractor, other than Excepted DB Subcontractors, as necessary to support the Design-Builder's certification required by clause (A), or, if the Design-Builder is unable to obtain all such waivers, a letter of credit or bond that has received Port Authority Approval to protect the Port Authority, the Developer, the Construction Project and the Premises from any and all Claims and Liens arising out of or in connection with the performance of the DB D&C Work by the Design-Builder or any of the DB Subcontractors;

(xii) (x) all obligations of the Design-Builder associated with Design-Builder Governmental Approvals applicable to the DB Construction Work shall have been completed, including the payment to any permitting agency of any amounts due pursuant to the terms of or as a result of any breaches of Design-Build Governmental Approvals by the Design-Builder; and (y) the Design-Builder shall cooperate with the Developer as set forth in Section 15.1(d)(vii) with respect to all other Governmental Approvals required by Section 10.7(a)(xii) of the Lease;

(xiii) with respect to any New Facilities Construction Milestone or any Construction Segment related to the DB D&C Work that achieved Partial Completion, all conditions set forth in Sections 4.3.2.3 and 6.2.3 of the TCAP shall have been satisfied and the Port Authority shall have issued the Final Certificate of Authorization to Occupy or Use in accordance with such sections of the TCAP; and

(xiv) with respect to the individual concession spaces in the New Facilities intended to be subleased to Airline Sublessees (to the extent of any Subleases for portions of the New Facilities related to airline passenger services), the fit-out of any such concession spaces in accordance with the initial configuration set forth in the revised Comprehensive Concessions Plan delivered by the Developer to the Port Authority pursuant to Section 5.3(d) of the Lease that was not completed prior to Substantial Completion or Central Hall Substantial Completion, as applicable, shall have been completed.

(b) Within sixty-five (65) days prior to the date the Design-Builder expects to complete all conditions that are the responsibility of the Design-Builder for the achievement of Final Acceptance, the Design-Builder shall provide written notice to the Developer of such expected completion date (the "**Expected Final Acceptance Date**"). The Design-Builder's notification shall include a list of all specific requirements that the Design-Builder has achieved or will achieve to allow the Port Authority's issuance of the Certificate of Final Acceptance. The Developer will then provide the Port Authority prior written notification of the Expected Final Acceptance Date within sixty (60) days prior thereto, so as to allow the Port Authority to commence its review of the satisfaction of those conditions amenable to being reviewed at the time of such notice and such notification shall include the list of all such requirements identified by the Design-Builder.

(c) No later than forty-five (45) days prior to the Expected Final Acceptance Date, the Design-Builder (unless excluded by the Port Authority) and the Developer shall meet and

confer with the Port Authority with respect to the list of requirements provided by the Developer pursuant to Section 10.7(b) above or otherwise required by Section 10.7(b) of the Lease. Subsequent to this initial meeting, the Design-Builder (unless excluded by the Port Authority), the Developer and the Port Authority shall meet, confer and exchange information on a regular basis as necessary with the goal being to facilitate the Port Authority's timely inspection and determination of whether all of the conditions required for the Port Authority's issuance of a Certificate of Final Acceptance have been satisfied. If at any time the Design-Builder anticipates completing all conditions for Final Completion for which the Design-Builder is responsible prior to the Expected Final Completion Date and the Design-Builder desires to change the Expected Final Completion Date to an earlier date, then, with the written approval of the Developer and, if required, the Port Authority, the Expected Final Completion Date may be changed to such earlier date.

(d) The Design-Builder shall thereafter provide written notification to the Developer of the date the Design-Builder has satisfied all conditions for the Port Authority's issuance of the Certificate of Final Acceptance for which the Design-Builder is responsible, together with the relevant supporting documentation. The Developer will thereafter provide written notification to the Port Authority of the date all conditions for the issuance of the Certificate of Final Acceptance have been satisfied, together with the relevant supporting documentation. Pursuant to Section 10.7(d) of the Lease, the Port Authority is required, within thirty (30) days of receipt of the Developer's written notification, all required documentation and all Submittals required to be provided in accordance with the Project Documents, to conduct an inspection of the Punch List Items, a review of the As-Built Drawings and such other investigation as may be necessary to evaluate whether all of the conditions to achieve Final Acceptance have been satisfied.

(e) Pursuant to Section 10.7(e) of the Lease, (1) the Port Authority is required, within the thirty (30)-day period referred to in Section 10.7(d), to either (i) issue a Certificate of Final Acceptance, effective as of the date the Port Authority accepts that all the conditions to Final Acceptance were satisfied or (ii) notify the Developer in writing of the reasons why the conditions to Final Acceptance have not been achieved; provided, that, in the event that any condition has not been satisfied, the Developer shall be entitled to resubmit the notification to the Port Authority pursuant to Section 10.7(d) of the Lease once the Developer believes that the relevant condition has been satisfied, whereupon, if the Port Authority agrees that such condition has been satisfied, the Port Authority will be required to issue a Certificate of Final Acceptance in accordance with Section 10.7(e) of the Lease. If the Developer receives the notification described in clause (ii) above in connection with a condition to Final Completion that is the responsibility of the Design-Builder to satisfy, the Design-Builder shall be entitled to resubmit the notification required of the Design-Builder pursuant to Section 10.7(d) above once the Design-Builder believes that the relevant condition has been satisfied, in which event the Developer will resubmit such information to the Port Authority. If any of the Developer, the Design-Builder or the Port Authority cannot agree as to the occurrence of Final Acceptance, the matter shall be subject to dispute resolution pursuant to Article 33 or Article 33A, as applicable.

Section 10.8 Design and Construction Warranties

(a) The Design-Builder warrants and guarantees (the “**Warranty**”) to the Developer and, subject to Section 19.1(f), to the Port Authority, as follows:

(i) the design of the Construction Project shall satisfy the requirements of this Design-Build Contract, the Requirements and Provisions for Work and the other Contract Documents with respect to the DB D&C Work;

(ii) all DB D&C Work (except as described in clause (i) above), including materials and equipment furnished as part of the construction, shall be (A) complete and conform to Best Management Practice, (B) new (unless otherwise specified herein or in the Requirements and Provisions for Work), of good quality, in conformance with the Applicable Laws, Applicable Standards, this Design-Build Contract, the Requirements and Provisions for Work and the other Contract Documents, and (C) once completed, free of all DB Work Defects in design, materials and workmanship and fit for its intended purpose; and

(iii) the Final Design Documents with respect to the DB D&C Work, final Construction Documents and the Record Documents shall (A) be accurate and complete, (B) comply with the requirements of the Contract Documents, and (C) accurately reflect the condition of the Construction Project as of Final Acceptance.

(b) The Warranty with respect to the entire Construction Project (other than the Central Hall) shall be for a term of one (1) year from the issuance by the Port Authority of the Certificate of Substantial Completion and with respect to the Central Hall, one (1) year from the issuance by the Port Authority of the Certificate of Central Hall Substantial Completion, or in each case for such other periods set out in Exhibit A-35, but, with respect to any portion of the DB D&C Work that is repaired or replaced during such one (1)-year periods or such other periods set out in Exhibit A-35, respectively, such term shall be for one (1) year from the date of repair or replacement of such portion of the DB D&C Work or for such other period set out in Exhibit A-35, respectively ; provided, that the Warranty with respect to any New Facilities Construction Milestone or any Construction Segment that has achieved Partial Completion prior to the Substantial Completion Date shall commence from the issuance by the Port Authority of a Temporary Certificate of Authorization to Occupy or Use with respect to such New Facilities Construction Milestone or Construction Segment, as applicable; and provided, further, that the Design-Builder shall not have any Warranty obligations with respect to a New Improvement (or a portion thereof) once such New Improvement (or a portion thereof) has been turned over to the Port Authority as described in Section 10.5(h) and the related construction warranties have been assigned to the Port Authority as described in Section 10.8(d) (the “**Warranty Period**”).

(c) If a DB Work Defect in the DB D&C Work encompassed by the Warranty has occurred during the applicable Warranty Period, then no later than thirty (30) days after the expiration of the Warranty Period, the Developer shall be entitled to require that the Design-

Builder (or a DB Subcontractor on the Design-Builder's behalf), at its sole expense, rectify such DB Work Defect.

If the Design-Builder and the DB Subcontractor have failed to promptly rectify such DB Work Defect within the time permitted in Section 28.1 and if the Port Authority exercises its right to rectify such DB Work Defect itself in accordance with Section 28.1 (or to engage a third party to rectify such DB Work Defect), then the Developer shall be entitled to receive from the Design-Builder payment or reimbursement of the resulting amount due to the Port Authority, which shall be equal to one hundred fifteen percent (115%) of the Port Authority's out-of-pocket costs, expenses, damages, penalties and other charges directly paid or incurred to rectify such DB Work Defect (together with, but without duplication of, late charges calculated pursuant to Section 35.16(a) in accordance with Section 28.2). If the Design-Builder fails to make such payment to the Developer as required by Section 28.2, subject to the other terms and conditions of this Design-Build Contract (including Section 23.1(h)) and in addition to all rights and remedies available to the Developer under the DB Project Documents or Applicable Law, the Developer shall be entitled to direct the Collateral Agent to draw on the Construction Security furnished by the Design-Builder pursuant to this Design-Build Contract in the amount payable to the Port Authority by the Developer and pay the proceeds of such draw over to the Developer (for the Developer to pay to the Port Authority) without deduction. In the event of any associated deductions by the Port Authority in any payments due to the Developer under the Lease as a result of any such amount due to the Port Authority, the Design-Builder shall be responsible for making the Developer whole with respect to such deductions.

If the Design-Builder defaults or neglects to carry out the DB D&C Work in accordance with the requirements of this Design-Build Contract or if there are any DB Work Defects that the Design-Builder refuses or neglects to repair, in each case after giving effect to and without limiting the Design-Builder's right to cure or repair or correct performance as provided in this Section 10.8 and in the applicable provisions of the Lease or otherwise in this Design-Build Contract, and the Design-Builder fails after receipt of written notice from the Developer to commence and continue correction of such default, neglect, or DB Work Defect with diligence and promptness, (i) any such defaults occurring prior to Substantial Completion shall be included in the Punch List and the DB Punch List and (ii) the Developer shall also be entitled, without prejudice to any other remedy it may have, to correct the same itself or cause it to be corrected. If the Developer does so, it will issue an appropriate scope change order to the Design-Builder deducting from the payments then or thereafter due to the Design-Builder the reasonable, documented, direct out-of-pocket cost of correcting such default, neglect, or DB Work Defect or, if the payments due the Design-Builder are not sufficient to cover such amount, the Design-Builder shall be required to pay the difference to the Developer within thirty (30) days after the Developer issues an invoice for such amount together with supporting documentation.

(d) The Design-Builder shall obtain from all DB Subcontractors and Suppliers appropriate representations, warranties, guarantees and obligations in accordance with Best Management Practice, for work of similar scope and scale, all as set forth in Sections 12.1(c)(iv), (c)(x), (c)(xii) and (d). The Design-Builder will cause any warranties to be

expressly extended to the Developer and the Port Authority; provided, that the foregoing requirement will not apply to standard, pre-specified manufacturer warranties of mass-marketed materials, products (including software products), equipment or supplies where the warranty cannot be extended to the Developer and the Port Authority despite Reasonable Efforts exercised in accordance with Best Management Practice; and provided, further, that pursuant to Section 10.8(d) of the Lease upon Partial Completion of any of the New Improvements, the Developer shall assign in favor of the Port Authority the Developer's rights under this Design-Build Contract with respect to the construction warranty coverage for such New Improvement under terms that provide for the warranties to run solely for the benefit of the Port Authority.

(e) The rights of the Developer under this Section 10.8 shall not be the Developer's sole or exclusive remedy with respect to DB Work Defects, but shall be in addition to, and shall not in any way release, compromise, waive or diminish, any and all rights and remedies available to the Developer, including under the Contract Documents or under Applicable Law, which the Developer hereby expressly reserves. The obligations contained in this Section 10.8 shall survive expiration or early termination of this Design-Build Contract or completion of the DB D&C Work.

(f) If and to the extent the Design-Builder obtains general or limited warranties from any Person with respect to design, materials, workmanship, construction, equipment, tools, supplies, software or services that extend beyond the Warranty Period, the Design-Builder shall cause such warranty to be extended to the Developer for such period.

(g) With respect to any repair or rectification of any DB Work Defect, the Design-Builder shall repair or rectify such works or materials in a manner that results in such works or materials having the same lifecycle expectations as the same or similar works or materials used for the Construction Project or, if there are no such similar works or materials, having the lifecycle expectations intended for the Construction Project as set forth in the original lifecycle requirements.

(h) The Design-Builder acknowledges and agrees that, as required by the provisions of the Lease, upon expiration of the term of the Lease or upon Early Termination, all remaining warranties and guaranties, express or implied, if any, shall be assigned to the Port Authority.

Section 10.9 Suspension of DB D&C Work

(a) Pursuant to Section 10.9(a) of the Lease, the Port Authority shall at any time have the right and authority to suspend, in whole or in part, the D&C Work by written order to the Developer, and any such written order from the Port Authority must be supported by the Port Authority's reasons for the required suspension of the D&C Work. The Developer will provide the Design-Builder with a copy of each such written suspension order relating to the DB D&C Work as soon as practicable and in any event no later than two (2) Business Days after the Developer's receipt thereof from the Port Authority (or if less than two (2) Business

Days is provided by the Port Authority for compliance with such order to suspend, then as soon as practicable and in advance of the provided deadline).

(b) Pursuant to Section 10.9(b) of the Lease, except where any suspension of the D&C Work by the Port Authority pursuant to this Section 10.9 is made in response to:

(i) any failure by any Lessee-Related Entity to comply with any Applicable Law, Applicable Standard or Governmental Approval or obtain any Lessee Governmental Approval;

(ii) the existence of conditions unsafe for workers, other personnel or the general public, including failures by a Lessee-Related Entity to comply with Safety Standards or perform Safety Compliance as set forth in Section 13.5;

(iii) a declared Emergency issued pursuant to Applicable Law by the Port Authority Police or any other Governmental Entity (to the extent not a Force Majeure Event with respect to the Developer), if caused by a Lessee-Related Entity;

(iv) a significant incident involving one or more casualties requiring hospitalization or treatment by a medical professional or one or more fatalities caused by the failure of any Lessee-Related Entity to comply with any Applicable Law or Applicable Standard or any requirements of the Project Documents;

(v) the presence of a “VIP,” dignitary or other person requiring special security arrangements or expedited handling at LGA Airport; or

(vi) the exercise of other suspension rights expressly set forth in the Project Documents resulting from any Lessee-Related Entity’s failure to comply with any requirement of the Project Documents,

any such suspension order shall entitle the Developer to claim a Compensation Event and a Delay Event in accordance with Article 14 of the Lease and any suspension order made in response to matters referred to in clauses (i) and (v) above shall cease to apply as soon as the relevant matter has been rectified or remedied to the reasonable satisfaction of the Port Authority, and the Design-Builder shall be entitled to make a corresponding claim for Equivalent Project Relief pursuant to Article 14A hereto. Further, any suspension of the DB D&C Work by the Port Authority pursuant to this Section 10.9 made in response to an event listed in (i) through (iv) or (vi) above shall constitute a Developer Act if the Lessee-Related Entity (as referenced therein) is the Developer or its Contractors (other than the Design-Builder or any DB Party).

(c) In addition to the Port Authority’s right to suspend the D&C Work as described in Section 10.9(a) above, the Developer shall also have the right at any time and for any other reason to require the Design-Builder to suspend performance of the DB D&C Work or any portion thereof by giving prior written notice to the Design-Builder (a “**Developer Suspension**”). Prior to a Developer Suspension of the DB D&C Work pursuant to this paragraph, the Developer shall provide the Design-Builder with written notice of such intent at least five (5) days in advance. The Developer may also unilaterally order the Design-

Builder to resume performance of the DB D&C Work or any such portion thereof at any time during the Developer Suspension; provided, however, that upon ordering the Design-Builder to resume the DB D&C Work, the Developer shall compensate the Design-Builder for the reasonable costs that resulted from such Developer Suspension (including any direct costs, payments to DB Subcontractors and Suppliers, demobilization and re-mobilization costs, and any other costs incurred by the Design-Builder in connection with Design-Builder efforts to accelerate the DB D&C Work to the extent such acceleration is requested by the Developer and such other costs are approved in advance by the Developer) and, subject to Article 14B, shall grant the Design-Builder additional time for performance of its contractual obligations reflecting the delay resulting from such suspension, having made due allowance for any such acceleration of the DB D&C Work. Once such payment is made, the Design-Builder shall continue its performance. Further, the Design-Builder shall have the right to terminate this Design-Build Contract as a result of a Developer Suspension under the circumstances described in Section 24.2(e) hereof.

Section 10.10 Inspections of Construction Work Generally; No Duty to Inspect or Police

(a) Pursuant to Section 10.10(a) of the Lease, the Port Authority shall have the right, through its duly authorized representatives, to inspect the Construction Work and the plans and specifications thereof, at any and all times during the progress thereof and from time to time, in its sole discretion, to take samples and perform testing in any part of the Construction Work, in each case without interfering with the Construction Work or operation of the Premises to the extent reasonably practicable.

(b) Subject to the provisions of the design review protocol set forth in Exhibit 44 hereto, it is hereby further understood that neither the Port Authority nor the Developer has any duty or obligation of any kind whatsoever to inspect or police the performance of the DB Construction Work by the Design-Builder, and the rights granted to the Port Authority under the Lease and the Developer hereunder shall not create or be deemed to create such a duty or obligation. Accordingly, the fact that the General Manager has not exercised the Port Authority's right to require the Developer to cease all or any part of the Construction Work shall not be or be deemed to be an agreement or acknowledgment on the part of the Port Authority that the Design-Builder has in fact performed such portion of the Construction Work constituting DB Construction Work in accordance with the terms of the Lease or the Construction Plan, nor shall such fact be or be deemed to be a waiver by the Port Authority or the Developer from the requirement of compliance by the Design-Builder with the provisions of the Lease or this Design-Build Contract, respectively, with respect to the DB Construction Work and the Construction Plan.

Section 10.11 Coordination of the Work

(a) The Design-Builder shall be responsible for the coordination of the performance of the DB D&C Work, including particularly for coordinating with the Developer and the Port Authority (i) in compliance with this Article 10 (and particularly this

Section 10.11), Article 16, and Sections 12.1 and 12.2, in each case to the extent applicable to the performance of the DB D&C Work, and (ii) in compliance with Exhibit A hereto.

(b) Pursuant to Section 10.11(b) of the Lease, (1) with respect to the Perimeter Intrusion Detection System (PIDS), the Developer and the Port Authority's cooperation obligations under Section 10.11 of the Lease include the obligation to cooperate with each other, and to exercise Reasonable Efforts to cause their respective contractors to cooperate with each other, in negotiations with the Port Authority's PIDS provider and in reaching an agreement mutually agreed by the Developer and the Port Authority with the Port Authority's PIDS provider, and (2) if an agreement is reached with the Port Authority's PIDS provider pursuant to which the Perimeter Intrusion Detection System (PIDS) will be replaced by the Developer as part of the D&C Work, as described in Section 24.0 of the Design and Construction Requirements, the Developer and the Port Authority shall enter into an appropriate change order to memorialize such agreement pursuant to Section 13.1 of the Lease. With respect to the Perimeter Intrusion Detection System (PIDS), the Design-Builder's and the Developer's cooperation obligations under this Section 10.11 shall include the obligation to cooperate with each other and the Port Authority in negotiations with the Port Authority's PIDS provider and in assisting the Developer in reaching an agreement mutually agreed by the Developer and the Port Authority with the Port Authority's PIDS provider (provided, that the Developer shall not agree to such agreement without the Design-Builder's consent, which shall not unreasonably be withheld). If an agreement is reached with the Port Authority's PIDS provider, the Design-Builder shall enter into an agreement with the Port Authority's PIDS provider pursuant to which the Perimeter Intrusion Detection System (PIDS) will be replaced by the Design-Builder as part of the DB D&C Work, as described in Section 24.0 of the Design and Construction Requirements and in accordance with Section 10.11(b) of the Lease, in satisfaction of the Developer's obligations under the Lease.

(c) The Design-Builder acknowledges and agrees that design and construction activities being undertaken with respect to the Construction Project, the Perimeter Intrusion Detection System (PIDS) and the Supporting Projects and any other construction or redevelopment activities at LGA Airport authorized by the Port Authority may be required to be undertaken concurrently, in sequence or otherwise, and may be closely integrated to each other physically, structurally, operationally, programmatically, or otherwise. The Design-Builder shall sequence and perform, or cause to be sequenced and performed, the DB D&C Work (including disposal of materials and use of construction staging areas and transport roadways) so as to minimize interference with the work and operations of contractors engaged on the Supporting Projects, the Perimeter Intrusion Detection System (PIDS) and any other construction or redevelopment activities at LGA Airport authorized by the Port Authority. Pursuant to Section 10.11(b) of the Lease, the Port Authority is required to use Reasonable Efforts to sequence and perform its work on the Supporting Projects, the Perimeter Intrusion Detection System (PIDS) and any other construction or redevelopment activities at LGA Airport authorized by the Port Authority (including disposal of materials and use of construction staging areas and transport roadways) so as to minimize interference with the Work and the operations of Contractors engaged on the Construction Project, including the Design-Builder. The Design-Builder's rights with respect to any relief related to the Port Authority's sequencing and performance of its work in connection with Support Projects and

the Perimeter Intrusion Detection System (PIDS) shall be limited to Equivalent Project Relief pursuant to Article 14A.

(d) Both Parties shall cooperate with each other and the other Persons involved in the Construction Project. Specifically, with respect to the DB D&C Work:

(i) subject to the Developer providing the Design-Builder with access to the DB Work and Staging Area (including the Permanent Rights of Access and the Temporary Rights of Access) in accordance with Section 3.1(a), the Design-Builder will

(A) provide reasonable access to such areas to the Developer, by its officers, employees, agents, authorized representatives, designees, designers, Sublessees and Contractors (other than the Design-Builder and the DB Subcontractors), and the Lenders (if applicable) and their advisors, to, at all reasonable times, (1) enter upon, monitor, and inspect the DB Work and Staging Area and the DB D&C Work, including for the purpose of developing facility maintenance plans or other plans related to the facilities and facilitating the provision of certifications required to be delivered to or by such entities; and (2) enter the DB Work and Staging Area to carry out any Operations and Maintenance Work or D&C Work not constituting DB D&C Work as may be agreed between the Parties (with the agreement of the Design-Builder not to be unreasonably withheld), or that is identified on and consistent with the Project Baseline Schedule; provided, that the Parties shall cooperate with one another in coordinating their respective activities within the Premises so as to minimize each Party's interference with the activities of the other Party; provided, however, that the Design-Builder shall not be responsible for any damage caused to the Premises prior to the date that the Developer grants the Design-Builder access to such portion of the Premises as part of the DB Work and Staging Area (unless such damage is caused by the Design-Builder or any other DB Party) and the Design-Builder shall not be responsible for the accuracy or completeness of any Operations and Maintenance Work or such D&C Work carried out by the Developer or such other Persons;

(B) provide access to such areas to any Persons who may be accompanied by the Developer, provided that the Developer must accompany such Persons at all times while within the DB Work and Staging Area;

(C) permit the Developer to be present in the DB Work and Staging Area for any testing that occurs related to the DB Work and Staging Area or the DB D&C Work, and the Design-Builder (1) will provide at least two (2) Business Days' prior written notice of any such tests to the Developer to enable the Developer to attend such tests, and (2) if requested by the Developer, will promptly deliver copies of any reports resulting from any such tests to the Developer, at the Developer's cost;

(D) cooperate fully with the Developer to facilitate the entry of the Developer and the other Persons and entities referenced in this Section 10.11(c)(i) to the DB Work and Staging Area and the exercise by the Developer of its rights with respect thereto;

(ii) each Party will cooperate in providing such information and taking such actions as the other Party may reasonably require in connection with the Construction Project.

(e) The Design-Builder and the Developer shall use Reasonable Efforts to ensure that the interplay between the D&C Work (regardless of whether such D&C Work is the responsibility of the Developer or the Design-Builder), on the one hand, and the Developer's terminal operations, Project Management and Execution Plan, Operational Readiness and Transition Plan and O&M Manual, on the other hand, are generally consistent with each other, and the Design-Builder and the Developer shall mutually participate in coordinating the interplay between the DB D&C Work within the Existing Terminal B and terminal operations on-going therein (which DB D&C Work shall be performed consistent with the Project Baseline Schedule and in accordance with Exhibit A hereto). In particular, the Design-Builder shall use Reasonable Efforts to (i) cooperate with the Developer during the Developer's start up and efforts to otherwise bring on-line completed segments of the DB D&C Work following the issuance by the Port Authority of a Temporary Certificate of Authorization to Occupy or Use with respect to such segments or of a Certificate of Substantial Completion with respect to the Construction Project (including in each case cooperating with the Developer to provide a reasonable time period for such transition, including testing, training and commissioning) and (ii) conduct all remaining DB D&C Work after such Partial Completion or Substantial Completion, as applicable, in a manner that minimizes disruption of LGA terminal operations and interference with the use of the New Terminal B by Patrons thereof.

(f) The Developer shall not permit any Work of the Developer or its officers, employees, agents, authorized representatives, designees, designers, Sublessees, or Contractors (excluding, for purposes of this provision, the DB D&C Work) to be performed in a manner that (i) fails to comply with this Design-Build Contract (including Exhibit A-19), the other Contract Documents, Applicable Laws, Applicable Standards or Governmental Approvals or (ii) interferes in any material respect with the Design-Builder's ability to discharge its own obligations to the Developer under this Design-Build Contract as a result of such failure.

Section 10.12 Parking Deficiency

(a) As of the DB Contract Effective Date, the Developer (with input from the Design-Builder) and the Port Authority shall have developed and mutually agreed to a plan (as revised or updated from time to time as permitted under Section 10.12 of the Lease, the "**Parking Plan**") that, among other things, sets forth projected numbers of unavailable parking spaces during each phase of the D&C Work (as may be revised or updated from time to time in a revised or updated Parking Plan, the "**Projected Parking**

Deficiencies”). Pursuant to Section 10.12(a) of the Lease, the Parking Plan may be revised or updated from time to time upon the mutual agreement of the Developer and the Port Authority. The Developer shall not agree to any revision to the Parking Plan that adversely impacts the DB D&C Work or imposes additional obligations on the Design-Builder without the consent of the Design-Builder, which consent shall not be unreasonably withheld.

(b) [REDACTED]

(c) Pursuant to Section 10.12(c) of the Lease, (1) failure of the Lessee to comply with its obligations set forth in Section 10.12(b) of the Lease will give rise to the right of the Port Authority to require the Lessee to prepare a plan of action, as described below, to resolve any unavailability of parking spaces at LGA Airport that is projected to result from such failure in excess of the Projected Parking Deficiencies (the “**Excess Parking Deficiency**”); provided, that an Excess Parking Deficiency does not include any parking unavailability to the extent that it is the result of any act or omission of the Port Authority, actual demand for parking spaces by patrons of LGA Airport being in excess of projected demand, a Delay Event, a change order or Other Redevelopments; (2) the Lessee is required to prepare a plan of action to resolve any Excess Parking Deficiency by a date certain (including by implementing alternative modes of parking or ground transportation), mitigate any damages and address any dissatisfaction of airline passengers and customers of the Existing Terminal B Facilities or the New Terminal B Facilities, as applicable, caused by and during such condition (“**Parking Deficiency Plan of Action**”), and any Parking Deficiency Plan of Action shall be subject to Port Authority Approval and (3) any increased costs or mitigation payments with respect to such Parking Deficiency Plan of Action approved by the Port Authority shall be the responsibility of the Lessee (including any costs incurred by the Port Authority in connection with the exercise by the Port Authority of its right to step-in and perform the Developer’s obligations pursuant to Article 28 of the Lease in connection with the Developer’s efforts to comply, or any failure of the Developer to comply, with a Parking Deficiency Plan of Action).

(d) The Parties acknowledge and agree that the Design-Builder’s obligations with respect to the Parking Plan shall be limited to [REDACTED]

[REDACTED] (ii) constructing a temporary taxi lot as and when required by the Parking Plan and (iii) complying with its obligations with respect to management of its workforce set forth in this Design-Build Contract, including the use of good faith efforts in connection with any project labor agreement for the Construction Project. The Design-Builder shall not be responsible for the Busing Support Payments or, except as described in

the preceding sentence, any other aspect of such Parking Plan without its prior consent as set forth in Section 10.12(a). If, however, the Design-Builder fails to comply with its obligations with respect to the Parking Plan or if the obligations set forth in Section 10.12(c) of the Lease result from a failure by the Design-Builder to comply with its obligations under this Design-Build Contract, the Design-Builder shall be required to assist the Developer in preparing a Parking Deficiency Plan of Action that complies with Section 10.12(c) of the Lease and shall be responsible for any increased costs or mitigation payments with respect to such Parking Deficiency Plan of Action described therein.

Section 10.13 NOT USED

ARTICLE 10A

DESIGN COORDINATION AND INPUT; COOPERATION

Section 10A.1 Design Coordination

The Design-Builder shall coordinate with the Developer on design matters throughout the design process and implementation thereof (in advance of finalization of plans or procurement) in accordance with this Article 10A and the Design Review Process set forth in Exhibit 44 hereto, and the Developer shall have the on-going right to provide input and suggest changes that do not negatively impact the Project Baseline Schedule or the Contract Price (reserving the right to request such changes through change orders if the Project Baseline Schedule or the Contract Price is negatively impacted) as and to the extent set forth in this Article 10A or Exhibit 44 hereto.

Section 10A.2 Design Development Involvement

(a) The Developer shall be afforded the opportunity to provide input by reviewing the design, commenting on the design of such components, and discussing the design of such components with the Design-Builder as it is being prepared. The scope of the Developer's review shall be for the limited purpose of commenting upon issues related to functionality considerations associated with the operation and maintenance of the facility, as well as input related to various aesthetic features in the terminal and other design elements such as sample material selection and mockups, if any, consistent with Exhibit A which will influence the passenger sense of place. By way of illustration and not limitation:

(i) The scope of the Developer's review could include input and comments related to the location of access panels for mechanical, plumbing and electrical systems, as well as placement of room HVAC diffusers and electrical receptacle locations, but would not include the selection of the mechanical equipment; other than expressly described in Exhibit A, or the location of trunk or branch lines feeding the base-building systems of the facility; and

(ii) The scope of the Developer's review could include input and comments related to the incorporation of different floor types to promote public traffic flow patterns, the location of interior doors and placement of the flight information display system and

other design elements which assist with passenger wayfinding and flow, but would not include input into design features such as structural elements including load bearing walls.

(b) To facilitate Developer input into the fifty percent (50%), seventy-five percent (75%) and ninety percent (90%) Design Development (as defined in the A.I.A. Standards) design development document review, the Design-Builder shall, in accordance with the provisions set out in the Design Review Process, facilitate a design charrette by phase together with the Developer to review its comments and input that have functionality considerations associated with the operation and maintenance of the facility, as well as input related to various aesthetic features in the terminal and other design elements such as sample material selection and mockups, if any, consistent with Exhibit A that will influence the passenger sense of place and, as appropriate, incorporate the same consistent with the Construction Project requirements and Exhibit A. The Design-Builder shall reasonably consider the Developer's input and shall advise the Developer if the implementation of the Developer's input would result in a change to the scope of the DB D&C Work, and, if so, whether that change would impact the D&C Work by extending the Project Baseline Schedule or increasing the Contract Price. If the Design-Builder identifies such a change and impact, then the Developer's input may only be implemented as a Developer Change (subject to the requirements and procedures set forth in this Design-Build Contract with respect thereto).

ARTICLE 11

NOT USED.

ARTICLE 12

DB SUBCONTRACTORS, SUPPLIERS AND LEAD PERSONNEL

Section 12.1 Relationship with DB Subcontractors and Suppliers

(a) Nothing in any DB Subcontract will create any contractual relationship between the Port Authority or the Developer and any DB Subcontractor or any Supplier. No DB Subcontract entered into by or under the Design-Builder shall impose any obligation or liability upon the Port Authority or the Developer to any DB Subcontractor, any Supplier or any of their respective employees.

(b) The retention of DB Subcontractors and Suppliers by the Design-Builder will not relieve the Design-Builder of its obligations under the DB Project Documents and the Design-Builder will at all times be held fully responsible under the DB Project Documents for the acts and omissions of all DB Subcontractors and Suppliers, in relation to the DB D&C Work, as if they were the acts and omissions of the Design-Builder.

(c) DB Subcontractors.

(i) Subject to any restrictions, consents and requirements with respect to Contractors or applicable to Contractors that are set forth in the Lease or in Exhibit A

hereto, the Design-Builder shall have the right to subcontract portions of the DB D&C Work (but not the overall responsibility for the management of the DB D&C Work) under this Design-Build Contract to one or more qualified Contractors (each, a “**DB Subcontractor**” and each such subcontract, a “**DB Subcontract**”).

(ii) The Design-Builder shall retain or cause to be retained only DB Subcontractors that are licensed (to the extent required by Applicable Law, Applicable Standards, the Lease or any Governmental Approvals), experienced and capable in the performance of the portion of the DB D&C Work subcontracted to them.

(iii) NOT USED.

(iv) The Design-Builder shall ensure that each DB Subcontractor is in compliance with all restrictions, consents and requirements with respect to Contractors or applicable to Contractors that are set forth in the Lease or in Exhibit A hereto and that are applicable to such DB Subcontractor or the performance of the DB D&C Work subcontracted to them.

(v) Each DB Subcontract shall permit the assignment of the Design-Builder’s rights and obligations under such DB Subcontract to the Developer in the event that this Design-Build Contract is terminated as a result of a Design-Builder Event of Default.

(vi) The Design-Builder shall use Reasonable Efforts to cooperate and coordinate with, and shall require that all DB Subcontractors and other Persons performing any of the DB D&C Work to use Reasonable Efforts to cooperate and coordinate with, the work of any such contractor engaged by the Port Authority or the Developer (and the Developer shall use Reasonable Efforts to ensure that any such contractor cooperates and coordinates its work with the DB D&C Work performed by the Design-Builder and the DB Subcontractors).

(vii) The Design-Builder shall comply with and shall cause the DB Subcontractors to comply with applicable federal and state requirements concerning prompt payment of retainage to DB Subcontractors. The Design-Builder shall make progress payments to the DB Subcontractors of all amounts (except disputed amounts claimed by the Design-Builder) invoiced by them within such time as required by Applicable Law and, in any event, within the period of time required by the applicable DB Subcontract.

(viii) The Design-Builder shall not permit or allow any DB Subcontractor to perform DB D&C Work if that DB Subcontractor is ineligible to bid on, be awarded or perform work on public works projects pursuant to Applicable Laws or Applicable Standards. At the time it awards a DB Subcontract, the Design-Builder shall verify that the applicable DB Subcontractor is not publicly listed as a contractor ineligible to perform work as a contractor on any Port Authority-administered or federally-financed public works project. The Design-Builder shall ensure that the award documents of all

DB Subcontracts include the certifications and disclosures set forth in Form F of the ITP and Sections 1.6 and 1.7 of the General Conditions; provided that such certifications and disclosures shall be limited to DB Subcontracts valued at more than One Hundred Thousand Dollars (\$100,000) where allowed by Form F or Sections 1.6 and 1.7 of the General Conditions.

(ix) The Design-Builder shall require each DB Subcontractor (and use Reasonable Efforts to assist in such efforts, if necessary) to familiarize itself with the requirements of any and all Applicable Laws and Applicable Standards and the conditions of any Governmental Approvals applicable to such DB Subcontractor's scope of work.

(x) The Design-Builder shall ensure that all DB Subcontracts comply with the requirements of the Lease and the Requirements and Provisions for Work applicable to such DB Subcontractor's scope of work.

(xi) The Design-Builder shall require by contract that all DB Subcontractors and vendors comply with Applicable Laws and Applicable Standards.

(xii) Each DB Subcontract shall include terms and conditions sufficient to ensure both the acknowledgement and compliance by the DB Subcontractor with this Design-Build Contract and its requirements to the extent applicable to the DB Subcontractor's scope of work, and shall include those terms that are expressly required by this Design-Build Contract (including, for avoidance of doubt, those terms that are expressly required by the Lease) to be included therein, and shall provide that such provisions be included in all DB Subcontracts at lower tiers to the extent applicable thereto.

(d) Each DB Subcontract for the performance of the DB D&C Work shall name each of the Developer and the Port Authority as third-party beneficiaries of all DB Subcontractor and Supplier (as the case may be) representations and warranties contained in such DB Subcontract, except where the Developer and the Port Authority would not be named as a third-party beneficiary pursuant to Best Management Practice; provided, that, pursuant to Section 19.1(f) of the Lease, the Port Authority will have the right to exercise its rights under such representations and warranties only so long as the Developer or a Lender is not pursuing remedies thereunder and, to the extent the Port Authority makes claims exercising such rights of the Developer, Section 19.1(f) of the Lease provides that the Port Authority shall be responsible for its own acts or omissions in respect of such claims found to be in violation of the relevant DB Subcontract.

Section 12.2 Lead Personnel

(a) For the purposes of this Design-Build Contract, "**Lead Personnel**" means, with respect to the Design-Builder, the "Project Officer", "General Superintendent" and "Design Manager".

(b) The Design-Builder shall retain, employ and utilize the individuals specifically listed as Lead Personnel in the Lessee's Proposal Commitments or the Project Management and Execution Plan to fill the corresponding positions until such time as all relevant activities have been completed. The Design-Builder shall not, prior to Substantial Completion, change or substitute any such individuals, except due to retirement, death, disability, incapacity, or voluntary or involuntary termination of employment or with the prior written consent of the Port Authority and the Developer (such consent not to be unreasonably withheld, delayed or conditioned if the proposed substitute individual possesses equal or greater experience, skill, knowledge and professional expertise in the relevant fields than the individual being replaced), and, in each case, in accordance with the Financing Documents.

(c) The Design-Builder shall notify the Developer in writing of any proposed replacement for any Lead Personnel position no later than five (5) Business Days prior to the date that the Developer is required to notify the Port Authority of such proposed replacement pursuant to the Lease (which is thirty (30) days prior to the effective date of such proposed replacement). The Developer and the Port Authority shall have the right to review the qualifications and character of each individual to be appointed to such a Lead Personnel position (including personnel employed by DB Subcontractors to fill any such position). Pursuant to Section 12.2(c) of the Lease, within fifteen (15) Business Days of receipt by the Port Authority of any notice of a proposed replacement, the Port Authority, acting reasonably, shall approve or disapprove the use of such individual in such position. The Developer, in its reasonable discretion, shall also promptly approve or disapprove the use of such individual in such position during such timeframe.

(d) The Design-Builder shall cause each individual filling a Lead Personnel position to dedicate the full amount of time necessary for the proper prosecution and performance of the applicable DB D&C Work.

(e) The Design-Builder shall provide the Developer with phone and cell phone numbers as well as e-mail addresses for all Lead Personnel. The Design- Builder shall provide to the Developer two (2) personnel and a minimum of one (1) Lead Personnel who the Developer and the Port Authority can contact twenty-four (24) hours per day, seven (7) days per week as required, and who will be able to, in turn, contact the other Lead Personnel promptly thereafter.

Section 12.3 Certain Public Policy Requirements

(a) Port Authority Prevailing Wage. The Design-Builder shall perform, and shall cause its DB Subcontractors to perform, the DB D&C Work in compliance with Exhibit 12.

(b) Port Authority Living Wage. The Design-Builder shall comply with, and shall cause its DB Subcontractors, permittees and others on the DB Work and Staging Area, and their respective contractors, to comply with the wage and benefits requirements set forth in Exhibit 30, which requirements may be modified, supplemented or otherwise modified by the Port Authority from time to time pursuant to the Lease, in which event such requirements shall apply under this Design-Build Contract as so modified or supplemented. For the

avoidance of doubt, any wage and benefits requirements that the Design-Builder is required to comply with pursuant to this Section 12.3(b) shall not constitute an Applicable Standard and any modifications, supplements or revisions to any such wage and benefits requirements shall not constitute an Applicable Standards Change.

Section 12.4 Labor Harmony

(a) The Design-Builder shall be responsible and liable for all labor relations matters of its own personnel and DB Subcontractor personnel relating to the DB D&C Work and shall at all times use Reasonable Efforts to maintain harmony among the unions, if any, and other personnel employed by the Design-Builder or its DB Subcontractors in connection with the DB D&C Work and act in a reasonable, professional and courteous manner with the Port Authority's and the Developer's separate contractors. The Design-Builder shall at all times use Reasonable Efforts and judgment as an experienced contractor to adopt and implement policies and practices which do not contain terms relating to the Design-Builder's or any DB Subcontractor's performance of the DB D&C Work that are likely to instigate strikes, boycotts, picketing, work-stoppages, slowdowns, and disputes (collectively, "**Labor Troubles**") but the Design-Builder shall not, in so doing, be obliged to investigate the employment terms or the employment status of any Person not employed by it or by its DB Subcontractors in connection with the DB D&C Work, and the Design-Builder shall use Reasonable Efforts to comply, and cause its DB Subcontractors to comply, with any such policies and practices implemented by the Developer pursuant to Article 12 of the Lease.

(b) Neither Party shall employ any Contractor or shall such Party or any of its Contractors employ any Persons or use any labor, or use or have any equipment or materials, or permit any condition to exist, which causes any Labor Troubles at the Premises that interfere or are likely to interfere with the Work or any part thereof in any material respect, or interfere or are likely to interfere with the operations of the Port Authority, the other Party or their respective contractors, or lessees, licensees, permittees or other users of LGA Airport. Upon written notice from a Party specifying the failure of the other Party to comply with this Section 12.4(b) (whether or not prompted by a written notice from the Port Authority specifying a failure to comply with Section 12.4(b) of the Lease in connection with the DB D&C Work), such other Party shall, as promptly as possible, remove such Contractor or withdraw or cause its Contractors to withdraw, from LGA Airport, the Persons, equipment or materials specified in the notice; provided, that such other Party shall be entitled to replace such Contractors, Persons, equipment and materials with a substitute which, if such existing Contractor, Person, equipment or material previously required approval of the Developer or Port Authority Approval pursuant to the terms of this Design-Build Contract or the Lease, respectively, is reasonably acceptable to the Developer or the Port Authority, as applicable. In the event of failure by such other Party to comply or to cause its Contractors to comply with any removal notice within thirty (30) days of such notice (or, in the event such notice is prompted by a notice from the Port Authority pursuant to Section 12.4(b) of the Lease with respect to the DB D&C Work, then by the date that is five (5) Business Days prior to the date compliance is required pursuant to Section 12.4(b) of the Lease), the notifying Party shall have the right to suspend such other Party's right to perform that portion of the DB D&C Work for which the offending Contractor was responsible or which was being performed by

such offending Persons, equipment or materials. When the Labor Troubles shall be so settled such that such other Party is in compliance with this Section 12.4(b) (and, if applicable the Developer is in compliance with Section 12.4(b) of the Lease), the notifying Party, by further written notice to such other Party, shall reinstate said right on all the same terms and conditions as before the suspension.

(c) The Design-Builder shall give notice to the Developer (to be followed by written notice and reports) of any and all impending or existing Labor Troubles referenced in Section 12.4(b) and the progress thereof as soon as practicable (but in no event later than three (3) days after the Design-Builder becomes aware of such impending or existing Labor Troubles). The Design-Builder shall use its best efforts to resolve any such Labor Troubles.

(d) If any strike or labor activity is directed against the Design-Builder or any other DB Party at LGA Airport or against any operations pursuant to the Lease resulting in picketing or boycott for a period of at least forty-eight (48) hours, which, in the opinion of the Developer or the Port Authority, adversely affects or is likely to adversely affect the operation of LGA Airport or the operations of other permittees, lessees or licensees thereat, whether or not the same is due to the fault of the Developer, the Design-Builder or any other DB Party, and whether caused by the employees of either the Developer, the Design-Builder or any such DB Party or by others, each of the Port Authority and the Developer shall have the right to take all legal remedies available to them, respectively, to end or arrange for the cessation of any such strike or labor activity.

(e) The Developer shall not permit any Work of the Developer or its Contractors (excluding, for purposes of this provision, the DB D&C Work) to be performed in a manner that fails to adhere to union trade work rules as set forth in Exhibit A-19.

ARTICLE 13

PORT AUTHORITY AND DEVELOPER CHANGES; DIRECTIVE LETTERS; SAFETY COMPLIANCE ORDERS; DESIGN-BUILDER INITIATED ENHANCEMENTS

Section 13.1 Port Authority Changes

(a) The Port Authority has the right to propose Port Authority Changes in accordance with Section 13.1 of the Lease, including Port Authority Changes affecting the DB D&C Work under this Design-Build Contract.

(b) Pursuant to Section 13.1(b) of the Lease, if the Port Authority proposes a Port Authority Change, the Port Authority is required to provide to the Developer in writing a description of the Port Authority's requirements for a change in the Work, including any change to the Requirements and Provisions for Work, in sufficient detail to enable the Developer to provide the Lessee's Impact Statement in accordance with Section 13.1(c) of the Lease. If the proposed Port Authority Change relates to the DB D&C Work, the Developer will provide the documentation provided by the Port Authority with respect to such proposed

Port Authority Change to the Design-Builder as soon as practicable, and in any event no later than three (3) Business Days after the Developer's receipt thereof.

(c) Pursuant to Section 13.1(c) of the Lease, as soon as practicable, but in no event later than thirty (30) days after the Developer receives a proposal for a Port Authority Change, the Developer is required to deliver to the Port Authority a written description of the projected impact to the Developer of the proposed Port Authority Change (a "**Lessee's Impact Statement**"). The Lease further provides that the Developer may request in writing, within such thirty (30)-day period, additional time to provide the Lessee's Impact Statement to the Port Authority, together with the explanation of the reasons therefor, and the Port Authority will consider such request in good faith; provided, further, that the Port Authority may in such case require the Developer to provide to the Port Authority such required information the Developer prepared within the initial thirty (30)-day period and deliver the remaining information to the Port Authority within the time period agreed to by the Port Authority. To the extent the Port Authority Change is applicable to the DB D&C Work, the Design-Builder shall be responsible (subject to the Developer using Reasonable Efforts to assist the Design-Builder) for the preparation of any such Lessee's Impact Statement (or portion thereof) that relates to the DB D&C Work, including providing the Developer with a Contract Price and Project Baseline Schedule impact estimate, which Lessee's Impact Statement (or portions thereof) the Design-Builder shall deliver to the Developer no later than five (5) Business Days before the date on which the Lessee's Impact Statement is due to the Port Authority under the Lease. If the proposed Port Authority Change relates to the DB D&C Work and the Design-Builder requests in writing that the Developer seek additional time to provide the Lessee's Impact Statement to the Port Authority, as described above (provided that the Design-Builder shall submit such written request to the Developer no later than five (5) Business Days before the Developer must submit such request to the Port Authority), the Developer will request such additional time from the Port Authority. For the avoidance of doubt, the Developer may also request such additional time at its own election, without request by the Design-Builder. If the Port Authority agrees to extend the required time for submission of a Lessee's Impact Statement affecting the DB D&C Work, the time for the Design-Builder to submit the applicable Lessee's Impact Statement (or portion thereof) to the Developer shall be extended by the same number of days as the extension received by the Developer from the Port Authority. Each Lessee's Impact Statement (or portion thereof) prepared by the Design-Builder shall include, among other things, the following, as applicable:

(i) any deviation from the Design-Builder's obligations under this Design-Build Contract or from the Requirements and Provisions for Work that would result from the implementation of the proposed Port Authority Change, and any impact to the Project Baseline Schedule, including to the scheduled New Facilities Construction Milestone Completion Dates, the scheduled Substantial Completion Date and the scheduled Final Acceptance Date;

(ii) NOT USED;

(iii) any Governmental Approvals, or amendments, revisions, supplements, waivers or modifications thereto or exemptions therefrom, which would be required as a

result of the proposed Port Authority Change, to the extent applicable to the DB D&C Work;

(iv) if applicable, any additional land or real property rights which would be required as a result of the proposed Port Authority Change;

(v) a scope of work for any proposed additional or modified work required as a result of the proposed Port Authority Change and estimated pricing to carry out such work; and

(vi) NOT USED;

(vii) such other supporting documentation as may be reasonably required by the Developer or the Port Authority.

(d) NOT USED.

(e) Pursuant to Section 13.1(e) of the Lease, as soon as practicable after the Port Authority receives the Lessee's Impact Statement, the Port Authority and the Developer are required to meet and negotiate in good faith to agree to the terms of the Port Authority Change, which terms will reflect an agreement addressing the Lessee's Impact Statement. The Design-Builder shall participate with the Developer in the Developer's discussions with the Port Authority with respect to any proposed Port Authority Change(s) (including pursuant to the issuance of a Directive Letter by the Port Authority) relating to the DB D&C Work, and the Design-Builder shall work with the Developer in the Developer's efforts to reach agreement with the Port Authority in accordance with the Lease. In all discussions with the Port Authority, the Developer shall take the lead, and the Design-Builder shall not initiate discussions with the Port Authority with respect to any claim for Primary Project Relief relating to the Design-Builder's obligations under this Design-Build Contract without the prior written consent of the Developer. The Developer shall not agree to the terms of any proposed Port Authority Change unless the Design-Builder also agrees (in its reasonable discretion) to such terms, to the extent such terms are applicable to the DB D&C Work.

(f) If the Port Authority and the Developer (with the consent of the Design-Builder, to the extent required pursuant to Section 13.1(e)) agree on the terms of the proposed Port Authority Change in accordance with Section 13.1 of the Lease, then, pursuant to Section 13.1(f) of the Lease, the Port Authority and the Developer shall enter into an appropriate change order to give effect to the proposed Port Authority Change, which change order shall include, as applicable, the scope of the additional or modified Work and schedule to perform such Work (including any adjustments to the Guaranteed New Facilities Construction Milestone Completion Dates, the Guaranteed Substantial Completion Date, the Guaranteed Final Acceptance Date and/or Long Stop Deadline, as appropriate), changes and modifications to the other requirements of the Project Documents and compensation and payment terms (including to the New Improvements Payment and Milestone Schedule and /or the Central Hall Payment and Milestone Schedule, as applicable) and such other payments as may be payable hereunder. The Design-Builder's entitlement to additional funds or adjustments to

the Project Baseline Schedule (including changes to the Guaranteed New Facilities Construction Milestone Completion Dates, if necessary) will also be back-to-back with the rights of the Developer under the Lease and shall be limited to Equivalent Project Relief pursuant to Article 14A, except that the Design-Builder shall be entitled to a corresponding adjustment to any Delay LDs Dates if the applicable Guaranteed New Facilities Construction Milestone Completion Date or the Guaranteed Substantial Completion Date is adjusted pursuant to this Section 13.1(f).

(g) Pursuant to Section 13.1(g) of the Lease, if at any time after the Port Authority receives the Lessee's Impact Statement, the Port Authority determines not to proceed with the proposed Port Authority Change, the Port Authority shall reimburse the Developer for the reasonable, documented out-of-pocket costs incurred to prepare the Lessee's Impact Statement, but shall not bear any other of the Developer's costs and expenses in complying with Section 13.1 of the Lease, and the proposed Port Authority Change shall be deemed withdrawn. The Design-Builder shall be entitled to receive from the Developer the reasonable, documented out-of-pocket costs incurred by the Design-Builder to prepare the portions of the Lessee's Impact Statement prepared by the Design-Builder, but the Developer shall not bear any other of the Design-Builder's costs and expenses incurred pursuant to this Section 13.1. The Design-Builder's right to reimbursement of such costs is limited to Equivalent Project Relief pursuant to Article 14A.

Section 13.2 Directive Letters

Pursuant to Section 13.2 of the Lease, if the Port Authority and the Developer are unable to reach an agreement on a proposed Port Authority Change and enter into a change order in accordance with Section 13.1 of the Lease, the Port Authority may, in its sole discretion, deliver to the Developer a Directive Letter directing the Developer to proceed with the implementation of the Port Authority Change. Upon receipt of any Directive Letter related to the DB D&C Work, the Developer shall deliver to the Design-Builder a copy of such Directive Letter as soon as practicable, and in any event no later than two (2) Business Days after the Developer's receipt thereof (or, if less than two (2) Business Days is provided by the Port Authority for compliance with such Directive Letter, then as soon as practicable and in advance of the provided deadline). The Design-Builder shall implement and perform the work in question to the extent related to the DB D&C Work as directed by the Port Authority in the Directive Letter, and the Developer shall implement and perform any other Work in question as directed by the Port Authority in the Directive Letter. Pursuant to Section 13.2 of the Lease, the Developer will be entitled to claim a Delay Event and/or a Compensation Event with respect to such Directive Letter in accordance with Article 14 of the Lease. The Design-Builder shall therefore also be entitled to submit a DB Delay Event Notice and/or a DB Compensation Event Notice, as applicable, with respect to such Directive Letter and shall be entitled to Equivalent Project Relief pursuant to Article 14A.

Section 13.3 Developer Changes

(a) If the Developer wishes to propose any change to the DB D&C Work that would constitute a Lessee Change under the Lease or any other change under this Design-Build Contract (a "**Developer Change**"), the Design-Builder will (following receipt of a

proposal request from the Developer detailing such Lessee Change or Developer Change, as applicable): (1) prepare a change order proposal (including a Contract Price and Project Baseline Schedule impact analysis, if necessary; provided that the Design-Builder shall use Reasonable Efforts in preparing any such proposal so as to minimize or eliminate any impact to the Contract Price or the Project Baseline Schedule from the applicable Lessee Change or Developer Change, as applicable) and (2) in the case of a Lessee Change, provide the Developer with any other information required for the Developer to prepare a Lessee Change Request (as defined in the Lease) for submission to the Port Authority. The Design-Builder change order proposal shall include, without limitation, the following:

- (i) the proposed change to the DB D&C Work in sufficient detail to enable the Port Authority, if applicable, and the Developer to evaluate it in full;
- (ii) NOT USED;
- (iii) any implications of the change to the DB D&C Work on the ability of the Design-Builder to fulfill any of its obligations under this Design-Build Contract;
- (iv) any implications of the change to the DB D&C Work on any component of the Supporting Projects;
- (v) any dates by which a decision by the Developer or the Port Authority is critical; and
- (vi) NOT USED;
- (vii) all of the other information enumerated above in Section 13.1(c).

(b) With respect to a Lessee Change, the Port Authority will be entitled to evaluate and either approve or disapprove of such Lessee Change in accordance with the procedures set forth in Section 13.3 of the Lease. With respect to either a Lessee Change (prior to review by the Port Authority) or a Developer Change, the Developer shall evaluate the Lessee Change Request information provided by the Design-Builder in good faith and either approve or disapprove thereof.

(c) If the Developer does not approve the Design-Builder's change order proposal, the Developer may (subject to the Authority's prior approval, if applicable, pursuant to the Lease) either (x) issue a work order to the Design-Builder directing the Design-Builder to proceed with such Lessee Change or other Developer Change and shall compensate the Design-Builder for the costs the Design-Builder incurs to perform such change, plus reasonable overhead and profit on the same, and provide the Design-Builder with any Project Baseline Schedule adjustments, subject to Section 13.3(d) below, that might be necessary as a result thereof or (y) withdraw its proposal request for such Lessee Change or other Developer Change and pay the Design-Builder its reasonable costs incurred in the preparation of the change order proposal.

(d) If the Developer approves the Design-Builder's change order proposal for a Developer Change, the Developer shall issue a work order that describes (1) the work to be performed, (2) the compensation to be paid to the Design-Builder for its performance (which shall be the amount set forth in the Design-Builder's change order proposal or such other amount as may be mutually agreed upon by the Developer and the Design-Builder, and (3) the Project Baseline Schedule adjustments, if any, that will be made by the Developer on account of such work order (which shall be for the period of time set forth in the Design-Builder's change order proposal or such other period as may be mutually agreed upon by the Developer and the Design-Builder and which shall include, if necessary, adjustments to the DB New Facilities Construction Milestone Deadlines or the DB Substantial Completion Deadline and corresponding changes to the Delay LDs Dates). If the Developer approves the Design-Builder's change order proposal for a Lessee Change, the Developer shall proceed to submit a Lessee Change Request including such information to the Port Authority and the Parties shall pursue such Lessee Change Request with the Port Authority as set forth in this Section 13.3 and in Section 13.3 of the Lease. Pursuant to Section 13.3(d) of the Lease, if the Port Authority approves a Lessee Change Request (with or without modification), the Port Authority and the Developer shall as soon as practicable enter into an appropriate change order to implement the Lessee Change Request, which change order shall include, as applicable, the scope of the additional or modified Work and schedule to perform such Work and changes and modifications to the requirements of the Project Documents. In the event of an adjustment to the Guaranteed New Facilities Construction Milestone Completion Dates or the Guaranteed Substantial Completion Date, the Design-Builder shall be entitled to a corresponding adjustment to the applicable Delay LDs Dates. In the case of either a Lessee Change or any other Developer Change, the Developer shall be responsible for the payment of amounts associated with such Lessee Change or other Developer Change, in accordance with the regular payment provisions of this Design-Build Contract and in accordance with the amounts payable at the times set forth in the applicable work order.

(e) In the event of a dispute with respect to any Lessee Change or other Developer Change, such dispute shall be subject to the accelerated DB Dispute Resolution Procedure set forth in this Design-Build Contract unless the Lease requires resolution of such dispute pursuant to Article 33 thereof. Pursuant to Section 13.3(e) of the Lease, if the Port Authority rejects a Lessee Change Request pursuant to the Lease, the Port Authority is not obligated to give its reasons for such a rejection and, subject only to Section 13.3(f) of the Lease, such rejection shall not be subject to challenge by the Developer, whether pursuant to Article 33 of the Lease or otherwise. In such case, such rejection shall also not be subject to challenge by the Design-Builder.

(f) Pursuant to Section 13.3(f) of the Lease, the Port Authority is not entitled under the Lease to reject a Lessee Change Request that is required in order to conform to Applicable Law or Applicable Standards.

(g) NOT USED.

Section 13.3A Design-Builder Initiated Enhancements

In the event the Design-Builder wishes to propose any change:

(a) If such change is to be made to DB D&C Work and would constitute a Lessee Change under the Lease if proposed by the Developer, the Design-Builder shall provide a change order proposal to the Developer (including a Contract Price and Project Baseline Schedule impact analysis, if necessary; provided that the Design-Builder shall use Reasonable Efforts to minimize or eliminate any negative impact to Contract Price or Project Baseline Schedule in preparing such proposal), which proposal shall satisfy, to the extent required to comply with the Lease, all of the requirements for a Lessee Change Request set forth in Section 13.3 of the Lease. The Developer shall use Reasonable Efforts to review any such proposal and submit any such proposal (if acceptable to the Developer as set forth herein) to the Port Authority as a Lessee Change Request. The Developer may reject any such change order proposal that (i) may negatively impact costs in respect of the Operations and Maintenance Work, (ii) may impose additional liability on the Developer, or (iii) is otherwise deemed unacceptable by the Developer in its reasonable discretion. Notwithstanding the foregoing, the Developer shall not be entitled to reject any such change order proposal that is required in order to conform to Applicable Law or Applicable Standards.

(b) Subject to the terms of the Lease, in the event the Design-Builder wishes to propose any changes to the DB D&C Work to be performed by it under this Design-Build Contract that would not constitute a Lessee Change and, therefore, would not require the review or approval of the Port Authority, the Design-Builder shall submit to the Developer a written request for such changes, listing all impacts on this Design-Build Contract, including a Contract Price and Project Baseline Schedule impact analysis, and the Developer shall approve or reject such request within a reasonable period of time after receipt thereof from the Design-Builder. Under such circumstances, the Developer may reject any such change order proposal based on the same factors that are set forth in Section 13.3A(a) above.

(c) In the event that any additional financing may be required in connection with implementing any change proposed by the Design-Builder pursuant to this Section 13.3A, the Developer and the Design-Builder shall negotiate in good faith regarding the appropriate structure and obligations with respect to such financing.

(d) With respect to any change proposed by the Design-Builder, the Design-Builder will not be obligated to proceed with such change until and unless it receives a work order from the Developer that describes (1) the work to be performed, (2) the compensation, if any, to be paid to the Design-Builder for its performance (which shall be the amount set forth in the Design-Builder's change order proposal or such other amount as may be mutually agreed upon by the Developer, the Design-Builder and, if required, the Port Authority), and (3) the Project Baseline Schedule adjustments, if any, that will be made by the Developer on account of such work order (which shall be for the period of time set forth in the Design-Builder's change order proposal or such other period as may be mutually agreed upon by the Developer, the Design-Builder and, if required, the Port Authority). The Developer shall be responsible for the payment of amounts associated with any such change proposed by the Design-Builder, if approved by the Developer pursuant to this Section 13.3A, in accordance with the regular payment provisions set forth in this Design-Build Contract and in accordance with the amounts payable at the times set forth in the work order. For the avoidance of doubt, however, the Design-Builder shall not be entitled to any adjustment of the Contract Price or

the Project Baseline Schedule for any such change proposed by the Design-Builder in order to conform to Applicable Law or Applicable Standards, and the Design-Builder's right to reimbursement of such costs and to any adjustments to the Project Baseline Schedule shall be limited to Equivalent Project Relief pursuant to Article 14A.

(e) In the event of a dispute with respect to any change proposed by the Design-Builder (other than a rejection of such a proposed change by the Developer, which shall be in the Developer's sole discretion and shall not be subject to further review), such dispute shall be subject to the accelerated DB Dispute Resolution Procedure set forth in this Design-Build Contract unless the Lease requires resolution of such dispute pursuant to Article 33 of the Lease.

Section 13.4 Performance During Negotiation of Proposed Port Authority Change or Lessee Change Request

The Design-Builder shall not suspend performance of the DB D&C Work during the negotiation of any proposed Port Authority Change or Lessee Change Request, except (a) as may be otherwise directed by the Developer or the Port Authority in writing as expressly permitted under the terms of this Design-Build Contract (including pursuant to Section 10.9), or (b) to the extent that such suspension by the Design-Builder is otherwise expressly permitted under the terms of this Design-Build Contract.

Section 13.5 Safety Compliance Orders

(a) Safety Compliance Orders.

(i) Pursuant to Section 13.5(a) of the Lease, (1) the Port Authority is required to use Reasonable Efforts to inform the Developer at the earliest practicable time of any circumstance or information relating to the D&C Work, the Operations and Maintenance Work or the Premises that, in the Port Authority's reasonable judgment, is likely to result in a Safety Compliance Order; and (2) except in the case of an Emergency, the Port Authority shall consult with the Developer prior to issuing a Safety Compliance Order. To the extent the Port Authority consults with the Developer prior to issuing a Safety Compliance Order regarding matters involving the DB D&C Work, the Developer shall use Reasonable Efforts to afford the Design-Builder an opportunity to participate in such consultation.

(ii) Pursuant to Section 13.5(a)(ii) of the Lease, subject to the limitation described in clause (i) of Section 13.5(a) of the Lease, the Port Authority may issue Safety Compliance Orders to the Developer at any time from and after the Lease Commencement Date. The Developer will notify the Design-Builder in writing as soon as practicable and in any event no later than two (2) Business Days after the Developer's receipt from the Port Authority of any Safety Compliance Order regarding matters involving the DB D&C Work (or, if less than two (2) Business Days is provided by the Port Authority for compliance with such Safety Compliance Order, then as soon as practicable and in advance of the provided deadline).

(b) Duty to Comply.

(i) Subject to Section 13.5(a), the Design-Builder shall implement, and shall require that all DB Subcontractors and other Persons performing any of the DB D&C Work implement, all Safety Compliance as expeditiously as reasonably possible following receipt of the Safety Compliance Order regarding matters involving the DB D&C Work from the Developer.

(ii) The Design-Builder shall diligently perform, and shall require that all DB Subcontractors and other Persons performing any of the DB D&C Work diligently perform, all work required to implement such Safety Compliance, and the Design-Builder shall bear all costs with respect to any Non-Qualifying Safety Compliance with respect thereto. Pursuant to Section 13.5(b) of the Lease, the Developer may claim a Compensation Event or a Delay Event with respect to any costs or other impacts incurred or suffered in connection with the implementation of Qualifying Safety Compliance. The Design-Builder shall therefore also be entitled to submit a DB Delay Event Notice and/or a DB Compensation Event Notice, as applicable, with respect to implementation of such Qualifying Safety Compliance and shall be entitled to Equivalent Project Relief pursuant to Article 14A.

(iii) The Design-Builder shall undertake, and shall require that all DB Subcontractors and other Persons performing any of the DB D&C Work undertake, Reasonable Efforts to overcome any inability to comply with any such Safety Compliance Order caused by a Delay Event.

Section 13.6 Instruction to Carry Out Construction Management Services

If so instructed by the Developer, the Design-Builder shall enter into one or more CM Agency Agreements in accordance with the provisions of Part II of Exhibit 45 for the purposes of overseeing the tenant fit out work described therein. Payment for such services shall be set out in the relevant CM Agency Agreement utilizing the principles as set out in Exhibit 45 and shall be paid as an additional sum under Article 9. Such services shall not form part of the DB D&C Work.

ARTICLE 14

COMPENSATION EVENTS; DELAY EVENTS

Section 14.1 Compensation Events

(a) Definition. Section 14.1 of the Lease defines the term “**Compensation Event**” as meaning any of the following events or conditions (subject to the limitations and other provisions set forth in such Section 14.1):

(i) any failure by the Port Authority to complete, or cause to be completed, any work carried out in connection with any Supporting Project by the applicable Supporting Project Milestone; provided, that no such failure shall be deemed to be a

Compensation Event to the extent that it is due to a Force Majeure Event with respect to the Port Authority and for so long as the Port Authority and the Developer are coordinating the resumption of performance pursuant to the last paragraph of Section 14.1(a) thereof;

(ii) performance of work at or immediately adjacent to the Premises carried out by the Port Authority or its contractors that materially damages or disrupts the DB Construction Work so as to materially and adversely impact (notwithstanding the Developer's reasonable efforts to mitigate) the Developer's cost of performing the Construction Work; provided, that for the avoidance of doubt none of Delta, any other Scheduled Aircraft Operator and their respective contractors shall be considered contractors of the Port Authority for the purposes of this Design-Build Contract and the Lease; and provided, further, that no such event shall be deemed to be a Compensation Event to the extent that it is due to a Force Majeure Event with respect to the Port Authority and for so long as the Port Authority and the Developer are coordinating the resumption of performance pursuant to the last paragraph of Section 14.1(a) thereof;

(iii) any failure by the Port Authority to respond in accordance with the Lease or the other Project Documents to any Submittal subject to Port Authority Approval within the time period provided therefor under the D&C Schedule of Submittals, the O&M Schedule of Submittals, the Requirements and Provisions for Work, Section 8.4 of the Lease or Section 16.14 of the Lease, as applicable; provided, that no such failure shall be deemed to have occurred if due in whole or in part to (A) the submission of incomplete or unresponsive documentation by the Developer for Port Authority Approval or (B) review by Governmental Entities required in connection with Submittals for Port Authority Approval where such review is required and cannot be completed or independently obtained by the Developer; provided, further, that no such failure shall be deemed to be a Compensation Event to the extent it is due to a Force Majeure Event with respect to the Port Authority and for so long as the Port Authority and the Developer are coordinating the resumption of performance pursuant to the last paragraph of Section 14.1(a) thereof;

(iv) any delay or failure by the Port Authority to issue a Temporary Certificate of Authorization to Occupy or Use with respect to a New Facilities Construction Milestone or Construction Segment, as applicable, a Certificate of Substantial Completion, a Certificate of Central Hall Substantial Completion, a Certificate of Final Acceptance or a Notice to Proceed within the time set forth herein if, in each case, all conditions to issuance of such certificate or Notice to Proceed have been fully satisfied; provided, that no such event shall be deemed to be a Compensation Event to the extent that it is due to a Force Majeure Event with respect to the Port Authority and for so long as the Port Authority and the Developer are coordinating the resumption of performance pursuant to the last paragraph of Section 14.1(a) thereof;

(v) any suspension of the D&C Work by the Port Authority that constitutes a Compensation Event as described in Section 10.9(b) of the Lease;

(vi) any Directive Letter issued by the Port Authority pursuant to Section 13.2 of the Lease;

(vii) any Change in Law or Applicable Standards Change taking effect prior to the Substantial Completion Date that materially and adversely impacts (notwithstanding the Developer's reasonable efforts to mitigate) the Developer's cost of performing the D&C Work (other than D&C Work performed with respect to the New Improvements, which is addressed in Section 14.1(a)(viii) thereof); provided, that for the purposes of Section 14.1(a)(vii) thereof, Change in Law and Applicable Standards Change shall exclude (A) any repeal of, amendment or modification to, or written change in interpretation of, any Applicable Standard or Applicable Law, as the case may be, by the Federal government or any agency or political subdivision thereof or by the Port Authority in order to comply with or implement any Federal Change in Law or Applicable Standards Change; or (B) any adoption or enactment of any new Applicable Standard or Applicable Law, as the case may be, by the Federal government or any agency or political subdivision thereof or by the Port Authority in order to comply with or implement any new Federal Applicable Standard or Applicable Law;

(viii) any Change in Law or Applicable Standards Change taking effect prior to the Substantial Completion Date that materially and adversely impacts (notwithstanding the Developer's reasonable efforts to mitigate) the Developer's cost of performing the D&C Work with respect to the New Improvements;

(ix) any change by the Port Authority to the General Conditions or the Technical Requirements taking effect prior to the Substantial Completion Date that materially and adversely impacts (notwithstanding the Developer's reasonable efforts to mitigate) the Developer's cost of performing the D&C Work;

(x) any Discriminatory Change in Law or Discriminatory Applicable Standards Change that materially and adversely impacts the Developer's performance of the Operations and Maintenance Work in a way that increases operating expenditures or necessitates additional capital expenditures; but in each case, excluding any Discriminatory Change in Law and Discriminatory Applicable Standards Change that may be promulgated or applied from time to time (A) in the interest of public health, (B) in response to an Emergency or (C) that is intended to bring the Operations and Maintenance Work into compliance with Best Management Practices so long as applied in a non-discriminatory manner;

(xi) the issuance of any injunction, restraining order or other similar legal order by a court of competent jurisdiction under Applicable Law based on a claim that challenges the Port Authority's authority to enter into the Lease or the transactions contemplated thereby under New York Unconsolidated Laws Sections 6631-6647, which injunction or order prohibits or enjoins prosecution of the Work for more than ninety (90) consecutive days;

(xii) any failure or delay by the Port Authority to obtain a Port Authority Governmental Approval it is required to obtain pursuant to the Project Documents, or, with respect to Governmental Approvals the Developer is required to obtain pursuant to the Project Documents for which the Developer has requested information or requires a signature from the Port Authority, any failure or delay by the Port Authority to provide such information or signature, subject to Section 8.4 of the Lease, or Section 16.14 of the Lease, within the specified time period, or, if no time period is specified, then within a reasonable time period after the request from the Developer to provide such information or signature; provided, that no such failure or delay shall be deemed to be a Compensation Event to the extent it is due to a Force Majeure Event with respect to the Port Authority and for so long as the Port Authority and the Developer are coordinating the resumption of performance pursuant to the last paragraph of Section 14.1(a) thereof;

(xiii) any breach by the Port Authority of any material obligation under the Lease (to the extent not covered otherwise by any of the other events specified in Section 14.1(a) thereof), to the extent the Net Revenue Impact and Net Cost Impact caused by such breach exceed Ten Million Dollars (\$10,000,000) per occurrence;

(xiv) the occurrence of conditions relating to the Environmental Requirements described in Section 16.17(b) of the Lease for which the Developer is entitled to recover Incremental Environmental Damages pursuant to Section 14.1 thereof;

(xv) the discovery of any Unknown Endangered Species by the Developer during the carrying out of the Construction Work;

(xvi) the discovery of any Unknown Archaeological Remains by the Developer during the carrying out of the Construction Work;

(xvii) the discovery of any Unknown Facilities by the Developer during the carrying out of the Construction Work that causes a Net Cost Impact to the Developer's performance of the Construction Work, to the extent such Net Cost Impact exceeds One Million Dollars (\$1,000,000) per occurrence or, taken together with all other amounts of Net Cost Impact with respect to previous occurrences of a Compensation Event under Section 14.1(a)(xvii) thereof, exceed Five Million Dollars (\$5,000,000) in the aggregate;

(xviii) the discovery of any Unknown Geotechnical Conditions during the carrying out of the Construction Work that causes a Net Cost Impact to the Developer's performance of the Construction Work, to the extent such Net Cost Impact exceeds One Million Dollars (\$1,000,000) per occurrence or, taken together with all other amounts of Net Cost Impact with respect to previous occurrences of a Compensation Event under this Section 14.1(a)(xviii), exceed Five Million Dollars (\$5,000,000) in the aggregate;

(xix) the issuance by the Port Authority of any Qualifying Safety Compliance Order; or

(xx) any final and non-appealable determination by a court of competent jurisdiction finding a violation by the Port Authority of Applicable Law that has, or could

reasonably be expected to have, a direct, material and adverse impact on the Developer's performance of the Work;

except, in each case, to the extent arising by reason of or attributable to (A) the negligence or willful misconduct of a Lessee-Related Entity or (B) any act or omission by a Lessee-Related Entity in breach of the provisions of the Lease or any other Project Document.

If any of the events described in clauses (i) through (iv) and (xii) of this Section 14.1(a) are deemed not to be a Compensation Event under the Lease due to the occurrence of a Force Majeure Event with respect to the Port Authority, the Design-Builder and the Developer shall coordinate with each other and the Port Authority in good faith to resume the performance relevant to the event as soon as reasonably practicable following the cessation of such Force Majeure Event, with the Design-Builder's understanding, acknowledgement and agreement that the nature of certain Force Majeure Events may preclude or hamper the Port Authority's ability to resume performance immediately, notwithstanding that the Force Majeure Event has ceased. The Design-Builder shall be entitled to make claims for Equivalent Project Relief pursuant to Article 14A hereto with respect to any Force Majeure Event for which the Developer has a right to seek Primary Project Relief. Further, if an event is not deemed to constitute a Force Majeure Event due to any act or omission by a Lessee-Related Entity (other than an act or omission of a DB Party) described under clauses (a), (b), (d) or (e) of the definition of Force Majeure Event, then such act or omission shall constitute a breach of this Design-Build Contract by the Developer.

(b) DB Compensation Event Notice.

(i) Subject to Section 8.5 and Article 14A, the Design-Builder shall give written notice to the Developer within twenty-five (25) days following the date on which the Design-Builder first became aware (or should have become aware, using all reasonable due diligence) that an event has occurred that the Design-Builder claims is a Compensation Event (a "**DB Compensation Event Notice**"). The DB Compensation Event Notice will include such information as may be needed to enable the Developer to submit such claim to the Port Authority in accordance with the requirements of the Lease, including (A) the claimed Compensation Event and its date of occurrence in reasonable detail, (B) any underlying disagreement or ambiguity of a technical nature contributing to or affecting the claimed Compensation Event, (C) the amount by which the Design-Builder claims the Contract Price should be adjusted as a result of the Compensation Event and details of the calculation thereof, which shall include a calculation of the Delay LDs that would be payable by the Design-Builder to the extent that the Compensation Event causes the DB D&C Work to extend beyond any relevant Delay LDs Date, provided that, if the amount of the applicable Contract Price adjustment and details of the calculation thereof are not available within the notice period required herein, the Design-Builder may submit an estimate of the amount of such Contract Price adjustment, or if known, the actual amount claimed as a Contract Price adjustment and details of the calculation thereof no later than twenty-five (25) days from submission of the DB Compensation Event Notice to the Port Authority, which estimate or actual amount may be updated one time thereafter within twenty-five (25) days from the last submission

thereof to the Port Authority (or at other times, if reasonably requested by the Developer or the Port Authority), and (D) evidence reasonably satisfactory to the Developer and the Port Authority that such event could not reasonably be avoided by the Design-Builder without material cost or delay, including by re-sequencing, reallocating or redeploying its forces to other portions of the DB D&C Work. Pursuant to Section 14.1(b)(i) of the Lease, for the avoidance of doubt, none of the Developer's estimated Net Cost Impact or the Net Revenue Impact will include any projected impacts to cost of operations and maintenance, or revenues derived from the operation, of the Central Hall and no Net Revenue Impact will be deemed to apply to any Compensation Event affecting solely the Central Hall and not affecting the rest of the Premises or Construction Work or Operations and Maintenance Work on the Premises generally. The Developer shall submit a Compensation Event Notice to the Port Authority under Section 14.1(b) of the Lease based on the DB Compensation Event Notice submitted by the Design-Builder and thereafter the Developer shall assert its rights under the Lease with respect to the Compensation Event claimed by the Design-Builder, in accordance with the requirements of Article 14A.

(ii) For purposes of the Design-Builder submitting a claim for Equivalent Project Relief under Article 14A, the Design-Builder will bear the burden of proving the occurrence of a claimed Compensation Event and the resulting impacts on the Contract Price or otherwise on the Design-Builder. Such burden of proof will include establishing the entitlement to compensation for excess Soil Disposal Costs under Section 16.4(g) and for excess Additional ACM Costs under Section 16.12(m).

(iii) If, for any reason, the Design-Builder fails to deliver such written DB Compensation Event Notice within the time period required by Section 14.1(b)(i), the Design-Builder will be deemed to have irrevocably and forever waived and released any Claim or right to Equivalent Project Relief or other relief that the Design-Builder may otherwise have been able to claim as a Compensation Event.

(iv) Pursuant to Section 14.1(b)(iv) of the Lease, (1) after the Developer submits a Compensation Event Notice, the Port Authority may, but is not required to, obtain, at its sole cost and expense, (A) from a technical consultant, a comprehensive report as to the Developer's estimate of the Net Cost Impact attributable to the claimed Compensation Event (including the amount by which the Design-Builder claims the Contract Price should be adjusted as a result of the Compensation Event) and/or (B) from a revenue consultant, a revenue study, prepared in accordance with Best Management Practice, analyzing and calculating the estimated Net Revenue Impact attributable to the claimed Compensation Event, if applicable; (2) without prejudice to the foregoing, the Port Authority may, but is not required to, prepare any such report or study on its own behalf; (3) if it is finally determined in accordance with Section 14.1(c)(v) of the Lease that the Developer's estimates of the Net Cost Impact or the Net Revenue Impact are materially incorrect, the Developer will reimburse the Port Authority for its reasonable costs and expenses in connection with the preparation of any such report or study by the Port Authority or a consultant; and (4) within ninety (90) days after receiving a Compensation Event Notice and the supporting documentation required by Section

14.1(b)(i) or such other time period reasonably necessary for the Port Authority to procure the services of one or more consultants and obtain such reports or studies, the Port Authority will provide to the Developer a copy of any such reports the Port Authority has elected to obtain or prepare, as the case may be. The Developer will provide the Design-Builder, as soon as practicable and in any event no less than five (5) Business Days of receipt from the Port Authority, a copy of such portions of any such reports delivered to the Developer pursuant to clause (4) above that are applicable to Contract Price adjustment prepared by the Design-Builder, and the Design-Builder will be responsible for payment of any reimbursement due to the Port Authority under clause (3) to the extent such reimbursement obligation relates to the Design-Builder's estimates of the Contract Price adjustment provided to the Developer pursuant to this Design-Build Contract.

(c) Damages Determination.

(i) NOT USED.

(ii) NOT USED.

(iii) The Developer will conduct all discussions and negotiations with the Port Authority to determine any Lessee Damages, subject to the Design-Builder's rights to participate in discussions with the Port Authority related to Primary Project Relief as provided in Section 14A.5. The Design-Builder will share with the Developer all data, documents and information pertaining to the relevant claimed Compensation Event, and exchange, on an Open Book Basis (as defined in the Lease), plans, drawings, configuration and other information related to the claimed Compensation Event and projected impact on the Contract Price and the DB D&C Work, all of which the Developer will provide to the Port Authority.

(iv) The Design-Builder will, and will cause each of its DB Subcontractors and Suppliers to, take all steps reasonably necessary to mitigate the amount of Lessee Damages attributable to, and other consequences of, any Compensation Event, including all steps that would generally be taken in accordance with Best Management Practice, including filing a timely claim for insurance and pursuing such claims in accordance with Article 20. In the event that the Design-Builder fails to take (or to cause its DB Subcontractors to take) mitigation measures as required pursuant to this clause (iv), the amount of the Design-Builder's recovery shall be reduced to the extent that such mitigation measures, if taken, would have reduced the amount of the Reasonable DB Claims.

(v) Pursuant to Section 14.1(c)(v) of the Lease, (1) if the Port Authority disagrees (A) that a Compensation Event claimed by the Developer has occurred or (B) with the Developer's entitlement to or amount of Lessee Damages claimed by the Developer, pursuant to the Lease, the Developer and the Port Authority will commence good faith negotiations to resolve the Dispute within one hundred twenty (120) days after the delivery of the Compensation Event Notice; provided, that the Chief Engineer shall

retain the authority to resolve any Disputes of a technical nature as provided in Section 33.3 of the Lease within the same one hundred twenty (120)-day period; and (2) if the Dispute cannot be resolved within such one hundred twenty (120)-day period, then either the Port Authority or the Developer, by written notice to the other party, may terminate the negotiations and submit the Dispute for resolution in accordance with Article 33 of the Lease (provided, that the period for resolution of the Dispute via mediation pursuant to Section 33.1(b) shall be reduced to thirty (30) days after the initiation of mediation proceedings for the purpose of this Section 14.1(c)); provided, that the Lease requires the Port Authority to proceed to make payment to the Developer of the undisputed portion of the Lessee Damages in accordance with Section 14.1(c) of the Lease without regard to the Port Authority Dispute Resolution Procedures. The Developer shall pay the portion of such undisputed Lessee Damages attributable to an adjustment of the Contract Price over to the Design-Builder in accordance with Article 14A. Notwithstanding anything in the foregoing, pursuant to the Lease, (1) the payment of any Lessee Damages (including any amount payable to the Design-Builder pursuant to Equivalent Project Relief) in respect of any Compensation Event that is agreed between the Developer and the Port Authority or is determined pursuant to the Port Authority Dispute Resolution Procedures is subject to the prior written approval of the Board of Commissioners in accordance with the Bylaws; provided, further, that approval of the Board of Commissioners which would otherwise be required by the Bylaws will not be required for a final judgment for payment of Lessee Damages (including any amount payable to the Design-Builder pursuant to Equivalent Project Relief) by a court of competent jurisdiction, for which all rights to appeal have either been exhausted or have expired; and (2) if approval of the Board of Commissioners is required in accordance with the Bylaws, the Port Authority is required to seek to obtain it in an expeditious and diligent manner, consistent in all respects with Applicable Law.

(d) Compensation Event Payment. All payments to the Design-Builder of amounts claimed in respect of a Compensation Event shall be strictly subject to provisions of Article 14A hereof.

(e) NOT USED.

(f) Sole Remedy and Release of Claims.

(i) The Design-Builder's rights with respect to Equivalent Project Relief pursuant to Article 14A hereof (including the Design-Builder's rights against the Developer to enforce the Developer's obligations thereunder with respect to claims for Equivalent Project Relief) will be the sole and exclusive rights of the Design-Builder to relief for the adverse effects of a Compensation Event.

(ii) NOT USED.

(g) NOT USED.

Section 14.2 Delay Events

(a) Definition. Section 14.2 of the Lease defines the term “**Delay Event**” as meaning any of the following events or conditions (subject to the limitations and other provisions set forth in Section 14.2 of the Lease) that causes a delay in the Developer’s performance of the Work or adversely affect the Developer’s ability to perform the Work in compliance with the Project Documents, but only if and to the extent that such event or condition cannot be overcome by consumption of available Float (provided, that, the Developer shall not be required to consume available Float with respect to the events described in clauses (ii) through (v), (xi), (xii), (xiii) and (xxi) of such Section 14.2(a)):

(i) the occurrence of any Force Majeure Event with respect to the Developer or any other Lessee-Related Entity;

(ii) any failure by the Port Authority to complete, or cause to be completed, any work carried out in connection with any Supporting Project by the applicable Supporting Project Milestone;

(iii) performance of work at or immediately adjacent to the Premises carried out by the Port Authority or its contractors (or by Delta in respect of the Other Redevelopments) that materially damages or disrupts the Construction Work so as to cause a material delay to the scheduled New Facilities Construction Milestone Completion Dates, the scheduled Substantial Completion Date and/or the scheduled Final Acceptance Date set forth in the Project Baseline Schedule;

(iv) any failure by the Port Authority to respond in accordance with the Lease or the other Project Documents to any Submittal subject to Port Authority Approval within the time period provided therefor under the D&C Schedule of Submittals, the O&M Schedule of Submittals, the Requirements and Provisions for Work, Section 8.4 of the Lease or Section 16.14 of the Lease, as applicable; provided, that no such failure shall be deemed to have occurred if due in whole or in part to (A) the submission of incomplete or unresponsive documentation by the Developer for Port Authority Approval, or (B) review by Governmental Entities required in connection with Submittals for Port Authority Approval where such review is required and cannot be completed or independently obtained by the Developer;

(v) any delay or failure by the Port Authority to issue a Temporary Certificate of Authorization to Occupy or Use with respect to a New Facilities Construction Milestone or a Construction Segment, as applicable, a Certificate of Substantial Completion, a Certificate of Central Hall Substantial Completion, a Certificate of Final Acceptance or a Notice to Proceed within the time set forth herein if, in each case, all conditions to issuance of such certificate or Notice to Proceed have been fully satisfied;

(vi) any suspension of the D&C Work by the Port Authority that constitutes a Delay Event pursuant to Section 10.9(b) of the Lease;

(vii) any Directive Letter issued by the Port Authority pursuant to Section 13.2 of the Lease;

(viii) any Change in Law or Applicable Standards Change taking effect prior to the Substantial Completion Date that materially and adversely impacts (notwithstanding the Developer's reasonable efforts to mitigate) the Developer's performance of the D&C Work;

(ix) any change by the Port Authority to the General Conditions or the Technical Requirements taking effect prior to the Substantial Completion Date that materially and adversely impacts (notwithstanding the Developer's reasonable efforts to mitigate) the Developer's performance of the D&C Work;

(x) any Discriminatory Change in Law or Discriminatory Applicable Standards Change that materially and adversely impacts the Developer's performance of the Operations and Maintenance Work; but in each case, excluding any Discriminatory Change in Law and Discriminatory Applicable Standards Change that may be promulgated or applied from time to time (A) in the interest of public health, (B) in response to an Emergency or (C) that is intended to bring the Operations and Maintenance Work into compliance with Best Management Practices so long as applied in a non-discriminatory manner;

(xi) any failure or delay by the Port Authority to obtain a Port Authority Governmental Approval it is required to obtain pursuant to the Project Documents, or, with respect to Governmental Approvals the Developer is required to obtain pursuant to the Project Documents but for which the Developer has requested information or requires a signature from the Port Authority, any failure or delay by the Port Authority to provide such information or signature, subject to Section 8.4 of the Lease or Section 16.14 of the Lease, within the specified time period, or, if no time period is specified, then within a reasonable time period after the request from the Developer to provide such information or signature;

(xii) any breach by the Port Authority of any material obligation under the Lease (to the extent not covered otherwise by any of the other events specified in Section 14.2(a) of the Lease);

(xiii) the issuance of any injunction, restraining order or other similar legal order by a court of competent jurisdiction under Applicable Law based on a claim that challenges the Port Authority's authority to enter into the Lease or the transactions contemplated hereby under New York Unconsolidated Laws Sections 6631-6647, which injunction or order prohibits or enjoins prosecution of the Work;

(xiv) the occurrence of conditions relating to the Environmental Requirements described in Section 16.17(b) of the Lease for which the Developer is entitled to schedule relief pursuant to Section 14.2 of the Lease;

(xv) the discovery of any Unknown Endangered Species by the Developer during the carrying out of the Construction Work;

(xvi) the discovery of any Unknown Archaeological Remains by the Developer during the carrying out of the Construction Work;

(xvii) the discovery of any Unknown Facilities by the Developer during the carrying out of the Construction Work that adversely impacts the Developer's performance of the Construction Work;

(xviii) the discovery of any Unknown Geotechnical Conditions during the carrying out of the Construction Work that adversely impacts the Developer's performance of the Construction Work;

(xix) the issuance by the Port Authority of any Qualifying Safety Compliance Order;

(xx) the issuance of a decision or determination by the Chief Engineer pursuant to Section 33.3 of the Lease in connection with a Dispute involving a purely technical or engineering matter;

(xxi) any final and non-appealable determination by a court of competent jurisdiction finding a violation by the Port Authority of Applicable Law that has, or could reasonably be expected to have, a direct, material and adverse impact on the Developer's performance of the Work; or

(xxii) any Lessee Change Request approved by the Port Authority that implements an Airline Requested Change pursuant to Section 13.3(g) of the Lease;

except, in each case, to the extent arising by reason of or attributable to (A) the negligence or willful misconduct of a Lessee-Related Entity or (B) any act or omission by a Lessee-Related Entity in breach of the provisions of the Lease or any other Project Document.

(b) Delay Event Notice.

(i) Subject to Section 8.5 and Article 14A, the Design-Builder shall give written notice to the Developer within twenty-five (25) days following the date on which the Design-Builder first became aware (or should have become aware, using all reasonable due diligence) that an event affecting the DB D&C Work has occurred that the Design-Builder claims is or is likely to become a Delay Event (provided, that in the case of the same Delay Event being a continuing cause of delay, only one (1) notice will be necessary) (a "**DB Delay Event Notice**"). The DB Delay Event Notice will include such information as may be needed to enable the Developer to submit such claim to the Port Authority in accordance with the requirements of the Lease, including (A) a detailed description of the Delay Event claimed by the Design-Builder, (B) details of the circumstances from which the claimed Delay Event arises, (C) an estimate of the duration of the delay in the performance of obligations pursuant to this Design-Build Contract

attributable to such Delay Event and information in support thereof, if known at that time and (D) evidence reasonably satisfactory to the Developer and the Port Authority that such event could not reasonably be avoided by the Design-Builder without material cost or delay, including by re-sequencing, reallocating or redeploying its forces to other portions of the DB D&C Work. The Design-Builder will also provide such further information relating to the claimed Delay Event as the Developer or the Port Authority may reasonably require. The Design-Builder may update the information provided in the DB Delay Event Notice once within the twenty-five (25) day period commencing at the submission of the DB Delay Event Notice to the Port Authority (or at other times, if reasonably requested by the Developer or the Port Authority). The Developer shall submit a Delay Event Notice to the Port Authority under Section 14.2(b) of the Lease including the information in the DB Delay Event Notice submitted by the Design-Builder and thereafter the Developer shall assert its rights under the Lease with respect to the Delay Event claimed by the Design-Builder, in accordance with the requirements of Article 14A.

(ii) For purposes of the Design-Builder submitting a claim for Equivalent Project Relief under Article 14A, the Design-Builder will bear the burden of proving the occurrence of a Delay Event claimed by the Design-Builder and the resulting impacts on the Design-Builder.

(iii) If for any reason the Design-Builder fails to deliver such written DB Delay Event Notice within the time period required by Section 14.2(b)(i), the Design-Builder will be deemed to have irrevocably and forever waived and released any Claim or right to time extensions or any other relief with respect to such event that the Design-Builder may otherwise have been able to claim as a Delay Event pursuant to this Design-Build Contract or any DB Project Document.

(iv) The Design-Builder will, and will cause each of its DB Subcontractors and Suppliers to, take all steps reasonably necessary to mitigate the effects of such event, including all steps that would generally be taken in accordance with Best Management Practice. The Design-Builder will promptly deliver to the Developer an explanation of the measures being undertaken to mitigate the delay and other consequences of such event. The Design-Builder will notify the Developer within ten (10) days following the date on which the Design-Builder first became aware (or should have become aware, using all reasonable due diligence) that such event has ceased. In the event that the Design-Builder fails to take (or to cause its DB Subcontractors to take) mitigation measures as required pursuant to this clause (iv), the delay and excuse of performance permitted under this Section 14.2 shall be reduced to the extent that such mitigation measures, if taken, would have reduced the impact of such event on the Design-Builder.

(v) Notwithstanding the occurrence of an event that is or may be a Delay Event, the Design-Builder will continue its performance and observance pursuant to this Design-Build Contract of all of its obligations and covenants to be performed to the extent that it is reasonably able to do so and will use Reasonable Efforts to, and will cause each of its DB Subcontractors and Suppliers to use Reasonable Efforts to, minimize

the effect and duration of such event. Without limiting the foregoing, the occurrence of a Delay Event will not excuse the Design-Builder from timely payment of monetary obligations pursuant to this Design-Build Contract or compliance with Applicable Law, Applicable Standards, the Requirements and Provisions for Work and other Contract Documents, except temporary inability to comply as a direct result of the Delay Event.

(vi) Section 14.2(b)(vi) of the Lease provides that, subject to Sections 14.2(b)(v) and 14.2(e) of the Lease and the Developer giving the Delay Event Notice required in Section 14.2(b)(i) of the Lease, a Delay Event will excuse the Developer from whatever performance is prevented or delayed by the Delay Event referred to in such notice to the extent set forth in Section 14.2(c) of the Lease.

(c) Delay Events Affecting Performance of the D&C Work. Pursuant to Section 14.2(c) of the Lease and subject to the requirements and conditions set forth in Article 14A, (1) subject to Sections 14.2(b)(iv), 14.2(b)(v) and 14.2(e) of the Lease, a Delay Event that is agreed between the Port Authority and the Developer occurring during the Construction Period affecting the performance of the D&C Work will excuse the Developer from performance of its obligations to perform the DB D&C Work pursuant to the Lease but only to the extent that such DB D&C Work is directly affected by such Delay Event; and (2) in addition, during the Construction Period, extensions of any Guaranteed New Facilities Construction Milestone Completion Date, the Guaranteed Substantial Completion Date, the Guaranteed Final Acceptance Date and/or the Long Stop Deadline, as applicable, for Delay Events directly affecting the DB D&C Work will be made based on a Time Impact Analysis, using the then-effective Project Baseline Schedule and taking into account impacts of the Delay Events on Critical Path items, in accordance with the Requirements and Provisions for Work, and will extend the Guaranteed New Facilities Construction Milestone Completion Date(s), the Guaranteed Substantial Completion Date, the Guaranteed Final Acceptance Date and the Long Stop Deadline under the Lease, as may be applicable, but only to the extent that the Delay Event actually delays the performance of the DB D&C Work beyond such date or deadline; provided, that, with respect to any Delay Event occurring during the Construction Period which solely affects the Central Hall and does not affect the rest of the Premises or DB D&C Work on the Premises generally, extension of the Guaranteed Final Acceptance Date under the Lease will be permitted, to the extent that such Delay Event actually delays performance of the DB D&C Work beyond such date or deadline, but no extensions will be permitted with respect to any Guaranteed New Facilities Construction Milestone Completion Date, the Guaranteed Substantial Completion Date and/or the Long Stop Deadline under the Lease in connection with such Delay Event. Upon the occurrence of a Delay Event, the Design-Builder shall be entitled to Equivalent Project Relief to the extent and subject to the requirements and conditions set forth in Article 14A.

(d) NOT USED.

(e) Failure to Agree. Pursuant to Section 14.2(c) of the Lease, if the Developer and the Port Authority (i) cannot agree on the extent of any delay incurred or relief from the Developer's obligations under the Lease, or (ii) the Port Authority disagrees that a claimed Delay Event has occurred (or as to its consequences) or that the Developer is entitled to relief

under Section 14.2 of the Lease, the Developer and the Port Authority shall resolve the matter in accordance with Article 33 of the Lease.

(f) Sole Remedy and Release of Claims.

(i) The Design-Builder's rights with respect to Equivalent Project Relief pursuant to Article 14A hereof (including the Design-Builder's rights against the Developer to enforce the Developer's obligations thereunder with respect to claims for Equivalent Project Relief) will be the sole and exclusive rights of the Design-Builder to relief for the adverse effects of a Delay Event.

(ii) NOT USED.

Section 14.3 Final Crane Directive

(a) Subject to the limitations set forth in clause (d) below, prior to the date of public issuance of the Final Crane Directive, the following procedures shall apply (to the exclusion of the other provisions of Article 14, except as otherwise specified herein) with respect to the determination of any Lessee Damages with regard to the DB D&C Work, if any, caused by the Temporary Crane Directives (it being understood that delay incurred or relief from the Design-Builder's obligations under this Design-Build Contract, if any, on account of the Temporary Crane Directives shall not be determined under this Section 14.3(a), but shall be determined in accordance with Section 14.3(b)):

(i) Within five (5) days following the end of the first month of the Term, and within five (5) days following the end of each month thereafter during which the Temporary Crane Directives are in effect, the Design-Builder shall concurrently provide written notice to the Developer and the Port Authority if, despite all commercially reasonable efforts to mitigate the impact of the Temporary Crane Directives (including the use of workarounds, re-sequencing, re-allocating and re-deploying labor forces), the Design-Builder claims that the Temporary Crane Directives constitute a Compensation Event.

(ii) Within thirty (30) days following the end of the first month of the Term, and within thirty (30) days following the end of each month thereafter during which the Temporary Crane Directives are in effect, the Design-Builder shall provide the Developer (for submission to the Port Authority) with a supplemented written notice setting forth the analysis and calculation of the amount of Lessee Damages attributable to the Temporary Crane Directives.

(iii) Within sixty-five (65) days following the end of the first month of the Term, and within sixty-five (65) days following the end of each month thereafter during which the Temporary Crane Directives are in effect, the Port Authority, the Developer and the Design-Builder shall meet and confer with respect to resolution of the amount of Lessee Damages with regard to the DB D&C Work attributable to the Temporary Crane Directives. Any determination of such Lessee Damages pursuant to this Section 14.3(a) shall be limited to only actual, documented, adverse Net Cost Impact incurred by the

Design-Builder during the previous month that are directly attributable to the Temporary Crane Directives; provided, that the determination of impact for the first month of the Term shall also include any Net Cost Impact incurred in the period prior to the DB Contract Effective Date.

(iv) Failure by the Design-Builder to deliver the written notice described in Section 14.3(a)(i) within the time period required thereby will result in the Design-Builder being deemed to have irrevocably and forever waived and released any Claim or right to damages attributable to the Temporary Crane Directives with respect to the applicable month. The Developer and the Design-Builder shall conduct all discussions and negotiations with the Port Authority and will share with the Port Authority all data, documents and information pertaining to the relevant negotiations on an Open Book Basis. Compensation as determined in accordance with this Section 14.3(a) will represent the sole right to compensation and damages for the adverse impacts of the Temporary Crane Directives.

(b) Pursuant to Section 14.3(b) of the Lease, the Port Authority and the Developer have acknowledged and agreed that the Final Crane Directive shall be deemed to be a Change in Law solely for purposes of Article 14 of the Lease, and (2) any claim by the Developer for a Compensation Event or Delay Event based on the Final Crane Directive or for a Delay Event based on the Temporary Crane Directives will be subject to the terms and provisions of Article 14 of the Lease in all respects; provided, however, that solely in connection with any claim based on the Final Crane Directive or a Delay Event claim based on the Temporary Crane Directives, the parties shall comply with the modified procedures set forth in clauses (i) through (v) of Section 14.3(b) of the Lease, which procedures shall modify Article 14 of the Lease only as specifically identified therein and shall otherwise in all cases be read in conjunction with Article 14 of the Lease in a manner that gives full effect to the provisions of Article 14 of the Lease without diminishing or deviating from the intent thereof. The Developer and the Design-Builder acknowledge and agree that the Final Crane Directive shall be deemed to be a Change in Law solely for purposes of this Article 14. Any claim by the Design-Builder for a Compensation Event or Delay Event based on the Final Crane Directive or for a Delay Event based on the Temporary Crane Directives shall be subject to the terms and provisions of this Article 14 in all respects; provided, however, that solely in connection with any claim based on the Final Crane Directive or a Delay Event based on the Temporary Crane Directives, the Parties shall comply with the modified procedures set forth in the following clauses (i) through (v), which procedures shall modify this Article 14 only as specifically identified herein and shall otherwise in all cases be read in conjunction with Article 14 in a manner that gives full effect to the provisions of Article 14 without diminishing or deviating from the intent thereof:

(i) Within five (5) days following the later of (x) the DB Contract Effective Date and (y) the date of public issuance of the Final Crane Directive (or determination that the current Temporary Crane Directive shall constitute the Final Crane Directive) (such later date, the “**Crane Directive Trigger Date**”), the Design-Builder shall concurrently provide written notice to the Developer and the Port Authority if, despite all commercially reasonable efforts to mitigate the impact of the Final Crane Directive

(including the use of workarounds, re-sequencing, re-allocating and re-deploying labor forces), the Design-Builder claims that the Final Crane Directive constitutes a Compensation Event and/or a Delay Event. The notice shall also indicate if the Temporary Crane Directives constitute a Delay Event.

(ii) Within thirty (30) days following the Crane Directive Trigger Date, the Design-Builder shall provide the Developer (for submission to the Port Authority) with a supplemented DB Compensation Event Notice and/or DB Delay Event Notice, as applicable, setting forth all of the information required to be provided by clauses (A) through (D) of Section 14.1(b)(i) and/or by clauses (A) through (D) of Section 14.2(b)(i), as applicable. The Design-Builder's analysis and calculation of Lessee Damages with regard to the DB D&C Work and the schedule impact due to the Delay Event, which for purposes of the Net Cost Impact on the DB D&C Work directly attributable to the Final Crane Directive (and, with respect to schedule impact only, attributable to the Temporary Crane Directives) will be based on historical wind and weather records, the Developer's experience and the Design-Builder's experience with similar construction projects and the same methodology used by the Design-Builder for the development of the estimate of performing the DB D&C Work and the Project Baseline Schedule. Such notices, as supplemented, shall constitute a "DB Compensation Event Notice" and a "DB Delay Event Notice" described in Sections 14.1(b)(i) and 14.2(b)(i), respectively. The additional twenty-five (25)-day period which the Design-Builder is otherwise afforded by Sections 14.1(b)(i) and 14.2(b)(i) to provide a one-time update to a DB Compensation Event Notice and DB Delay Event Notice shall not apply to notices delivered in connection with the Final Crane Directive or to a DB Delay Event Notice delivered in connection with the Temporary Crane Directives.

(iii) Within sixty-five (65) days following the Crane Directive Trigger Date, the Port Authority, the Developer and the Design-Builder shall meet and confer to determine: (i) with respect to the Temporary Crane Directives, the delay incurred or relief from the Design-Builder's obligations under this Design-Build Contract as determined in accordance with Section 14.2, and (ii) with respect to the Final Crane Directive, any Lessee Damages with regard to the DB D&C Work as determined in accordance with Section 14.1, and the delay incurred or relief from the Design-Builder's obligations under this Design-Build Contract as determined in accordance with Section 14.2.

(iv) Pursuant to Section 14.1(b)(iv) of the Lease, the Port Authority is entitled to procure any report or study to verify or analyze the impacts claimed by the Developer arising from the Final Crane Directive, in accordance with Section 14.1(b)(iv) of the Lease, except that such report or study will be provided to the Developer within sixty-five (65) days (and not ninety (90) days as provided in such Section) following the Crane Directive Trigger Date, or such other time period reasonably necessary for the Port Authority to obtain such report or study. The Developer will provide the Design-Builder as soon as practicable and in any event no less than five (5) Business Days of receipt from the Port Authority, a copy of such portions of any such reports delivered to the Developer pursuant to Section 14.1(b)(iv) of the Lease that are applicable to Contract Price adjustment prepared by the Design-Builder.

(v) Pursuant to Section 14.3(b)(v) of the Lease, if the Port Authority disagrees (A) that a Compensation Event or a Delay Event claimed by the Developer on the basis of the Final Crane Directive, or a Delay Event claimed by the Developer on the basis of the Temporary Crane Directives, has occurred or (B) with the Developer's entitlement to or amount of Lessee Damages, or other relief claimed by the Developer under Section 14.3(b)(iii) of the Lease, the Developer and the Port Authority will commence good faith negotiations to resolve the Dispute within ninety-five (95) days following the Crane Directive Trigger Date; provided, that if the Dispute cannot be resolved within such ninety-five (95) day period, then either the Developer or the Port Authority, by written notice to the other party, may terminate the negotiations and submit the Dispute for resolution in accordance with Article 33 of the Lease.

(c) Pursuant to Section 14.3 of the Lease, further amendments or modifications to the Final Crane Directive shall constitute a Change in Law solely for purposes of Article 14 of the Lease. Further amendments or modifications to the Final Crane Directive shall constitute a Change in Law solely for purposes of this Article 14.

(d) Pursuant to Section 14.3 of the Lease, (1) notwithstanding anything in the Lease, but for the avoidance of doubt, without limiting the Developer's obligation to mitigate potential damages and schedule impacts, to negotiate with the Port Authority on an Open Book Basis and to bear the burden of proving such claimed impacts, all as set forth in Sections 14.1 and 14.2 of the Lease, the Developer and the Port Authority may agree to seek resolution of the Final Crane Directive and the Temporary Crane Directives by negotiating a Port Authority Change, and (2) in that event, nothing in Section 14.3 of the Lease, nor any exercise by the Developer and the Port Authority of their rights or obligations under Section 14.3 of the Lease, will preclude the Developer and the Port Authority from resolving any or all impacts of the Final Crane Directive or the Temporary Crane Directives through an agreement on the terms of a Port Authority Change in accordance with Section 13.1 of the Lease. Notwithstanding anything herein, but for the avoidance of doubt, without limiting the Design-Builder's obligation to mitigate potential damages and schedule impacts, to negotiate with the Developer and the Port Authority on an Open Book Basis and to bear the burden of proving such claimed impacts, all as set forth in Sections 14.1 and 14.2, if the Port Authority and the Developer agree to seek resolution of the Final Crane Directive and the Temporary Crane Directive by negotiating a Port Authority Change, nothing in this Section 14.3, nor any exercise by the Design-Builder or the Developer of their rights and obligations under this Section 14.3 shall preclude the Design-Builder and the Developer from resolving any or all impacts of the Final Crane Director or Temporary Crane Directives through an agreement with the Port Authority on the terms of a Port Authority Change in accordance with Section 13.1.

Section 14.4 Waiver

The Design-Builder unconditionally and irrevocably waives the right to any claim against the Developer, its officers, directors, commissioners, agents, representatives, consultants and employees for any monetary compensation, schedule relief or other relief except to the extent specifically provided in this Article 14 and Article 14A or otherwise as specifically provided in this Design-Build Contract. The foregoing waiver is limited solely to the occurrence of

Compensation Events and Delay Events and encompasses all theories of liability, whether in contract, tort (including negligence), strict liability, equity, *quantum meruit* or otherwise, and encompasses all theories to extinguish contractual obligations, including impracticability, mutual or unilateral mistake and frustration of purpose. Notwithstanding anything to the contrary herein, no liability of the Design-Builder that arose before the occurrence of the Compensation Event or Delay Event giving rise to a claim under this Article 14 and Article 14A shall be excused as a result of the occurrence thereof. Nothing in the Requirements and Provisions for Work shall have the intent or effect or shall be construed to create any right of the Design-Builder to any claim for additional monetary compensation, schedule relief or other relief, notwithstanding any provision in the Requirements and Provisions for Work to the contrary, in each case with respect to Compensation Events and Delay Events. The provisions of this Section 14.4 shall not affect the Design-Builder's remedies under the Contract Documents in the event of a termination of this Design-Build Contract prior to the stated expiration of the Term.

ARTICLE 14A

EQUIVALENT PROJECT RELIEF

Section 14A.1 Dependence on Primary Project Relief

Unless otherwise expressly stated to the contrary in this Design-Build Contract, the Design-Builder will benefit from and have, but not be limited to (unless so limited by the terms of this Design-Build Contract), the same rights, benefits and entitlements including to financial compensation or any extension of time or relief from performance of obligations under this Design-Build Contract as those of the Developer under the Lease; provided that such rights, benefits or entitlements under this Design-Build Contract ("**Equivalent Project Relief**") will be conditional upon the existence and enforcement of a corresponding right, benefit or entitlement of the Developer under the Lease ("**Primary Project Relief**").

Section 14A.2 Design-Builder Submission of Claims for Equivalent Project Relief

The Design-Builder shall provide any claim for Equivalent Project Relief to the Developer, which in the case of claims for compensation and delay shall be submitted in accordance with Sections 14.1(b) and 14.2(b), within sufficient time and in sufficient detail to enable the Developer to review such claim and to submit such claim for which Primary Project Relief may be available to the Developer to the Port Authority in accordance with the requirements of the Lease. The Developer shall coordinate such Design-Builder claim with any other Contractor claims arising from the same event and shall ensure that all Reasonable DB Claims are promptly submitted to the Port Authority in accordance with the Lease, including, as applicable, Sections 14.1(b) and 14.2(b) thereof.

Section 14A.3 Pursuit of Reasonable DB Claims

The Developer shall promptly forward and process all Reasonable DB Claims, including Delay Events or Compensation Events, to the Port Authority as claims for Primary Project

Relief. The Developer shall use Reasonable Efforts to pursue and prosecute diligently all such claims for Primary Project Relief in good faith with the Port Authority, and the Parties shall pay, to the extent that such expenses are not paid by the Port Authority, their own respective costs and expenses incurred in the pursuit of any Reasonable DB Claim, including reporting and compliance expenses. Notwithstanding the foregoing, the Developer may decline to pursue any claim provided by the Design-Builder that the Developer determines (in its reasonable discretion) and informs the Design-Builder in writing, within two (2) Business Days of receipt from the Design-Builder of the claim for Equivalent Project Relief (including all required supporting documentation), is not a Reasonable DB Claim.

Section 14A.4 Disputes Regarding Reasonable DB Claims

Any Dispute with respect to whether a claim submitted pursuant to this Article 14A by the Design-Builder constitutes a Reasonable DB Claim shall be subject to the DB Dispute Resolution Procedure set forth in Article 33A of this Design-Build Contract unless the Lease requires resolution of such Dispute pursuant to Article 33 of the Lease. If the DB Dispute Resolution Procedure determines that a claim provided by the Design-Builder was a Reasonable DB Claim and the Developer failed to submit such Reasonable DB Claim, the Developer shall promptly submit such Reasonable DB Claim to the Port Authority or, if such Reasonable DB Claim is time barred by the terms of the Lease, the Developer shall promptly pay the Design-Builder the amount of Equivalent Project Relief that the Design-Builder would have otherwise been entitled to receive with respect to such Reasonable DB Claim (as determined pursuant to a further DB Dispute Resolution Procedure, if necessary).

Section 14A.5 Discussions with the Port Authority Regarding Primary Project Relief

At the Developer's request, the Design-Builder shall participate in discussions with the Port Authority with respect to any claim for Primary Project Relief relating to the Design-Builder's obligations under this Design-Build Contract. To the extent Developer has not requested Design-Builder's participation in such discussions, the Design-Builder shall have the right (i) to consult with the Developer; (ii) to participate in such discussions solely with respect to claims of a technical nature or with respect to Reasonable DB Claims; and (iii) to attend and observe such discussions with respect to all other claims that pertain to the Design-Builder. In all discussions with the Port Authority, the Developer will take the lead, and the Design-Builder will not initiate discussions with the Port Authority with respect to any claim for Primary Project Relief relating to the Design-Builder's obligations under this Design-Build Contract without the prior written consent of the Developer. Except as expressly provided in this Design-Build Contract, the Design-Builder shall have no separate right to claim against the Developer or its designees in connection with a claim for Primary Project Relief.

Section 14A.6 Payment of Amounts to the Design-Builder

In the event that the Design-Builder approves the settlement of a Reasonable DB Claim with the Port Authority or, if there is no such settlement, the Developer uses Reasonable Efforts to prosecute a Reasonable DB Claim to completion through the dispute resolution procedures set

forth in the Lease, then (i) the amount payable to the Design-Builder shall equal the amount designated in such settlement or dispute resolution procedure as being attributable to such Reasonable DB Claim (provided, however, if such settlement or dispute resolution procedure also includes claims other than such Reasonable DB Claim (e.g., a Developer-initiated claim), and if the settlement or dispute resolution procedure does not identify a specific amount payable for such Reasonable DB Claim, then the amount payable to the Design-Builder shall be the percentage of the total amount to be paid by the Port Authority that such Reasonable DB Claim bears to all the claims that were submitted to the Port Authority and settled or resolved through such settlement or dispute process) and (ii) the payment of such amount to the Design-Builder by the Developer shall be conditioned upon the Developer first receiving sufficient payment from the Port Authority through Primary Project Relief. Notwithstanding the foregoing, if under such circumstances the full amount paid by the Port Authority through Primary Project Relief is less than the amount payable to the Design-Builder set forth in sub-clause (i) as a result of an offset in the overall payment by the Port Authority to reflect additional revenue or cost savings to the Developer (i.e., attributable to increased operations and maintenance revenues or cost savings), then the amount payable to the Design-Builder shall be the amount identified in sub-clause (i) above even if the full amount thereof is not received from the Port Authority.

Section 14A.7 Settlements Without Design-Builder Consent

The Developer may also settle any Reasonable DB Claim without the prior consent of the Design-Builder, but if in such circumstances the amount requested in such Reasonable DB Claim is greater than the amount for which the Developer settles such Reasonable DB Claim, then the Design-Builder may bring a claim against the Developer in respect of such difference.

Section 14A.8 Assistance in Offsetting Lessee Damages

The Design-Builder shall use Reasonable Efforts to assist the Developer in the Developer's pursuit of potential sources of funds or reimbursement from any third-party source to offset Lessee Damages, as required by Section 14.1(c)(ii) of the Lease.

Section 14A.9 Impact of Insurance Proceeds

If the amount payable to the Design-Builder with respect to a Reasonable DB Claim pursuant to this Article 14A is decreased by the Port Authority pursuant to Section 14.1(c)(ii) of the Lease to reflect Insurance Proceeds or amounts recovered from third-party sources pursuant to Section 14A.8, the Design-Builder shall be entitled to payment of any such Insurance Proceeds or amounts recovered from third-party sources promptly upon the receipt of same by the Developer from the applicable insurance provider, Sublessee or other third-party source.

Section 14A.10 Port Authority Prepayment of Lessee Damages

In the event the Port Authority elects to prepay any Lessee Damages pursuant to Sections 14.1(d)(iv) and (v) of the Lease, the Developer shall not be required to prepay to the Design-Builder any such amount. Such amount received from the Port Authority for future costs to be incurred in the performance of DB D&C Work that are payable to the Design-Builder pursuant to this Article 14A shall instead be paid to the Design-Builder when such costs are paid or

incurred by the Design-Builder and thereafter become payable pursuant to the payment provisions of this Design-Build Contract.

ARTICLE 14B

DELAY AND COMPENSATION FOR DELAY; LIQUIDATED DAMAGES

Section 14B.1 Facilitation of DB D&C Work

The Developer and the Design-Builder shall perform their respective contractual obligations under this Design-Build Contract to facilitate the timely commencement, performance and completion of the DB D&C Work in accordance with the Project Baseline Schedule.

Section 14B.2 Entitlement to Extension of Time or Compensation

The Design-Builder shall be entitled to adjustments to the Contract Price and Project Baseline Schedule as and to the extent set forth in Articles 13, 14 and 14A hereof (and, if applicable, subject to the restrictions in the definition of “Delay LD Dates,” to the Delay LDs Dates). In addition, the Design-Builder shall be entitled, pursuant to the procedures set forth in Section 14B.5, to an extension of time in respect of the DB Substantial Completion Deadline, the DB Final Acceptance Deadline and the DB New Facilities Construction Milestone Deadlines, and compensation for such additional time, and an extension of time in respect of the Delay LDs Dates, in each case (1) to the extent attributable to a Developer Suspension or a Developer Act and (2) if the Design-Builder provides evidence reasonably satisfactory to the Developer that such applicable event(s) could not reasonably be avoided by the Design-Builder without material cost or delay, including by re-sequencing, reallocating or redeploying its forces to other portions of the DB D&C Work; provided, that:

(a) to the extent that any such delay or damages are attributable to a Developer Act or a Developer Suspension and, as a result, are not entitled to relief pursuant to Article 14A hereof, the Developer shall compensate the Design-Builder for the reasonable costs actually incurred by the Design-Builder that resulted from such delay (including any direct costs, mitigation costs, payments to DB Subcontractors and Suppliers, de-mobilization and, if applicable, re-mobilization costs), plus reasonable overhead and profit on such costs, subject to determination of such costs in accordance with Section 14B.5;

(b) to the extent such delay or damages are not attributable to a Developer Act or a Developer Suspension, the Developer shall not be required to compensate the Design-Builder for any additional costs incurred by the Design-Builder that resulted from such delay; and

(c) any delay or increase in costs of DB D&C Work caused by failure to obtain or maintain (or caused by a delay in obtaining or maintaining) any Governmental Approval required to be obtained by the Design-Builder under Applicable Law, Applicable Standards or by the DB Project Documents shall be at the Design-Builder’s sole risk, except to the extent that Equivalent Project Relief is obtained or such failure or delay is caused by a Developer Act or Developer Suspension.

Section 14B.3 Developer Act Resulting From Failure to Provide Certain Notices

For the avoidance of doubt, the Parties acknowledge and agree that each of the following shall constitute a Developer Act under this Design-Build Contract: (i) failure of the Developer to provide any notice as and when required by Section 10.9(a) (Port Authority Suspensions), Section 13.2 (Directive Letters), Section 13.5(a)(ii) (Safety Compliance Orders) or Section 18.3 (certain Lender notices) and (ii) failure of the Developer to notify the Design-Builder, in writing, of any initiation of any action for the liquidation, bankruptcy, reorganization, dissolution or winding up of the Developer no later than three (3) Business Days after the Developer has actual knowledge of the same.

Section 14B.4 Delay LDs

(a) Subject to Section 14B.2 above, each of the following Delay LDs (or any combination thereof, as applicable) shall be payable by the Design-Builder:

(i) if the Design-Builder fails to achieve the first New Facilities Construction Milestone by the applicable Delay LDs Date, the Design-Builder shall pay Delay LDs to the Developer during the period from the applicable Delay LDs Date until the New Facilities Construction Milestone Completion Date at a daily rate of \$58,598.95;

(ii) if the Design-Builder fails to achieve the second New Facilities Construction Milestone by the applicable Delay LDs Date, the Design-Builder shall pay Delay LDs to the Developer during the period from the applicable Delay LDs Date until the New Facilities Construction Milestone Completion Date at a daily rate of \$26,627.26;

(iii) if the Design-Builder fails to achieve the third New Facilities Construction Milestone by the applicable Delay LDs Date, the Design-Builder shall pay Delay LDs to the Developer during the period from the applicable Delay LDs Date until the New Facilities Construction Milestone Completion Date at a daily rate of \$261,292.13;

(iv) if the Design-Builder fails to achieve the fourth New Facilities Construction Milestone by the applicable Delay LDs Date, the Design-Builder shall pay Delay LDs to the Developer during the period from the applicable Delay LDs Date until the New Facilities Construction Milestone Completion Date at a daily rate of \$38,938.45;

(v) if the Design-Builder fails to achieve the fifth New Facilities Construction Milestone by the applicable Delay LDs Date, the Design-Builder shall pay Delay LDs to the Developer during the period from the applicable Delay LDs Date until the New Facilities Construction Milestone Completion Date at a daily rate of \$112,923.60; and

(vi) if the Design-Builder fails to achieve Substantial Completion by the applicable Delay LDs Date, the Design-Builder shall pay Delay LDs to the Developer during the period from the applicable Delay LDs Date until the Substantial Completion Date at a daily rate of (x) to and including December 31, 2022, \$53,093.83 or (y) after December 31, 2022, \$83,756.82.

(b) Subject to Section 34.1(b), each of the Delay LDs shall accrue daily and shall be payable on the last day of the month in which the Design-Builder failed to achieve the relevant New Facilities Construction Milestone and on the last day of each subsequent month until and including the month in which the New Facilities Construction Milestone is achieved.

(c) THE DELAY LDS SHALL BE THE ONLY DAMAGES PAYABLE BY THE DESIGN-BUILDER FOR ANY DELAY IN ACHIEVING PARTIAL COMPLETION BY A PARTICULAR DB NEW FACILITIES CONSTRUCTION MILESTONE DEADLINE OR SUBSTANTIAL COMPLETION BY THE DB SUBSTANTIAL COMPLETION DEADLINE OR FOR FAILURE TO ACHIEVE FINAL ACCEPTANCE BY THE DB FINAL ACCEPTANCE DEADLINE; provided, that, this Section 14B.4(c) (1) is without prejudice to any right of the Developer to terminate this Design-Build Contract pursuant to Section 23.3 below with respect to a Design-Builder Event of Default, which termination will not limit the Developer's right to claim for any damages (other than Delay LDs, unless past due) that result from such termination due to the Design-Builder, (2) for greater certainty, is without prejudice to any right of the Developer to claim against the Design-Builder in respect of any deductions in the payments to be made by the Port Authority to the Developer under the Lease, and (3) shall not limit the Design-Builder's liability for defects or deficiencies in the DB D&C Work, or in the performance of the DB D&C Work, or for the Design-Builder's failure to perform its other obligations under the DB Project Documents.

(d) In the event of any Compensation Event or Delay Event, the Design-Builder shall not be excused from its obligation to pay Delay LDs, except that (1) such Delay LDs shall be reduced by the amount of any insurance recovery with respect thereto in accordance with clause (e) below, and (2) from the date of any Indicative Termination Notice until the date, if any, on which the Developer orders the Design-Builder to resume DB D&C Work, no such Delay LDs shall be payable by the Design-Builder.

(e) If the Developer receives proceeds from an insurance policy for the loss of revenue arising from a delay, any liability of the Design-Builder to pay Delay LDs with respect to such delay will be reduced to the extent of such insurance proceeds (provided that no reduction will be permitted until the Delay LDs paid by the Design-Builder first account for any applicable insurance deductible). If the insurance proceeds are not received until after the Design-Builder has paid Delay LDs to the Developer pursuant to this Design-Build Contract, the Developer shall reimburse the Design-Builder in an amount equivalent to such insurance proceeds received, less any applicable insurance deductible (up to the amount of Delay LDs actually paid by the Design-Builder with respect to such delay), promptly after receipt of the same. The Developer shall use Reasonable Efforts to pursue payment from its existing insurance providers for the loss of revenue arising from Project Baseline Schedule delays.

(f) The Design-Builder will be entitled to relief from payment of Delay LDs that are attributable to a Developer Act or a Developer Suspension, as and to the extent set forth in Section 14B.5(e) below, through appropriate adjustments to the Delay LDs Dates.

(g) Any Dispute with respect to the Design-Builder's obligation to pay Delay LDs or any other matter set forth in this Section 14B.4 shall be subject to the DB Dispute Resolution

Procedure set forth in Article 33A hereof, unless the Lease requires resolution of any matter relating to such Dispute pursuant to Article 33 of the Lease.

Section 14B.5 Delay Caused by Developer Suspension or Developer Act; Notice; Dispute Resolution

(a) If the Design-Builder becomes aware of any Developer Suspension or Developer Act that is likely to cause the Design-Builder to fail to achieve (1) Partial Completion after any Guaranteed New Facilities Construction Milestone Completion Date or (2) Substantial Completion after the Guaranteed Substantial Completion Date, the Design-Builder shall notify the Developer as soon as reasonably practicable, and in any event no later than ten (10) Business Days after the Design-Builder becomes aware of the same. The Parties will, within ten (10) days of any such notification or claim, meet in good faith and seek to agree on steps to be taken to rectify or mitigate such delay. Any dispute not resolved during such meeting(s) as to the anticipated length of delay or the attributable costs with respect thereto will be referred to the DB Dispute Resolution Procedure. The DB New Facilities Construction Milestone Deadlines and the DB Substantial Completion Deadline, as applicable, shall be extended by the period of delay attributable to such Developer Suspension or Developer Act, as determined either (1) in accordance with an agreement of the Parties or (2) pursuant to the DB Dispute Resolution Procedure, in each case in accordance with Section 14B.5(b). Failure of the Design-Builder to give notice as required by this Section 14B.5(a) shall not be deemed to be a material breach of this Design-Build Contract.

(b) Further, if the Design-Builder desires to assert any claim for an extension of time in respect of (i) the DB Substantial Completion Deadline, the DB Final Acceptance Deadline or the DB New Facilities Construction Milestone Deadlines, or compensation for such additional time, or (ii) any Delay LDs Date, in each case as provided by Section 14B.2, the Design-Builder shall submit such claim to the Developer in accordance with the procedures (including submission deadlines and informational requirements) set forth in Section 14.1 with respect to DB Compensation Event Notices and Section 14.2 with respect to DB Delay Event Notices, as applicable.

(c) NOT USED.

(d) To the extent that there is any Dispute between the Parties as to the length of the period attributable to any Developer Suspension or any Developer Act, the Design-Builder will be entitled to relief for the undisputed portion of such delay in the interim, with the balance to be determined in accordance with the DB Dispute Resolution Procedure.

(e) NOT USED.

(f) If, solely and directly as a result of a Developer Act or Developer Suspension, the Developer fails to obtain an extension of any Guaranteed New Facilities Construction Milestone Completion Date or the Guaranteed Substantial Completion Date under the Lease and the Parties determine (pursuant to this Section 14B.5) that such extension would have otherwise been granted and resulted in an extension of any Guaranteed New Facilities Construction Milestone

Completion Date or the Guaranteed Substantial Completion Date of greater than thirty (30) days, then the Developer may elect (by written notification to the Design-Builder) to require the Design-Builder to use its best efforts to accelerate the DB D&C Work to achieve Partial Completion or Substantial Completion, as applicable, by the applicable non-extended date and, if the Developer so elects, the Developer shall pay the Design-Builder for the reasonable costs and expenses incurred by the Design-Builder in so using its best efforts to accelerate the DB D&C Work, plus reasonable overhead and profit on the same, with such payment to be made in accordance with a schedule of additional payments to be agreed upon by the Parties, acting reasonably (with the expectation that payment would be due and payable, generally, as the acceleration costs or expenses are incurred, but in no event more frequently than on a bi-weekly basis). The Design-Builder's failure to make up the delay in time attributable to such Developer Act and to achieve Partial Completion or Substantial Completion, as applicable, by the non-extended date shall not result in any additional liability for Delay LDs or constitute a Design-Builder Event of Default so long as the Design-Builder used best efforts to meet the accelerated schedule.

Section 14B.6 **NOT USED**

Section 14B.7 **NOT USED**

Section 14B.8 **Float**

For the avoidance of doubt, the Design-Builder, rather than the Developer, shall have the benefit of any Float included in the Project Baseline Schedule, and the Design-Builder shall not be required to use any available Float except as explicitly required pursuant to the Lease.

ARTICLE 15

COMPLIANCE WITH LAW

Section 15.1 Compliance with Law Generally; Governmental Approvals

(a) The Design-Builder shall comply, and shall require that all DB Subcontractors and other Persons performing any of the DB D&C Work comply, with all Applicable Laws and Applicable Standards, including all Environmental Laws and those Applicable Laws and Applicable Standards specifically enumerated in this Article 15. The Design-Builder shall make, and shall require that all DB Subcontractors and other Persons performing any of the DB D&C Work make, any and all structural or non-structural improvements, alterations or repairs of the Premises that are related to or required to conduct or complete the DB D&C Work that may be required at any time hereafter by any such Applicable Law or Applicable Standard. Except as otherwise expressly provided in this Design-Build Contract, including in Section 15.1(d) below, the Design-Builder shall procure and obtain, and shall require that all DB Subcontractors and other Persons performing any of the DB D&C Work procure and obtain, from all Governmental Entities having jurisdiction over the operations of the Design-Builder hereunder all required Governmental Approvals in respect of DB D&C Work other than Governmental Approvals required to be obtained or maintained by the Port Authority or

that are identified in Exhibit A-22 as being obligations of the Developer (all such Governmental Approvals to be obtained by the Design-Builder are referred to herein as the “**Design-Builder Governmental Approvals**”), and shall maintain in full force and effect all such Design-Builder Governmental Approvals.

(b) The obligation of the Design-Builder, all DB Subcontractors and other Persons performing any of the DB D&C Work to comply with Applicable Laws, Applicable Standards and Governmental Approvals is not to be construed as a submission by the Port Authority to the application to itself of such Applicable Laws, Applicable Standards and Governmental Approvals.

(c)

(i) The Design-Builder shall promptly provide notice to the Developer after the Design-Builder becomes aware of any Claim, action, judgment, warning, summons, obligation, notice, notice of violation, investigation, proceeding, order or Lien arising under or relating to any violation or alleged violation of any Applicable Law, Applicable Standard or Governmental Approval with respect to the Premises or LGA Airport.

(ii) The Developer shall promptly provide notice to the Design-Builder after the Developer becomes aware of any Claim, action, judgment, warning, summons, obligation, notice, notice of violation, investigation, proceeding, order or Lien with regard to the DB D&C Work arising under or relating to any violation or alleged violation of any Applicable Law, Applicable Standard or Governmental Approval with respect to the Premises or LGA Airport.

(iii) Failure of either Party to give notice as required by this Section 15.1(c) shall not constitute a breach of this Design-Build Contract.

(d) Governmental Approvals.

(i) The Design-Builder shall be solely responsible for securing, obtaining and maintaining all Design-Builder Governmental Approvals (including any revision, modification, amendment, supplement, renewal or extension thereof) required by Applicable Law, Applicable Standards, the Lease, or the DB Project Documents in connection with the performance of its obligations under the DB Project Documents. Design-Builder Governmental Approvals shall be obtained prior to the time set forth in the Project Baseline Schedule for the commencement of the portion of the DB D&C Work to which such Design-Builder Governmental Approvals are applicable.

(ii) Notwithstanding Sections 15.1(a) and 15.1(d)(i), and unless provided to the contrary in Exhibit A-22, the Design-Builder shall be responsible for obtaining any amendments, modifications, revisions or supplements to any Port Authority Governmental Approval where such amendments, modifications, revisions or supplements are necessary to reflect the requirements for the DB Construction Work based on the Final Design and/or means and methods should the Final Design and/or means and methods deviate from the basis upon which the Port Authority Governmental

Approval was initially granted by the applicable Governmental Entity; it being understood that if the application or request for such amendment, modification, revision or supplement can only be made in the name of the Port Authority or the Port Authority's participation in such application or request process is necessary or desirable, Section 15.1(d)(ii) of the Lease requires the Port Authority to cooperate in such process and the Design-Builder shall provide all information to the Developer (for provision to the Port Authority) to facilitate such process. In the event that the applicable Governmental Entity refuses to grant any such amendment, modification, revision or supplement or any such amendment, modification, revisions or supplement cannot be obtained in a form that is consistent with the Final Design and acceptable to the Port Authority in accordance with the requirements of the Lease, the Design-Builder shall be responsible, at its own risk of delay and cost, for revising its Final Design and/or means and methods as necessary to satisfy the requirements and conditions of the original Port Authority Governmental Approval or the amendment, modification, revision or supplement to such Governmental Approval as has been issued by such Governmental Entity, as applicable, and the Design-Builder shall perform the DB Construction Work in accordance therewith during the Term. Pursuant to Section 15.1(d)(ii) of the Lease, for avoidance of doubt, any amendments, modifications, revisions or supplements to any Port Authority Governmental Approval required to be obtained by the Developer pursuant to Section 15.1(d)(ii) of the Lease shall not provide the basis for any Compensation Event or Delay Event under Section 14.1(a)(xii) or Section 14.2(a)(xi) of the Lease, respectively, for any failure or delay of the Port Authority to obtain a Port Authority Governmental Approval that it is required to obtain pursuant to the Project Documents. Such limitation shall also apply to any amendments, modifications, revisions or supplements to any Port Authority Governmental Approval required to be obtained by the Design-Builder pursuant to this Section 15.1(d)(ii).

(iii) The Design-Builder shall at all times perform its obligations under this Design-Build Contract in compliance with all Governmental Approvals and shall be responsible for the satisfaction of all conditions of such Governmental Approvals in connection with such performance.

(iv) The Design-Builder shall deliver to the Developer for submission to the Port Authority for Port Authority Approval, as required by Section 16.14(a)(ii), accurate and complete copies of all applications for new Governmental Approvals or amendments to the existing Governmental Approvals that are required to be obtained by the Design-Builder, at least twelve (12) days in advance of the Lease deadline for such submissions (which is the date that is sixty (60) days in advance of planned submittal of such application and taking into account time allotted for review of such application by the Port Authority in accordance with Section 16.14(a)); provided, that if, a new Design-Builder Governmental Approval or an amendment to an existing Design-Builder Governmental Approval is required in order to comply with Applicable Law, Applicable Standards or the Design-Builder's obligations under this Design-Build Contract and a sixty (60)-day review period is impracticable, the Design-Builder may request that the Developer and the Port Authority review such application or amendment on an expedited basis and the Developer shall not unreasonably withhold or delay their consent to such

request. The Design-Builder shall provide concurrently to the Developer and to the Port Authority a true and complete copy of any new or amended Design-Builder Governmental Approval within two (2) Business Days after receipt thereof, together with all correspondence to and from the applicable Governmental Entity in respect of such Design-Builder Governmental Approval.

(v) The Developer will use Reasonable Efforts to cooperate with the Design-Builder as necessary or appropriate to facilitate the Design-Builder obtaining Design-Builder Governmental Approvals. In particular, the Developer will use Reasonable Efforts to cause the Port Authority, pursuant to the Port Authority's obligations set forth in Section 15.1(d)(v) of the Lease, to (1) cooperate with the Developer (on behalf of the Design-Builder) in connection with any application by the Design-Builder for a Design-Builder Governmental Approval and (2) at the reasonable request of the Design-Builder (or the Developer on the Design-Builder's behalf) and at the Design-Builder's expense, and where necessary to obtain, renew, replace, extend the validity of, or arrange necessary amendments to any Design-Builder Governmental Approval:

(A) execute documents that are acceptable to the Port Authority and can only be executed by the Port Authority;

(B) make such applications, either in its own name or jointly with the Design-Builder, as can only be made by the Port Authority or in the joint names of the Design-Builder and the Port Authority, as the case may be; and

(C) attend meetings with appropriately qualified staff and cooperate with approval bodies as reasonably requested by the Design-Builder,

in each case, with reasonable advance notice on the Premises or at a location convenient for the Port Authority and within a reasonable period of time of being requested to do so by the Design-Builder.

(vi) The Design-Builder shall use Reasonable Efforts to cooperate with the Developer and the Port Authority as necessary and appropriate to facilitate the application by the Developer for any Lessee Governmental Approvals that do not constitute Design-Builder Governmental Approvals and the application by the Port Authority of all Port Authority Governmental Approvals, at the times and in the manner reasonably requested by the Developer or the Port Authority, as applicable. If there are any Design-Builder Governmental Approvals that are legally required to be obtained by the Developer rather than the Design-Builder, the Design-Builder shall take such steps as may be necessary to enable the Developer to obtain such Design-Builder Governmental Approvals or, if so requested by the Developer, shall obtain such Design-Builder Governmental Approval in the Developer's name.

Section 15.2 Port Authority Rules and Regulations

(a) The Design-Builder covenants and agrees to comply, and to cause the DB Parties and their respective guests and invitees to comply, with the Rules and Regulations in

effect on the DB Contract Effective Date and such future Rules and Regulations and amendments and supplements to Rules and Regulations with respect to the conduct and operations of the Design-Builder and others at LGA Airport, including with respect to the use of the Public Aircraft Facilities, as such Rules and Regulations may from time to time be promulgated by the Port Authority pursuant to Section 15.2(b) of the Lease. Pursuant to Section 15.2(a) of the Lease, the Port Authority is required, except in cases of Emergency, to notify the Developer of any new Rules and Regulations or amendments to Rules and Regulations that require compliance under Section 15.2(a) of the Lease at least thirty (30) days before the Developer shall be required to comply therewith (or such longer time period as may be specified by the Port Authority in such notice). The Developer shall notify the Design-Builder of any such new or amended Rules and Regulations within two (2) Business Days of receipt of such notice from the Port Authority.

(b) The use by the Design-Builder, the DB Parties and their respective officers, employees, guests and invitees, and those doing business with the Design-Builder, of the Public Aircraft Facilities and any and all other portions of LGA Airport which it may be entitled to use under this Design-Build Contract shall be subject to the Rules and Regulations in effect as of the DB Contract Effective Date, and such future Rules and Regulations (including amendments and supplements to existing Rules and Regulations) as the Port Authority may from time to time promulgate in the public interest and in the interest of health, safety, noise, sanitation, good order and the economic and efficient operation of LGA Airport. Without limiting the foregoing and pursuant to Section 15.2(b) of the Lease, the Port Authority may take into account in adopting such Rules and Regulations the adequacy, capacity and suitability of (i) Aircraft using LGA Airport, (ii) passenger handling facilities at LGA Airport, (iii) the Public Aircraft Facilities at LGA Airport, (iv) the roadways and (v) the parking facilities.

Section 15.3 Compliance with General Manager's Bulletins, Directives and Instructions

(a) In addition to all other provisions of this Design-Build Contract that expressly require compliance with the General Manager's decisions and instructions in the exercise of the General Manager's discretion, the Design-Builder covenants and agrees to comply, and to cause its DB Subcontractors and Suppliers to comply, with any bulletin, directive or other official instruction issued by the General Manager from time to time (a "**General Manager Directive**"), it being understood that a General Manager Directive would apply comparably to the Design-Builder as to other Contractors at LGA Airport; provided, however, that a Design-Builder Event of Default or any other event subjecting the Design-Builder to termination under this Design-Build Contract shall be deemed not to occur if, in complying with a General Manager Directive, the Design-Builder is compelled to commit a breach of, or otherwise would be non-compliant with, the terms of this Design-Build Contract, any Applicable Law or any Applicable Standard.

(b) The Design-Builder shall not be entitled to submit to the Developer a claim with respect to a Compensation Event or a Delay Event for which the Design-Builder should be entitled to Equivalent Project Relief with respect to any costs or other impacts incurred or

suffered in connection with its compliance with any General Manager Directive pursuant to this Section 15.3; provided, however, that the Design-Builder shall be entitled to claim for Equivalent Project Relief due to a Compensation Event or a Delay Event, as applicable, if and to the extent the Design-Builder demonstrates that such General Manager Directive has been issued to comply with or directly implement a Discriminatory Change in Law or Discriminatory Applicable Standards Change with respect to which the Developer would otherwise be entitled to claim a Compensation Event or a Delay Event under Section 14.1 or Section 14.2, as applicable, and with respect to which the Design-Builder would be entitled to make a claim for Equivalent Project Relief.

Section 15.4 [Reserved]

Section 15.5 FAA Grants

(a) As set forth in Section 15.5 of the Lease, the Port Authority has applied for and received a grant or grants of money from the Administrator of the FAA and has applied for and received permission to collect and use Passenger Facility Charges pursuant to An Act To Revise, Codify, And Enact Without Substantive Change Certain General And Permanent Laws, Related To Transportation, Pub. Law 103-272, 108 Stat 745 (July 5, 1994), and under prior Federal statutes which said act superseded and that the Port Authority may apply for and receive such grants and permissions in the future. The Port Authority has undertaken, and may in the future undertake, certain obligations respecting its operation of LGA Airport and the activities of its contractors, lessees and permittees thereon in applications for such grants and permissions. The Design-Builder acknowledges and agrees that the performance by the Developer of the covenants and obligations contained in the Lease is a special consideration and inducement for the Port Authority to enter into and execute the Lease, and the performance by the Design-Builder of the covenants and obligations contained in this Design-Build Contract is a special consideration and inducement for the Developer to enter into and execute this Design-Build Contract.

(b) Pursuant to Section 15.5(b) of the Lease, the Developer covenants and agrees that the Developer shall comply with any direction issued by the Port Authority (including any bulletin, directive or other official instruction issued by the General Manager) to comply with Applicable Law or Applicable Standards, or with any applicable regulation, order, statement of policy, advisory circular, recommendation or suggestion, of the Administrator of the FAA or any other governmental officer or body having jurisdiction over the enforcement of the obligations of the Port Authority under Federal law, or arising from the applications described in Section 15.5(a) of the Lease; provided, that with respect to directions issued to comply with a recommendation or suggestion of any such governmental officer or body, such direction shall be applied in a non-discriminatory manner to the Developer, (ii) for the purpose of such Section 15.5, “governmental officer or body” shall not be construed to refer to or include the Port Authority, (iii) the direction of the Port Authority made pursuant to Section 15.5(b) of the Lease shall include a direction to the Developer to take an action, to not take an action, or to cease an action, including the granting of a Contract or permission or directing another person to take an action, refrain from taking an action, or cease an action, (iv) the Port Authority’s interpretation of any such law, order, statement of policy, advisory

circular, recommendation or suggestion, including those of a general nature which do not refer specifically to LGA Airport or any specific person, shall be final and determinative unless such interpretation is discriminatory to the Developer; and (v) the Design-Builder acknowledges that the Port Authority may require any permittee, Sublessee, subtenant, licensee, Contractor or Supplier of the Developer who acts for or on behalf of the Developer in or regarding the Premises, including the Design-Builder and its licensees, DB Subcontractors or Suppliers, to perform the obligations imposed by, and be subject to, the terms of, Section 15.5 of the Lease, as if such permittee, Sublessee, subtenant, licensee, Contractor or Supplier were the Developer with respect to the obligations of the Developer set forth in Section 15.5 of the Lease.

Section 15.6 Terminal Security Program Obligations

(a) [Redacted]
(b) [Redacted]
(c) [Redacted]
(d) [Redacted]
(e) [Redacted]
(f) [Redacted]
(g) [Redacted]
(h) [Redacted]
(i) [Redacted]
(j) [Redacted]
(k) [Redacted]
(l) [Redacted]
(m) [Redacted]
(n) [Redacted]
(o) [Redacted]
(p) [Redacted]
(q) [Redacted]
(r) [Redacted]
(s) [Redacted]
(t) [Redacted]
(u) [Redacted]
(v) [Redacted]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Section 15.7 NOT USED.

Section 15.8 Non-Discrimination

(a) Without limiting the generality of any of the provisions of this Design-Build Contract, the Design-Builder, for itself, its successors in interest and assigns, as a part of the consideration hereof, does hereby covenant and agree, and shall require all DB Subcontractors and other Persons performing any of the DB D&C Work to covenant and agree, that: (i) no person or group of persons, including employees and applicants for employment, on the ground of race, religious creed, color, sex, age, disability (including physical disability or mental disability), marital status, national origin, ancestry, medical condition or sexual orientation shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of the Premises, (ii) in performance of the DB D&C Work, no person or group of persons, including employees and applicants for employment, on the ground of race, religious creed, color, sex, age, disability (including physical disability or mental disability), marital status, national origin, ancestry, medical condition or sexual orientation shall be excluded from participation in, denied the benefits of, or otherwise be subject to discrimination and (iii) the Design-Builder, DB Subcontractors and other Persons performing any of the DB D&C Work, as applicable, shall use the Premises in compliance with all other requirements imposed by or pursuant to 49 C.F.R. Part 21 and as said regulations may be amended, and any other Applicable Laws or Applicable Standards, which from time to time may be applicable to the Design-Builder or its performance of the DB D&C Work.

(b) NOT USED.

(c) The Design-Builder's noncompliance with the provisions of this Section 15.8 shall constitute a material breach of this Design-Build Contract. In the event of the breach by

the Design-Builder of any of the above non-discrimination provisions the Developer may take appropriate action to enforce compliance; or the Developer shall have the right to terminate this Design-Build Contract pursuant to Article 23, or may pursue such other remedies as may be provided by law; and as to any or all the foregoing, the Developer may take such action as the United States may direct.

(d) Pursuant to Section 21.1(l) of the Lease, each Party shall indemnify and hold harmless the Port Authority from any Third-Party Claims resulting from such Party's noncompliance with this Section 15.8, and such Party shall reimburse the Port Authority, as applicable, for any loss or expense incurred by reason of such noncompliance.

(e) The Design-Builder specifically agrees, as part of its obligation to comply with all Applicable Laws and Applicable Standards during the Term, that it shall comply with 49 C.F.R. Part 26 and 49 C.F.R. Part 23, as the same may be amended from time to time. In addition, the Developer or the Port Authority may from time to time, by written notice to the Design-Builder, provide to the Design-Builder specific provisions that the Developer or the Port Authority, as applicable, determines may be required by 49 C.F.R. Part 26 and/or 49 C.F.R. Part 23, to be attached to and form a part of this Design-Build Contract. Such specific provisions, from the effective date of such notice, shall be deemed to constitute an integral part of this Design-Build Contract.

Section 15.9 Employment – Affirmative Action – Equal Opportunity

(a) The Design-Builder shall not discriminate against employees or applicants for employment, including recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, termination, rates of pay or other forms of compensation, and selections for training or retraining, including apprenticeship and on-the-job training, because of race, religious creed, color, national origin, sex, age, ancestry, physical disability, mental disability, medical condition, marital status or sexual orientation.

(b) In addition to and without limiting the foregoing, and without limiting the provisions of Section 15.8 hereof and Part I of Exhibit 13, it is hereby agreed that the Design-Builder in connection with the DB D&C Work, or any portion thereof, shall throughout the Term commit itself to and use good faith efforts to implement an extensive program of affirmative action, including specific affirmative action steps to be taken by the Design-Builder to ensure maximum opportunities for employment and contracting by minorities and women. Such programs shall include recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, termination, rates of pay or other forms of compensation, and selections for training or retraining, including apprenticeship and on-the-job training. In meeting such commitment the Design-Builder agrees to submit to the Developer (for submission to the Port Authority for its review and approval) the Design-Builder's extensive affirmative action program, including the specific affirmative action steps to be taken by the Design-Builder to meet its aforesaid commitment, by the date that is twelve (12) days prior to the applicable Port Authority deadline pursuant to the Lease (which is the sixtieth (60th) day after the Lease Commencement Date). The Design-Builder shall incorporate in its affirmative action program such revisions and changes which the Port

Authority initially or from time to time may reasonably require. Throughout the Term the Design-Builder shall document its efforts in implementing such program, shall keep the Developer fully advised (and the Developer shall keep the Port Authority fully advised) of the Design-Builder's progress in implementing such affirmative action program and shall supply to the Developer for submission to the Port Authority such information, data and documentation with respect thereto as the Developer or the Port Authority may from time to time and at any time reasonably request, including but not limited to annual reports.

(c) The Design-Builder's noncompliance with the provisions of this Section 15.9 shall constitute a material breach of this Design-Build Contract. In the event of the breach by the Design-Builder of any of the above provisions the Developer may take appropriate action to enforce compliance; or the Developer shall have the right to terminate this Design-Build Contract pursuant to Article 23, or may pursue such other remedies as may be provided by law.

(d) Pursuant to Section 15.9(d) of the Lease, (1) in the implementation of Section 15.9 of the Lease, the Port Authority may consider compliance by the Developer with the provisions of any Federal, state or local law concerning affirmative action equal employment opportunity which are at least equal to the requirements of Section 15.9 of the Lease, as effectuating the provisions of Section 15.9 of the Lease; and (2) if the Port Authority determines that by virtue of such compliance with the provisions of any such Federal, state or local law that the provisions of the Lease duplicate or conflict with such law, the Port Authority may waive the applicability of the provisions of Section 15.9 of the Lease to the extent that such duplication or conflict exists. In such event the Design-Builder shall not be required to comply with any such provisions of Section 15.9 of the Lease under this Design-Build Contract so long as the Design-Builder is also in compliance with such provisions of Federal, state or local law.

Section 15.10 Minority Business Enterprises, Women-Owned Business Enterprises and Local Business Enterprises Commitment

(a) Minority Business Enterprises and Women-owned Business Enterprises Commitment. In addition to and without limiting any other term or provision of this Design-Build Contract, it is hereby agreed that the Design-Builder in connection with the DB D&C Work, or any portion thereof, shall throughout the Term commit itself to and use good faith efforts to implement (and shall require each DB Subcontractor to commit itself to and use good faith efforts to implement) an extensive program to ensure maximum opportunities for Minority Business Enterprises ("MBE") and Women-owned Business Enterprises ("WBE") in accordance with Part II of Exhibit 13.

(b) Local Business Enterprises Commitment. Throughout the Term, the Design-Builder in connection with any DB D&C Work on the Premises, or any portion thereof, shall commit itself to and use good faith efforts to implement (and shall require each DB Subcontractor to commit itself to and use good faith efforts to implement) a program to maximize the use of Local Business Enterprises in accordance with Exhibit 14.

(c) Throughout the Term the Design-Builder shall document its efforts in implementing programs to ensure maximum opportunities for MBE and WBE and to maximize the use of Local Business Enterprises in accordance with this Section 15.10, shall keep the Developer fully advised (and the Developer shall keep the Port Authority fully advised) of the Design-Builder's progress in implementing such programs and shall supply to the Developer (which shall supply to the Port Authority) such information, data and documentation with respect thereto as the Developer or the Port Authority may from time to time and at any time request, including but not limited to annual reports.

(d) NOT USED.

Section 15.11 NOT USED.

Section 15.12 NOT USED.

ARTICLE 16

ENVIRONMENTAL, HEALTH AND SAFETY REQUIREMENTS

Section 16.1 General Obligations

(a) Environmental Laws and Environmental Requirements. The Design-Builder shall design and construct the Construction Project so that it complies with and can be operated in compliance with all Environmental Requirements. Unless otherwise expressly stated herein, all Environmental Requirements related to the Developer's and the Design-Builder's rights to use the Premises and the areas subject to the Temporary Rights of Access and activities with respect to the DB D&C Work at the Premises and the Temporary Rights of Access are the responsibility of the Design-Builder, and the Design-Builder shall be responsible for all costs, losses, liabilities, damages and operational requirements arising under or with respect to such Environmental Requirements, including obtaining any surety bond or giving any other financial assurance that may be required in connection with the DB D&C Work, and the Design-Builder shall not dispose of, release or discharge any Hazardous Materials on, in, under or from the Premises or the Temporary Rights of Access, except in compliance with the Environmental Requirements and this Design-Build Contract.

(b) DB Environmental Management Plan. The Design-Builder shall prepare and submit to the Developer for subsequent submittal to the Port Authority for Port Authority Approval as part of the Developer's Environmental Management Plan, in accordance with the submittal time periods set forth in Section 16.14, an environmental management plan ("DB Environmental Management Plan") that sets forth in detail the design and construction requirements, operational procedures, documentation, reporting and record keeping requirements addressed in this Article 16 and other information required by Section 7.8 and 7.9 of the Design and Construction Requirements and by the provisions of the TCAP relating to environmental management plan preparation as it relates to DB D&C Work. The DB Environmental Management Plan shall include inspection, sampling and maintenance requirements to ensure compliance with the Environmental Requirements, including to the

extent required by the Environmental Requirements or this Design-Build Contract, the timely identification, reporting, remediation and repair of conditions that constitute violations of the Environmental Requirements or Hazardous Materials Releases by the Design-Builder or Design-Builder Occupant, and shall include provisions relating to coordination with the Port Authority with respect to communications with or obligations of the Port Authority. The DB Environmental Management Plan shall include the substantive requirements and any additional details necessary for the Design-Builder to comply with the Developer's obligations under, and permit the Developer and the Port Authority to monitor and, where provided by this Design-Build Contract or the Lease, supervise and approve the Design-Builder's compliance with, this Article 16, including the classification, handling, management and disposal of Demolition Debris, Excavated Materials, Groundwater and Hazardous Materials.

(c) Environmental Approvals. The Design-Builder shall identify and obtain any Governmental Approvals required under Environmental Laws for the performance of the DB D&C Work throughout the Term in accordance with Section 15.1(d) hereof, other than the Port Authority Governmental Approvals.

(d) Costs and Expenses. Unless specified otherwise in this Article 16, the Design-Builder shall bear all costs, fees and expenses of performing its responsibilities under and otherwise complying with this Article 16 until all Design-Builder obligations arising under this Article 16 are satisfied, including all costs, losses, liabilities, expenses and claims relating to Hazardous Environmental Conditions caused by the Design-Builder or Design-Builder Occupant during the Term, or for which Design-Builder is responsible under this Design-Build Contract, or that are associated with obtaining and maintaining Governmental Approvals required to perform the DB D&C Work. To the extent the Design-Builder recovers costs from any available reimbursement program or third parties with respect to any Hazardous Materials Release that have been paid or reimbursed by the Developer or the Port Authority, the Design-Builder will pay such amounts to the Developer or the Port Authority, as appropriate, less the reasonable documented costs incurred by the Design-Builder in seeking recovery from such available reimbursement program or third parties. The Design-Builder will furnish to the Developer and the Port Authority documentation supporting the amount recovered from any reimbursement program or third parties and the reasonable documented costs incurred by the Design-Builder in pursuing such recovery.

(e) Storage of Waste Materials. The Design-Builder shall collect, manage and store on the Premises and the Temporary Rights of Access all garbage, debris and other waste materials (whether solid or liquid), or soil intended for use as backfill, arising out of its performance of the DB D&C Work, occupancy of the Premises, the areas subject to the Temporary Rights of Access or out of its operations as part of the DB D&C Work, including all Excavated Materials and Demolition Debris. Any such material that may be temporarily stored in the open shall be kept in suitable garbage and waste receptacles, the same to be made of metal or other suitable material and equipped with tight-fitting covers, and to be designed to safely and properly contain whatever material may be placed therein; provided, that Excavated Materials and Demolition Debris may be stockpiled as provided in Section 16.4(b). No such garbage, soil, debris or other waste materials, including all Excavated Materials and

Demolition Debris, shall be thrown, discharged or deposited into or upon any waters or any wetland areas or be stored in a manner that could result in such waste materials being blown or dislodged that could result in such discharges or deposits. The Design-Builder shall not allow the collection, management or storage of such waste materials to create or maintain a nuisance on the Premises, or to cause or permit to emanate from the Premises or the Temporary Rights of Access any smoke, gases, vapor or odors that cause or maintain a nuisance, create a safety hazard for airfield operations, violate any Environmental Requirements or constitute a Hazardous Materials Release.

(f) Responsibility for Third Parties. Without limiting the generality of Section 1.4, the Design-Builder shall be responsible for the performance of and breaches of the Design-Builder's obligations and responsibilities under this Article 16 by all DB Parties, and other Persons using space within the Premises or the areas subject to the Temporary Rights of Access with the permission of the Design-Builder, or handling, storing, managing, transporting or disposing of waste materials subject to Section 16.4 pursuant to any contract with the Design-Builder, as well as all guests, invitees, and visitors of the Design-Builder within the Premises or the areas subject to the Temporary Rights of Access (other than the Port Authority and its contractors) (collectively, "**Design-Builder Occupants**"). All such Design-Builder Occupants shall be required by the Design-Builder to comply with all Environmental Requirements applicable to the Design-Builder (including all DB Parties or other Design-Builder Occupants) or the Premises during the Term, including such requirements relating to Hazardous Materials and compliance with Environmental Laws as are imposed pursuant to the DB Project Documents. With respect to Design-Builder Occupants subject to contract with the Design-Builder, the Design-Builder shall ensure that any applicable requirements of this Article 16 are imposed upon such Design-Builder Occupant pursuant to such contract. With respect to Design-Builder Occupants not parties to a contract with the Design-Builder, such as invitees, guests and visitors, the Design-Builder shall use reasonable commercial efforts and exercise due care to cause such Design-Builder Occupants to comply with the Design-Builder's obligations under this Article 16. The Design-Builder shall be responsible for any acts or omissions of Design-Builder Occupants during the Term that breach or cause the Design-Builder to breach the requirements of this Article 16 as though such acts or omissions were performed or caused by the Design-Builder or are otherwise the Design-Builder's obligation or responsibility under this Article 16. If, during the Term, the actions or omissions of a Design-Builder Occupant, including a DB Party, guest, invitee or visitor, create a Hazardous Environmental Condition, Hazardous Materials Release or result in an Environmental Liability for which the Design-Builder is responsible under this Article 16, or otherwise violate the Design-Builder's obligations under this Article 16, then the Design-Builder shall take all actions as may be required or necessary to correct such conditions, including Remedial Action, and shall be entitled, in its own name and, with the prior written consent of the Developer and the Port Authority, in the name of the Developer or the Port Authority, to pursue any legal action or remedy available with respect to such conditions, including filing and pursuing claims against responsible persons or against insurers under available insurance, to recover the costs of its actions to correct the conditions subject to this Section 16.1(f). For the avoidance of doubt, the references to, or failure to reference, this Section 16.1(f), shall not affect the interpretation of whether this Section 16.1(f) applies throughout this Article 16. With respect to the obligations imposed upon the

Design-Builder pursuant to this Article 16, references to the Design-Builder shall be deemed to include references to all Design-Builder Occupants, including DB Parties, regardless of whether there is an express reference to any Design-Builder Occupant in the provision referencing the Design-Builder.

(g) SPDES Permit. The Design-Builder shall comply with the SPDES Permit, and shall manage stormwater within the DB Work and Staging Area during DB D&C Work in a manner that does not cause violations of the SPDES Permit. Should the SPDES Permit be modified or renewed in such a way as to require local collection of materials (e.g., deicing fluid), local prevention of runoff of Hazardous Materials, centralized collection, reclamation or treatment of stormwater or other disposal of stormwater related to DB D&C Work, the Design-Builder shall perform such collection and pollution prevention measures, or, as applicable, pay directly or reimburse the Developer or the Port Authority for the costs of collection, reclamation, treatment or disposal, as applicable, based on an equitable allocation by the Port Authority among tenants and operating entities within the Airport Premises, including the Design-Builder, for areas within its control. Nothing in this Design-Build Contract shall prohibit the Design-Builder from submitting comments to the relevant Governmental Entities in connection with modifications to the SPDES Permit (or any other Port Authority Governmental Approval) in connection with the publication of a draft permit or proposed amendments, or as otherwise permitted under Applicable Law.

(h) Reliance on Available Documents. The Design-Builder may rely upon the accuracy of information disclosed in the Available Documents for purposes of identifying Known Hazardous Materials, identifying Disclosed Facilities and estimating quantities of ACM, PCB and LCP in Demolition Debris (or, if applicable, Excavated Materials) in connection with the implementation of this Article 16, and for no other purpose. For the avoidance of doubt, neither the Design-Builder nor any third party shall be entitled to rely upon the Available Documents (i) to confirm that there are no Hazardous Materials existing in any Current Facilities, Disclosed Facilities, soil or Groundwater, (ii) for purposes of classifying any materials, including Excavated Materials, as required under this Design-Build Contract or the Environmental Requirements, or (iii) for any other report, designation, notice or other purpose relating to compliance with the Environmental Requirements. Nothing in this Section 16.1(h) shall prohibit the Design-Builder from distributing Available Documents to third parties, including Governmental Entities, at the Design-Builder's sole risk, cost and expense. The Design-Builder shall indemnify the Developer and the Port Authority and hold the Developer and the Port Authority harmless from and shall defend the Developer and the Port Authority against any Third-Party Claims arising from such third-party distribution and use.

(i) Temporary Rights of Access. The obligations under this Article 16 with respect to the Temporary Rights of Access apply with respect to the areas subject to the Temporary Rights of Access, and such obligations terminate when the Temporary Rights of Access terminate; provided, that any obligations arising under this Article 16 that have not been performed or completed on or prior to such date of termination shall survive and remain obligations of the Design-Builder until performed or completed. With respect to the areas subject to the Temporary Rights of Access with respect to which the Design-Builder's rights

of access are not exclusive, the provisions of Section 16.1(f) apply only with respect to Persons whom the Design-Builder has the legal right or obligation to exclude from or admit to such areas.

Section 16.2 Sustainability

(a) LEED Certification. The Design-Builder shall design and construct the Construction Project to achieve LEED Silver Certification for Building Design and Construction, and to assist the Developer in achieving LEED Silver Certification for Building Operations and Maintenance, and obtain (or in the case of Certification for Building Operations and Maintenance, assist the Developer in obtaining) as many additional credits for LEED Gold Certification as are reasonably obtainable consistent with the Requirements and Provisions for Work, including Section 8 of the Design and Construction Requirements. The Design-Builder shall satisfy the requirements of the Port Authority's Sustainable Design Guidelines and the "LEED for New Construction & Major Renovation" framework to achieve all required credits under the Sustainable Design Guidelines. The Design-Builder shall appoint a person who is a USGBC LEED Accredited Professional – Building Design + Construction (AP BD+C) to act as the sustainability lead (the "**Sustainability Lead**") for the DB Construction Work to coordinate and monitor the Design-Builder's compliance with the sustainability requirements of this Section 16.2.

(b) LEED Administration During DB Construction Work. Throughout the Construction Period, the Design-Builder shall monitor and update the verification documentation with respect to the reviewed "Project Credit Checklist" and other LEED documentation. Evidence and documentation as required by the Sustainable Design Guidelines and the LEED for New Construction & Major Renovations shall be provided to verify that all items identified during the DB Design Work are completed during the DB Construction Work. The Sustainability Lead shall compile all documentation for each credit identified in the "Project Credit Checklist Form" using the relevant "Project Credit Documentation Form." The "Final Project Credit Checklist" and "Project Credit Documentation" shall be provided to the Port Authority after Substantial Completion but prior to Final Acceptance. Port Authority Approval of the Final Project Credit Checklist and Project Credit Documentation is a condition precedent to Final Acceptance.

(c) NOT USED.

Section 16.3 Specific Environmental Planning Requirements

(a) Spill Prevention, Control and Countermeasures. The Design-Builder shall prepare a spill prevention, control and countermeasures plan in relation to the DB D&C Work (the "**DB SPCC Plan**"), in accordance with applicable federal SPCC requirements, for the Developer to submit for Port Authority Approval in accordance with the submittal time periods set forth in Section 16.14 for any petroleum products or chemicals for which spill prevention control and countermeasures plans are required under Environmental Requirements. The DB SPCC Plan shall include best management practices, spill containment methods, spill response, spill cleanup and equipment decontamination for all DB

Construction Work. To the extent not covered in the DB SPCC Plan, spill prevention, control and countermeasure plans for bulk chemical storage facilities and mobile equipment shall be incorporated into the DB Environmental Management Plan.

(b) Stormwater Pollution Prevention Plan. The Design-Builder is responsible for the preparation of a stormwater pollution prevention plan (the “**SWPPP**”) in accordance with the Environmental Requirements for the DB D&C Work. The SWPPP shall include, but not be limited to: drawings and specifications detailing requirements relating to the protection of the existing storm sewer transportation and collection system and new or existing catch basins and drains; prevention of storm water runoff to adjacent areas; and schedules for site inspections, reporting and recordkeeping requirements. The Design-Builder shall submit the SWPPP and any Notice of Intent (“**NOI**”) required to obtain a general permit for stormwater discharges on or from the DB Work and Staging Area during construction to the Developer for subsequent submission to the Port Authority for Port Authority Approval, in accordance with the submittal time periods set forth in Section 16.14, to allow Developer submission to the Port Authority at least sixty (60) days prior to the date of issuance of the Full Construction NTP or the initial Construction Segment NTP, as applicable. The Port Authority will then submit the approved SWPPP and NOI to NYSDEC on behalf of the Developer and the Design-Builder. The Design-Builder shall certify and ensure all DB Subcontractor(s) have read and will fully comply with the SWPPP. The Design-Builder shall provide to the DB Subcontractor(s) a copy of the SWPPP and certification forms. Construction Work shall not commence until signed certification forms are submitted to and received by the Port Authority. If and when required by applicable Environmental Requirements, the Design-Builder shall also prepare required notices and plans to obtain any stormwater permit required for operation of the Premises or the Temporary Rights of Access.

(c) Erosion Control Plan. The Design-Builder shall submit to the Developer for subsequent submission for Port Authority Approval in accordance with the submittal time periods set forth in Section 16.14, a soil erosion and sediment control plan for the DB Work and Staging Area (the “**Soil Erosion and Sediment Control Plan**”) in conformance with the New York State Standards and Specifications for Erosion and Sediment Control (August 2005), the New York State Storm Water Management Design Manual (August 2010) and the SWPPP, including inspection and maintenance procedures. After receiving Port Authority Approval, the Design-Builder shall submit the Soil Erosion and Sediment Control Plan and related inspection and maintenance procedures to NYSDEC for approval, and may not commence any DB Construction Work prior to receipt of all such approvals.

(d) Health and Safety Plan. The Design-Builder shall prepare a Health and Safety Plan (“**DB HASP**”) for the full scope of the DB D&C Work, conforming with current OSHA requirements and signed by a certified industrial hygienist, all of which shall be submitted to the Developer for subsequent submission for Port Authority Approval in accordance with the submittal time periods set forth in Section 16.14. The DB HASP shall include provisions for worker protection, as well as any terms and conditions required to protect contractors, visitors and the public from exposure to Hazardous Materials. The DB HASP shall provide (or alternative documentation shall provide) for emergency planning, notifications to Governmental Entities required for Hazardous Materials locations, types and quantities, for

fire protection and other emergency communications, all to the satisfaction of the Developer and the Port Authority.

(e) Updates. All plans required by this Section 16.3 shall be reviewed and maintained in current status throughout the Term, as needed in connection with the DB D&C Work, and shall be updated or amended as changing circumstances may require (including, as applicable, any change in law). Updated documentation shall be submitted to the Developer for subsequent submission to the Port Authority within twenty (20) days after it is finalized, and may be subject to Developer and Port Authority Comment.

(f) Incorporation into DB Environmental Management Plan. Any plan required by this Section 16.3 may be incorporated into the DB Environmental Management Plan and need not be prepared or submitted to the Developer in a separate document if fully included in the DB Environmental Management Plan.

Section 16.4 Waste Management

(a) Responsibility for Waste Management. The Design-Builder shall be responsible for handling, sampling, evaluation, characterization, disclosure, storage, transport and disposal in compliance with all Environmental Requirements of all waste materials used, handled, disturbed or generated within the DB Work and Staging Area as part of the DB D&C Work. During the Term, the Design-Builder shall be responsible for the administration of waste handling services for all wastes generated by Design-Builder Occupants. The Design-Builder shall conduct any sampling, analysis or other investigation of such waste materials required to characterize waste materials and otherwise comply with the Environmental Requirements relating to waste management and disposal, and may not rely upon the accuracy or completeness of sample results or other information provided by the Port Authority for purposes of such compliance. The Design-Builder is responsible for ensuring that all waste materials originating from the DB D&C Work, including Excavated Materials, Demolition Debris and any waste materials containing Hazardous Materials intended to be disposed of off-Premises, are (i) sampled to confirm waste classification and disposal requirements in accordance with Port Authority requirements as approved in the DB Environmental Management Plan, but no less frequently than one (1) representative sample for the smallest of (A) a single, discrete area of excavation (e.g., an individual excavation that is not part of or adjacent to a larger excavation); (B) a single stockpile of soil; or (C) five hundred (500) cubic yards, (ii) excavated, collected, handled, stored, transported and disposed of in compliance with Applicable Law, including all Environmental Requirements, by contractors approved by the Port Authority, (iii) disposed of only at Approved Disposal Locations, and (iv) described accurately and completely in documentation prepared by the Design-Builder and provided to the Developer for subsequent submission to the Port Authority no less frequently than in DB Environmental Status Reports to establish compliance with the requirements of this Section 16.4(a) pertaining to characterization, shipping and acceptance at Approved Disposal Locations.

(b) Construction and Excavation Wastes. During the performance of the DB D&C Work, the Design-Builder is responsible for the storage, classification, handling and disposal

of Excavated Materials and Demolition Debris generated in connection with the DB Construction Work in compliance with Section 16.4(a). The Design-Builder shall sample Excavated Materials and Demolition Debris as required by the Environmental Requirements or as otherwise necessary to determine the waste classification of such materials if such Excavated Materials or Demolition Debris are intended to be disposed of off-Premises. No such Excavated Materials or Demolition Debris shall be combined, mixed, stored together or otherwise commingled with other Excavated Materials, Demolition Debris or other waste materials unless such waste classification has been completed and such materials fall into the same regulatory classification. Any stockpiles of Excavated Materials stored on the Premises or the Temporary Rights of Access shall be located on impervious sheeting to avoid contaminating the Premises or the Temporary Rights of Access as a result of placement of the Excavated Materials in stockpiles and shall be covered to avoid contamination of stormwater and release of dust.

(i) Universal Waste; Lead-Containing Materials. The Design-Builder is responsible for the identification, removal, handling and disposal of Hazardous Materials, including lead-containing paint (“**LCP**”), equipment and oils containing polychlorinated biphenyls in excess of fifty (50) parts per million (“**PCB**”) and universal waste (“**UW**”), including those present within the DB Work and Staging Area as of the DB Contract Effective Date to the extent necessary to perform the DB D&C Work. LCP found on structural steel and throughout other building surfaces is subject to OSHA’s “Lead in Construction Standard” requirements, which require localized abatement when heating or cutting structural steel members. Additionally, the HASP shall include a DB Work and Staging Area-specific written compliance program meeting the requirements of the General Industry Standard for Lead set forth in 29 C.F.R. 1926.62. No LCP is expected to remain in place after the DB Construction Work is completed, but if LCP does remain in place, it must be identified, encapsulated, contained or stabilized, and subjected to an operations and maintenance program consistent with Best Management Practices. All other UW that is used or remains in place during the Initial O&M Period, the Phased Construction O&M Period and the O&M Period shall be put in a condition by the Design-Builder that allows it to be managed in accordance with the Environmental Requirements throughout the term of the Lease as provided in Section 16.12(b) of the Lease.

(ii) Asbestos-Containing Materials. The Design-Builder is responsible for the identification, removal, handling and disposal of all asbestos-containing materials (“**ACM**”) present in the Current Facilities in compliance with the Environmental Requirements to the extent necessary to perform the DB Construction Work. The Design-Builder shall engage properly licensed personnel or DB Subcontractors to identify and classify the ACM through inspection and sampling, and to perform any required abatement, packaging, transport and disposal; provided, that sampling shall not be required for any materials presumed or assumed to be ACM based on the Available Documents or this Design-Build Contract, including Conduit ACM, that are handled and disposed of as ACM. All the asbestos abatement of friable ACM, including thermal system insulation and surfacing, shall be performed by the Design-Builder prior to any demolition work as per the State of New York Department of Labor’s Industrial Code

Rule 56. Any residual ACM, following completion of the DB Construction Work, shall be put in a condition by the Design-Builder so that it may be maintained in place in accordance with applicable Federal guidance (including property characterization, encapsulation and inspection) and Best Management Practices.

(iii) Hazardous Waste. Any waste materials that are identified as RCRA hazardous wastes shall be handled, managed, maintained, stored, transported, disposed of by the Design-Builder in compliance with the Environmental Requirements, including RCRA. For any such RCRA hazardous wastes that are Pre-Existing Hazardous Materials encountered during the DB Construction Work, the Design-Builder shall perform all actions, prepare all documents and otherwise fully comply with all requirements under RCRA, as the Port Authority's designated contractor for RCRA hazardous waste management. In connection with the RCRA hazardous wastes that are Pre-Existing Hazardous Materials transported from the Premises or the Temporary Rights of Access in connection with the DB Construction Work, the Design-Builder shall obtain and use a project-specific hazardous waste identification number (distinct from any hazardous waste identification number currently applicable to any part of the Premises) under RCRA, identifying the Port Authority as the owner and/or operator of the Premises. For all other RCRA hazardous wastes generated in the course of the DB Construction Work, the Design-Builder shall procure a separate RCRA identification number and shall conduct such operations as the "generator" (unless a DB Party is identified as the "generator"). Copies of all applications, notices, Regulatory Manifests, and other compliance documentation in connection with off-Premises shipments of RCRA hazardous wastes shall be provided in DB Environmental Status Reports.

(c) Shipping Documentation. The Design-Builder and any DB Party performing the DB Construction Work shall handle all Excavated Materials and Demolition Debris as required in this Section 16.4 and Section 16.12, as applicable, except that with respect to any Excavated Materials or Demolition Debris containing Pre-Existing Hazardous Materials shipped off the Premises or the Temporary Rights of Access for disposal or recycling in connection with the DB Construction Work as required or permitted by this Design-Build Contract, the Port Authority shall be identified as the originator, owner, shipper or generator of such Excavated Materials or Demolition Debris on any manifests, bills of lading and all other transportation documents, including if applicable, Regulatory Manifests relating to Excavated Materials or Demolition Debris during Construction Work. Regulatory Manifests used for shipment of Pre-Existing Hazardous Materials in connection with the DB Construction Work that are regulated RCRA hazardous wastes may identify the Port Authority as the "generator," as provided in Section 16.4(b)(iii). The Design-Builder may not execute Regulatory Manifests relating to RCRA hazardous wastes that are Pre-Existing Hazardous Materials encountered in the course of the DB Construction Work on behalf of the Port Authority except pursuant to delegations and authorizations provided in writing by the Port Authority or as set forth in the Environmental Management Plan approved by the Port Authority. In cases where the Port Authority directs or approves Remedial Action, during the DB Construction Work and as provided in Section 16.12(e), Section 16.12(h), Section 16.12(d) or Section 16.16(d), the Port Authority shall be identified as the originator, owner, shipper or generator on any manifests, bills of lading and all other transportation documents,

including if applicable, Regulatory Manifests, relating to Remedial Action Debris generated by such Remedial Action that contains Pre-Existing Hazardous Materials.

(d) Disposal Locations. All waste materials, including Excavated Materials and Demolition Debris intended to be disposed of shall be disposed of off-Premises by Design-Builder, unless the Excavated Materials meet the requirements for backfill set forth in Section 16.6. The DB Environmental Management Plan shall include a procedure for approval by the Port Authority of disposal locations for disposal of waste materials, including Demolition Debris, Excavated Materials and Hazardous Materials, generated in connection with the Work, from among Qualified Disposal Locations identified by the Design-Builder (an “**Approved Disposal Location**”). Wastes containing any levels of Hazardous Materials that are produced from DB D&C Work or Remedial Action on the Premises or the Temporary Rights of Access shall be disposed of only at Approved Disposal Locations for the specific type of wastes being disposed of. Excavated Materials and Remedial Action Debris that are removed from the Premises or the Temporary Rights of Access for disposal shall not be reused as fill at any location other than as restricted fill at Approved Disposal Locations. The Design-Builder may sort Excavated Materials to separate soil from debris, so long as dust from such operations is controlled as provided herein, required Governmental Approvals are obtained, and the separated materials are separately classified for regulatory purposes (including sampling if necessary) and are managed as required in this Article 16. Pursuant to Section 16.4(d) of the Lease, the Port Authority may, for reasonable cause, disapprove a disposal location that was formerly identified as an Approved Disposal Location.

(e) Soil Stockpiling and Sampling. Unless otherwise provided in an approved DB Environmental Management Plan, the Design-Builder shall submit a stockpile or in-situ sampling plan to the Developer in sufficient time to allow for subsequent submission to the Port Authority for approval at least one (1) week prior to the date of the proposed sampling activity with respect to any soil that is or is expected to be Excavated Material to be disposed of at off-Premises locations. Soil sampling shall be conducted in a manner approved by any applicable disposal facility to ensure that the sampling is representative and accurately classifies the regulatory category applicable to the soil (i.e., confirming non-hazardous or hazardous status).

(f) Off-Premises Disposal Arrangements. The DB Environmental Management Plan shall include criteria to be used for classification of Excavated Materials for off-site disposal, and procedures for ensuring that the Design-Builder submits appropriate applications and information to, and obtains approval from, Qualified Disposal Locations. The Design-Builder shall maintain, for each shipment by the Design-Builder of waste materials for off-site disposal, the sampling and characterization data, the documentation exchanged with the disposal location and the disposal facility acceptance letter. The DB Environmental Management Plan shall also include criteria for selection and qualification of transporters of Excavated Materials and Demolition Debris, including current applicable state issued waste transporters permits, and procedures for documenting the transporters control of shipments and use of procedures required by the Environmental Requirements to ensure that waste shipments are accepted and disposed of at acceptable facilities. The Design-Builder shall prepare and maintain, in a format acceptable to the Developer and the Port Authority,

summaries of the information pertaining to such off-site waste shipments. The summary format shall be in a spreadsheet table format and shall include at a minimum the following columns: parameters, concentration results, facility acceptance criteria, method detection limit, qualifier, and date analyzed, and such soil cleanup or remediation standards as the Port Authority may request to be included. The Design-Builder shall submit the summary to the Developer for subsequent submission to the Port Authority in Environmental Status Reports, and upon the Developer or the Port Authority's request, copies of documentation of reuse or disposal of any waste materials removed from the Premises or the Temporary Rights of Access for disposal, plus laboratory data, bills of lading and/or manifests executed by the receiving facility.

(g) Soil Disposal Cost Savings. The Design-Builder shall account for and track Soil Disposal Costs, and provide documentation and backup information in the DB Environmental Status Reports comparing the Soil Disposal Costs (including the RCRA Soil Disposal Costs) incurred by the Design-Builder to the Soil Disposal Cost Budget (which includes the RCRA Allowance). The Design-Builder shall be entitled to make a claim for Equivalent Project Relief pursuant to Article 14A with respect to Soil Disposal Costs incurred in excess of the Soil Disposal Cost Budget; provided, that the Design-Builder has disposed of the Excavated Materials at a Budgeted Disposal Location in the appropriate Material Category for such Excavated Materials.

Section 16.5 Dewatering

(a) Dewatering Plan. The Design-Builder shall submit a discharge authorization request to the Developer in sufficient time to allow for subsequent submission to the Port Authority for Port Authority Approval at least sixty (60) days prior to the date the Design-Builder desires to submit such request to the NYSDEC. In addition, the Design-Builder shall submit a plan (the "**Dewatering Plan**") to the Developer in sufficient time to allow for subsequent submission to the Port Authority for Port Authority Approval at least sixty (60) days prior to initiation of any dewatering operations. The Dewatering Plan shall at a minimum include a plan for minimizing Groundwater infiltration into excavations, a Groundwater discharge plan, a contingency plan for the handling of petroleum and hazardous materials spills and a pre-treatment or treatment plan, if any, that is required in order to operate dewatering equipment and discharge pumped water. During excavation, if the capacity of dewatering equipment exceeds forty-five (45) gallons per minute, the Design-Builder shall obtain a Long Island Water well permit prior to implementation. Dewatering activities shall be conducted in accordance with all applicable Environmental Requirements, including any requirement to obtain Long Island Water well permits, any amendments required to the SPDES Permit and any stormwater permit that may be applicable to the DB D&C Work or the Premises or the Temporary Rights of Access.

(b) Dewatering Requirements. The Design-Builder shall use reasonable commercial efforts to minimize the flow of Groundwater into excavations (such as sheet piling), in order to reduce the rate of pumping of Groundwater and minimize potential movement of Known Hazardous Materials in Groundwater. The Design-Builder shall implement pumping, storage and treatment protocols for the management of water pumped

from excavations (including Groundwater and any rainwater or surface water that may be handled with such Groundwater) as may be necessary to ensure compliance of combined wastewater streams with the discharge requirements of the SPDES Permit and with any applicable pre-treatment requirements directly imposed upon the Design-Builder by applicable Environmental Requirements or by Governmental Entities issuing Governmental Approvals to the Design-Builder. Treated effluent must meet the SPDES Permit requirements and any other parameters specified by NYSDEC at the point of discharge from the Design-Builder's treatment equipment. A Groundwater treatment system design, including an effluent monitoring schedule, shall be submitted to the Developer in sufficient time to allow for subsequent submission to the Port Authority for approval prior to commencement of construction that is designed to treat the highest concentrations of Known Hazardous Materials in Groundwater (and any other Known Hazardous Materials in soil if Groundwater sampling results are not provided in the Available Documents) in the manner required under the DB Environmental Management Plan (unless the Design-Builder proposes and the Developer and the Port Authority approve specific exceptions in advance). After treatment and before being combined with other wastewater discharges, Groundwater effluent shall be sampled and analyzed. Procedures shall be set forth in the DB Environmental Management Plan for sampling and record keeping in relation to dewatering activities sufficient to demonstrate compliance by the Design-Builder with the requirements of this Design-Build Contract and the Requirements and Provisions for Work. No discharges of Groundwater effluent to the Port Authority's wastewater collection system, or to any other location, including any catch basin, wetland, ditch, or injection wells are permitted, unless approved in advance in writing by the Port Authority following submittal of sampling results and approval of a discharge and monitoring plan. The Design-Builder shall take all appropriate steps to assure that dewatering does not result in settling that may cause damage to adjacent structures, and to evaluate and avoid to the extent feasible any material modifications to Groundwater flows and directions that are likely to result in additional treatment requirements for Hazardous Materials present in soil or Groundwater.

Section 16.6 Backfill; Reuse of Excavated Materials

(a) All material originating off-Premises that is used to backfill excavations within the Premises shall be clean soil, sand or gravel procured from sources identified by the Design-Builder and from entities authorized to provide such material under Applicable Law. Any soil or other material originating from areas other than the Premises and used pursuant to this Section 16.6 shall be sampled and analyzed by the Design-Builder to fully characterize its condition and confirm that any Hazardous Materials in such material occur at levels below New York State NYCRR Part 375 Unrestricted Use Soil Cleanup Objectives. Soil and other materials originating from off-Premises that are used for backfill shall be certified as clean material by a professional engineer licensed in the State of New York. Procedures and criteria necessary for implementation of this Section 16.6 shall be included in the Environmental Management Plan.

(b) The Design-Builder shall maintain sampling results and summary information comparing the concentration of chemical constituents contained in fill material originating from off-Premises to the criteria in the DB Environmental Management Plan and/or the limits

set forth in New York State NYCRR Part 375 Unrestricted Use Soil Cleanup Objectives. The Design-Builder shall obtain and maintain records of analytical results at a rate of at least one five-point grab composite sample for every 1,000 cubic yards originating from a single source location or any smaller portion thereof. Pursuant to Section 16.6(b) of the Lease, nothing in this paragraph shall be interpreted to preclude the Port Authority from collecting and analyzing soil samples to confirm compliance with the requirements for clean fill. Soil and any other material used for backfill that is brought onto the Premises and is not in compliance with the requirements of this Section 16.6 shall be removed from the Premises and replaced with acceptable material by the Design-Builder, without additional compensation.

(c) Notwithstanding any of the foregoing provisions of this Section 16.6:

(i) Soil and other Excavated Materials that are not removed from the Premises are not subject to the requirements and limitations applicable to backfill materials originating from off-Premises locations under this Section 16.6; and

(ii) Excavated Materials that may lawfully be stored on the Temporary Rights of Access shall be subject to all of the requirements of this Section 16.6 that are applicable to Excavated Materials originating from the Premises, and no such Excavated Materials shall be stored permanently or otherwise be disposed of or backfilled within the Temporary Rights of Access unless such Excavated Materials comply with all requirements for on-Premises fill set forth in this Section 16.6;

(iii) Excavated Materials that have been sampled pursuant to any requirements of this Design-Build Contract and that do not meet the New York State NYCRR Part 375 Unrestricted Use Soil Cleanup Objectives may not be reused as fill on the Premises or the Temporary Rights of Access, unless (A) NYSDEC approves a “beneficial reuse determination” or the equivalent in accordance with NYSDEC’s regulations, (B) the Port Authority approves the alternative standard for backfill material, including any conditions or restrictions on land use associated with such alternative standards, (C) no deed notice or land use restriction is required to be recorded in the land records for any part of the Premises or the Temporary Rights of Access as a result of the use of such backfill material, and (D) no engineering or institutional controls are necessary to prevent exposure to such backfill materials or prevent Hazardous Materials Releases from such materials; and

(iv) If Excavated Materials exhibit olfactory or visual evidence of the presence of Hazardous Materials, such Excavated Material may not be used for backfill unless sampled and determined to comply with the requirements for off-Premises fill materials set forth in this Section 16.6. Prior to such sampling, the Design-Builder shall either arrange for off-Premises disposal in a manner that complies with the provisions of this Article 16, or shall segregate and temporarily store such Excavated Materials in a manner that complies with all Environmental Requirements until sample results are available for classification of such Excavated Materials. If such Excavated Materials are sampled and analyzed, and comply with the criteria set forth in this Section 16.6 for use

as backfill applicable to off-Premises soil and backfill materials, such Excavated Materials may be used as backfill.

Section 16.7 Pesticides and Herbicides

The Design-Builder shall notify the Developer and the Port Authority of any impending applications of herbicides and/or insecticides by the Design-Builder at least twenty-four (24) hours prior to any application. Written notification of the application of herbicides and insecticides shall be posted at all access points to the Premises at least twenty-four (24) hours prior to application to forewarn visitors of the application(s). The HASP shall include the procedures to follow in the event staff is exposed to the herbicides/insecticides without proper personal protective equipment. Only products registered with the NYSDEC or exempt from state registration in the State of New York shall be used. The use of “restricted use” products is prohibited unless used under the direction of a properly licensed and certified technician. The use of any products in the sulfonylurea family of chemicals is not permitted. Herbicide application by broadcast spraying is not permitted. The Design-Builder shall ensure that all of its employees and contractors applying insecticides and herbicides possess a current Commercial Pesticide Operator License, compliant with Article 33, Section 33-0905 of the New York State Environmental Conservation Law and approved by the Port Authority, and provide a copy of current certificates to the Developer and the Port Authority upon request.

Section 16.8 Indoor Environmental Quality

The Design-Builder shall develop and comply with an indoor air quality management plan (the “**DB Indoor Air Quality Management Plan**”), which employs architectural and HVAC design strategies to establish minimum outdoor air replacement quantities, chemical and biological and particulate source control and on-going air quality monitoring to meet the requirements of ASHRAE Standard 62-2010 and all published addenda. Ventilation rates for acceptable indoor air quality, using the “Ventilation Rate Procedure,” shall comply with the Sustainable Design Guidelines for “Indoor Environmental Qualities.” Any new buildings to be constructed over areas where Known Hazardous Materials are present shall be evaluated for the installation of vapor barriers or other mitigation systems, and such systems shall be installed where necessary, to ensure that Known Hazardous Materials do not migrate into such buildings in concentrations that would pose a hazard to building occupants.

Section 16.9 Acoustics

(a) The Design-Builder shall take all appropriate measures to eliminate vibrations originating from the DB D&C Work that may damage any equipment, structure, building or portion of a building located off the Premises and to maintain the sound level of its operations at levels that do not unreasonably disturb others located off the Premises.

(b) The Design-Builder shall design and construct the New Facilities so that they may be operated without further modification to control ambient noise levels as required by the Sustainable Design Guidelines. The Design-Builder shall investigate and employ where feasible the following Sustainable Design Guidelines requirements:

- (i) locate the mechanical plant and equipment and other sources of noise away from interior and exterior spaces designed for use by building tenants and the public;
- (ii) design and maintain separations between interior spaces to minimize the transfer of noise;
- (iii) provide Sound Transmission Class levels of fifty (50) or better;
- (iv) comply with the recommendations of ASHRAE Applications Handbook, HVAC (2011) Chapter 48, “Noise and Vibration Control Guidelines” to reduce potential noise and vibration from mechanical equipment and Architectural Graphics Standards 11th Edition (2007); and
- (v) comply with the latest edition of City building code provisions applicable to noise and vibration mitigation and reduction.

Section 16.10 Maintenance and Inspection Requirements

The Design-Builder shall be responsible for the inspection and maintenance of mechanical systems under its control in the DB Work and Staging Area that could result in a Hazardous Materials Release, including performance of the inspections of the following systems: (a) storm sewer systems, including culverts, piping, catch basins and other associated storm sewer system components; (b) sanitary sewer systems, including piping, pumps, lift stations, sewer ejector pits and other associated sanitary sewer system components; and (c) all indoor environmental quality and monitoring systems, including HVAC systems. The Design-Builder shall be required to use video inspections, in the manner and frequency prescribed in ASSE standards, of any sanitary sewer system under its control within the DB Work and Staging Area.

Section 16.11 Storage Tank Systems

(a) Responsibility for Tanks and Tank Systems. At the Developer’s request, the Design-Builder shall remove and demolish all underground storage tanks and all above-ground storage tanks (including oil/water separators) currently in use and owned or operated by the Port Authority that are Disclosed Facilities existing in or on the Premises as of the Lease Commencement Date (each, a “**Tank**”), in each case, including their appurtenances, pipes, lines, fixtures and other related equipment (collectively with the Tanks, the “**Tank Systems**”). For the avoidance of doubt, this Section 16.11(a) does not affect the allocation of responsibilities and costs for Known Hazardous Materials or Unknown Hazardous Materials set forth elsewhere in this Design-Build Contract, except that the Design-Builder shall be entitled to claim Incremental Environmental Damages pursuant to Article 14A for any Remedial Action to the extent required to be performed by the Design-Builder in connection with the removal of a Tank System because of Hazardous Materials Releases from the Tank System occurring or existing prior to the DB Contract Effective Date, in order to comply with Environmental Requirements, and was not otherwise part of the DB Construction Work or required for the physical removal of the Tank System. Any Tank System discovered by the Design-Builder within the DB Work and Staging Area during the DB Construction Work that

is an Unknown Facility and presents a risk of a Hazardous Materials Release or interferes with the DB Construction Work, shall be removed by the Design-Builder in compliance with the Environmental Requirements, and the Design-Builder shall, pursuant to Article 14A be entitled to claim Incremental Environmental Damages in connection with such removal (including Remedial Action to the extent provided in this Section 16.11(a)) to the extent available for Unknown Facilities.

(b) NOT USED.

(c) NOT USED.

(d) Leaking Tank Systems. At the Developer's request, the Design-Builder shall remove any Tank or Tank System on or under the Premises if such Tank or Tank System is the source of a Hazardous Materials Release during the Term and cannot be repaired to prevent future Hazardous Materials Releases. In connection with any such removal, the Design-Builder shall (i) perform such testing of the Tank, Tank System and soil, sub-soil and Groundwater in the vicinity of the Tanks as shall be necessary to identify the extent and location of any Hazardous Materials Release associated with such Tank or Tank System, (ii) complete Remedial Action with respect to any Hazardous Environmental Condition disclosed by said testing, and (iii) restore the surface of the Premises to the same condition existing prior to the removal of the Tank or Tank System. During the Initial O&M Period, the Design-Builder shall be entitled to claim Incremental Environmental Damages pursuant to Article 14A with respect to Losses attributable to Remedial Action required to be performed in connection with Unknown Hazardous Materials originating from Tank Systems. The Design-Builder shall be responsible for Losses attributable to leaks occurring after the DB Contract Effective Date from Tanks and Tank Systems that (A) were not in use within the Premises as of the DB Contract Effective Date, and were put into use by the Design-Builder, or (B) were installed by the Design-Builder, or (C) are used by the Design-Builder more than sixty (60) days after the Lease Commencement Date.

(e) TCAP. The Design-Builder shall not perform any major repair, removal, installation or replacement of Tanks or Tank Systems after the completion of DB Construction Work on buildings or improvements at which such Tanks or Tank Systems are located or operated without the prior written approval of the Port Authority pursuant to the TCAP.

Section 16.12 Hazardous Materials

(a) Responsibility for Hazardous Materials During DB Construction Work. As part of the DB Construction Work and subject to Article 10, the Design-Builder shall be responsible for the management, treatment, handling, storage, monitoring, remediation, removal, transport, and disposal of any and all Hazardous Materials present or contained in the Current Facilities, Demolition Debris, Groundwater and Excavated Materials that are required to be operated, demolished, managed, removed, excavated or disposed of in connection with the DB Construction Work. Costs for managing, treating, handling, storing, monitoring, remediating, removing, transporting and disposing of Hazardous Materials associated with the DB Construction Work, including Excavated Materials, Demolition

Debris and Groundwater, are the responsibility of the Design-Builder, in accordance with Sections 16.1(d) and 16.4, except that to the extent that the Design-Builder incurs costs and expenses for Unknown Hazardous Materials handling, management or disposal required by this Section 16.12(a), the Design-Builder shall be entitled to claim Incremental Environmental Damages, as provided in Section 16.17(b)(i), pursuant to Article 14A. The Design-Builder shall perform such investigation, sampling, analysis and other Work as shall be necessary to ensure that all waste materials generated in the performance of the DB Construction Work that contain Hazardous Materials, including Demolition Debris, Excavated Materials and Groundwater, are properly characterized, handled, stored and disposed of in accordance with the Environmental Requirements. Neither the Design-Builder nor any Design-Builder Occupant may rely upon the accuracy or sufficiency of sampling results or information set forth in the Available Documents in connection with the classification and assessment of waste materials generated by the DB Construction Work unless the Design-Builder or Design-Builder Occupant independently verifies that such information satisfies the Environmental Requirements. The requirements for Work under this Section 16.12(a) are not Remedial Action, as that term is defined and used herein.

(b) NOT USED.

(c) Release Prevention. The Design-Builder shall not cause or permit a Hazardous Materials Release to occur on, in, under or from the Premises or the Temporary Rights of Access, except as authorized pursuant to a Governmental Approval or in a manner that does not violate or require Remedial Action under any Environmental Requirement. The Design-Builder is responsible for the investigation, monitoring, management and Remedial Action with respect to all Hazardous Materials Releases occurring on, in, under or from the Premises or the Temporary Rights of Access from and after commencement of the DB Construction Work to the extent related to or arising from the DB D&C Work. During the Term, the Design-Builder shall regularly inspect, monitor and maintain all equipment and improvements under its control within the DB Work and Staging Area, including Utilities, Tanks and Tanks Systems, to detect and prevent Hazardous Materials Releases, and shall ensure that such equipment and improvements are operational at all times. With respect to costs in connection with these activities, the Design-Builder shall seek reimbursement, insurance recoveries or contribution from responsible Persons to the extent commercially reasonable.

(d) Contamination Encountered During the DB Construction Work. The Design-Builder shall notify the Developer and the Port Authority immediately if it identifies odors, observes conditions or obtains other information (including sampling data if the Design-Builder is conducting sampling within the relevant area) indicating that the Design-Builder has encountered a Hazardous Environmental Condition during the DB Construction Work that may require Remedial Action, and shall immediately implement reasonably available measures to avoid disturbance of such conditions and prevent or mitigate any Hazardous Materials Release associated with such observed conditions. The Port Authority will determine whether sampling or analysis is required, and the extent to which Remedial Action should be performed or the Work stopped in order to conduct Remedial Action. If the Port Authority directs the Developer to conduct Remedial Action under Section 16.16(d), the Developer may direct the Design-Builder to conduct such Remedial Action. Remedial Action

performed under this Section 16.12(d) by the Design-Builder pursuant to the Environmental Requirements or a written agreement with a Governmental Entity that was submitted for Port Authority Approval and was approved by the Port Authority, and that addresses Unknown Hazardous Materials, or that addresses Known Hazardous Materials located outside the areas intended or required to be excavated as part of the DB Construction Work, entitles the Design-Builder to claim Incremental Environmental Damages and a Delay Event pursuant to Article 14A; provided that no Delay Event shall be applicable or Incremental Environmental Damages authorized to the extent the Design-Builder or any DB Party is responsible, directly or pursuant to Section 16.12(f), for the foregoing Hazardous Environmental Condition. Nothing herein prevents the Design-Builder from conducting Remedial Action or stopping work in response to a Hazardous Environmental Condition if required by Environmental Requirements, provided that no Delay Event is applicable or Incremental Environmental Damages authorized under this Section 16.12(d) unless and until the Developer and the Port Authority are notified and the Port Authority issues such written direction to stop work or commence Remedial Action, or a Governmental Entity issues a written order to the Developer or the Design-Builder, or the Developer or Design-Builder enters into an agreement with a Governmental Entity, subject to Port Authority approval, to perform Remedial Action, whichever is earlier. Subject to the terms of the Project Documents, the Design-Builder will be responsible for obtaining and maintaining all Governmental Approvals relating to any Remedial Action and will be solely responsible for compliance with all Environmental Requirements concerning or relating to such Hazardous Environmental Condition. The Remedial Actions covered by this Section 16.12(d) are separate and distinct from Work performed under Section 16.12(a), and are not intended to cover handling of Demolition Debris, Excavated Materials or Groundwater dewatering pursuant to Section 16.5. The Design-Builder is responsible for managing the evaluation, planning and coordination of any such Remedial Action to minimize the duration of any Delay Event that may result. Excavation and other construction during the O&M Period are not subject to this Section 16.12(d).

(e) Area-Wide Remediation. Remediation of Hazardous Environmental Conditions that were present on, in or under the Premises or the Temporary Rights of Access on or prior to the Lease Commencement Date and that are found outside an Excavation Zone (“**Area-Wide Contamination**”) are the Port Authority’s responsibility. To the extent that the Excavation Zone includes or is affected by the same Hazardous Materials that comprise part of a larger contiguous Hazardous Environmental Condition that includes the area surrounding the Excavation Zone and the Port Authority is required by law, or elects, to remediate all of such Hazardous Environmental Condition with remediation technology that would remediate all of such Hazardous Environmental Condition within and outside of the Excavation Zone, such Port Authority remediation within the Excavation Zone will be the Port Authority’s responsibility. To the extent that the Developer directs the Design-Builder to stop Work in order for the Port Authority to conduct Remedial Action with respect to the Excavation Zone, the Design-Builder shall stop such Work as the Developer shall direct.

(f) Hazardous Materials Releases During the Term. If, at any time from and after the earlier of the date of the first Construction Segment NTP or, if issued, the Full Construction NTP, a Hazardous Materials Release occurs at, on or under the Premises or the

Temporary Rights of Access during the Term, as a result of the negligence, actions or omissions of the Design-Builder or Design-Builder Occupant, a breach of the provisions of the DB Project Documents by the Design-Builder or any Design-Builder Occupant or otherwise, but excluding any Hazardous Materials Release to the extent proximately caused after the DB Contract Effective Date by the negligence, actions or omissions of, or breach of this Design-Build Contract by, the Developer or its Sublessees, or by the negligence of or breach of the Lease by the Port Authority or its contractors, the Design-Builder shall (i) promptly commence and diligently prosecute to completion all investigation, sampling, monitoring, containment, cleanup, removal, restoration, remedial work, or other response action of any kind to the extent required by and in compliance with the Environmental Requirements and this Design-Build Contract, including at any locations outside of the DB Work and Staging Area affected by such Hazardous Materials Release, and (ii) provide notices or reports to the Developer, for the Developer to provide to the Port Authority in such form and substance as the Developer and the Port Authority may reasonably require, specifying the likely origin, nature and condition of such Hazardous Materials, and such Remedial Action the Design-Builder or any other Person the Design-Builder has knowledge of, has taken, is taking or proposes to take with respect thereto. The obligations to take a Remedial Action shall include the investigation of the area affected by such Hazardous Materials Release, the preparation of feasibility studies, reports and Remedial Action plans, and the performance of all Remedial Actions and related Work in a good, safe and workmanlike manner. Promptly upon completion of such investigation and Remedial Action, the Design-Builder shall seal or cap all monitoring wells and test holes, remove all associated equipment and restore the remediated property. With respect to any sudden Hazardous Materials Release caused by the Design-Builder or a Design-Builder Occupant, the Design-Builder shall stabilize and contain the relevant Hazardous Materials Release without prior notice or inspection, but will immediately notify the Developer and the Port Authority of the sudden Hazardous Materials Release and its location, and shall comply with Applicable Law, Governmental Approvals and the requirements of any Governmental Entity in reporting such Hazardous Materials Release and implementing Remedial Action. With respect to any Hazardous Materials Release occurring during the Term for which the Design-Builder is responsible under this Design-Build Contract, the Design-Builder shall complete the Remedial Action to achieve the more stringent of the following standards: (i) the default cleanup standard established under NYSDEC regulations that are part of the Environmental Requirements; (ii) an Approved Alternative Cleanup Standard; or (iii) removal and cleanup of such Hazardous Materials Release so that Hazardous Materials in soil and Groundwater are restored to levels equivalent to or better than levels existing before such Hazardous Materials Release occurred. If the Design-Builder is required to conduct a Remedial Action with respect to a Hazardous Materials Release for which the Design-Builder is responsible under this Design-Build Contract, any Remedial Action with respect to Pre-Existing Hazardous Materials shall be conducted at the Design-Builder's cost and expense, without regard to Section 16.17(b)(i), to the extent that such Remedial Action for Pre-Existing Hazardous Materials is confined to the same environmental media (soil or Groundwater) and approximately the same geographic area as the Remedial Action for which the Design-Builder is responsible.

(g) Remedial Action Plans. For any Remedial Action required or authorized to be implemented by the Design-Builder under this Design-Build Contract, the Design-Builder shall prepare for the Developer for subsequent submission to the Port Authority for Port Authority Approval, in accordance with the submittal time periods in Section 16.14, a Remedial Action Plan prior to implementing any Remedial Action, except for sudden Hazardous Materials Releases requiring an immediate response as provided in Section 16.12(f). This Remedial Action Plan shall include and provide for such sampling and investigation as is necessary to characterize soil and Groundwater, and plan for excavation, extraction, storage, handling, transport, removal, treatment and disposal of such Hazardous Materials for any Remedial Action required for a Hazardous Materials Release during the Term for which the Design-Builder is responsible under this Design-Build Contract to achieve the cleanup standards set forth in Section 16.12(l). The Design-Builder shall be responsible for the diligent and prompt implementation of such Remedial Action Plan after receiving Port Authority Approval therefor. Such Remedial Actions shall be conducted by the Design-Builder until the Design-Builder receives a “no further action” letter or the equivalent from any Governmental Entity having jurisdiction over the Remedial Action.

(h) Remediation at Port Authority Direction. The Port Authority may assume responsibility for, or modify, suspend or terminate, any Remedial Action required to be performed, or being performed, by the Design-Builder under this Design-Build Contract upon delivery of written notice from the Port Authority to the Developer and the Design-Builder. Such notice shall take the form either of a release, deferral or postponement of the Design-Builder obligations hereunder by the Port Authority (which may be conditioned or limited in scope, duration or otherwise), or by a Port Authority Change pursuant to which the Port Authority requests or directs the Developer to conduct specific or different forms of Remedial Action. Nothing in this Section 16.12(h) shall relieve the Design-Builder from obligations it may have to comply with the Environmental Requirements, including those under Section 16.12(f). Notwithstanding the foregoing, the Design-Builder shall not be required to conduct, modify, suspend or terminate any Remedial Action at the Port Authority’s direction if such action, modification, suspension or termination would violate a written order issued to the Developer or the Design-Builder by a Governmental Entity under Environmental Law, or an agreement between the Developer or the Design-Builder and a Governmental Entity that was submitted for Port Authority Approval and was approved by the Port Authority in writing, unless the Port Authority shall have assumed responsibility for the performance or reimbursement of the costs relating to such written order or agreement.

(i) Remediation Completion Reports. After the Design-Builder performs any Remedial Action on the Premises or the Temporary Rights of Access, the Design-Builder shall sample and test the soil and/or Groundwater in or under the Premises, the Temporary Rights of Access or portions thereof affected by such Remedial Action to confirm that the Hazardous Materials Release has been removed from the Premises or the Temporary Rights of Access and soil and Groundwater have been restored to the condition existing before the Hazardous Materials Release or better, and set forth the results of such samplings and tests in a report (any such report and test results, a “**Remediation Completion Report**”) and submit for the Developer’s and the Port Authority’s review. Upon Port Authority Approval of such Remediation Completion Report, such Remediation Completion Report shall (i) supersede

and replace the existing Disclosed Environmental Reports with respect to the relevant area or environmental media, or (ii) supplement the Disclosed Environmental Reports to the extent the test results and report do not supersede (pursuant to the foregoing clause (i)) any existing test results and reports in the Disclosed Environmental Reports; provided, however, that said sampling and testing shall produce a fair and representative sampling of the Premises or the Temporary Rights of Access, and shall have been performed in accordance with a methodology approved by the Port Authority. Nothing in this Section 16.12(i) shall relieve the Design-Builder of its obligation to obtain a “no further action” letter as provided in Section 16.12(g).

(j) Preservation of Rights. Before any Remedial Action is taken by the Design-Builder with respect to a Hazardous Environmental Condition, the Design-Builder shall assess whether there is a potential right to recovery of contribution or reimbursement from other Persons that may be exercised by the Port Authority or the Developer but not by the Design-Builder. In such cases, the Design-Builder shall afford the Developer and the Port Authority a reasonable opportunity to inspect areas and locations that require Remedial Action within a reasonable time period. For any costs, losses or liabilities relating to Hazardous Environmental Conditions that may be retained by or otherwise imposed upon a third party by the Developer or the Port Authority, the Design-Builder shall preserve data, information, documents and records, and conduct any required Remedial Action in such as manner as to preserve the Developer’s and the Port Authority’s rights of indemnification, contribution or cost recovery as may be available under Applicable Law. The Design-Builder shall be entitled to, and at the direction of the Port Authority and/or the Developer, shall take such steps and actions as may reasonably be required in order to preserve potential claims of contribution and indemnity, statutory or otherwise, against potentially responsible parties. Any recoveries by the Design-Builder, after reductions for costs and expenses required to obtain such recoveries, shall be applied to the past and future costs of the Remedial Action incurred or to be incurred by the Design-Builder that are recoverable by the Design-Builder under Section 16.17(b). Any excess recovery above the costs of recovering such amounts and payment of the Design-Builder’s costs for such Remedial Action as provided above, shall be paid to the Developer or the Port Authority to the extent that the Developer or the Port Authority has paid such costs or incurred damages. The Design-Builder shall not settle or consent to any judgment concerning such recoveries without approval of the Developer.

(k) Environmental Assessment after the Completion of DB Construction Work. The Design-Builder shall provide to the Developer for subsequent submission to the Port Authority within thirty (30) days following Final Acceptance a report, similar in scope and substance to the Exit Baseline Report and including investigation and sampling results within any areas where Hazardous Materials are known to have been released, during the Term, documenting the locations and concentrations of Hazardous Materials in sufficient detail to update the Available Documents and provide a basis against which to compare the Handback Environmental Report and Exit Baseline Report required to be prepared by the Developer under Section 16.13 of the Lease.

(l) Cleanup Standards. Any Remedial Action conducted as part of the DB D&C Work under this Design-Build Contract shall be conducted to achieve the regulatory standards

imposed by NYSDEC regulations as the “default” standards (those that are specified in the regulations). Less stringent alternative standards may be used where (i) permitted under NYSDEC regulations, (ii) NYSDEC approves the use of such alternative remediation standard, if such approval is required, (iii) the Port Authority approves the alternative remediation standard, including any conditions on land use associated with such standards, (iii) no deed notice or land use restriction is required to be recorded in the land records for any part of the Premises or the Temporary Rights of Access, and (iv) no engineering or institutional controls are necessary to prevent exposure to such backfill materials or prevent further Hazardous Materials Releases in order to apply such alternative remediation standard. Such alternative cleanup standards may be approved by the Port Authority for a limited time period. The Port Authority Approval for such alternative standards may be conditioned upon compensation or adequate security for later Remedial Action (by the Port Authority or third parties). An alternative cleanup standard applicable to soil or Groundwater located or originating within the Premises or the Temporary Rights of Access and approved under this Section 16.12(l) is an “**Approved Alternative Cleanup Standard.**” Notwithstanding the foregoing, in the case of a Hazardous Materials Release during the Term, for which the Design-Builder is responsible and required to implement Remedial Action, including under Section 16.11(d) and Section 16.12(f), the applicable cleanup standard shall be the more stringent of the Approved Alternative Cleanup Standard or restoration to pre-existing conditions, as provided in Section 16.12(f).

(m) Additional ACM Cost Savings. The Design-Builder shall account for and track Additional ACM Costs, and provide documentation and backup information in the DB Environmental Status Reports comparing the Additional ACM Costs incurred by the Design-Builder to the Additional ACM Allowance. All submittals establishing that Additional ACM Costs have been incurred shall be based upon a unit cost approved by the Port Authority and applied to the Additional ACM that has been removed, abated or disposed of. The Design-Builder shall be entitled to make a claim for Equivalent Project Relief pursuant to Article 14A with respect to Additional ACM Costs incurred by the Design-Builder in excess of the Additional ACM Allowance.

Section 16.13 NOT USED.

Section 16.14 Environmental Notices, Submittals and Reports

(a) Environmental Submittals.

(i) Submittals relating to environmental matters and other documentation described in this Section 16.14(a) are subject to the provisions and requirements of Article 8 during the Construction Period, provided however that the provisions of this Section 16.14(a) shall govern in the event of any inconsistency with Article 8 or additional requirement imposed under this Section 16.14(a). Notwithstanding the preceding, the Design-Builder shall provide all environmental submittals pursuant to the procedures and time frames set forth in Section 8.3 of this Design-Build Contract. Unless otherwise expressly provided in this Article 16 or the D&C Schedule of Submittals, or applicable provisions of

the Requirements and Provisions for Work, the Design-Builder shall provide the following Submittals to the Developer to allow the Developer to submit the Submittals to the Port Authority for Port Authority Approval at least sixty (60) days prior to proceeding with the relevant portion of the Work on the Premises and the Temporary Rights of Access, if applicable: (A) Remedial Action Plans and Remediation Completion Reports; (B) DB SPCC Plan; (C) SWPPP, Soil Erosion and Sediment Control Plan, and NOI; (D) DB HASP; the (E) DB Environmental Management Plan; (F) the request for authorization to discharge contemplated under Section 16.5; and (G) such other reports, notices, data and other documentation required to be submitted by the Developer or the Port Authority under Article 16 of the Lease. Reports may be combined in a single document (such as the DB Environmental Management Plan), so long as the components of each plan are clearly labeled and readily identifiable, and the requests for Port Authority Approval identify the separate approval requests for separate plans or Submittals that are combined. Notwithstanding the foregoing, the provisions of Section 8.2(b), that permit the Design-Builder to proceed “at risk” without considering Port Authority comments, shall not apply to Submittals required or permitted by this Article 16.

(ii) The Design-Builder shall submit to the Developer for subsequent submittal to the Port Authority for Port Authority Approval all draft applications for Design-Builder Governmental Approvals (or if requested by the Port Authority pursuant to Section 15.1(d)(vi), applications for Port Authority Governmental Approvals) or amendments to Port Authority Governmental Approvals if necessary pursuant to Section 15.1(d)(ii), at least seventy (70) days prior to the date on which such application is required to be submitted in order to obtain the related Governmental Approval by the time required to commence the related Work in order to achieve the Project Baseline Schedule. With respect to such applications as require action by the Port Authority, including signatures or the supply of information regarding Port Authority personnel, operations or history that is not otherwise available to the Design-Builder, the Design-Builder shall identify such requested action or information in a cover letter accompanying the application.

(iii) NOT USED.

(iv) NOT USED.

(v) The Design-Builder shall ensure that the draft and final reports required under this Article 16, including all Remedial Action Plans, and all Remediation Completion Reports, are signed by a professional engineer licensed in the State of New York.

(b) Hazardous Materials Documentation. For any DB D&C Work requiring demolition of building components and materials that include Hazardous Materials, the Design-Builder shall provide documentation to the Developer, to allow the Developer to

submit the documentation to the Port Authority, at least thirty-five (35) days in advance of commencement of such Work confirming that all required licenses and certifications are held by the DB Subcontractor(s) performing such Work. For disposal of wastes containing Hazardous Materials (including Excavated Materials, Groundwater, stormwater or Demolition Debris), the Design-Builder shall provide completed bills of lading, manifests, invoices, licenses, certifications, sampling results and evidence of receiving facility approval at least ten (10) Business Days in advance of such disposal. A closure report shall be provided by the Design-Builder to the Developer, to allow the Developer to submit the Submittals to the Port Authority, within twenty-five (25) days after achieving completion of a Remedial Action by the Design-Builder, to confirm compliance with all requirements of this Design-Build Contract pertaining to Remedial Action, which report shall include all documentation required to confirm that Remedial Action standards imposed under this Design-Build Contract and the Environmental Requirements have been achieved. Each such closure report shall be subject to the Port Authority's review and approval.

(c) Release Reporting. The Design-Builder shall promptly provide written notice to the Developer for subsequent submittal to the Port Authority when the Design-Builder becomes aware of any Claim, judgment, notice, notice of violation, investigation, order or Lien relating to (i) a violation or alleged violation of, or matter arising under, any Environmental Laws with respect to the Premises or the Temporary Rights of Access or (ii) Hazardous Materials at, on, under or migrating to or from the Premises or the Temporary Rights of Access. Any new Hazardous Materials Release shall be reported to the Developer and the Port Authority within the time necessary and reasonable to notify the Port Authority of actions that the Design-Builder or the Port Authority must take to contain, remove or implement Remedial Action with respect to such Hazardous Materials Release. New Hazardous Materials Releases that do not require immediate response under the Environmental Requirements or under this Design-Build Contract will be reported to the Port Authority and the Developer in writing up to five (5) Business Days after discovery or in the Environmental Status Report, whichever occurs sooner. Any notice or report required to be made under Applicable Law in response to a Hazardous Materials Release, incident, accident or other lawfully reportable event within or from the Premises or the Temporary Rights of Access on or after the DB Contract Effective Date related to or arising from the DB D&C Work shall be made by the Design-Builder in its name and shall also be provided to the Developer and the Port Authority as and when provided to the required Governmental Entity. The Design-Builder agrees that in reporting any such Hazardous Material discovered on the Premises or the Temporary Rights of Access, the Design-Builder shall direct such report to the attention of such individual at the subject Governmental Entity as the Port Authority shall require. The Design-Builder agrees that any of the foregoing may be filed by the Developer or the Port Authority with the appropriate Governmental Entity on behalf of the Design-Builder at the Design-Builder's cost and expense.

(d) Test Results, Etc. Unless directed otherwise by the Developer, Design-Builder shall provide the Developer with copies of all information, documentation, records, correspondence, notices, certifications, reports, test results and all other submissions provided by the Design-Builder to a Governmental Entity and by a Governmental Entity to the Design-Builder within five (5) Business Days that the same are made available to or received by the

Design-Builder with respect to any Environmental Requirements, unless a shorter period of time is required to obtain a response from the Port Authority that is required by this Design-Build Contract or desired by the Developer. The Design-Builder shall provide the Developer with copies of any other information, documentation, records, correspondence, notices, reports, test results, and certifications and any other information as the Developer or the Port Authority shall request in connection with any Environmental Requirements. All such documentation relating to the Work or the Premises during the Term shall be signed and certified by the Design-Builder, in its own name, unless otherwise directed by the Port Authority.

(e) Information in Environmental Status Report. Any documentation or notification required by this Section 16.14 shall be included in the next Environmental Status Report, and need not be separately provided to the Port Authority if the Environmental Status Report is provided prior to the deadline for notifications set forth in this Section 16.14.

(f) Developer and Port Authority Responsibility. The Developer's and the Port Authority's rights to review and approve Submittals, receipt of reports or other information, inspections and other oversight activities under this Article 16 or otherwise with respect to the Environmental Requirements shall not be deemed or interpreted to impose upon the Developer or the Port Authority obligations relating to the Design-Builder's performance of the DB D&C Work, and no aspect of such review, approval, oversight or inspection shall be deemed to constitute negligence relieving the Design-Builder of any obligation under this Article 16.

Section 16.15 Environmental Status Reports

(a) DB Environmental Status Report. Until the Final Acceptance Date, the Design-Builder shall prepare and submit to the Developer, to allow the Developer to submit the documentation to the Port Authority as part of the Environmental Status Reports, DB Environmental Status Reports within five (5) days after the end of each calendar month to summarize the previous month's environmental activities, including permit status, soil disposal activities and other environmental activities. Each DB Environmental Status Report shall include copies of any material correspondence or other written communications received or given by the Design-Builder concerning the Design-Builder's performance under this Article 16, including any notices, reports and applications filed with Governmental Entities during the reporting period, and any Governmental Approvals, notices or other correspondence from third parties or Governmental Entities, received during the reporting period, including such documentation and written communications as to which the Design-Builder was required to give notice to the Developer or the Port Authority under this Design-Build Contract during the reporting period.

(b) DB Environmental Status Reports; Topics. The content of the DB Environmental Status Reports shall document the Design-Builder's performance during construction and include, but not be limited to, the following:

(i) status of implementation and compliance with the DB Environmental Management Plan and any proposed modifications or amendments to it;

(ii) status of all applications for Governmental Approvals and copies of newly-issued Governmental Approvals, or amendments and modifications thereto;

(iii) status of handling, storage and management of Hazardous Materials, construction and demolition debris, soil and dewatering effluent, including sampling results and all documentation required by this Design-Build Contract with respect to past and future off-site disposal; and

(iv) status of ACM, LCP and UW abatement activities, documentation and compliance, including sampling results and all documentation required by this Design-Build Contract with respect to past and future off-site disposal.

(c) Field Work Conditions. Each DB Environmental Status Report shall include a summary of field work performed (e.g., asbestos abatement) during the previous reporting period (month or quarter) and shall identify:

(i) the name of environmental monitoring inspector(s);

(ii) date(s) of activities;

(iii) weather conditions;

(iv) locations where field activities occurred; and

(v) resource(s) addressed, such as air, water, or hazardous waste.

(d) Compliance Status and Corrective Action. Each DB Environmental Status Report shall include the status of compliance with this Design-Build Contract, Governmental Approvals, plans submitted under this Article 16, and other Environmental Requirements, along with any corrective actions required in relation to the DB D&C Work, including the following:

(i) locations and nature of violations;

(ii) response to each violation; and

(iii) implemented Remedial Actions and precautions to prevent reoccurrence of violations.

(e) Submittals Status. Each DB Environmental Status Report shall include a list of any notices, reports or other Submittals made, given or received during the reporting period pursuant to this Design-Build Contract and the DB Environmental Requirements and copies of any such notices, reports or other Submittals that have not previously been provided to the Port Authority. The DB Environmental Status Report shall clearly identify, by a list or other summary, the Submittals that require further action or review, the type of review or action required and the responsible Party (e.g., complete, requiring Design-Builder action, requiring Port Authority Approval, etc.). Where reasonably feasible, a schedule of Submittals which the Design-Builder expects to be submitted to the Developer for Port Authority Approval in the ensuing ninety (90) days should be submitted. The list of expected future Submittals shall indicate the information, action (e.g., signatures) or other responses expected to be requested from the Port Authority.

Section 16.16 Enforcement and Administration

(a) General. In addition to any other rights and remedies that may be available to the Developer under this Design-Build Contract or under Applicable Law, the Developer may notify the Design-Builder of a default under or breach of this Article 16 related to the Design-Builder's actions or inactions. The Design-Builder shall commence diligent efforts to remedy the default or breach immediately upon receipt of such notice and provide a written response indicating the Design-Builder's plan for remedying such default or breach within (i) three (3) Business Days after receipt of such notice, in the case of any condition that poses a material threat of a Hazardous Materials Release, or (ii) seven (7) Business Days for other matters. If no default or breach has occurred, the Design-Builder shall provide the Developer within seven (7) Business Days after receipt of the notice documentation of compliance. The Design-Builder shall implement any plan for achieving compliance approved by the Developer and the Port Authority under this subsection.

(b) Immunity and Waiver. Pursuant to Section 16.16(b) of the Lease, nothing in the foregoing shall be construed as a submission by the Port Authority to the application to itself of the Environmental Requirements; provided, however, that no immunity or exemption of the Port Authority from the Environmental Requirements shall excuse the compliance therewith by the Developer or shall be grounds for non-compliance therewith by the Developer. Thus, no such immunity or exemption of the Port Authority from the Environmental Requirements shall excuse the compliance therewith by the Design-Builder or shall be grounds for non-compliance therewith by the Design-Builder.

(c) Third Parties. The terms and conditions of this Article 16 are intended to allocate the obligations and responsibilities between the Design-Builder and the Developer, and nothing in this Article 16 or elsewhere in this Design-Build Contract shall be deemed to limit, modify waive or otherwise alter the rights, claims and remedies which the Port Authority, the Developer or the Design-Builder may have against third parties at law, in equity or otherwise.

(d) Port Authority-Directed Testing and Remediation. Subject to Section 16.17, to the extent directed by the Port Authority, the Developer shall have the right, but not the obligation, upon notice to the Design-Builder to direct the Design-Builder, (i) to perform such

reasonable additional testing, above and beyond testing otherwise required by the Environmental Requirements for the performance of the DB D&C Work, of soil, construction debris, Demolition Debris, dewatering effluent, stormwater and other materials or environmental media as the Port Authority shall direct and the Design-Builder shall perform such testing of such materials, and (ii) to clean-up and remediate any Hazardous Environmental Condition that is not otherwise required to be cleaned up or remediated pursuant to this Design-Build Contract, which clean-up and remediation shall be performed pursuant to applicable Environmental Requirements and a Remedial Action Plan prepared by the Design-Builder and submitted to the Port Authority by the Developer for Port Authority Approval. For the avoidance of doubt, the foregoing provisions of this Section 16.16(d) relate only to directions by the Port Authority and subsequently the Developer to conduct Remedial Action and/or testing that is not otherwise required to demonstrate compliance with this Design-Build Contract or required under Applicable Law, and does not exclude the Design-Builder's responsibility for performing and paying for such Remedial Action and/or testing as is otherwise required under this Design-Build Contract.

(e) Port Authority Testing and Remediation. In addition to the foregoing, the Port Authority and its designees have the right, but not the obligation, to conduct Remedial Action and/or testing of soil and Groundwater, using existing or new borings or wells, including conducting pumping operations from any new or existing wells, within the Premises or the Temporary Rights of Access, upon reasonable notice and at reasonable times; provided, that the Port Authority's conduct of such Remedial Action or testing does not unreasonably interfere with Design-Builder's Work; and provided, further, that the Port Authority repairs the condition of any facilities, improvements and equipment to substantially the condition in which they existed immediately prior to the Port Authority's Remedial Action or testing or, if applicable, to the Port Authority's own specifications for such facilities, improvements or equipment.

(f) Use of Certified Laboratories. All sampling, testing and chemical analyses performed in accordance with this Article 16 shall be performed by a laboratory duly approved or certified by NYSDEC or other appropriate Governmental Entity acceptable to the Port Authority.

(g) Burden of Proof. In performing its obligations under this Design-Build Contract, the Design-Builder shall be responsible for collecting, recording and maintaining records of the facts related to: (i) the existence or concentrations of any Hazardous Material; (ii) whether any Hazardous Material was released or disposed of or migrated to or from the Premises or the Temporary Rights of Access prior or subsequent to a specific date; (iii) the causes or origin of such Hazardous Material Release and whether the Design-Builder or any Design-Builder Occupant caused a Hazardous Materials Release or exacerbated any Hazardous Environmental Condition so as to cause a Hazardous Material to first become regulated during the Term; (iv) the waste classification of any Excavated Materials, Demolition Debris or any other materials constituting or containing Hazardous Material; and (v) entitlement to remedies based on any claim of Compensation Event or Delay Event arising from the Design-Builder's obligations under this Article 16. In the event that the Design-Builder has failed to collect, record and maintain sufficient factual information upon which the determinations set forth in clauses (i)-(iv) of this Section 16.16(g) are based, then any ambiguity or uncertainty concerning such facts shall

be presumed to be resolved in the Developer's or Port Authority's favor in any discussion, dispute or analysis (subject to rebuttal by the Design-Builder through the development of additional factual information or analysis that demonstrates that the presumption is inaccurate). While the burden of proof shall remain with the Design-Builder for demonstrating the presence or absence of Unknown Hazardous Materials, no presumption under this Section 16.16(g) shall apply with respect to the presence or absence of Unknown Hazardous Materials in areas where no data or information exist regarding the use, storage, handling or release of Hazardous Materials.

(h) Developer and Port Authority Remedies. Without limiting the Developer's other remedies under this Design-Build Contract or, generally, at law or in equity, the Developer shall have the right, during and after the Term, to such equitable relief, including injunctions and declaratory judgments, to enforce compliance by the Design-Builder of its environmental obligations under this Design-Build Contract, including all the Design-Builder's obligations under this Article 16. In the event that the Design-Builder fails to comply with or perform any of such obligations, the Developer at any time during or subsequent to the Term may elect (but shall not be required) to perform such obligations, and upon demand the Design-Builder shall pay to the Developer its costs thereof, including all overhead costs as determined by the Developer in accordance with Section 28.2.

(i) Survival of Obligations. Obligations with respect to Environmental Liabilities arising or existing under this Design-Build Contract at or prior to the expiration or Early Termination of this Design-Build Contract that have not been performed shall survive the expiration or Early Termination of this Design-Build Contract.

Section 16.17 Exclusions, Risk Allocation and Remedies

(a) Exclusions from the Design-Builder's Environmental Liability. Notwithstanding any of the foregoing provisions of this Article 16, but subject to the provisions of Article 14A the Design-Builder shall not be responsible for Remedial Action or Environmental Liabilities to the extent arising from:

(i) a Hazardous Materials Release occurring or existing outside of the Premises and the Temporary Rights of Access on or prior to the DB Contract Effective Date;

(ii) Area-Wide Contamination as to which the Port Authority has assumed responsibility for Remedial Action pursuant to Section 16.12(e) of the Lease or other Remedial Action undertaken by the Port Authority pursuant to Section 16.16(e) of the Lease;

(iii) Third-Party Claims relating to Environmental Liability to the extent arising from events, acts or circumstances occurring or existing prior to the DB Contract Effective Date, but not including liability for Remedial Action or management of Hazardous Materials as part of the DB Construction Work, responsibility for which is allocated in other provisions of this Design-Build Contract;

(iv) fines and penalties imposed by any Governmental Entity with respect to violations of Environmental Law based on facts, circumstances or events existing or occurring prior to the DB Contract Effective Date, unless such fines or penalties are imposed as a result of the Design-Builder's or any Design-Builder Occupant's failure to comply with obligations under this Design-Build Contract;

(v) Hazardous Material that migrates onto the Premises or the Temporary Rights of Access from outside the Premises or the Temporary Rights of Access for reasons other than an act or omission of the Design-Builder or any DB Party;

(vi) Environmental Liabilities arising from the presence at Approved Disposal Locations of Pre-Existing Hazardous Materials disposed of by the Design-Builder during the DB Construction Work in compliance with the requirements of this Design-Build, including Section 16.4(a); and

(vii) Remedial Action requirements to the extent arising out of or relating to any Hazardous Materials Release existing on additional land at the time such additional land was added to the Premises or to the Temporary Rights of Access by any Port Authority Change or Directive Letter; and

(viii) Claims for removal or other Remedial Action to the extent attributable to Pre-Existing Hazardous Materials in Excavated Materials arising after such Excavated Materials have been permanently backfilled on the Premises in compliance with this Design-Build Contract.

(b) Cost Allocation for Design-Builder Responsibilities. Except as expressly provided in Section 16.12(f), and subject to the provisions of Article 14A the Design-Builder shall be entitled to claim a Compensation Event and a Delay Event, as applicable, for complying with its obligations under this Article 16 to the extent that, without the negligence or culpable act or omission of the Design-Builder or any Design-Builder Occupant, the Design-Builder incurs Incremental Environmental Damages arising from and attributable to:

(i) Unknown Hazardous Materials that are required to be managed, treated or disposed of by the Design-Builder as part of the DB Construction Work under this Design-Build Contract or Environmental Requirements; or

(ii) Subject to Section 16.4(g), Excavated Materials, Demolition Debris and other waste materials that the Design-Builder is handling during the DB Construction Work under the provisions of Section 16.4, Section 16.5, or Section 16.12(a) that (A) are classified as regulated hazardous wastes under RCRA where such classification was not expressly disclosed or readily apparent from the Available Documents, or (B) require specialized protective equipment under the HASP for personnel handling such waste materials beyond the protective equipment that would have been required under the HASP based on Known Hazardous Materials in such waste materials; or

(iii) Remedial Action that the Design-Builder is required to perform under Environmental Law at the request or direction of a Governmental Entity with respect to

Pre-Existing Hazardous Materials outside of the Excavation Zone during the DB Construction Work or that arise from an Excluded Liability (including those obligations excluded from the Design-Builder's environmental obligations pursuant to Section 16.17(a)); or

(iv) the stoppage of Work or modification of Work as directed by the Port Authority under Section 16.12(e) or Section 16.12(h) of the Lease; or

(v) Remedial Action required or otherwise approved by the Port Authority to be performed by the Design-Builder under Section 16.12(d) or Section 16.16(d) of the Lease; or

(vi) the discovery, management and removal by the Design-Builder of Tanks or Tank Systems that are Unknown Facilities and are required to be removed in order to perform the DB Construction Work or are directed to be removed by the Port Authority.

(c) Exceptions to Exclusions, Risk Allocation and Remedies. The provisions of this Section 16.17 shall not operate to relieve the Design-Builder of:

(i) obligations under this Design-Build Contract to the extent arising as a result of the actions or omissions of the Design-Builder or any Design-Builder Occupant, including any breaches of this Design-Build Contract, to the extent that they cause or contribute to conditions that would otherwise be Excluded Liabilities under Section 16.17(a) or qualify as Incremental Environmental Damages under Section 16.17(b); or

(ii) Design-Builder obligations arising under other DB Project Documents or provisions of this Design-Build Contract other than Article 16, except pursuant to a Directive Letter or as a result of an agreed change order implementing a Lessee Change or a Port Authority Change that expressly references Section 16.17 of the Lease and modifies its terms; or

(iii) obligations for which costs and expenses were expressly provided for, or estimated in, the Lessee's Proposal Commitments for obligations arising under the Lease or other Project Documents, unless reductions in cost relating to such obligations are part of a cost savings plan proposed in the Lessee's Proposal Commitments for which a cost reduction or shared savings plan was accepted by the Port Authority; or

(iv) costs and expenses attributable to deviations from the quantities of Known ACM (including any claimed Incremental Environmental Damages under Section 16.17(b)(i)), Known LCP or Known PCB, as such quantities are estimated or presumed to exist in the Available Documents, either individually by category or type, unless, prior to the demolition or removal of such Known Hazardous Materials, the Design-Builder prepares and submits, for Port Authority Approval, documentation confirming that the quantities of such Known Hazardous Materials differ in kind, quality or location from the information provided in the Available Documents.

(d) Developer Obligations.

The Developer shall carry out the D&C Work relating to the matters identified in Exhibit A (for which the Developer is responsible) and the Operations and Maintenance Work as such Work relates to the applicable provisions of Article 16 of the Lease in a manner that will not hamper in any material respect the Design-Builder's ability to discharge its own obligations to the Developer under this Design-Build Contract.

(e) Reserved.

(f) Additional Design-Builder Requirements.

Without limiting anything set forth in this Article 16, the Design-Builder shall carry out and complete the DB D&C Work in accordance with the applicable provisions of this Article 16 so as to enable the Developer to discharge its obligations to the Port Authority under the Lease with respect to the DB D&C Work.

ARTICLE 17

ASSIGNMENTS

Section 17.1 Restrictions on Assignments

(a) This Design-Build Contract requires the personal services of the Design-Builder, and no assignment of the Design-Builder's rights or obligations hereunder may be made without the prior written consent of the Developer (in its sole discretion) and the Port Authority, provided that this provision shall not prohibit the subcontracting of portions of the DB D&C Work.

(b) No Change in Control of the Design-Builder or any member of the Design-Builder shall occur unless consented to by the Developer and, to the extent required under the Lease, the Port Authority.

(c) Any purported voluntary or involuntary assignment by the Design-Builder, in violation of this Section 17.1 shall be null and void *ab initio* and of no force and effect.

(d) The Developer may assign its right and interest in this Design-Build Contract without prior approval from the Design-Builder only (i) in accordance with the Lease, any DB Direct Agreement and the DB Lenders' Direct Agreement (ii) to a subsidiary or affiliate of the Developer or (iii) in connection with any debt or equity financing of the D&C Work. The Developer may also assign this Design-Build Contract to a person having comparable credit and performance capacity subject to the written consent of the Design-Builder, which consent shall not be unreasonably withheld or delayed; provided, however, that prior to any such assignment by the Developer, the Developer or its assignee must pay the Design-Builder all amounts then due and payable by the Developer under this Design-Build Contract. Subject to the rights of the Lenders pursuant to the DB Lenders' Direct Agreement, all of the Developer's rights under this Design-Build Contract may be assigned to the Port Authority, or

its successor, assignee, or designee, contingent only upon delivery of a written request from the Port Authority following termination or expiration of the Lease, allowing the Port Authority or its successor, assign, or designee to assume the benefit of the Developer's rights with liability only for those remaining obligations of the Developer accruing after the date of assumption, such assignment to include the benefit of all Design-Builder warranties, indemnities, guarantees and professional responsibility. Any acceptance of assignment of this Design-Build Contract by the Port Authority, or its successor, assign or designee, shall not operate to make the Port Authority, or its successor, assign or designee, responsible or liable for any breach of this Design-Build Contract by the Developer or for any amounts due and owing under this Design-Build Contract for work or services rendered prior to assignment.

Section 17.2 NOT USED

Section 17.3 NOT USED

Section 17.4 NOT USED

Section 17.5 Submittals

For the avoidance of doubt, the provisions of Sections 8.1 through 8.4 shall not apply to any submittal required pursuant to this Article 17.

ARTICLE 18

LENDERS' RIGHTS

Section 18.1 DB Lenders' Direct Agreement

Concurrently with the execution hereof, the Design-Builder has entered into a direct agreement with the Developer and the Collateral Agent in the form attached hereto as Exhibit 42, which agreement sets forth, among other things, certain rights of the Lenders with respect to this Design-Build Contract. The Design-Builder acknowledges that the Developer has certain rights to conduct Refinancings under the Lease, and the Design-Builder shall use Reasonable Efforts to cooperate with the Developer and any prospective Lenders in connection with the Developer conducting any such Refinancing. In particular, the Design-Builder agrees that it will enter into a direct agreement with the Developer and each person at any time having the rights of a Recognized Mortgagee pursuant to Section 18.2 of the Lease, in each case in substantially the form attached hereto as Exhibit 42 or in such other form as may be satisfactory to the Design-Builder (in its reasonable discretion), the Developer, and the applicable Lenders (each such agreement, including the agreement entered into concurrently with the execution hereof, a "**DB Lenders' Direct Agreement**"). The Design-Builder shall also deliver officer's certificates, parent company guarantees, board resolutions, legal opinions and other documents related to the Design-Builder's organization, authority and guarantees as and when reasonably required by or reasonably requested by the Developer or any Lender in connection with entering into any such DB Lenders' Direct Agreement

Section 18.2 NOT USED.

Section 18.3 NOT USED.

Section 18.4 NOT USED.

Section 18.5 NOT USED.

Section 18.6 NOT USED.

Section 18.7 NOT USED.

Section 18.8 NOT USED.

Section 18.9 NOT USED.

Section 18.10 NOT USED.

Section 18.11 NOT USED.

Section 18.12 NOT USED.

ARTICLE 19

PRINCIPAL DESIGN-BUILDER DOCUMENTS

Section 19.1 Contracts

(a) NOT USED.

(b) The Design-Builder shall be solely responsible for paying each DB Subcontractor and Supplier under any DB Subcontract or other Contract that the Design-Builder executes for the performance of any portion of the DB D&C Work to whom any amount is due from the Design-Builder for services, equipment, materials or supplies. The Design-Builder agrees that, within twenty (20) days following receipt of monies from the Developer for the DB D&C Work performed by any such DB Subcontractor or Supplier, the Design-Builder shall either (i) pay each of its DB Subcontractors and Suppliers that have executed a Contract with the Design-Builder for the proportionate share of the total payment received from the Developer attributable to the DB D&C Work performed by such DB Subcontractor or Supplier (excluding contractual retainage) or (ii) notify the Developer and the DB Subcontractor or Supplier, in writing, of the Design-Builder's intention to withhold all or a part of the DB Subcontractor's or the Supplier's payment, specifying the reason for the non-payment. The Design-Builder also agrees that it shall require all of its DB Subcontractors and Suppliers to include in all of their respective Contracts related to the DB D&C Work a provision that obligates each DB Subcontractor and Supplier to be subject to the corresponding payment requirements as specified in this Section 19.1(b) with respect to each lower-tier Contractor and Supplier.

(c) NOT USED.

(d) The Design-Builder and all DB Subcontractors and Suppliers shall cooperate fully with the Port Authority's Office of the Inspector General, which includes the Office of Investigations and the Audit Department (collectively, the "OIG"). In addition, the Design-Builder and all DB Subcontractors and Suppliers shall cooperate fully with the OIG's Project Integrity Monitor. Such cooperation will include, but is not limited to, providing complete access to all personnel and records in any way related to the DB D&C Work, including in accordance with Section 30.2, and reimbursing the Developer or the Port Authority, as applicable, as may be required in accordance with said Section. A material failure to cooperate with the OIG or the Project Integrity Monitor may result in a Design-Builder Event of Default and/or removal of such Contractor or Supplier.

(e) NOT USED.

(f) (i) The Port Authority is hereby named a third-party beneficiary of all Design-Builder representations and warranties contained in this Design-Build Contract and (ii) each DB Subcontract for the performance of the DB D&C Work shall name the Port Authority as a third-party beneficiary of all DB Subcontractor and Supplier (as the case may be) representations and warranties contained in such DB Subcontract, except where the Port Authority would not be named as a third-party beneficiary pursuant to Best Management Practice; provided, that, pursuant to Section 19.1(f) of the Lease, the Port Authority will have the right to exercise its rights under such representations and warranties only so long as the Developer or a Lender is not pursuing remedies thereunder and, to the extent the Port Authority makes claims exercising such rights of the Developer, the Port Authority shall be responsible for its own acts or omissions in respect of such claims found to be in violation of the relevant DB Subcontract or this Design-Build Contract.

(g) This Design-Build Contract does not impose any obligation or liability upon the Port Authority to the Design-Builder or any of its employees; however, the Design-Builder shall be entitled to make claims for Equivalent Project Relief pursuant to Article 14A hereto with respect to any corresponding claim for which the Developer may be entitled to Primary Project Relief. Pursuant to Section 19.1 of the Lease, nothing in the Lease or this Design-Build Contract will create any contractual relationship between the Port Authority and the Design-Builder or a DB Subcontractor or a Supplier.

(h) NOT USED.

(i) At the Developer's request, the Design-Builder will promptly provide, or cause its DB Subcontractors and Suppliers to promptly provide, the Developer with a copy of any Contract for the DB D&C Work, subject to Section 10.1(f)(ii).

(j) NOT USED.

(k) NOT USED.

(l) NOT USED.

Section 19.2 Construction Security

[REDACTED]

[REDACTED]

Section 19.3 NOT USED.

Section 19.4 NOT USED.

Section 19.5 NOT USED.

Section 19.6 NOT USED.

Section 19.7 NOT USED.

ARTICLE 20

INSURANCE

Section 20.1 Required Insurance

(a) Generally. The Developer and the Design-Builder will each comply with the insurance requirements set forth in Exhibit 39-A and Exhibit 39-B attached hereto. Nothing in this Design-Build Contract is intended to limit a Party's recovery of amounts to which it is entitled under this Article 20. In the event of any conflict or discrepancy between the requirements of this Article 20 and the requirements set forth in Exhibit 39-A and Exhibit 39-B, the order of precedence, from highest to lowest, shall, unless otherwise noted, be as follows: (i) the requirements of this Article 20, (ii) Exhibit 39-A and (iii) Exhibit 39-B.

(b) NOT USED

(c) NOT USED

(d) NOT USED

(e) NOT USED

(f) NOT USED

(g) NOT USED

(h) NOT USED

(i) DB Subcontractor Insurance Requirements. The Design-Builder shall cause each DB Subcontractor to obtain (prior to commencing any DB D&C Work) and maintain all insurance that a reasonable and commercially prudent contractor in North America performing work similar to that to be performed by the DB Subcontractor would maintain, to the extent that such DB Subcontractor is not covered by the Developer-Provided Insurance or the Design-Builder-Provided Insurance, as applicable; provided, that, in any event, with respect to the Construction Work, the Design-Builder shall cause the DB Subcontractor to obtain and maintain all applicable insurance that may be required from time to time pursuant to the TCAP. The Design-Builder shall cause each such DB Subcontractor to include the

additional insureds specified in the applicable insurance policies as required under this Article 20 and Article 20 of the Lease. If requested by the Developer (on its own behalf or on behalf of the Port Authority), the Design-Builder shall promptly provide certificates of insurance evidencing coverage for each DB Subcontractor.

(j) Project-Specific Insurance. Except for the PNTP Work, the DB Subcontractors' auto insurance, and the Design-Builder's and DB Subcontractors' insurance for their tools and equipment, and except as expressly provided otherwise herein, all the Design-Builder-Provided Insurance shall be purchased specifically and exclusively for the Construction Project and extend to all aspects of the DB D&C Work, with coverage limits devoted solely to the Construction Project. Insurance coverages with dedicated limits and identified premiums specific to the Construction Project are acceptable; provided, that they otherwise meet all requirements described in this Design-Build Contract.

(k) Developer-Provided Insurance.

(i) During the Term, the Developer shall procure and maintain the insurance for which premium responsibility is identified as that of the Developer in Exhibit 39-A attached hereto (collectively, the "**Developer-Provided Insurance**"). The Developer-Provided Insurance shall be provided with the endorsements and exclusions as outlined in Exhibit 39-B attached hereto. For any Developer-Provided Insurance, the Developer shall provide proof of payment of premium to the Design-Builder within two (2) Business Days of payment.

(ii) The Commercial General Liability, Workers' Compensation, and Employer's Liability shall be procured in the form of a wrap insurance policy (the "**Wrap**"), which will include ten (10) years completed operations coverage in accordance with this Design-Build Contract and Exhibit 39-B, where the following shall apply:

(A) procurement mechanics and cost responsibility:

(1) the Design-Builder shall be the first named insured of the Wrap and the Developer shall be a named insured on the policies;

(2) the Developer shall be responsible for procuring and maintaining the Wrap and payment of all premiums associated with the Wrap, subject to Section 20.1(m); and

(3) the Design-Builder shall be responsible for any and all forms of collateral, security or escrow that may be required by the insurer(s) in connection with the Wrap.

(B) limits for the Wrap will be as set forth in Exhibit 39-A and Exhibit 39-B.

(iii) Contractors' Pollution Liability coverage will be included for liability arising out of hazardous materials transport and non-owned treatment/disposal facilities.

(iv) Pollution Legal Liability coverage will be included to indemnify for bodily injury, property damage, or amounts which the Developer or the Design-Builder are legally obligated to pay for clean-up/remediation work arising out of the DB D&C Work.

(v) Excess Liability coverage with an annual limit as set forth in Exhibit 39-A, including a reinstatement of the \$300,000,000 limit for the (10) years completed operations coverage, which will be placed in accordance with this Design-Build Contract. The Excess Liability coverage is excess and following form to the following insurances:

(A) Commercial General Liability;

(B) Workers' Compensation; and

(C) Employer's Liability.

(l) Design-Builder-Provided Insurance.

(i) From the date on which such insurance is required under this Design-Build Contract until Final Acceptance Date (except with respect to erosion of limits due to unpaid claims and as otherwise specified in this Design-Build Contract), the Design-Builder shall procure and maintain a subcontractor default insurance policy and/or procure other performance security, such as subcontractor-provided payment and performance bonds or letters of credit, and insurance for its tools and equipment (and insurance required pursuant to the TCAP), and shall cause all DB Subcontractors to procure and maintain auto insurance and insurance for their tools and equipment (collectively, the "**Design-Builder-Provided Insurance**").

(m) Responsibility for Insurance Premiums and Deductibles.

(i) The Developer shall be responsible for payment of all premiums for the Developer-Provided Insurance as further described in Exhibit 39-A, including any associated broker fees or commissions; provided, that the Developer shall be entitled to collect from the Design-Builder the costs associated with any increase in premiums (including those resulting from increased insurance requirements or required extensions of insurance coverage under this Article 20, Article 20 of the Lease or the PNTP Agreement) of the Developer-Provided Insurance that occur between Financial Close and Design-Builder's completion of the DB D&C Work, and which do not result from (1) any general changes in insurance markets, (2) a Port Authority Change or Compensation Event where such increased premiums are paid for by the Port Authority, (3) a Lessee Change, (4) a Developer Change, (5) a Developer Suspension or (6) a Developer Act. The Design-Builder shall not be entitled to an adjustment of the Contract Price for any increased premium costs for which it is responsible hereunder. With the assistance of the Design-Builder, the Developer shall pursue the prompt recovery of any proceeds under the Developer-Provided Insurance relating to the DB D&C Work, notwithstanding that the Design-Builder may be co-insured.

(ii) The Design-Builder shall be responsible for payment of any premium for the Design-Builder-Provided Insurance. The Design-Builder shall also be responsible for payment of:

(A) any deductible associated with claims under the Developer-Provided Insurance for which the Design-Builder has deductible responsibility as set forth in Exhibit 39-A unless solely caused by a Developer Act,

(B) any deductible associated with claims under the Developer-Provided Insurance for which the Developer has deductible responsibility as set forth in Exhibit 39-A if such claims are solely caused by any DB Party,

(C) any deductible associated with claims under Design-Builder-Provided Insurance; provided, that the Developer shall reimburse the Design-Builder for any deductibles associated with claims under the Design-Builder-Provided Insurances which arise solely as a result of a Developer Act,

(D) any broker fee associated with the Design-Builder-Provided Insurance,

(E) any administration fee or claims handling fee associated with any of the Developer-Provided Insurances (but only to the extent caused by a DB Party's negligent acts or omissions or willful misconduct) and Design-Builder-Provided Insurances, and

(F) its pro rata share of any auto liability insurance procured by the Developer on behalf of the Design-Builder.

The deductibles associated with the insurance policies are set forth in Exhibit 39-A.

(iii) The Design-Builder shall ensure that each DB Subcontractor (i) procures and maintains any insurance coverage required of such DB Subcontractor by this Design-Build Contract, (ii) pays any premium associated with such insurance, and (iii) pays any deductible associated with any such insurance, in each case as may be due with respect to an insurance policy to be procured and maintained by such DB Subcontractor in accordance this Design-Build Contract.

Section 20.2 Other Requirements as to Insurance Policies

(a) Insureds under Property and Liability Policies. Subject to the claims of the Collateral Agent, all property damage insurance policies required under this Design-Build Contract shall name the Developer, the Design-Builder, the Port Authority, the City and the EDC (with insurance clauses consistent with the provisions of this Design-Build Contract) as the loss payees, as their respective interests may appear. All liability policies (except for professional liability insurance, employers liability insurance and workers' compensation insurance, if any) required under this Design-Build Contract shall name the Developer, the

Design-Builder, the Port Authority, the City and the EDC (in addition to any others required by Exhibit 39-B hereto, if any) as additional insureds.

(b) Liability Insurance Limits Greater Than Otherwise Required. The Developer or the Design-Builder, as appropriate, and the Port Authority, the City and the EDC (in addition to any others required by Exhibit 39-B hereto, if any) shall be included as additional insureds on all liability insurance (except for professional liability insurance, employers liability insurance and workers' compensation insurance, if any) maintained under this Design-Build Contract in limits greater than otherwise required in this Article 20 to the full extent of all such insurance in accordance with all the terms and provisions hereof.

(c) Contractual Liability Coverage. Each policy of liability insurance constituting Design-Builder-Provided Insurance or Developer-Provided Insurance (except for professional liability insurance) shall contain contractual liability coverage covering the insurable obligations assumed by the applicable Party under any indemnification provisions set forth in this Design-Build Contract. Neither the Design-Builder's nor the Developer's indemnification and defense obligations hereunder are limited to the type or amount of insurance coverage that the Design-Builder or the Developer is required to provide hereunder.

(d) No Impairment. The Parties shall provide coverages that are not impaired or the aggregate is not impaired by any risk not within the scope of this Design-Build Contract, whether past or present, and the limits required shall be fully available to the Port Authority.

(e) Absorption of Losses. Except if and as expressly provided otherwise herein, all losses within the scope of this Article 20 which are not recoverable by insurance or deductible shall be absorbed by the applicable Party. Other losses and expenses not covered by insurance shall also be the responsibility of and paid by the applicable Party. The insurance to be provided and maintained under this Article 20 shall be primary insurance with respect to the Port Authority, the City and the EDC. Any insurance or self-insurance maintained by the Port Authority, the City and the EDC shall not contribute to any loss or claim.

(f) Restrictions on Insurance. Except as otherwise approved in writing by the Port Authority and provided herein (including in Exhibit 39-A and Exhibit 39-B attached hereto), self-funded, self-insurance, self-insured retention, policy fronting, or other non-risk transfer insurance mechanisms by the Developer, the Design-Builder or the DB Subcontractors are not permitted (except for such commercial standard deductibles that are self-funded, including retention under professional liability insurance and pollution liability insurance).

(g) Deductible. Each Party shall pay all deductibles stated to be payable by the applicable Party pursuant to Section 20.1(m). Any deductible (including retention under professional liability insurance and pollution liability insurance) shall not impair or otherwise reduce the limits required for each insurance policy required to be procured and maintained in accordance with this Article 20.

(h) Indemnification. Each Party shall use best efforts to ensure that the insurance it procures and maintains shall provide that the interest of the Port Authority, the City and the EDC, and, to the extent applicable, the other Party, will not be prejudiced by such Party's error, omission or misdescription of the risk insured under the policies, incorrect declaration of values, failure to advise insurers of any change of risk interest or property insured or failure to comply with a statutory requirement, nor by any other misrepresentation, act or omission by such Party that would otherwise result in forfeiture or reduction of coverage. Pursuant to Section 21.1(n) of the Lease or Section 21.1(n) hereof, as applicable, the applicable Party shall indemnify, hold harmless and make whole the Port Authority and, if applicable, the other Party, for any forfeiture of insurance coverage resulting from such error, omission, misdescription, incorrect declaration, failure to advise, misrepresentation, act or omission, and for any expense the Port Authority or the other Party, if applicable, incurs as a result thereof.

(i) Certain Endorsements.

(i) Each Design-Builder-Provided Insurance policy and Developer-Provided Insurance policy required under this Design-Build Contract shall contain a valid provision or endorsement that the policy may not be cancelled, terminated, changed or modified (other than to effectuate an increase in coverage) without giving at least thirty (30) days' advance written notice thereof to the Collateral Agent, the Port Authority and, respectively, the Developer or the Design-Builder (provided, that, with respect to any policy for which such endorsement is not commercially available, the Developer or the Design-Builder, as applicable, shall cause its insurance agent to provide to the Collateral Agent, the Port Authority and, respectively, the Developer or the Design-Builder, as applicable, at least thirty (30) days' advance written notice of any such cancellation, termination, change or modification), and an endorsement to the effect that the insurance as to the interests of the Collateral Agent, the Port Authority (if applicable), the City and the EDC, and, to the extent applicable, the Party not responsible for procuring such insurance policy shall not be invalidated by any act or omission, including negligence, of the insured. The provision or endorsement must specify that the policy may not be cancelled for non-payment of premium unless and until the Collateral Agent and the Port Authority have had thirty (30) days' actual notice and an opportunity to cure such nonpayment of premium. Should the Collateral Agent or the Port Authority pay the premium in order to preserve coverage, the insured party shall be unconditionally liable to reimburse the Collateral Agent or the Port Authority (if applicable), as appropriate, for the full cost of doing so, including any legal fees or other collateral expenses.

(ii) Each liability policy which must be provided to the Port Authority required under this Design-Build Contract shall contain an endorsement providing that in any action or proceeding under or in connection with such policy, the insurance carrier shall not, without obtaining express advance consent from the General Counsel of the Port Authority, raise any defense involving in any way the immunity of the Port Authority, the governmental nature of the Port Authority, the provisions of any statutes respecting suits against the Port Authority or the jurisdiction of the Tribunal over the person of the Port Authority.

(iii) Developer-Provided Insurance required under this Design-Build Contract shall contain an endorsement providing that the protection afforded the Developer thereunder with respect to any claim or action against such Party by a third party shall obtain and apply with like effect with respect to any claim or action against the insured by the other Party or each Port Authority Indemnified Party, and against the other Party and each Port Authority Indemnified Party by the insured, but such endorsement shall not limit, vary, change or affect the protections afforded the other Party, if applicable, the Port Authority, the City and the EDC, as additional insureds.

(iv) *Umbrella and Excess Policies, etc.* Insurance policies required under this Design-Build Contract may be written in the form of primary and excess policies and policies of liability insurance may be written in the form of a primary policy and one or more umbrella policies. Such excess and umbrella policies shall “follow form” with drop down provisions. On request of the other Party, which may be made at any time and from time to time, the Party maintaining an applicable insurance policy shall furnish to the party or parties making such request a true copy of each of the insurance policies, including premiums which the Party maintaining such insurance policy is required to carry under this Design-Build Contract.

(v) *Certificates, etc.* With respect to each insurance policy maintained by either Party hereunder, duplicate original certificates of insurance shall be delivered to the other Party not later than ten (10) days after the date on which such insurance policy is required to be in effect hereunder. With respect to any Design-Builder-Provided Insurance for which a certificate must be provided to the Port Authority under the Lease, if any, the Design-Builder shall provide such certificate to the Developer no later than five (5) Business Days in advance of the Lease deadline for such submission to the Port Authority (which date is ten (10) days after the date on which such insurance policy is required to be in effect under the Lease (i.e., the Lease Commencement Date) or, for renewal policies, ten (10) days prior to the expiration date of each expiring policy). If at any time any of the certificates or policies shall become unsatisfactory to the receiving Party, the Party maintaining such insurance shall promptly obtain a new and satisfactory certificate and policy. In addition to the foregoing, at least once in each twelve (12) month period:

(A) the Design-Builder shall deliver to the Developer (1) certificates for the renewal or replacement of the insurance cover which the Design-Builder takes out; and (2) a certificate of an appropriate officer of the Design-Builder (x) confirming that all insurance policies taken out pursuant to this Design-Build Contract are in force on the date thereof, (y) confirming the amounts and expiration date or dates of such policies and the names of the qualifying insurers issuing such policies, and (z) including certificates evidencing payment of any premiums then due, in a form reasonably satisfactory to the Developer; and

(B) the Developer shall deliver to the Design-Builder (1) certificates for the renewal or replacement of the insurance cover which the Developer takes out pursuant to this Design-Build Contract, and (2) a certificate of an appropriate

officer of the Developer (x) confirming that all insurance policies taken out pursuant to this Design-Build Contract are in force on the date thereof, (y) confirming the amounts and expiration date or dates of such policies and the names of the qualifying insurers issuing such policies, and (z) including certificates evidencing payment of any premiums then due, in a form reasonably satisfactory to the Design-Builder.

(vi) The requirements for insurance procured hereunder shall not in any way be construed as a limitation on the nature or extent of the contractual obligations assumed by the insured Party under this Design-Build Contract or by law. The Developer makes no representation that the scope of coverage and limits of liability specified for any Design-Builder-Provided Insurance or approved variances therefrom are adequate to protect the Design-Builder against its undertakings under this Design-Build Contract to the Developer, or its liabilities to any third party. It is the responsibility of the Design-Builder to determine if any changes or additional coverages are required to adequately protect its interests. No such limits of liability or approved variances therefrom shall preclude the Developer from taking any actions as are available to it hereunder, under the Lease, or otherwise at law or in equity.

(vii) Endorsements adding additional insureds to required policies shall contain no limitations, conditions, restrictions or exceptions to coverage beyond those that apply under the policy generally, and shall state that the interests and protections of each additional insured shall not be affected by any misrepresentation, act or omission of a named insured or any breach by a named insured of any provision in the policy which would otherwise result in forfeiture or reduction of coverage.

(j) NOT USED.

(k) Design-Builder's or Rented Equipment. All equipment (other than any equipment covered under an automobile insurance policy), supplies and materials belonging to the Design-Builder or any DB Subcontractor used by or on behalf of the Design-Builder or any DB Subcontractor for its performance of the DB D&C Work or that is leased or loaned to any of them, shall be brought to and kept at the DB Work and Staging Area at the sole cost, risk and expense of the Design-Builder or such DB Subcontractor, and the Developer shall not be liable for loss or damage thereto, unless caused by a Developer Act, and any insurance policies carried by the Design-Builder, any DB Subcontractor, or any third party on such equipment, supplies and materials shall provide for a waiver of the underwriters' right to subrogation against the Port Authority, the Developer, the Lenders, the Lenders' Technical Advisor and their respective permitted assigns, successors, parent companies, subsidiaries, affiliates, employees, insurers and underwriters.

(l) Unemployment and Other Insurance Benefits. The Design-Builder agrees to and does hereby accept full and exclusive responsibility and liability for the withholding and payment of any and all taxes and contributions levied or assessed against the Design-Builder for unemployment insurance and for retirement benefits, and for pensions and annuities now imposed, or hereafter imposed, by the Governmental Entities with respect to, assessed against

or measured by wages, salaries or other remuneration paid to persons employed by the Design-Builder in connection with the DB D&C Work. The Design-Builder further agrees to indemnify and hold harmless the Port Authority, the Developer, the Lenders and their respective permitted assigns, successors, parent companies, subsidiaries, affiliates and employees from any and all liability therefor.

(m) Design-Build or Similar Exclusions. The Design-Builder will ensure that any policy which the Design-Builder is responsible to maintain under this Design-Build Contract will delete any design-build or similar exclusions that could compromise coverages because of use of the design-build delivery method.

Section 20.3 Nature of Insurers

All insurance policies provided for in this Design-Build Contract shall be issued by insurance carriers having an A.M. Best Rating of at least A- (A minus) (VII) or an equivalent rating by a comparable insurance rating agency.

Section 20.4 Review by the Port Authority

Pursuant to Section 20.4 of the Lease, binders and certificates of insurance for all insurance policies required under the Lease (including the insurance policies required to be maintained by the Design-Builder hereunder) are subject to Port Authority Approval. The Design-Builder shall provide such binders and certificates with respect to Design-Builder-Provided Insurance policies to the Developer no less than five (5) Business Days in advance of the Lease deadline for such submissions to the Port Authority (which is at least thirty (30) days prior to the date that such policies are required pursuant to Article 20 of the Lease (i.e., the Lease Commencement Date) and Article 10 of the Lease). Pursuant to Section 20.4 of the Lease, all insurance policies required under the Lease (including the insurance policies required to be maintained by the Design-Builder hereunder) are subject to Port Authority Approval. The Design-Builder shall provide copies of all Design-Builder-Provided Insurance policies to the Developer no less than five (5) Business Days in advance of the Lease deadline for such submissions to the Port Authority (which is thirty (30) days after the inception date of such insurance policies). Pursuant to Section 20.4 of the Lease, insurance policies required under the Lease (including the insurance policies required to be maintained by the Design-Builder hereunder) may be reviewed by the Port Authority for adequacy of terms, conditions, coverages and limits of coverage at any time and from time to time and that the Port Authority may, at any such time, require an increase in the minimum limits, or additions, deletions, amendments or modifications to the insurance requirements, or may require such other and additional insurance against such other insurable hazards, as the Port Authority may deem appropriate. Subject to Section 20.2(j) hereof, the Parties shall promptly comply with such requirements. Except as provided in Sections 20.2(j) and 20.9, the limits of coverage under any policy shall not be reduced without the Port Authority's prior written consent.

Section 20.5 Settlement of Losses

The proceeds from any property insurance policy (except any business interruption insurance) or any business interruption insurance maintained hereunder shall be utilized in accordance with the terms of the Lease and the Financing Documents; provided, that any business interruption insurance proceeds actually recovered by the Developer shall offset any Delay LDs otherwise payable by the Design-Builder to the Developer or, if such Delay LDs have been paid in advance by the Design-Builder to the Developer, shall be used to reimburse the Design-Builder for such advance payment of Delay LDs in an amount equal to the business interruption insurance proceeds actually recovered by the Developer.

Section 20.6 Separate Insurance

Neither Party shall carry separate insurance concurrent in form or contributing in the event of loss with that required under this Design-Build Contract (other than any retained corporate policies), without the prior written approval of the other Party and the Port Authority. If such separate insurance is approved by the other Party and the Port Authority, the Party procuring such insurance shall deliver to the other Party the policies therefor or duplicate originals thereof. All such separate insurance policies must comply with the requirements of this Article 20 (except with respect to minimum limits). Each Party shall be solely responsible for the acquisition and costs of any separate or additional coverages obtained by it that are permitted hereunder.

Section 20.7 Defense Costs

Unless otherwise agreed by the Parties and, if applicable, the Port Authority, in their reasonable discretion, no defense costs shall be included within or erode the limits of coverage of any of the primary insurance policies, except that defense costs may be included within the limits of coverage of professional liability, contractor's pollution and environmental impairment liability and pollution legal liability policies, if any.

Section 20.8 Contesting Denial of Coverage

If any insurer under an insurance policy described in this Article 20 denies coverage with respect to any claims reported to such insurer and both Parties agree to contest the denial of coverage, the Party maintaining such insurance shall bear all the costs of contesting such denial of coverage. If, however, the Parties do not agree that the denial of coverage should be contested, the Party electing to contest the denial of coverage shall bear all the costs of contesting such denial of coverage.

Section 20.9 Lender Insurance Requirements

If under the terms of any Financing Document either Party is obligated to, and does, carry insurance coverage with higher limits or lower deductibles, or broader coverage than required under this Design-Build Contract, the provision of such insurance shall satisfy the applicable requirements of this Design-Build Contract; provided, that such policy meets all the other applicable requirements of this Article 20.

Section 20.10 Notices and Prosecution of Claims

The Design-Builder shall immediately notify the Developer, and thereafter keep the Developer fully informed, of any incident, potential claim, claim or other matter of which the Design-Builder becomes aware that involves or could conceivably involve the Port Authority, the Developer, the Lenders, the Lenders' Technical Advisor and their respective permitted assigns, successors, parent companies, subsidiaries, affiliates, employees, insurers and underwriters as a defendant. In particular, the Design-Builder shall provide the Developer (and the Developer shall provide the Port Authority) with the following written notices: (a) as soon as practicable, but in no event later than five (5) days after the occurrence of any Claim made by the Design-Builder or any other party under any insurance obtained in connection with the Construction Project or otherwise in connection with the Premises, which Claim involves any of the following:

- (i) Any incident involving the general public or a Sublessee;
- (ii) Any fatality;
- (iii) Any incident that involves an amputation or potential loss of use of a limb or body part;
- (iv) Incidents that might result in the loss of bodily functions, senses, or abilities;
- (v) Head injuries resulting in unconsciousness;
- (vi) Falls from any height;
- (vii) Major property damage, including collapse, explosion, or fire;
- (viii) Any disruption, causing interruption to the operations of the Terminal B Facilities;
- (ix) Any impairment to any security/fire protection systems at any Terminal B Facility;
- (x) Any incident resulting in injury to two or more persons; and
- (xi) Any incident where an ambulance is called; and

(b) the expiration of any Design-Builder-Provided Insurance policy (whether by its terms or due to non-payment of premium or otherwise) at least fifteen (15) days prior to such expiration, including notification of the date of such expiration.

(c) The Parties acknowledge that they and the Port Authority shall have the right, but not the obligation, to report directly to insurers and process their claims against the insurance taken out by the other pursuant to this Design-Build Contract.

(d) The Design-Builder shall cooperate with the Developer as necessary for the Developer to fulfill its duties under Sections 20.8 and 20.10 with respect to Developer-Provided Insurance.

(e) If in any instance the Design-Builder has not performed its obligations respecting Design-Builder-Provided Insurance or is unable to enforce and collect any such insurance for failure to assert claims in accordance with the terms of the Design-Builder-Provided Insurance or to prosecute claims diligently, then, for purposes of determining the Design-Builder's liability and the limits thereon or determining reductions in compensation due from the Developer to the Design-Builder on account of available insurance, the Design-Builder shall be treated as if it has elected to self-insure up to the full amount of insurance coverage which would have been available had the Design-Builder performed such obligations and not committed such failure.

Section 20.11 Compliance with Insurance Policies

Each Party shall:

(a) comply with the terms, conditions and requirements of all insurance policies required pursuant to this Article 20; and

(b) not do or omit to do anything, or permit (insofar as it is within its power) any other person to do or omit to do anything, on or with respect to the Premises or the Construction Project or with respect to the DB D&C Work that results in or could reasonably be expected to result in the cancellation of any insurance policies or that would entitle any insurer to refuse to pay any claim under any insurance policy (in whole or in part) or that would otherwise prejudice the interests of the Design-Builder, the Developer, the Port Authority, the City or the EDC in an insurance policy or claim under any insurance policy.

Section 20.12 Failure to Procure Insurance

If the Design-Builder fails to procure and maintain or fails to cause others to procure and maintain the insurance required pursuant to this Design-Build Contract for which the Design-Builder is responsible, or any portion thereof, the Developer or the Port Authority, as applicable, shall have the right, but not the obligation, to procure and maintain the required insurance for and in the name of the Developer or the Port Authority, as applicable. If the Developer or the Port Authority procures any such insurance, the Design-Builder shall promptly pay the cost thereof and shall furnish all information necessary to procure and maintain such insurance. Neither the Design-Builder nor the Developer shall violate or knowingly permit any violation of the coverage terms and conditions of such insurance. The required insurance, where applicable, shall include a severability of interest clause, and the Design-Builder agrees that none of the insurance policies required under this Design-Build Contract shall contain a clause that would void coverage due to the individual actions of any other insured parties.

The Developer shall be responsible for claims that occur as a result of a failure to maintain any Developer-Provided Insurance if such failure is solely caused by a Developer Act.

Section 20.13 NOT USED

Section 20.14 Uninsured or Underinsured Loss

Pursuant to Section 20.14 of the Lease, (1) provided that the Developer has carried insurance to the extent required by Article 20 of the Lease, in the event that a casualty event occurs (other than as a result of the gross negligence or willful misconduct of the Developer or any of its Contractors) with respect to which the amount of insurance proceeds received by the Developer is insufficient to reconstruct the affected facilities in accordance with the plans and specifications for such facilities as the same existed prior to the applicable loss, then the Developer will promptly propose a plan with respect to (i) reasonable modifications to the affected facilities that would allow such facilities to be rebuilt, solely with the insurance proceeds made available for such purpose (including by making use of reasonable value engineering or other design approaches to reduce applicable rebuilding costs), as closely as practicable to a condition of reasonably comparable operating capacity, efficiency and functionality, consistent with the terms of the Financing Documents (to the extent not inconsistent with the Lease), and (ii) any modifications to the requirements of the Lease (including the Requirements and Provisions for Work and the Performance Standards and Measurement Provisions) that may be necessary or appropriate in light of the modifications to the affected facilities, and (2) such proposal will be deemed a Submittal subject to Port Authority Approval under Section 8.4(a) of the Lease.

Section 20.15 Descriptions Not Limitations

The coverages referred to in this Design-Build Contract are set forth in full in the respective policy forms, and the descriptions of such policies in this Design-Build Contract are not intended to be complete, nor to alter or amend any provision of the actual policies, and in matters, if any, in which such descriptions may be conflicting with such instruments, the

provisions of the policies of insurance shall govern; provided, however, that neither the content of any insurance policy or certificate nor the Developer's or the Design-Builder's approval thereof shall relieve the other of any of its obligations under this Design-Build Contract or otherwise.

Section 20.16 No Limitation of Liability

The required coverages referred to and set forth in this Design-Build Contract shall in no way affect, nor are they intended as a limitation of, the Design-Builder's liability with respect to its performance of the DB D&C Work.

ARTICLE 21

INDEMNITY

Section 21.1 Indemnification Pursuant to the Lease

(a) The Design-Builder shall indemnify and hold harmless the Developer for any liability for Losses that the Developer incurs to any Port Authority Indemnified Party pursuant to Section 21.1 of the Lease to the extent resulting from any acts or omissions of the Design-Builder or any other DB Party.

(b) The Design-Builder and the Developer acknowledge that the Port Authority Indemnified Parties shall be indemnitees, with direct right of enforcement, in each indemnity given by the Design-Builder under this Design-Build Contract. Notwithstanding anything to the contrary herein, any such indemnification of any Port Authority Indemnified Party shall be in accordance with the provisions of Article 21 of the Lease, including the provisions of Section 21.3 thereof with respect to defense of Third-Party Claims.

(c) The Developer shall indemnify and hold harmless the Design-Builder for any liability for Losses that the Design-Builder incurs to any Port Authority Indemnified Party pursuant to Section 21.1(b) to the extent resulting from any acts or omissions of the Developer or any of its Contractors (excluding the Design-Builder and any DB Subcontractor).

Section 21.1A Additional Indemnification by the Design-Builder

In addition to the indemnification set forth in Section 21.1(a), the Design-Builder shall indemnify, defend and hold harmless the Developer for any losses suffered or costs incurred by the Developer (including as a result of claims against the Developer by third parties) to the extent caused by:

(a) any third-party claims for bodily injury or death or property damage (including any claims for economic losses related thereto) arising out of (1) the Design-Builder's negligent performance of this Design-Build Contract or (2) any breach of this Design-Build Contract by any DB Party or any breach thereof by the Developer directly caused by the acts or omissions of any DB Party;

(b) any third-party claims for bodily injury or death or property damage (including economic damages attributable to said bodily injuries or property damages) arising out of (1) the Design-Builder's negligent performance of this Design-Build contract, or (2) any breach thereof by Design-Builder directly caused by the acts or omissions of any DB Party;

(c) gross negligence, willful misconduct or actual fraud of any DB Party, including the directors, officers, employees or agents of any DB Party;

(d) patent or copyright infringement or similar misuse (actual or alleged) by the Design-Builder of any protected information relating to the Construction Project or the DB D&C Work;

(e) any third-party claims brought against the Developer to the extent caused by (w) Hazardous Materials brought by any DB Party onto the Premises, (x) failure of any DB Party to comply with any requirement of this Design-Build Contract imposed on the Design-Builder and relating to Hazardous Materials or applicable Environmental Laws and Governmental Approvals, (y) any Hazardous Materials Release caused by any DB Party or (z) any spreading, migration, exposure or toxicity of Hazardous Materials due to the negligence, recklessness, or willful misconduct of any DB Party; or

(f) payments to any person with respect to taxes relating to or imposed on the Design-Builder, including the Design-Builder's income;

(each a "**Design-Builder Act**").

Section 21.2 Indemnification by the Developer

In addition to the indemnification set forth in Section 21.1(c), the Developer shall indemnify, defend and hold harmless the Design-Builder for any losses suffered or costs incurred by the Design-Builder (including as a result of claims against the Design-Builder by third parties) to the extent caused by:

(a) any third-party claims for bodily injury or death or property damage (including any claims for economic losses related thereto) arising out of (1) the Developer's negligent performance of this Design-Build Contract or (2) any Developer Act described in clause (1) or (2) of such definition;

(b) any Developer Act described in clause (3) of such definition; or

(c) any third-party claims brought against the Design-Builder to the extent caused by (w) Hazardous Materials brought onto the Premises by the Developer or any Contractor (other than the Design-Builder and its contractors) retained by the Developer to perform any obligation of the Developer with respect to the D&C Work or the Operations and Maintenance Work or by any Sublessee or Scheduled Aircraft Operator (but specifically excluding, in all cases, any act or omission of the Port Authority) (each such party, including the Developer, being referred to in this subsection (c) as a "**Covered Party**"), (x) failure of the Developer to comply with any requirement of this Design-Build Contract imposed on the

Developer and relating to Hazardous Materials or applicable Environmental Laws and Governmental Approvals, (y) any Hazardous Materials Release caused by any Covered Party or (z) any spreading, migration, exposure or toxicity of Hazardous Materials due to the negligence, recklessness, or willful misconduct of any Covered Party.

Section 21.3 Defense of Third-Party Claims

(a) If either Party becomes aware of the commencement or assertion of any third-party claim for which it might be entitled to indemnification hereunder, such Party will as promptly as practicable notify the other Party in writing of such third-party claim, and such notice will include a copy of the third-party claim and any related correspondence or documentation from the third party asserting such third-party claim.

(b) The Developer or the Design-Builder, as applicable, shall have the right, by provision of written notice, to require the other Party who has indemnification obligations with respect to any third-party claim to defend, at the indemnifying party's sole expense, with counsel satisfactory to the indemnified party (in its reasonable discretion), and third-party claim (even if such third-party claim is groundless, false or fraudulent), and the indemnifying party shall so defend such third-party claim.

(c) The indemnified party shall have the right to employ its own counsel, and the indemnifying party shall bear the reasonable fees, costs and expenses of such counsel, if the indemnifying party has not employed counsel to represent the indemnified party within a reasonable time after notice of the institution of such action.

(d) The indemnifying party shall not enter into any settlement or compromise in connection with a third-party claim without the indemnified party's prior written consent, which consent will not be unreasonably withheld or delayed, except where such settlement or compromise is approved by the court after the indemnifying party receives reasonable notice and the opportunity to be heard and such court approval has become final and non-appealable.

(e) The provisions of this Section 21.3 shall not apply to defense by either Party of any third-party claim in connection with indemnification of any Port Authority Indemnified Party pursuant to Section 21.1(b) of the Lease, which shall instead be governed by the provisions of Section 21.3 of the Lease.

Section 21.4 Losses Net of Insurance; Reductions and Subrogation; Other Indemnity Provisions

(a) For purposes of this Article 21, the amount of any Losses for which indemnification is provided under Article 21 shall be reduced by any amounts actually recovered by the indemnified party under insurance policies with respect to such Losses, it being understood that the obligations of the indemnifying party hereunder shall not be so reduced to the extent that any such recovery results in an increase in the indemnified party's insurance premiums, or results in any other additional cost or expense to any such indemnified party.

(b) If the amount of any Loss incurred by an indemnified party at any time subsequent to the making of a payment required under this Article 21 on account of such Losses (an “**Indemnity Payment**”) is reduced by any subsequent recovery, settlement or otherwise under or pursuant to any insurance coverage, or pursuant to any claim, recovery, settlement or payment by or against any other Person, the amount of such reduction (less any costs, expenses (including Taxes) or premiums incurred or increased in connection therewith), together with interest thereon from the date of such recovery, settlement or reduction pursuant to Section 35.15, shall promptly be repaid by the indemnified party to the indemnifying party.

(c) Upon making a full Indemnity Payment, the indemnifying party, to the extent of such Indemnity Payment, shall be subrogated to all rights of the indemnified party against any third-party in respect of the Losses to which the Indemnity Payment relates. Until the indemnified party recovers full payment of its Losses, any and all claims of the indemnifying party against any such third-party on account of such Indemnity Payment shall be subordinated in right of payment to the indemnified party’s rights against such third-party.

(d) Wherever the Developer or the Design-Builder is liable to indemnify the other Party or is otherwise liable for the losses of the other Party, such other Party shall be obliged to use Reasonable Efforts to mitigate its damages or losses.

Section 21.5 Indemnity in Favor of the City

Without limiting any other indemnity obligations of the Design-Builder or any other DB Party hereunder, the Design-Builder shall indemnify and hold harmless the Developer for any liability that the Developer incurs pursuant to Section 21.5 of the Lease to the extent resulting from any acts or omissions of the Design-Builder or any other DB Party. The Developer shall indemnify and hold harmless the Design-Builder for any liability that the Design-Builder incurs to any Port Authority Indemnified Party pursuant to this Section 21.5 (as a result of Design-Builder’s indemnity in favor of the Port Authority Indemnified Parties pursuant to Section 21.1(b)) to the extent resulting from any acts or omissions of the Developer or any of its Contractors (excluding the Design-Builder and any DB Subcontractor).

Section 21.6 Port Authority Indemnification

In the event that the Developer is entitled to be indemnified by the Port Authority pursuant to the Lease for an act, event or circumstance that relates to the DB D&C Work, or the Design-Builder submits a claim against the Developer for which the Developer is entitled to indemnification from the Port Authority under the Lease, the Developer shall work with the Design-Builder in preparing any such claim for indemnification and, to the extent practicable, provide the Design-Builder with an opportunity to participate in the discussion and resolution of such claim with the Port Authority. Upon receipt by the Developer of indemnification payments from the Port Authority in relation to the DB D&C Work or a claim submitted by the Design-Builder for which the Developer is entitled to indemnification from the Port Authority under the Lease, the Design-Builder shall be entitled to such payments as and to the extent that they relate to the DB D&C Work or the Design-Builder’s claim.

Section 21.7 Sublessee Indemnification

(a) The Developer shall use Reasonable Efforts to include in each new Sublease it negotiates a legally-enforceable indemnity or other contractual provision, without any limitation of liability with respect thereto (other than for economic loss), which indemnity or other contractual provision requires the Sublessee to indemnify or otherwise compensate the Developer for any and all losses or damages suffered and costs (including attorneys' fees and other costs incurred to enforce or prosecute such indemnity or other contractual provision against the Sublessee) incurred by the Developer, including, but not limited to, losses, damages and costs relating to claims against the Developer by third parties (including the Design-Builder) to the extent caused by breach of such Sublease or other acts or omissions of such Sublessee (or a related Scheduled Aircraft Operator using such sub-leased space). Further, the Developer shall use Reasonable Efforts to include in any such Sublease third-party beneficiary provisions that enable the Design-Builder to enforce such indemnity or other contractual provision(s) of such Sublease with respect to claims relating to the DB D&C Work.

(b) In the event that the Developer is entitled to be indemnified by (or otherwise has a compensation claim against) a Sublessee pursuant to a Sublease for an act, event or circumstance that relates to the DB D&C Work, the Developer shall, if necessary and applicable to the Design-Builder, (i) notify the Design-Builder and work with the Design-Builder in good faith to prepare a claim for indemnification or compensation and (ii) to the extent permitted by the Sublease or otherwise practicable, provide the Design-Builder with an opportunity to participate in the discussion and resolution of such claim with the Sublessee.

(c) The Design-Builder and the Developer shall use Reasonable Efforts to provide each other with all information and documents reasonably necessary to pursue any claim to be made by either the Developer or the Design-Builder under any Sublease that relates to the DB D&C Work.

(d) If the Design-Builder has the right under the Sublease to prosecute claims directly against the Sublessee, the Design-Builder may, in its sole discretion (upon written notice to the Developer), pursue such indemnity or compensation claim directly against the Sublessee; provided, that any expenses incurred by the Design-Builder in prosecuting such claim shall be paid by the Design-Builder if not paid by the Sublessee as part of the resolution of such claim.

(e) The Developer's obligation to pursue claims on behalf of the Design-Builder (if the Design-Builder does not elect to pursue such claims directly pursuant to sub-clause (d) above) and the Design-Builder's entitlement to payment of amounts received by the Developer in respect of claims pursued by the Developer in accordance with this Section 21.7 shall be governed by the same process that is established in this Design-Build Contract for making, pursuing and resolving claims for Equivalent Project Relief with the Port Authority.

Section 21.8 Survival

The indemnification obligations contained in this Article 21 shall survive expiration or early termination of this Design-Build Contract or completion of the DB D&C Work.

ARTICLE 22

REPRESENTATIONS AND WARRANTIES

Section 22.1 Design-Builder Representations and Warranties

The Design-Builder, on behalf of itself and its members, as applicable, hereby represents and warrants to the Developer and to the Port Authority (which may rely upon such representations and warranties as if it was a party to this Design-Build Contract) and, if applicable, to the underwriters and Lenders (each of which may rely upon such representations and warranties as if it was a party to this Design-Build Contract) as follows:

(a) The Design-Builder is a joint venture duly organized, validly existing and in good standing (or its equivalent) under the laws of the jurisdiction of its organization, has the requisite power and all required licenses to carry on its present and proposed activities, and has full power, right and authority to do all acts and things and execute and deliver all documents required to be done, observed or performed by it in connection with its engagement by the Developer, including performing each and all of the obligations of the Design-Builder provided for herein and in the DB Project Documents to which it is a party. The Design-Builder is duly qualified to do business in the State of New York, and will remain so qualified throughout the Term and for as long thereafter as any obligations remain outstanding under the Contract Documents.

(b) The execution, delivery and performance of its obligation under this Design-Build Contract and each other DB Project Document to which the Design-Builder is a party have been duly authorized by all necessary action of the Design-Builder; each person executing this Design-Build Contract and the other DB Project Documents to which the Design-Builder is a party on the Design-Builder's behalf has been duly authorized to execute and deliver this Design-Build Contract on the Design-Builder's behalf; and this Design-Build Contract and each other DB Project Document to which the Design-Builder is a party has been duly executed and delivered by the Design-Builder.

(c) Neither the execution and delivery by the Design-Builder of this Design-Build Contract and the other DB Project Documents to which it is a party, nor the consummation of the transactions or the performance of the obligations contemplated hereby or thereby, is in conflict with or has resulted or will result in (A) a default under or a violation of the organizational documents of the Design-Builder or any other agreements or instruments to which it is a party or which are binding the Design-Builder or any of its property or assets or (B) a default under or violation of any Applicable Law.

(d) This Design-Build Contract and each other DB Project Document to which the Design-Builder is (or will be) a Party constitutes (or at the time of execution and delivery will

constitute) the valid and binding obligation of the Design-Builder, enforceable against the Design-Builder and each joint venture member of the Design-Builder (as the case may be), in accordance with its terms, subject only to applicable bankruptcy, insolvency and similar laws affecting the enforceability of the rights of creditors generally and the general principles of equity.

(e) There is no action, suit, proceeding, investigation or litigation pending or served on the Design-Builder or, to the Design-Builder's actual knowledge, threatened which (A) would reasonably be expected to have a material adverse effect on the ability of the Design-Builder to perform its obligations under this Design-Build Contract or any other DB Project Document to which it is a party, or (B) challenges the Design-Builder's authority to execute, deliver or perform, or the validity or enforceability of, this Design-Build Contract or any other DB Project Document to which it is a party, or (C) challenges the authority of the Design-Builder's representative executing this Design-Build Contract or any other DB Project Document to which it is a party; and the Design-Builder has disclosed to the Developer any pending and un-served or threatened action, suit, proceeding, investigation or litigation with respect to such matters of which the Design-Builder is aware.

(f) The Design-Builder and its Contractors have (i) obtained and maintained, and throughout the Term shall maintain, all required registrations, authority, license status, professional ability, skills and capacity to perform the then-current stage of the DB D&C Work, (ii) obtained and will maintain all necessary or required registrations, permits, licenses and approvals required under Applicable Law to perform the DB D&C Work and (iii) expertise, qualifications, experience, competence, skills and know-how to perform the DB D&C Work in accordance with this Design-Build Contract.

(g) Without limiting its rights and remedies expressly granted hereunder, the Design-Builder has evaluated the constraints (including the Project Specific Constraints) affecting the DB D&C Work, including the conditions of the Applicable Laws, Applicable Standards, Best Management Practices and Governmental Approvals then in effect, and has reasonable grounds for believing, and does believe, that the Construction Project can be designed and built within such constraints.

(h) Prior to the date of this Design-Build Contract, the Design-Builder has familiarized itself with the requirements of the Contract Documents and any and all Applicable Laws relating to the DB D&C Work (including those Applicable Laws relating to the use of Federal-aid funds, but only with respect to documentation concerning the nature and cost of the DB D&C Work required for applications for such funds), and, to the extent related to the DB D&C Work, the conditions of any required Governmental Approvals then in effect, and all DB D&C Work will be performed in compliance with such requirements, Applicable Laws and Governmental Approvals.

(i) The Design-Builder has no reason to believe that any Governmental Approval required to be obtained by the Design-Builder will not be granted in due course and, thereafter, remain in effect so as to enable the DB D&C Work to proceed in accordance with the DB Project Documents.

(j) All DB D&C Work will be performed by personnel who are skilled, experienced and competent in their respective trades or professions, who are professionally qualified to perform the DB D&C Work in accordance with the Contract Documents and, where required by Applicable Law and/or Applicable Standard, by or under the supervision of Persons who hold all necessary, valid licenses to practice in the State of New York.

(k) No later than the Proposal Due Date, the Design-Builder has disclosed to the Developer in writing all organizational conflicts of interest of the Design-Builder and its Contractors of which the Design-Builder was aware, and between the Proposal Due Date and the DB Contract Effective Date the Design-Builder has not obtained actual knowledge, after due inquiry and investigation, of any additional organizational conflict of interest, and there have been no organizational changes to the Design-Builder or the Contractors identified in the Proposal, which have not been approved in writing by the Port Authority and the Developer. For this purpose, “organizational conflict of interest” has the meaning set forth in the Instructions to Proposers.

(l) None of the Design-Builder, nor any member of the Design-Builder, nor any of their respective officers, directors or employees, (i) is suspended or debarred, subject to a proceeding to suspend or debar it, or subject to an agreement for voluntary exclusion, from bidding, proposing or contracting with any Federal or state department or agency; (ii) has been convicted, pled guilty or *nolo contendere* to a violation of law involving fraud, conspiracy, collusion, bribery, perjury, material misrepresentation, or any other violation that shows a similar lack of moral or ethical integrity or (iii) is then barred or restricted from owning, operating or providing services in connection with the DB D&C Work under Applicable Law, including the Foreign Investment and National Security Act of 2007, 50 USC App. 2170 (HR556).

(m) The Design-Builder is not in breach of any Applicable Law or Applicable Standard that would have a material adverse effect on the DB D&C Work.

(n) The audited consolidated financial statements of each member of the Design-Builder and each D&C Guarantor for the most recent reporting year prior to the date of the Finalized Proposal for which such audited statements are available have been prepared on a basis consistently applied and using GAAP or equivalent accounting principles utilized and generally accepted in the country of incorporation of such party, and audited by an independent certified public accountant (applying GAAP or equivalent auditing standards utilized and generally accepted in the country of incorporation of such party) and give a true and fair view of the consolidated financial condition of each such entity or group (as applicable) and are unqualified for the accounting period in question.

(o) There has been no material adverse change in the financial condition of the Design-Builder, any member of the Design-Builder or any D&C Guarantor since the date of its most recent audited financial statements that would have a material adverse effect on (i) to the knowledge of the Design-Builder, the Developer’s ability to perform its obligations under the Lease and the other Project Documents or (ii) such entity’s ability to perform its

obligations under the agreements with respect to the Construction Project to which it is a party.

(p) All written information and certifications furnished by or on behalf of the Design-Builder to the Developer or the Port Authority, or any of their representatives or advisors, as part of or in connection with the Proposal or the negotiation of the Contract Documents or the other Project Documents or delivered on or on behalf of the Design-Builder to the Developer or any Person on its behalf pursuant to the Lease or this Design-Build Contract was true and accurate in all material respects when given and taken as a whole and is true on the date on which this representation is made or repeated and taken as a whole, and there are no other facts or matters the omission of which made any statement or information contained in the written information provided to the Developer or the Port Authority or to any of their representatives or advisors misleading in any material respect as of the relevant date of delivery thereof or the date on which this representation is made or repeated and all expressions of opinion contained therein were honestly made on reasonable grounds after due and careful inquiry.

(q) The members of the Design-Builder are Skanska USA Building Inc., Skanska USA Civil Northeast Inc. and Walsh Construction Company II, LLC and the capital stock (or equivalent interest) of the Design-Builder (including options, warrants and other rights to acquire capital stock (or equivalent equity interest)) is owned by Persons whom the Design-Builder has identified in writing to the Developer prior to the DB Contract Effective Date.

(r) None of the Design-Builder nor any member of the Design-Builder is a Prohibited Party.

(s) The Design-Builder owns, or possesses a valid and enforceable right to use, all Intellectual Property necessary to perform the DB D&C Work and to conduct its business as presently conducted. No claim has been asserted or threatened by any third party alleging that the Design-Builder, the DB D&C Work or the Design-Builder's Intellectual Property infringes or misappropriates any intellectual property of any third party.

(t) Prior to entering into this Design-Build Contract, the Design-Builder made or caused to be made to the Developer, in writing, all the disclosures required to be made or caused to be made by the Design-Builder under the Contract Documents, and as of the DB Contract Effective Date all such disclosures will continue to be true, complete and accurate.

The Design-Builder acknowledges that the Developer will be relying on the Design-Builder's representations and warranties for purposes of executing this Design-Build Contract and the Lease and making corresponding representations and warranties under the Lease, and the Design-Builder agrees that such reliance is warranted.

Section 22.2 Developer Representations and Warranties

The Developer hereby represents and warrants to the Design-Builder that:

(a) The Developer is a limited liability company duly organized, validly existing and in good standing (or its equivalent) under the laws of the State of Delaware, has the requisite power and all required licenses to carry on its present and proposed activities, and has full power, right and authority to do all acts and things and execute and deliver all documents required to be done, observed or performed by it in connection with this Design-Build Contract and the Lease. The Developer is duly qualified to do business in the State of New York and will remain qualified throughout the Term and for as long thereafter as any obligations remain outstanding under the Contract Documents.

(b) This Design-Build Contract has been duly authorized by the Developer, and constitutes a legal, valid and binding obligation of the Developer enforceable against the Developer in accordance with its terms.

(c) This Design-Build Contract and each other DB Project Document to which the Developer is (or will be) a Party constitutes (or at the time of execution and delivery will constitute) the valid and binding obligation of the Developer, enforceable against the Developer in accordance with its terms, subject only to applicable bankruptcy, insolvency and similar laws affecting the enforceability of the rights of creditors generally and general principles of equity.

(d) Each person executing this Design-Build Contract for the Developer has been duly authorized to execute and deliver this Design-Build Contract on behalf of the Developer; and this Design-Build Contract has been duly executed and delivered by the Developer.

(e) Neither the execution nor delivery by the Developer of this Design-Build Contract is in conflict with or will result in a default under or violation of the Developer's organizational documents or any other agreements or instruments to which it is a party or by which it is bound.

(f) The execution and delivery by the Developer of this Design-Build Contract, and the performance by the Developer of its obligations hereunder, will not conflict with any Applicable Laws.

(g) There is no action, suit, proceeding, investigation or litigation pending and served on the Developer which challenges the Developer's authority to execute, deliver or perform, or the validity or enforceability of, this Design-Build Contract, or which challenges the authority of any Developer official executing this Design-Build Contract; and the Developer has disclosed to the Design-Builder any pending action, suit, proceeding, investigation or litigation with respect to such matters of which the Developer is aware.

(h) None of the Developer, nor any member of the Developer, nor any of their respective officers, directors or employees, (i) is suspended or debarred, subject to a proceeding to suspend or debar it, or subject to an agreement for voluntary exclusion, from

bidding, proposing or contracting with any Federal or State department or agency; (ii) has been convicted, plead guilty or *nolo contendere* to a violation of laws involving fraud, conspiracy, collusion, bribery, perjury, material misrepresentation, or any other violation that shows as similar lack of moral or ethical integrity or (iii) is then barred or restricted from owning, operating or providing services in connection with the DB D&C Work or the Construction Project under Applicable Law, including the Foreign Investment and National Security Act of 2007, 50 USC App. 2170 (HR556).

The Developer acknowledges that the Design-Builder will be relying on the Developer's representations and warranties for purposes of executing this Design-Build Contract, and the Developer agrees that such reliance is warranted.

ARTICLE 23

DESIGN-BUILDER EVENTS OF DEFAULT

Section 23.1 Design-Builder Event of Default

The occurrence of any one or more of the following events or conditions during the Term shall constitute a Design-Builder Event of Default under this Design-Build Contract (each, a "**Design-Builder Event of Default**"):

- (a) [reserved];
- (b) the Design-Builder fails to begin the DB Design Work within sixty (60) days of the Port Authority's issuance of the Design NTP;
- (c) [reserved];
- (d) the Design-Builder fails to begin the DB Construction Work (i) with respect to the entire Construction Project, within thirty-five (35) days of the Port Authority's issuance of the Full Construction NTP or (ii) with respect to a Construction Segment, within fifty (50) days of the Port Authority's issuance of the applicable Construction Segment NTP;
- (e) the Design-Builder fails to achieve Substantial Completion by the DB Long Stop Deadline;
- (f) the Design-Builder voluntarily abandons, deserts or vacates the DB Work and Staging Area or discontinues its performance of the DB D&C Work with the intention of not returning to the DB Work and Staging Area or not resuming the DB D&C Work, or any authorized representative of the Design-Builder repudiates this Design-Build Contract in writing;
- (g) except in the case of any suspension of the DB D&C Work by the Developer pursuant to Section 10.9 or the Port Authority pursuant to Section 10.9 of the Lease, the Design-Builder's discontinuance of the performance of the DB D&C Work for a period of fifteen (15) or more consecutive days, and failure to resume such discontinued DB D&C

Work within twenty-five (25) days following the date the Developer delivers to the Design-Builder written notice to resume such discontinued DB D&C Work;

(h) the Design-Builder fails (i) to pay any amounts required to be paid to or on behalf of the Developer or the Port Authority under this Design-Build Contract or (ii) to deposit funds to any reserve or account in the amounts and within the time periods required by this Design-Build Contract; provided, that the payment is not subject to a good faith Dispute and such failure shall continue unremedied or unwaived for a period of ten (10) days following the date on which the Design-Builder and the D&C Guarantors receive written notice from the Port Authority or the Developer to make such payment or deposit any such funds;

(i) any representation or warranty made by the Design-Builder in this Design-Build Contract or any other DB Project Document to which the Design-Builder is a party or any certificate delivered by the Design-Builder pursuant to this Design-Build Contract or any other DB Project Document shall prove to have been false or misleading in any material respect (whether by affirmative statement or omission of statement) as of the time made and the underlying event or circumstances giving rise to such misrepresentation continue without cure for a period of thirty (30) days following the earlier of (i) the date on which the Design-Builder and the D&C Guarantors receive written notice of such circumstances from the Developer and (ii) the Design-Builder's actual knowledge thereof; provided, that such thirty (30)-day grace period may be extended at the Developer's reasonable discretion, including where any such discretion is exercised by the Port Authority, if the Design-Builder notifies the Developer in writing within such thirty (30)-day period that cure cannot be achieved within such period despite the Design-Builder's diligent efforts and the Design-Builder shall have commenced performance within such thirty (30)-day grace period and continues such performance diligently and continuously to completion (except during the occurrence of any event beyond the Design-Builder's control); provided, further, that cure will be regarded as complete only when the adverse effects of the breach are remedied;

(j) (1) the Design-Builder shall fail to comply with the assignment or Change in Control restrictions set forth in Section 17.1, or (2) any Lien or a levy under execution or attachment made against all or any material portion of the Premises or any interest therein (including the Developer's interest) as a result of any Lien created, incurred, assumed or suffered to exist by the Design-Builder or any Person claiming through the Design-Builder (other than as a result of the Developer's failure to pay an undisputed amount due under this Design-Build Contract), shall not be discharged or bonded, as applicable, in each case, within fifteen (15) days after the earlier of (i) the date on which the Design-Builder and the D&C Guarantors receive written notice of such failure from the Developer and (ii) the Design-Builder's actual knowledge thereof;

(k) any Insolvency Event with respect to the Design-Builder, any D&C Guarantor or any Design-Builder member;

(l) the Design-Builder fails to comply with the provisions of Section 3.1(c) of the Lease (regarding the Basic Lease generally) or Section 11.4(e)(i) of the Lease (with respect to

information required under the Basic Lease), in each case to the extent applicable to the DB D&C Work, or the Design-Builder fails to discharge or cause the discharge of a Lien on the Premises as required by Section 32.2 of the Basic Lease, to the extent applicable to the DB D&C Work and other than as a result of the Developer's failure to pay an undisputed amount due under this Design-Build Contract, if, in each case, such failure continues without cure for a period of twenty-five (25) days after the earlier of (i) the date on which the Design-Builder and the D&C Guarantors receive written notice of such failure from the Developer or the Port Authority and (ii) the Design-Builder's actual knowledge thereof;

(m) the Design-Builder fails to comply with the provisions of (i) Section 15.1 if such failure causes, or in the reasonable opinion of the Port Authority or the Developer, is likely to cause, the loss of the Airport Operating Certificate, and if such failure is likely to cause the loss of the Airport Operating Certificate, such failure continues without cure for a period of twenty-five (25) days (or such shorter period of time as may be required to comply with FAA direction with respect to such failure) after the date on which the Design-Builder and the D&C Guarantors receive written notice of such failure from the Developer, or (ii) Section 15.5 and, if the Port Authority elects in its sole discretion to grant a cure period for such failure under the Lease, such failure is not cured within such time period;

(n) the Design-Builder fails to comply, in any material respect, with any insurance requirements set forth in this Design-Build Contract, if such failure is not cured within 75% of the shortest time period provided to the Developer, if any, under the Lease or any Financing Document to cure any corresponding event of default;

(o) the Design-Builder fails to comply with any written order issued by the Port Authority or the Developer to suspend, in whole or in part, any DB D&C Work within four (4) days following receipt of such written order by the Design-Builder;

(p) the Design-Builder fails to commence and continue the implementation of a Safety Compliance Order or a Directive Letter, to the extent applicable to the DB D&C Work, in accordance with the requirements of this Design-Build Contract and the Lease within such period of time as set forth in (or accompanied by) such Safety Compliance Order or Directive Letter, as applicable;

(q) the Design-Builder or any of its DB Subcontractors or Suppliers fails in any material respect to cooperate with the OIG or the Project Integrity Monitor in accordance with Section 19.1(d);

(r) the Design-Builder fails to comply with, perform or observe (other than as otherwise set forth in this Section 23.1) any obligation, covenant, agreement, term or condition of the Design-Builder in this Design-Build Contract or any other DB Project Document, including, for the avoidance of doubt, the Requirements and Provisions for Work (to the extent within the scope of the DB D&C Work), and such failure shall continue unremedied or unwaived for a period of thirty (30) days after the date on which the Design-Builder and the D&C Guarantors receive written notice of such failure from the Developer or any party to any such DB Project Document, provided, that such thirty (30)-day grace period

shall be extended for as many days as shall be necessary to cure such failure up to a maximum cure period of one hundred-eighty (180) days, where cure by the Design-Builder requires performance by the Design-Builder over a period of time, and the Design-Builder shall have commenced performance within such thirty (30)-day grace period and continues such performance diligently and continuously to completion (except during the occurrence of any event beyond the Design-Builder's control);

(s) disposal of all or a material portion of its assets by (A) the Design-Builder, (B) to the extent it has a material effect on the Design-Builder's ability to duly perform, any Design-Builder member, or (C) to the extent it has a material effect on such D&C Guarantor's or the applicable Design-Builder member's ability to duly perform, any D&C Guarantor;

(t) termination by the Port Authority of the Lease due to any act, omission, or breach by the Design-Builder;

(u) any DB Lenders' Direct Agreement or DB Direct Agreement becomes invalid, void or unenforceable due to an act or omission of the Design-Builder;

(v) (i) the Design-Builder's failure to obtain, provide and maintain any bonds, D&C Guarantees, the D&C Letter of Credit or any other Construction Security as and when required under this Design-Build Contract or (ii) any breach or default under any D&C Guarantee or under any D&C Letter of Credit that is not cured or waived within thirty (30) days after the date on which the Design-Builder receives written notice thereof from the Developer (with a copy to each of the D&C Guarantors) or any party to any such D&C Guarantee or D&C Letter of Credit;

(w) the Design-Builder's payment obligations of amounts due to the Developer or any other person under this Design-Build Contract to which the limitation of liability specified in this Design-Build Contract applies (including the sub-limit with respect to Delay LDs) equal or exceed such limitation of liability (or sub-limit), or the Design-Builder so asserts in writing, except to the extent the Design-Builder irrevocably waives such limitation of liability, or agrees to an increase in such limitation of liability, in each case in writing and as and to the extent acceptable to the Developer in its sole discretion; and

(x) failure of the Design-Builder to achieve any New Facilities Construction Milestone by the applicable New Facilities Construction Milestone Default Date.

provided, that with respect to any of the events described in clauses (a) through (g), (n), (o), (p), (r) and (x) above, the occurrence of any such event as a direct and proximate result of a Delay Event or a Compensation Event with respect to the Design-Builder shall be deemed not to constitute an event or circumstance that with the lapse of time, the giving of notice or both would constitute a Design-Builder Event of Default, but only for so long as the Delay Event or the Compensation Event is occurring, and any cure periods provided in such clauses shall be extended solely to the extent, and for so long as, the ability of the Design-Builder to cure thereunder is directly and adversely affected by a Delay Event or a Compensation Event.

Section 23.2 Remedial Plan

Pursuant to Section 23.2 of the Lease, (1) the Developer is entitled to cure certain Events of Default by the Developer under the Lease by preparing and submitting for Port Authority Approval, within the relevant cure period set forth in Section 23.1 of the Lease, a remedial plan that shall set forth a schedule and specific actions to be taken by the Developer to cure such Event of Default and, if applicable, reduce the likelihood of such defaults occurring in the future; (2) within twenty (20) days of receiving any Remedial Plan pursuant to Section 23.2 of the Lease, the Port Authority shall notify the Developer whether or not the relevant Remedial Plan is, in the Port Authority's reasonable discretion, acceptable and (3) if more time is needed by the Port Authority to review a proposed Remedial Plan, the Port Authority may extend such twenty (20)-day review period with written notice to the Developer (provided that the Port Authority shall not exercise any of its rights to remedy with respect to such Event of Default as provided in Section 23.3 of the Lease for the duration of such extended review period). In the case of any Design-Builder Event of Default described in Section 23.1 (other than clauses (h), (j), (k), (o), (p) and (q) of Section 23.1) that results in an Event of Default by the Developer under the corresponding provisions of the Lease, the Design-Builder shall be entitled to cure such Design-Builder Event of Default by preparing and submitting such a Remedial Plan for submission to the Port Authority. The actions identified in the Remedial Plan to cure the applicable Design-Builder Event of Default may include improvements to the Design-Builder's quality management practices, plans and procedures, revising and restating management plans, changes in organizational and management structure, increased monitoring and inspections, changes in Lead Personnel and other important personnel, and replacement of DB Subcontractors or Suppliers. The Developer and the Design-Builder shall use Reasonable Efforts to prepare and submit such Remedial Plan to the Port Authority in accordance with the provisions of the Lease. The Developer shall not have any separate right to approve any Remedial Plan under this Design-Build Contract. Further, if the Port Authority notifies the Developer that the Remedial Plan is not acceptable, the Developer shall promptly provide such notice to the Design-Builder, and the Port Authority, the Developer, and the Design-Builder shall meet no later than within the five (5) days following the Port Authority's notification to the Developer in order to agree any necessary modifications to the plan proposed. If the Port Authority, the Developer, and the Design-Builder fail to agree by the end of such five (5)-day period, a Design-Builder Event of Default shall be deemed to exist under this Design-Build Contract entitling the Developer to immediate exercise of its remedial rights under Section 23.3. If the Port Authority notifies the Developer that the Remedial Plan is acceptable, the Design-Builder shall implement such Remedial Plan diligently and in accordance with its terms (and the otherwise applicable cure periods and extension limits will be extended in accordance with such approved Remedial Plan) and the Developer shall refrain from exercising its rights and remedies with respect to such Design-Builder Event of Default for so long as the Design-Builder is diligently implementing such Remedial Plan. Any failure of the Design-Builder to comply diligently with such approved Remedial Plan shall be deemed to be a Design-Builder Event of Default described in Section 23.1(p) and the Developer shall have to right to terminate this Design-Build Contract pursuant to Section 23.3(a)(i) without any entitlement of the Design-Builder to a cure period for such Design-Builder Event of Default or to the proposal of another Remedial Plan.

Section 23.3 Remedies of the Developer Upon Design-Builder Event of Default; Port Authority and Lender Rights

(a) Developer Remedies. Upon the occurrence and during the continuance of a Design-Builder Event of Default, the Developer may, by notice to the Design-Builder and the D&C Guarantors, declare that a Design-Builder Event of Default has occurred and thereupon may do any or all of the following as the Developer, in its sole discretion shall determine:

(i) If a Design-Builder Event of Default occurs and is continuing, the Developer may, by written notice to the Design-Builder and the D&C Guarantors, terminate this Design-Build Contract subject to the terms and conditions set forth herein. If such termination occurs prior to the Final Acceptance Date, the Developer may cause the DB D&C Work to be completed by other contractors and, as the Developer's sole remedy with respect to such Design-Builder Event of Default, (A) the Design-Builder shall be required to pay for the Developer's excess reprocurement costs and for any other Direct Losses suffered by the Developer in connection with termination of this Design-Build Contract and entering into replacement construction arrangements and (B) if the Port Authority terminates the Lease as a result of a breach by the Design-Builder of its obligations under this Design-Build Contract that was not caused by the Developer's failure to perform its obligations under this Design-Build Contract, the Design-Builder shall compensate the Developer for any losses incurred as a result of such termination, including any amounts (x) required to be paid to the Lenders as a result of an event of default occurring under the Financing Documents as a result of such termination and (y) incurred by the Developer or its direct and indirect owners in connection with the Construction Project (subject to the limitations on liability set forth in Section 34.1 hereof). In the event of a dispute with respect to the amount payable by the Design-Builder pursuant to this Section 23.3(a), such dispute shall be subject to the accelerated DB Dispute Resolution Procedure set forth in this Design-Build Contract unless the Lease requires resolution of such dispute pursuant to Article 33 thereof. Any such payment shall be due within thirty (30) days.

(ii) If the Developer does not elect to terminate this Design-Build Contract as a result of a Design-Builder Event of Default, the Developer shall have the right to pursue all remedies at law or in equity with respect to such Design-Builder Event of Default, *inter alia*, damages, losses, expenses, penalties and costs incurred or paid by the Developer under the Lease or any other agreement and any other losses incurred by the Developer (subject to the limitations on liability set forth in Section 34.1 hereof).

(iii) Following a Potential Design-Builder Event of Default or a Design-Builder Event of Default, the Developer shall have the right to increase its monitoring of the Design-Builder's performance of the DB D&C Work, and the Design-Builder shall cooperate with any related requests and requirements of the Developer related thereto, including providing additional documentation as may be requested by the Developer.

(iv) The Design-Builder shall reimburse the Developer for the documented third-party out-of-pocket costs of effecting any cure of a Design-Builder Event of

Default; provided, however, that the Design-Builder shall not be responsible for any such costs incurred during the applicable cure period afforded the Design-Builder for such default unless the Design-Builder has indicated in writing to the Developer that the Design-Builder is unwilling or unable to prosecute such cure. The Developer shall be entitled to set-off such costs against amounts owed to the Design-Builder. If payments then or thereafter due to the Design-Builder are not sufficient to cover such amounts, the Design-Builder shall be responsible for reimbursement of such difference to the Developer.

(v) In the event of a termination of this Design-Build Contract by the Developer pursuant to this Article 23, no further Delay LDs shall be required to be paid by the Design-Builder (other than those that remain unpaid at the time of such termination).

(b) Consequences of Termination. In addition to all other rights set forth in this Design-Build Contract, if the Developer terminates this Design-Build Contract because of a Design-Builder Event of Default, the Design-Builder (at its own cost) will be obligated to (w) withdraw from the DB Work and Staging Area; (x) pay all amounts payable by the Design-Builder as a result of such termination or otherwise due and payable by the Design-Builder under this Design-Build Contract; (y) transfer to the Developer or its nominee all personal property, materials and documents that the Design-Builder would be required to deliver to the Developer upon a termination of this Design-Build Contract pursuant to Section 27.4(a) hereof, and (z) to the extent not otherwise addressed in (y) above, transfer to the Developer or its nominee such DB Subcontracts and purchase orders as the Developer may request, all parts or equipment purchased for the Construction Project or to be permanently incorporated into the Construction Project and intellectual property and any other items agreed to by the Design-Builder and the Developer (in each case, acting reasonably) or required to be transferred to the Port Authority under the Lease, provided that with respect to sub-clause (z) and so long as the Design-Builder has paid all amounts due and payable under sub-clause (x), the Design-Builder shall not be required to transfer such parts or equipment unless it has been paid all amounts then due and payable by the Developer for DB D&C Work performed under this Design-Build Contract. The Developer will indemnify and hold harmless the Design-Builder from any third-party claim arising from the Developer's misuse of any such intellectual property following termination of this Design-Build Contract.

(c) Port Authority and Lender Rights.

(i) In addition to the notifications required by Sections 14B.3 and 18.3, the Developer shall promptly provide the Design-Builder with a copy of any notice received from (1) the Lenders with respect to any defaults or imminent defaults under the Financing Documents, (2) the Port Authority with respect to any defaults or imminent defaults under the Project Documents, or (3) the Port Authority with respect to any matter relating to the DB D&C Work or the Design-Builder.

(ii) The Design-Builder also shall reimburse the Developer for all reasonable costs incurred in relation to exercising the Developer's right to perform any of the

Design-Builder's obligations (as provided for in Section 28.1 or otherwise expressly contemplated in this Design-Build Contract) for defaults of the Design-Builder (including costs successfully claims by the Port Authority in the event of a Port Authority suspension or step-in pursuant to the Lease).

(iii) In the event that any remedial action or prevention plan is proposed by the Design-Builder, such remedial action or prevention plan shall be subject to the approval by the Lenders and, if required by the Lease, the Port Authority, in each such case in such party's reasonable discretion (unless another measure of approval is provided for in any agreement granting such approval right to such party).

Section 23.4 NOT USED

Section 23.5 NOT USED

Section 23.6 NOT USED

Section 23.7 Surrender

Upon any termination pursuant to this Article 23, the Design-Builder covenants and agrees to promptly yield and deliver peaceably to the Developer possession of the DB Work and Staging Area, and all of the DB Work and Staging Area shall be free and clear of all Liens; provided, however, that the foregoing provisions shall not apply to the environmental condition of the DB Work and Staging Area, and the Design-Builder's obligations with respect to the environmental condition of the DB Work and Staging Area shall be governed by Article 16.

Section 23.8 NOT USED

ARTICLE 24

DEVELOPER DB EVENTS OF DEFAULT; OTHER TERMINATION

Section 24.1 Developer DB Events of Default

(a) The occurrence of any one or more of the following events or conditions during the Term shall constitute a Developer event of default under this Design-Build Contract (each, a "**Developer DB Event of Default**"):

(i) a default in the payment of any undisputed amount payable to the Design-Builder that is not cured within thirty (30) days after written notice thereof from the Design-Builder (a "**Developer Payment Default**");

(ii) an Insolvency Event with respect to the Developer;

(iii) any written repudiation of this Design-Build Contract by an authorized representative of the Developer; or

(iv) the Port Authority's termination of the Lease prior to the Final Acceptance Date due to any Event of Default under Section 23.1 of the Lease that was caused solely and directly by the Developer.

(b) While any Developer Payment Default exists, the Developer shall pay interest on the applicable undisputed amounts from and after the due date of the applicable payment giving rise to such Developer Payment Default until the same has been cured or waived, at the Default Interest Rate.

Section 24.2 Suspension and Termination Rights of the Design-Builder; Design-Builder Termination Payment

(a) Subject and in addition to the right set forth in Section 24.2(b) below governing the Design-Builder's right to suspend the DB D&C Work in the event of a payment delinquency by the Port Authority and the limitations on the Developer's payment obligations with respect to Port Authority Funding and Lessee Damages set forth in Section 9A.4, and further subject to the Lenders' rights under the DB Lenders' Direct Agreement and the Port Authority's rights under any DB Direct Agreement, including the right to notice of default and the right to cure, and further subject to the provisions of Section 24.2(i) below regarding certain limitations on the right of the Design-Builder to suspend its performance under this Design-Build Contract, the Design-Builder may suspend the DB D&C Work in the case of a Developer Payment Default; provided, that a failure by the Port Authority to pay amounts owed by it under the Lease shall in no event give rise to a Developer Payment Default, and provided further that:

(i) any such suspension shall only be effective for a period commencing ten (10) days after the Developer's receipt from the Design-Builder of written notice of such suspension and ending on the date that the Developer Payment Default is cured;

(ii) if the Developer Payment Default is not cured within twenty (20) days after such suspension begins, the Design-Builder shall be entitled to demobilize; and

(iii) from the date of commencement of any such suspension until the earlier of the termination of this Design-Build Contract or the date that the Developer Payment Default is cured, the Developer shall compensate the Design-Builder for the reasonable costs (limited to any direct costs, payments to DB Subcontractors and Suppliers, demobilization and, if applicable, remobilization costs) and overhead and profit on the same that resulted from such suspension, and shall grant the Design-Builder additional time for performance of the Design-Builder's contractual obligations reflecting the delay resulting from such suspension, subject to Article 14B and without duplication.

(b) In addition to the Design-Builder's suspension right set forth in Section 24.2(a) above, and subject to the provisions of Section 24.2(i) below, the Design-Builder shall be entitled to suspend its performance of the DB D&C Work if payment for such DB D&C Work or for Lessee Damages is delinquent from the Port Authority, so long as the Lease permits such suspension of performance pursuant to Section 14.2(c) thereof and, to the extent such

non-payment by the Port Authority might entitle the Design-Builder to compensation or other relief pursuant to the Equivalent Project Relief protocol, the Developer shall use Reasonable Efforts to pursue such Equivalent Project Relief.

(c) If a Developer DB Event of Default occurs and is continuing, the Design-Builder, by written notice to the Developer, and subject to the provisions of Section 24.2(i) below, may terminate this Design-Build Contract subject to the terms and conditions set forth herein. Such termination shall be subject to the rights of the Lenders under the DB Lenders' Direct Agreement and the rights of the Port Authority, if any, under any DB Direct Agreement, including the right to notice of default and the right to cure.

(d) If the right of the Developer to terminate the Lease pursuant to Sections 24.1(b)(i) and 24.1(b)(iii) of the Lease has arisen under the Lease, neither the Port Authority nor the Developer has given or received a notice to terminate the Lease and, as a result of the event that gave rise to the Developer's right to so terminate, it is impossible or impractical for the Design-Builder legally to proceed with the DB D&C Work, then the Design-Builder may give an indicative notice to the Developer of such circumstance (an "**Indicative Termination Notice**") and, after consulting with the Developer in good faith regarding a solution acceptable to both the Developer and the Design-Builder over a period of ninety (90) days after the date of such Indicative Termination Notice, may by notice to the Developer terminate this Design-Build Contract, subject to the provisions of Section 24.2(i) below. From the date of an Indicative Termination Notice until the earlier of the termination of this Design-Build Contract or the Design-Builder's resumption of the DB D&C Work, the Developer shall compensate the Design-Builder for the reasonable costs and time that resulted from the event giving rise to the Developer's right to terminate the Lease (limited to any direct costs, payment to DB Subcontractors and Suppliers, demobilization and, if applicable, re-mobilization costs); provided that (A) such costs are not covered by insurance and (B) the Design-Builder has used Reasonable Efforts to minimize such costs (including, if appropriate, by re-deploying the Design-Builder's and any DB Subcontractors' employees to other work or projects, returning or re-deploying equipment and laying off staff).

(e) If a Developer Suspension of all or substantially all of the DB D&C Work continues for a period of six (6) months or more, then the Design-Builder, by written notice to the Developer, and subject to the provisions of Section 24.2(i) below, may terminate this Design-Build Contract, in which event the Developer will be required to pay the Design-Builder for its reasonable costs associated with the applicable Developer Suspension, as well as reasonable demobilization costs and breakage costs, including any reasonable DB Subcontractor and Supplier compensation costs.

(f) Notwithstanding anything in this Design-Build Contract to the contrary, the Design-Builder will only be entitled to compensation on termination of this Design-Build Contract upon the occurrence of the following:

(i) if the Lease is terminated, receipt by the Developer of corresponding termination payments from the Port Authority, in which case the Design-Builder will be entitled to a portion of such payment from the Port Authority as and to the extent that

such payment relates to termination of this Design-Build Contract and subject to the Equivalent Project Relief protocol; or

(ii) a termination of this Design-Build Contract due to a Developer DB Event of Default or pursuant to Sections 24.2(d) or 24.2(e), in which case the Developer shall pay the Design-Builder: (x) for all DB D&C Work completed through the date of termination (or, if an authorized suspension of the DB D&C Work occurred prior to such termination date, for the DB D&C Work completed by the Design-Builder prior to such date of suspension and, if authorized by the Developer, following such suspension but prior to such termination date), in each case based on the schedule of values and only to the extent payment has not already been made, plus (y) reasonable demobilization and breakage costs, including any reasonable DB Subcontractor and Supplier compensation costs.

(g) Except in the case of a Developer Payment Default, the Design-Builder will not be entitled to terminate or suspend performance for any Developer DB Event of Default if such Developer DB Event of Default is being disputed in good faith under the DB Dispute Resolution Procedure set forth in Article 33A hereof.

(h) The Design-Builder's rights in respect of a Force Majeure Event, Change in Law or Applicable Standards Change shall be limited to Equivalent Project Relief under Article 14A and the Design-Builder shall not be entitled to terminate this Design-Build Contract, or to make any other adjustment to the Design-Builder's obligations under this Design-Build Contract, as a result of such event.

(i) Notwithstanding anything in this Design-Build Contract to the contrary, the Design-Builder shall have no right to (i) suspend its performance under this Design-Build Contract without first delivering to the Port Authority no less than ten (10) days' prior written notice specifying the Design-Builder's ground(s) therefor; provided, that if after the receipt of the Design-Builder's notice, the Port Authority notifies the Design-Builder of the Port Authority's intent to exercise its step-in rights with respect to this Design-Build Contract (subject to the rights of the Lenders pursuant to the DB Lenders' Direct Agreement), the Design-Builder shall have no right to suspend its performance under this Design-Build Contract, or (ii) terminate this Design-Build Contract or demobilize without first delivering to the Port Authority no less than forty-five (45) days' prior written notice specifying the Design-Builder's ground(s) therefor; provided, that if after the receipt of the Design-Builder's notice, the Port Authority notifies the Design-Builder of the Port Authority's intent to exercise its step-in rights with respect to this Design-Build Contract (subject to the rights of the Lenders pursuant to the DB Lenders' Direct Agreement), the Design-Builder shall have no right to terminate this Design-Build Contract.

(j) For the avoidance of doubt, amounts payable by the Developer to the Design-Builder pursuant to Section 9.1 and 9.2 and/or Section 9A.4 that are not paid by the Developer as and when due pursuant to this Design-Build Contract may result in a Developer Payment Default, including for purposes of Section 24.2(a).

Section 24.3 Other Termination

(a) Subject to the Lenders' rights under the DB Lenders' Direct Agreement and to the Port Authority's rights described in Sections 17.1(d) and 27.1 hereof or under any DB Direct Agreement, this Design-Build Contract will terminate automatically if the Lease is terminated for whatever reason, including the Developer's default thereunder, without liability of the Developer or the Port Authority for the Design-Builder's lost profits or business opportunity.

(b) In the event of a termination of the Lease entitling the Developer to compensation from the Port Authority, the Developer will (i) notify the Design-Builder and work with the Design-Builder in preparing any applicable claim for termination compensation and (ii) to the extent practicable, provide the Design-Builder with an opportunity to participate in the discussion and resolution of any claim with the Port Authority. The Design-Builder's right to receive a portion of any termination compensation received from the Port Authority will be governed by Section 24.2(f).

Section 24.4 Timing of Design-Builder Termination Payment

Any payment due to the Design-Builder under Section 24.2(f) shall be paid to the Design-Builder by the Developer (i) within five (5) Business Days of receipt thereof from the Port Authority of a corresponding termination payment as and to the extent such payment relates to termination of this Design-Build Contract and subject to the Equivalent Project Relief protocol and (ii) within thirty (30) days of termination of this Design-Build Contract for any other payments.

Section 24.5 Exclusivity of Remedy

(a) Subject to Section 24.5(b), any termination amount paid by the Developer to the Design-Builder pursuant to Article 24 shall be in full and final settlement of the Design-Builder's rights and claims against the Developer for breach and/or termination of this Design-Build Contract, without prejudice to:

(i) any antecedent liability of either Party to the other that arose prior to the applicable termination date (but not from the termination itself) to the extent such liability has not already been taken into account in the calculation of the termination amounts paid to the Design-Builder; and

(ii) any liabilities arising in respect of any breach by either Party after the applicable termination date of any obligation under this Design-Build Contract that survives the applicable termination date, to the extent not taken into account in the calculation of the termination amounts paid to the Design-Builder.

(b) Nothing in this Section 24.5 shall act as a waiver of, or constitute or be deemed a discharge of, any of the Design-Builder's obligations with respect to the condition of the DB Work and Stage Area as set forth in Article 16, including the Design-Builder's indemnity obligations related thereto.

(c) Nothing in this Section 24.5 shall act as a waiver of, or constitute or be deemed a discharge of, any of the Developer's obligations under Section 21.2.

ARTICLE 25

NOT USED

ARTICLE 26

NOT USED

ARTICLE 27

ACTIONS UPON TERMINATION OF THE LEASE

Section 27.1 Actions Upon Termination of the Lease

(a) Pursuant to Section 27.1 of the Lease, (1) if a Termination Notice is delivered prior to the Final Acceptance Date, subject to the Lenders' rights under any DB Lenders' Direct Agreement the Lenders or the Collateral Agent may have with respect to this Design-Build Contract, the Port Authority will elect, by written notice to the Developer and the Design-Builder delivered within ninety (90) days after the date on which such Termination Notice is delivered, to continue in effect this Design-Build Contract or to require its termination; (2) if the Port Authority does not deliver written notice of election within such ninety (90)-day period, the Port Authority will be deemed to elect to require termination of this Design-Build Contract and (3) if the Port Authority elects to continue this Design-Build Contract in effect in accordance with Section 27.1(a) of the Lease, then promptly upon notice thereof from the Port Authority, the Developer will execute and deliver to the Port Authority a written assignment, in form and substance acceptable to the Port Authority, of all the Developer's right, title and interest in and to this Design-Build Contract, and the Port Authority will assume in writing the Developer's obligations hereunder that arise from and after the Early Termination Date. If the Port Authority elects (or is deemed to elect) to require termination of this Design-Build Contract pursuant to the Lease, then:

(i) the Developer shall take such steps as are necessary to terminate this Design-Build Contract, including notifying the Design-Builder that this Design-Build Contract is being terminated and that the Design-Builder is to immediately stop work and stop and cancel orders for materials, services or facilities unless otherwise authorized in writing by the Port Authority, and the Design-Builder agrees to comply with such instructions;

(ii) the Design-Builder shall immediately and safely demobilize and secure construction, staging, lay down and storage areas for the Construction Project and Utility Relocations included in the DB Construction Work in a manner satisfactory to the Developer, and remove all debris and waste materials except as otherwise approved by the Developer in writing;

(iii) the Design-Builder shall take such other actions as are necessary or appropriate to mitigate further cost;

(iv) the Design-Builder shall, subject to the prior written approval of the Port Authority, settle all outstanding liabilities and all Claims arising out of this Design-Build Contract;

(v) the Design-Builder shall execute and deliver to the Port Authority a written assignment, in form and substance acceptable to the Port Authority, of all the Design-Builder's right, title and interest in and to (A) all third-party agreements and permits; provided, that the Port Authority assumes in writing all of the Design-Builder's obligations thereunder that arise after the Early Termination Date and (B) all assignable warranties and Claims held by the Design-Builder against other Contractors and other third-parties in connection with the Construction Project or the D&C Work; and

(vi) the Design-Builder shall carry out such other directions as the Port Authority may give for suspension or termination of the DB D&C Work performed under this Design-Build Contract.

(b) NOT USED.

Section 27.2 Lease Termination Transition Plan

(a) Pursuant to Section 27.2(a) of the Lease, (1) within three (3) days after receipt by the Developer or the Port Authority, as applicable, of a Termination Notice, the Developer and the Port Authority are required to meet and confer with each other for the purpose of developing an interim transition plan (the "**Termination Transition Plan**") for the orderly transition of Work, demobilization and transfer of control of the Premises to the Port Authority; and (2) the Developer and the Port Authority are required to use diligent efforts to complete preparation of the interim Termination Transition Plan within fifteen (15) days after the date the Developer or the Port Authority, as applicable, receives the Termination Notice. The Developer shall notify the Design-Builder promptly in the event that the Developer submits or receives a Termination Notice prior to the Final Completion Date, in which event the Design-Builder shall, if requested by the Developer or the Port Authority, use diligent efforts to assist in the preparation of the interim Termination Transition Plan to the extent applicable to the DB D&C Work.

(b) Pursuant to Section 27.2(b) of the Lease, (1) the Developer and the Port Authority are required to use diligent efforts to complete a final Termination Transition Plan within thirty (30) days after receipt by the Developer or the Port Authority, as applicable, of a Termination Notice; and (2) the final Termination Transition Plan must be in form and substance acceptable to the Port Authority and must include and be consistent with the other provisions and procedures set forth Article 27 of the Lease, all of which procedures the Developer must promptly follow, regardless of any delay in preparation or acceptance of the interim or final transition plan. The Design-Builder shall, if requested by the Developer or the Port Authority, use diligent efforts to assist in completion of the aspects of the Termination

Transition Plan related to the DB D&C Work within such thirty (30) day period. Further, the Design-Builder shall promptly follow, regardless of any delay in preparation or acceptance of the interim or final transition plan, the provisions and procedures set forth in this Article 27.

(c) NOT USED.

Section 27.3 NOT USED

Section 27.4 Transfer of Personal Property

(a) Pursuant to Section 27.4 of the Lease, the Developer is required (1) to deliver to the Port Authority on the Early Termination Date all tangible personal property, reports, Books and Records necessary or useful for the Work, and, to the extent provided in Article 31 of the Lease, Intellectual Property used or owned by the Developer or any Contractor or Supplier relating to the Construction Project or the Work; excluding, however, all personal property, machinery, equipment and tools owned or leased by any Contractor or Supplier and not incorporated or intended to be incorporated into the Construction Project and (2) to deliver an executed bill of sale or such other document of conveyance as the Port Authority deems acceptable to transfer the Developer's interest in such items to the Port Authority free and clear of all Liens. If such Early Termination also results in a termination of this Design-Build Contract, the Design-Builder shall deliver, on behalf of the Developer, to the Port Authority on the Early Termination Date (i) all tangible personal property, reports, Books and Records necessary or useful for the DB D&C Work, and, to the extent provided in Article 31, Intellectual Property used or owned by the Design-Builder or any DB Subcontractor or Supplier relating to the Construction Project or the DB D&C Work; excluding, however, all personal property, machinery, equipment and tools owned or leased by any DB Subcontractor or Supplier and not incorporated or intended to be incorporated into the Construction Project and (ii) an executed bill of sale or such other document of conveyance as the Port Authority deems acceptable to transfer the Design-Builder's interest in such items to the Port Authority free and clear of all Liens.

(b) The Design-Builder shall use Reasonable Efforts to assure that any of the Design-Builder's personal property which is leased and any of the Design-Builder's personal property which is or is subject to an intellectual property license, excluding, however, any personal property not incorporated or intended to be incorporated into the Construction Project, is assignable to both the Developer and the Port Authority, with the actual assignment in any particular case to be determined pursuant to this Design-Build Contract.

(c) Upon the occurrence of an Early Termination Date, the Design-Builder shall grant to the Port Authority and the Developer, for itself and on behalf of any DB Subcontractor and Supplier, a license to use Intellectual Property owned or licensable by the Design-Builder or any DB Subcontractor or Supplier in accordance and to the extent required by Section 31.1(b), for the limited purposes permitted by such Section 31.1(b).

Section 27.5 Exclusive Termination Rights

Article 23, Article 24, this Article 27 and Article 27A contain the entire and exclusive provisions and rights of the Developer and the Design-Builder regarding termination of this Design-Build Contract, and any and all other rights to terminate under Applicable Law are hereby waived to the maximum extent permitted by Applicable Law.

Section 27.6 NOT USED

ARTICLE 27A

ACTIONS UPON TERMINATION OF THIS DESIGN-BUILD CONTRACT

Section 27A.1 Actions Upon Termination of this Design-Build Contract

(a) For the avoidance of doubt, this Article 27A shall only apply in circumstances where a termination of this Design-Build Contract occurs or will occur without a corresponding termination of the Lease. In circumstances where the Lease is to be or has also been terminated, Article 27 shall govern.

(b) If a notice of termination of this Design-Build Contract is delivered pursuant to Section 23.3(a) but the Lease has not been terminated, then the Design-Builder shall:

(i) take such steps as are necessary to terminate all DB Subcontracts (except for those the Developer requests not to be terminated by the Design-Builder), including notifying each DB Subcontractor, as applicable, that this Design-Build Contract and each applicable DB Subcontract is being terminated and that the applicable DB Subcontractor is to immediately stop work and stop and cancel orders for materials, services or facilities unless otherwise authorized in writing by the Developer;

(ii) immediately and safely demobilize and secure construction, staging, lay down and storage areas for the Construction Project and Utility Relocations included in the DB Construction Work in a manner satisfactory to the Developer, and remove all debris and waste materials except as otherwise approved by the Developer in writing;

(iii) take such other actions as are necessary or appropriate to mitigate further cost;

(iv) subject to the prior written approval of the Developer (and, if required, the Port Authority), settle all outstanding liabilities and all Claims arising out of this Design-Build Contract for which the Design-Builder is responsible; provided, however, that any settlement shall not include any Claim the Design-Builder may have against the Developer for wrongful termination of this Design-Build Contract;

(v) execute and deliver to the Developer a written assignment, in form and substance acceptable to the Developer, of all the Design-Builder's right, title and interest in and to (A) all third-party agreements (including any DB Subcontracts the Developer

has requested not to be terminated by the Design-Builder) and permits; provided, that the Developer assumes in writing all of the Design-Builder's obligations thereunder that arise after the termination of this Design-Build Contract and (B) all assignable warranties provided by and Claims against other DB Subcontractors and other third parties in connection with the Construction Project or the DB D&C Work; provided, in each case, that any such assignment is not intended to waive or relinquish any of the Design-Builder's Claims against such third parties where such Claims relate to an obligation arising prior to the date of the assignment and where the Design-Builder has discharged the corresponding obligation under this Design-Build Contract; and

(vi) carry out such other directions as the Developer may give for suspension or termination of the DB D&C Work performed under this Design-Build Contract.

(c) In the event of a termination of this Design-Build Contract pursuant to Section 24.2(c), the Design-Builder shall, to the extent required by this Design-Build Contract, comply with directions of the Port Authority and/or the Lenders pursuant to the DB Lenders Direct Agreement; provided, however, that the Design-Builder shall continue to have the right and entitlement to pursue all remedies against the Developer as set forth herein, including pursuant to Section 24.2(f)(ii).

Section 27A.2 DB Termination Transition Plan

(a) Within three (3) days after receipt by the Design-Builder of a notice of termination of this Design-Build Contract delivered pursuant to Section 23.3(a) (where the Lease has not been terminated), the Parties shall meet and confer with each other for the purpose of developing an interim transition plan (the "**DB Termination Transition Plan**") for the orderly transition of DB D&C Work, demobilization and transfer of control of the DB Work and Staging Area to the Developer. The Parties shall use diligent efforts to complete preparation of the interim DB Termination Transition Plan within fifteen (15) days after the date the relevant Party receives such notice of termination of this Design-Build Contract.

(b) The Parties shall use diligent efforts to complete a final DB Termination Transition Plan within thirty (30) days after receipt by the Design-Builder of a notice of termination of this Design-Build Contract delivered pursuant to Section 23.3(a) (where the Lease has not been terminated). The final DB Termination Transition Plan shall be in form and substance acceptable to the Developer and shall include and be consistent with the other provisions and procedures set forth in this Article 27A, all of which procedures the Design-Builder shall promptly follow, regardless of any delay in preparation or acceptance of the interim or final transition plan. The final DB Termination Transition Plan shall include an estimate of costs and expenses to be incurred by both Parties in connection with implementation of the DB Termination Transition Plan.

Section 27A.3 Transfer of Personal Property

(a) The Design-Builder shall, subject to Section 31.4, deliver to the Developer upon termination of this Design-Build Contract pursuant to Section 23.3(a) (where the Lease

has not also been terminated), all tangible personal property, reports, Books and Records necessary or useful for the DB D&C Work, and, to the extent provided in Article 31, Intellectual Property used or owned by the Design-Builder or any DB Subcontractor or Supplier relating to the Construction Project or the DB D&C Work; excluding, however, all personal property, machinery, equipment and tools owned or leased by any DB Subcontractor or Supplier and not incorporated or intended to be incorporated into the Construction Project. The Design-Builder hereby agrees to deliver an executed bill of sale or such other document of conveyance as the Developer deems acceptable to transfer the Design-Builder's interest in the aforesaid items to the Developer free and clear of all Liens.

(b) The Design-Builder shall use Reasonable Efforts to assure that any of the Design-Builder's personal property which is leased and any of the Design-Builder's personal property which is or is subject to an intellectual property license, excluding, however, any personal property not incorporated or intended to be incorporated into the Construction Project, is assignable to the Developer, with the actual assignment in any particular case to be determined pursuant to this Design-Build Contract.

(c) Upon the occurrence of the termination of this Design-Build Contract pursuant to Section 23.3(a) (where the Lease has not also been terminated), the Design-Builder shall grant to the Developer, for itself and on behalf of any DB Subcontractor and Supplier, a license to use Intellectual Property owned or licensable by the Design-Builder or any DB Subcontractor and Supplier in accordance with Section 31.1(b), for the limited purposes permitted by such Section 31.1(b).

Section 27A.4 Exclusive Termination Rights When the Lease Has Not Been Terminated

Article 23, Article 24, this Article 27A and Article 33A contain the entire and exclusive provisions and rights of the Developer and the Design-Builder regarding termination of this Design-Build Contract where the Lease has not been terminated, and any and all other rights to terminate (where the Lease has not been terminated) under Applicable Law are hereby waived to the maximum extent permitted by Applicable Law.

ARTICLE 28

RIGHT TO PERFORM THE DESIGN-BUILDER'S OBLIGATIONS; NEW CONTRACT

Section 28.1 Right to Perform the Design-Builder's Obligations

If the Design-Builder fails to perform any of its obligations under this Design-Build Contract within the time period specified in the other Sections of this Design-Build Contract or in any other DB Project Document, or if no such time period is specified, within fifteen (15) Business Days after notice from the Port Authority or the Developer (or, with respect to obligations which by their nature are not susceptible to complete performance within such fifteen (15)-Business Day period, within such additional time period as may be permitted by the Port Authority and the Developer (or, in the case of a Developer notice, permitted by the Developer)

so long as the Design-Builder has commenced performance within such fifteen (15)-Business Day period), then in such event, the Port Authority and the Developer, in addition to all other remedies available to them, shall each have the right, subject to the rights of the Lenders pursuant to any DB Lenders' Direct Agreement, and without any necessity for a consent or approval from the Developer (in the case of the Port Authority) or the Design-Builder or the making of a determination whether the Port Authority or the Developer, as applicable, validly exercised its step-in rights, but under no circumstances any duty or obligation whatsoever, to perform any of such obligations (such performance to comply with Applicable Law); provided, that if the Design-Builder's failure to perform has resulted in an Emergency, each of the Port Authority and the Developer shall have the right to perform any of the Design-Builder's obligations in order to cure such Emergency without providing any cure period or notice to the Design-Builder. Nothing in this Design-Build Contract, including this Section 28.1, shall be construed as imposing any duty on the Port Authority or the Developer to perform any obligation required to be performed by the Design-Builder hereunder and the performance of any such obligation by the Port Authority or the Developer shall not constitute a waiver of the Design-Builder's default in failing to perform the same. So long as the Port Authority or the Developer undertakes any such action in accordance with this Section 28.1(a) in good faith, even if under a mistaken belief in the occurrence of a breach of the obligations of the Design-Builder hereunder, such action will not be deemed unlawful, will not expose the Port Authority or the Developer to any liability to the Design-Builder and will not entitle the Design-Builder to any remedy, it being acknowledged that the Port Authority and the Developer have a high-priority, paramount public interest in the continuous operations and maintenance of the Terminal B Facilities, the provision and maintenance of continuous public access to the Premises and the protection of public and worker safety. The foregoing will not, however, protect the Developer from the Design-Builder's lawful Claims for recovery for third-party bodily injury or property damage arising out of any such Developer action if and to the extent such injury or property damage was caused by the Developer's gross negligence and the third-party liability is not insured and not required to be insured pursuant to this Design-Build Contract. To the extent necessary to confirm the agreement set forth in this Section 28.1, the Design-Builder and the Developer agree to enter into a DB Direct Agreement in connection herewith. The Developer hereby waives and releases any claim or cause of action against the Design-Builder arising out of or relating to the Design-Builder's recognition of the Port Authority's and the Developer's respective rights under this Section 28.1 in reliance on any written notice from the Port Authority or the Developer, respectively, as described herein. At the written request of the Developer, the Design-Builder shall promptly and diligently enforce against any DB Subcontractors any right expressly granted to the Port Authority in this Design-Build Contract. This provision shall not be construed to qualify or otherwise limit the Developer's or the Port Authority's rights or remedies provided in this Section 28.1 or elsewhere in this Design-Build Contract.

Section 28.2 Reimbursement by the Design-Builder

An amount equal to (i) one hundred fifteen percent (115%), if in connection with an exercise of rights by the Port Authority or (ii) one hundred percent (100%), if in connection with an exercise of rights by the Developer, in each case pursuant to Section 28.1 above, of all out-of-pocket costs, expenses, damages, penalties and other charges paid or directly incurred by the Port Authority or the Developer, as applicable, in connection with its performance of any

obligation of the Design-Builder pursuant to Section 28.1, as applicable, together with late charges calculated pursuant to Section 35.16(a) for the period from the respective dates of the making of each such payment or incurring of each such cost, expense, damages, penalty or other charge, until the date of actual repayment to the Port Authority or the Developer, as applicable, shall be paid by the Design-Builder to the Port Authority or the Developer, as applicable, within thirty (30) days of receipt by the Design-Builder of the Port Authority's or the Developer's written notice thereof, as applicable, with a statement of such sums, costs, expenses, damages, penalties and other charges and evidence of payment thereof.

Section 28.3 New Agreements

Subject to the rights of the Lenders pursuant to the DB Lenders' Direct Agreement, the Design-Builder will promptly execute and deliver to the Port Authority or its successor, assignee or designee a new contract between the Design-Builder and the Port Authority or its successor, assignee or designee on the same terms and conditions as this Design-Build Contract, if (A) this Design-Build Contract is rejected by the Developer in bankruptcy or is wrongfully terminated by the Developer and (B) the Port Authority delivers written request for such new contract within sixty (60) days following termination or expiration of this Design-Build Contract. If the Design-Builder is a party to an escrow agreement for Intellectual Property escrow related to the DB D&C Work and the Developer terminates such escrow agreement, then the Design-Builder shall execute and deliver to the Port Authority, concurrently with the new contract described above, a new escrow agreement on the same terms and conditions as the terminated escrow agreement, and shall concurrently make the same deposits to the new Intellectual Property escrow as made or provided under the terminated escrow agreement. The obligation for the new agreements pursuant to this Section 28.3 to include the same terms and conditions as the prior agreement is subject to the following exceptions: (1) any terms and conditions of this Design-Build Contract (or an Intellectual Property escrow agreement, if applicable) rendered moot or inapplicable solely due to change in the identity of the contracting party to the Port Authority or its successor, assign or designee and (2) terms and conditions of this Design-Build Contract that must be adjusted due to schedule delay caused solely by the Developer's rejection of such agreement in bankruptcy or wrongful termination. The covenants set forth in this Section 28.3 shall survive termination of this Design-Build Contract.

ARTICLE 29

LIMITATIONS ON THE DESIGN-BUILDER'S RIGHT TO RELY

Section 29.1 Rights of the Port Authority

The Design-Builder expressly acknowledges and agrees (i) to the Port Authority's rights set forth in Section 29.1 of the Lease, and the Design-Builder shall recognize such rights in performing its obligations under this Design-Build Contract, and (ii) such rights exist solely for the benefit and protection of the Port Authority, do not create or impose upon the Port Authority any standard or duty of care toward the Design-Builder or any other Lessee-Related Entity, all of which the Port Authority disclaims in Section 29.1 of the Lease, and may not be relied upon, nor may the Port Authority's exercise or failure to exercise any such rights be relied upon, by the

Design-Builder in determining whether the Design-Builder has satisfied the standards and requirements set forth in this Design-Build Contract and may not be asserted, nor may the Port Authority's exercise or failure to exercise any such rights be asserted, against the Port Authority or the Developer by the Design-Builder as a defense, legal or equitable, to the Design-Builder's obligation to fulfill such standards and requirements. This Section 29.1 shall not, however, prohibit the Design-Builder from making any claim for Equivalent Project Relief pursuant to Article 14A hereto with respect to any corresponding claim for which the Developer may be entitled to Primary Project Relief.

Section 29.2 NOT USED

Section 29.3 No Relief or Waiver

Pursuant to Section 29.3 of the Lease, no rights of the Port Authority described in Section 29.1 of the Lease, no exercise or failure to exercise such rights, no failure of the Port Authority to meet any particular standard of care in the exercise of such rights, no issuance of permits, Temporary Certificate of Authorization to Occupy or Use, Certificate of Substantial Completion or Certificate of Final Acceptance will:

- (a) relieve the Developer from performance of the Work or of its responsibility for the selection and the competent performance of its Contractors and Suppliers;
- (b) except to the extent expressly stated herein, relieve the Developer of any of its obligations or liabilities under the Project Documents;
- (c) be deemed or construed to waive any of the Port Authority's rights and remedies under the Project Documents; or
- (d) be deemed or construed as any kind of representation or warranty, express or implied, by the Port Authority.

The Design-Builder will be subject to the provisions of Section 29.3 of the Lease to the extent such provisions are applicable to the DB D&C Work or the Design-Builder's obligations under this Design-Build Contract.

Section 29.4 Limited Right to Rely on Certain Notices and Certificates by the Port Authority

Pursuant to Section 29.4 of the Lease, (1) any Notices to Proceed, Temporary Certificate of Authorization to Occupy or Use, Certificate of Substantial Completion and Certificate of Final Acceptance will be binding on the Port Authority; (2) the Developer will be entitled to rely on specific approved Lessee Change Requests; and (3) the Port Authority is not relieved from any liability arising out of a knowing, intentional material misrepresentation under any written statement of the Port Authority. Notwithstanding Sections 29.1 and 29.3, the Design-Builder will also be entitled to rely on any of the notices and certificates described in clause (1) above; provided, however, that the delivery of such notices and certificates will not constitute a waiver by the Port Authority or the Developer of any breach of this Design-Build Contract by the

Design-Builder or relieve the Design-Builder of any of its obligations hereunder. The Design-Builder also will be entitled to rely on specific approved Lessee Change Requests as set forth in clause (2) above.

ARTICLE 30

MAINTENANCE AND INSPECTION OF RECORDS

Section 30.1 Maintenance and Inspection of Records; Ownership

(a) In addition to and without limiting Section 1.1 or any term or provision of this Design-Build Contract, the Design-Builder shall keep and maintain, and cause its DB Subcontractors and Suppliers to keep and maintain, in accordance with the applicable Rules and Regulations (including the Port Authority's Information Security Handbook), appropriate books and records in which complete and correct entries will be made of its transactions at, through or in any way connected with the DB D&C Work and the Premises, in accordance with GAAP or any other generally accepted accounting standards which are acceptable to the Port Authority (provided, that Excepted DB Subcontractors and Excepted Suppliers, while required to keep and maintain such books and records, shall not be required to keep and maintain such books and records in accordance with GAAP or such other accounting standards) (collectively, the "**Books and Records**"). The Books and Records shall include and show (i) all matters with respect to the costs of the DB Construction Work; (ii) all matters which the Design-Builder is required to certify to the Developer or the Port Authority pursuant to this Design-Build Contract and (iii) any and all other matters concerning the Design-Builder's operations at the Premises with respect to which the Developer or the Port Authority may reasonably need information to fulfill its obligations or exercise its rights under this Design-Build Contract, whether or not of the type enumerated above in this Section 30.1(a) and whether or not an express obligation to keep books and records with regard thereto is expressly set forth elsewhere in this Design-Build Contract. Neither the Design-Builder nor such DB Subcontractors and Suppliers shall be obligated to preserve the Books and Records (x) with respect to the Books and Records generated prior to the Substantial Completion Date, for more than seven (7) years after the Substantial Completion Date and (y) with respect to the Books and Records generated after the Substantial Completion Date, for more than seven (7) years after the date such Books and Records are generated (or in each case, if the DB Project Documents specify any longer period of time for retention of any particular Books and Records, such longer time period), unless they are material to litigation initiated within that time, in which event they shall be preserved until the final determination of the controversy.

(b) In addition to the Books and Records required to be maintained pursuant to Section 30.1(a), the Design-Builder shall keep and maintain, and cause its DB Subcontractors and Suppliers to keep and maintain, all Design Documents and Construction Documents that are prepared or procured by or on behalf of the Design-Builder for the DB D&C Work as required under the DB Project Documents, as well as all records, documentation and other supporting information evidencing the application of Port Authority Funding to the Construction Project, including copies of all original documents delivered to the Developer

for submission to the Port Authority. The Design-Builder shall keep and maintain, and cause its DB Subcontractors and Suppliers to keep and maintain, the Design Documents and Construction Documents in accordance with applicable provisions of the DB Project Documents and in accordance with Best Management Practice; provided, that in any event, the obligation to maintain the Design Documents and Construction Documents as provided in this Section 30.1(b) shall remain in effect until such time as the Design-Builder is required to transfer such documentation to the Developer or the Port Authority upon the expiration or early termination of this Design-Build Contract, as the case may be, unless the Design Documents or Construction Documents are material to litigation initiated within that time, in which event they shall be preserved until the final determination of the controversy.

(c) All Books and Records, Design Documents, Construction Documents and other documentation required to be kept and maintained in accordance with Sections 30.1(a) and 30.1(b) shall be so kept and maintained in an office or offices in the Port of New York District unless (i) a DB Subcontractor or a Supplier does not maintain an office in the Port of New York District, in which case such documentation shall be kept and maintained at an office or offices of such DB Subcontractor or Supplier located in the continental United States of America or (ii) a Supplier does not maintain an office in the continental United States of America, in which case such documentation shall be kept and maintained at the Supplier's principal place of business.

(d) As contemplated by Section 30.1(c) of the Lease, all Design Documents and Construction Documents that are prepared or procured by or on behalf of the Port Authority in connection with the Terminal B Facilities, whether before or after the Lease Commencement Date, shall be and remain the exclusive property of the Port Authority.

(e) As contemplated by Section 30.1(d) of the Lease, (1) prior to the Expiry Date or Early Termination Date under the Lease, as applicable, all Design Documents and Construction Documents prepared or procured by or on behalf of the Developer in connection with the Terminal B Facilities or the Work will remain exclusively the property of the Developer, as between the Developer and the Port Authority, notwithstanding any delivery of copies thereof to the Port Authority and (2) upon the Expiry Date or Early Termination Date (including as a result of a termination by the Developer), as applicable, (i) the Developer shall promptly turn over to the Port Authority copies of all Design Documents and Construction Documents the Developer owns and (ii) subject to Article 31 of the Lease, all such Design Documents and Construction Documents shall be deemed the sole and exclusive property of the Port Authority, without compensation due to the Developer, the Design-Builder, any other Lessee-Related Entity or any other Person. Notwithstanding the foregoing, prior to the termination of this Design-Build Contract, all Design Documents and Construction Documents prepared or procured by the Design-Builder in connection with the Terminal B Facilities or the DB D&C Work will remain exclusively the property of the Design-Builder and not of the Developer, notwithstanding any delivery of copies thereof to the Developer or the Port Authority. Upon final completion or the early termination of this Design-Build Contract (including as a result of a termination by the Design-Builder), (i) the Design-Builder shall promptly turn over to the Developer copies of all Design Documents and Construction Documents the Design-Builder owns (provided that all payment due to the Design-Builder for

such Design Documents and Construction Documents has been paid) and (ii) subject to Article 31, all such Design Documents and Construction Documents shall be deemed the sole and exclusive property of the Developer (or of the Port Authority, pursuant to the Lease) and not of the Design-Builder, without compensation due to the Design-Builder, any DB Party or any other Person.

Section 30.2 Audit; Inspection

(a) Each of the Developer and the Port Authority shall have the right to audit and inspect all Books and Records, all Design Documents and all Construction Documents and any other documentation as the Developer or the Port Authority may reasonably request in connection with the DB D&C Work or the Premises, for any purpose related to the DB D&C Work, the Premises or this Design-Build Contract, during ordinary business hours, and as often as it may consider necessary, at no cost or charge to the Developer or the Port Authority, as applicable, and the Design-Builder shall permit, and cause its DB Subcontractors and Suppliers to permit, such audit and inspection by officers, employees and authorized representatives of the Developer and the Port Authority; provided, however, that each of the Developer and the Port Authority may exercise such right unannounced and at any time during the pendency of a Design-Builder Event of Default or where the Developer or the Port Authority, as applicable, suspects willful misconduct or fraud. The Design-Builder shall provide, and cause its DB Subcontractors and Suppliers to provide, to the Developer or the Port Authority copies of all such Books and Records, Design Documents, Construction Documents and such other documentation as and when reasonably requested by the Developer or the Port Authority. The right of inspection includes the right to make copies and extracts and take notes. If the Books and Records, Design Documents, Construction Documents and other documentation required to be kept and maintained in accordance with Section 30.1 are kept and maintained outside of the Port of New York District by a DB Subcontractor or Supplier, then the Design-Builder shall reimburse, or cause such DB Subcontractor or Supplier, as applicable, to reimburse, the Developer or the Port Authority, as applicable, for the reasonable costs of travel, meals and lodging of any authorized officer, employee or representative of the Developer, the Port Authority or the Project Integrity Monitor auditing or examining the same, to the extent permitted under this Design-Build Contract, at the location at which they are maintained; provided, however, that if such Books and Records, Design Documents, Construction Documents and other documentation are kept and maintained outside of the continental United States of America in accordance with Section 30.1(c), the Design-Builder shall also reimburse, or cause such Supplier to reimburse, the Developer or the Port Authority, as applicable, for salaries, benefits, overhead costs and additional related fees and charges of any authorized officer, employee or representative of the Developer, the Port Authority or Project Integrity Monitor, as applicable, conducting such audit and examination..

(b) In addition to any other specific audit rights that the Developer or the Port Authority may have under the DB Project Documents, each of the Developer and the Port Authority shall have such rights to review and audit the Design-Builder and its DB Subcontractors and Suppliers and their respective Books and Records as the Developer or the Port Authority, as applicable, deems necessary for purposes of verifying compliance with the

DB Project Documents, Applicable Law and Applicable Standards. Without limiting the foregoing, each of the Developer and the Port Authority shall have the right to inspect all or any portion of the DB D&C Work and/or incidental activities, and to observe the business operations of the Design-Builder and its DB Subcontractors and Suppliers in order to confirm the accuracy of their respective Books and Records and verify the accuracy and adequacy of the plans relating to the DB D&C Work required by the Requirements and Provisions for Work and other relevant DB Project Documents.

(c) The Design-Builder shall install and use, and shall cause its DB Subcontractors and Suppliers (other than Excepted DB Subcontractors and Excepted Suppliers) to install and use, such computerized recordkeeping systems respecting, among other things, revenues, expenses, work orders and time records as may be appropriate to the Design-Builder's or such DB Subcontractor's or Supplier's business and necessary or prudent in order that accurate Books and Records are kept; provided, that, for the avoidance of doubt, nothing contained in this Section 30.2(c) shall otherwise limit the obligation of Excepted DB Subcontractors and Excepted Suppliers to maintain and keep accurate non-computerized Books and Records, Construction Documents, Design Documents and other documentation in accordance with this Article 30.

(d) The Design-Builder represents and warrants the completeness and accuracy in all material respects of all information it or its agents provides in connection with the Developer and/or Port Authority audits, and shall use Reasonable Efforts to cause all DB Subcontractors and Suppliers to warrant the completeness and accuracy in all material respects of all information such DB Subcontractors and Suppliers provide in connection with the Developer and/or Port Authority audits.

(e) The Design-Builder shall (and shall cause any DB Subcontractor and Supplier to) include appropriate terms in each Contract in order to provide the Developer and the Port Authority with access and audit rights in accordance with the terms of this Article 30.

(f) For the avoidance of doubt, whenever the Design-Builder has undertaken a selection process, whether through a request for proposals or otherwise, each of the Developer and the Port Authority may, at any time during the term of the Lease, request true and complete copies of all proposals submitted for the Design-Builder's consideration and the Design-Builder shall cause all of such information to be provided to the Developer or the Port Authority, as applicable, free of any non-disclosure or confidentiality restrictions.

Section 30.3 Semi-Annual Meetings; Information Sharing

Pursuant to Section 30.3 of the Lease, (1) there shall be meetings between representatives of the Port Authority and representatives of the Developer to discuss the use and operation of the Premises, including, without limitation, the status and performance of the concession program at the Terminal B Facilities, the operation of the Premises for passenger air-transportation-related uses, the Subleases (including prospective Subleases) and the Work on a semi-annual basis, or more frequently as either the Port Authority or the Developer may reasonably request and (2) the requirements of this Section 30.3 are in addition to and not in replacement of the meetings of the

design and construction working group pursuant to Section 8.5(b) of the Lease and the other cooperation and coordination obligations of the parties contained therein. The Design-Builder shall participate in such semi-annual meetings as and to the extent reasonably requested by the Developer.

ARTICLE 31

INTELLECTUAL PROPERTY

Section 31.1 Intellectual Property

(a) The Design-Builder shall deliver to the Developer copies of all available documentation evidencing Intellectual Property owned or licensed by the Design-Builder or any DB Subcontractor or Supplier which the Design-Builder or any DB Subcontractor or Supplier uses in performing the DB D&C Work. Except as expressly provided in Section 1.16 of the General Conditions, all Intellectual Property contained in the DB D&C Work owned or licensed by the Design-Builder or any DB Subcontractor or Supplier on the Lease Commencement Date or developed by the Design-Builder or any DB Subcontractor or Supplier during the Term shall remain exclusively the property of the Design-Builder or applicable DB Subcontractor or Supplier, as applicable, notwithstanding any delivery of copies thereof to the Developer or the Port Authority or any other provision contained in this Design-Build Contract.

(b) The Design-Builder hereby grants (on its own behalf and on behalf of its DB Subcontractors and Suppliers) to the Port Authority and the Developer a nonexclusive, transferable (subject to Section 31.1(d)), royalty-free, irrevocable, perpetual, worldwide, fully paid up right and license to use, reproduce, modify, adapt, disclose to and sublicense to other persons engaged (directly or indirectly) by or on behalf of the Port Authority and/or the Developer or subtenants of the Developer in connection with the Premises, the Intellectual Property owned or licensable by the Design-Builder or its DB Subcontractors or Suppliers; provided, that the Port Authority and the Developer shall have the right to exercise such license only in connection with the operation of the Premises.

(c) The Port Authority and the Developer shall have no right to sell any Intellectual Property of the Design-Builder or its DB Subcontractors or Suppliers or to use, reproduce, modify, adapt and disclose, or allow any party to use, reproduce, modify, adapt and disclose, any such Intellectual Property for any other purpose other than as set forth in Section 31.1(b) and shall ensure that any Person to which it discloses any Intellectual Property pursuant to the licenses granted under this Section 31.1 agrees to be bound by the provisions of this Section 31.1 and the confidentiality obligations set out in Section 35.18 of this Design-Build Contract with respect to such Intellectual Property.

(d) Pursuant to Section 31.1 of the Lease, the Port Authority's right to transfer the license is limited to any Governmental Entity that succeeds to the power and authority of the Port Authority generally or with respect to the Premises.

(e) The Design-Builder shall continue to have a full and complete right to use any and all duplicates or other originals of its Intellectual Property in any manner it chooses.

(f) With respect to any Intellectual Property that is not owned or licensable by the Design-Builder, the Design-Builder shall use Reasonable Efforts to obtain from the owner of such Intellectual Property (or any person entitled to license such Intellectual Property), concurrently with execution of any contract, subcontract or purchase order with such Person or with the first use or adaptation of the Intellectual Property in connection with the DB D&C Work or the Premises, for the Design-Builder, the Developer, and the Port Authority, a nonexclusive, transferable (subject to Section 31.1(d)), irrevocable, royalty-free license to use, reproduce, modify, adapt and disclose such Intellectual Property solely in connection with Work or the Premises of at least identical scope, purpose, duration and applicability as the license granted under Section 31.1(b). Any such license shall be subject to the terms of this Article 31.

(g) The Design-Builder agrees to assign to the Port Authority, and hereby does assign to the Port Authority, all copyrights in all DB D&C Work comprising video or photographic records, in accordance with Section 1.16 of the General Conditions.

Section 31.2 Maintenance of Data

(a) To the extent that any data, materials and documents referred to in this Article 31 are generated by or maintained on a computer or similar system, the Design-Builder shall use Reasonable Efforts to procure for the benefit of the Developer and the Port Authority, at no charge or at the lowest reasonable fee, the grant of a license or sub-license for any relevant software to enable the Developer and the Port Authority, or their respective nominees, to access and otherwise use (subject to the payment by the Developer or the Port Authority, as applicable, of the relevant fee, if any) such data for the purposes set forth in Section 31.1. As an alternative, the Design-Builder may provide such data, materials or documents in a format which may be read by software generally available in the market at the relevant time.

(b) The Design-Builder shall ensure the backup and storage in safe custody of the data, materials and documents referred to in Section 31.2(a) in accordance with Best Management Practice. The Design-Builder shall submit to the Developer for approval its proposals for the backup and storage in safe custody of such data, materials and documents and the Developer shall be entitled to object if the same is not, in the opinion of the Developer or of the Port Authority, in accordance with Best Management Practice. The Design-Builder shall comply, and shall use Reasonable Efforts to cause DB Subcontractors and Suppliers to comply, with all procedures to which the Developer and the Port Authority's Authorized Representative have given their approval.

Section 31.3 Design-Builder's Intellectual Property Indemnity

Where a claim or proceeding is made or brought against the Developer or the Port Authority which alleges any patent, trademark, or copyright infringement or other allegedly

improper appropriation or use by the Design-Builder, or any DB Subcontractor or Supplier of the Design-Builder, of Intellectual Property in performance of the DB D&C Work, or arising out of any use of Intellectual Property furnished or communicated to the Developer or the Port Authority or any other Port Authority Indemnified Party pursuant to the Contract Documents, then the Design-Builder shall indemnify and hold harmless the Developer and the Port Authority at all times from and against all Losses arising out of, based on or related to such claims and proceedings, and the provisions of Section 21.1 and Section 21.3 shall apply; provided, that this indemnity shall not apply to any claim or proceeding for infringement or other improper appropriation or use resulting from the use by the Developer or the Port Authority of Intellectual Property otherwise than in accordance with the terms thereof (provided, that such terms have been provided to the Developer by the Design-Builder, or to the Port Authority by the Developer or the Design-Builder, in writing) or the terms of this Design-Build Contract or the Lease.

Section 31.4 Use of Design Documents and Construction Documents by the Port Authority and the Developer

Pursuant to Section 31.4 of the Lease, following the delivery of a Termination Notice to or by the Developer prior to the Final Acceptance Date or following Final Acceptance, (a) if the Port Authority uses or modifies the Design Documents or the Construction Documents in connection with the Construction Project, the Port Authority agrees to (i) remove the Developer's and any relevant Lessee-Related Entity's name(s) from the title block of any such Design Documents or Construction Documents, and (ii) defend, indemnify and hold the Developer and any relevant Lessee-Related Entity harmless from any claim, demand or liability arising out of the use by the Port Authority of such portions of the Design Documents or the Construction Documents that have been expanded, supplemented or otherwise modified by the Port Authority or any third party without the prior consent of the Developer and the Design-Builder, and (b) the Port Authority agrees not to sell or use the Design Documents or Construction Documents or allow any party to sell or use the Design Documents or Construction Documents for any purpose other than in connection with the Construction Project, without the prior consent of the Developer and the Design-Builder. If such a termination of this Design-Build Contract relates to a termination of the Lease, the Design-Builder's right to indemnification shall be limited to Equivalent Project Relief pursuant to Article 14A.

Following any other termination of this Design-Build Contract pursuant to Section 23.3(a) (in circumstances in which the Lease has not also been terminated) prior to the Final Acceptance Date or following Final Acceptance, (a) if the Developer uses or modifies the Design Documents or the Construction Documents in connection with the Construction Project, the Developer agrees to (i) remove the Design-Builder's and any relevant DB Party's name(s) from the title block of any such Design Documents or Construction Documents, and (ii) defend, indemnify and hold the Design-Builder and any relevant DB Party harmless from any claim, demand or liability arising out of the use by the Developer of such portions of the Design Documents or the Construction Documents that have been expanded, supplemented or otherwise modified by the Developer or any Lessee-Related Entity (other than the Design-Builder or a DB Party) without the prior consent of the Design-Builder, and (b) the Developer agrees not to sell or use the Design Documents or Construction Documents or allow any party to sell or use the

Design Documents or Construction Documents for any purpose other than in connection with the Construction Project, without the prior consent of the Design-Builder.

Section 31.5 NOT USED.

ARTICLE 32

NOT USED.

ARTICLE 33

**DISPUTE RESOLUTION PROCEDURES; PORT AUTHORITY RELATED
PROCEEDINGS**

Section 33.1 General

Any Dispute that is subject to the dispute resolution procedures set forth in Article 33 of the Lease (the “**Port Authority Dispute Resolution Procedures**”) shall be resolved in accordance with the provisions of such Article 33 of the Lease, including but not limited to the provisions of Section 33.3 of the Lease governing Disputes involving technical or engineering matters that are subject to resolution by the Chief Engineer, Section 33.4 of the Lease involving a dispute or disagreement regarding Other Redevelopments, and Section 33.7 of the Lease providing the right of joinder for certain disputes under this Design-Build Contract. The provisions of Article 33 of the Lease are hereby incorporated *mutatis mutandis*, and the Parties shall be bound by the resolution of any proceedings under the Lease with respect to any such Dispute in accordance with the terms of the Lease. Unless provided to the contrary under the Lease or this Design-Build Contract, the Parties shall continue to perform their respective obligations under this Design-Build Contract pending the final resolution of any Dispute governed by this Article 33.

Section 33.2 NOT USED

Section 33.3 NOT USED

Section 33.4 NOT USED

Section 33.5 NOT USED

Section 33.6 NOT USED

Section 33.7 NOT USED

Section 33.8 NOT USED

Section 33.9 NOT USED

ARTICLE 33A

DB DISPUTE RESOLUTION PROCEDURE

Section 33A.1 General

In the event of a Dispute between the Design-Builder and the Developer arising from or in connection with this Design-Build Contract that is not subject to Section 33.1 above, such Dispute shall be subject to the dispute resolution process set forth in this Section 33A (the “**DB Dispute Resolution Procedure**”). For the avoidance of doubt, the DB Dispute Resolution Procedure shall apply only to Disputes directly between the Design-Builder and the Developer and, if at any time during the pendency of such Dispute, the Dispute becomes subject to the provisions of Section 33 hereof, the terms of this Section 33A shall cease to apply and such Dispute shall be governed by the terms of Section 33 hereof.

Section 33A.2 Dispute Avoidance and Resolution

The Parties are fully committed to working with each other throughout the performance of the DB D&C Work and agree to communicate regularly with each other at all times so as to avoid or minimize Disputes. If Disputes do arise, the Design-Builder and the Developer each commit to resolving such Disputes in an amicable, professional and expeditious manner so as to avoid unnecessary losses, delays and disruptions to the DB D&C Work.

The Design-Builder and the Developer will first attempt to resolve any Disputes through discussions between representatives of each party (the “**Design-Builder’s Representative**” and the “**Developer’s Representative**,” respectively), which discussions shall conclude within five (5) days of the written request to meet unless the Design-Builder and the Developer mutually agree otherwise.

If a Dispute cannot be resolved through the Design-Builder’s Representative and the Developer’s Representative, then, upon the request of either Party, senior representatives from

each Party (the “**Senior Representatives**”), each with the necessary authority within their own organizations to fully resolve the Dispute on behalf of their respective organizations, shall meet as soon as possible, but in no case later than seven (7) days after such a request is made, to attempt to resolve such Dispute. Three (3) days prior to any meetings between the Senior Representatives, the Parties will exchange relevant information that will assist the Parties in resolving their Dispute.

Engagement in the Dispute Avoidance and Resolution procedure of Section 33A.2 is a condition precedent to a Party’s right to refer a Dispute to the Dispute Board pursuant to Section 33A.3 or to commence litigation pursuant to Section 33A.4.

Section 33A.3 Standing Dispute Board & Dispute Board Rules

The Parties hereby agree to establish a Dispute Board consisting of the three Dispute Board Members. The Parties shall use Reasonable Efforts to jointly select each of the three Dispute Board Members within thirty (30) days of execution of this Design-Build Contract. In the event the Parties do not agree on all three Dispute Board Members within thirty (30) days of execution of this Design-Build Contract, each Party shall each nominate a Dispute Board Member and the two nominated Dispute Board Members shall jointly nominate the third Dispute Board Member. Neither Party shall object to the third nominated Dispute Board Member except on the basis of an actual or likely conflict of interest with one or both Parties.

If, after meeting, the Senior Representatives determine that the Dispute cannot be resolved on terms satisfactory to both Parties, the Dispute shall be referred to the Dispute Board. The aim of the Dispute Board is to assist the Parties (i) in resolving Disputes by informal assistance through mediation, and (ii) in resolving Disputes by issuing decisions upon formal referral.

The Rules governing the Dispute Board, including its establishment, operation, services, and compensation; the procedures for obtaining informal assistance from the Dispute Board through mediation; the procedures for formal referral of Disputes to the Dispute Board for resolution; the procedures for resolution of Disputes by the Dispute Board through the issuance of decisions; and the effect of the Dispute Board’s decisions are set out in Exhibit 43 (the “**Dispute Board Rules**”) to this Design-Build Contract and are incorporated herein by reference.

Engagement in the Dispute Board procedure of Section 33A.3 is a condition precedent to a Party’s right to commence litigation pursuant to Section 33A.4, except that engagement in mediation procedures set out in Article 10 of the Dispute Board Rules which require mutual consent of the Parties is not a condition precedent and shall not in any way impede a Party’s right to commence litigation pursuant to Section 33A.4.

Section 33A.4 Litigation

If any Party sends a written notice to the other Party and the Dispute Board expressing its dissatisfaction with Dispute Board’s Decision as provided in the Dispute Board Rules; or if a Party fails to comply with a Dispute Board Decision when required to do so pursuant to the Dispute Board Rules; or if the Dispute Board does not issue a Decision within the time limit

provided in the Article 15 of the Dispute Board Rules; or if the Dispute Board Decision does not issue within sixty (60) days of the Date of Commencement (as that term is defined in Article 12) for any reason; or if the Dispute Board is disbanded pursuant to the Rules prior to issuing the Decision; or if any Dispute is not referred to, or resolved by, the Dispute Board for any other reason, the Dispute shall be finally decided by litigation in any New York State court or the U.S. District Court for the Southern District of New York sitting in the City and County of New York, and any appellate court from any thereof, unless the Parties mutually agree otherwise.

Section 33A.5 Urgent Relief

Nothing herein shall prejudice the right of a Party to commence litigation when necessary to preserve legal and statutory rights (including to prevent the running of any statute of limitations) or to commence litigation seeking urgent relief when necessary to prevent imminent irreparable harm in respect of a Dispute arising under or in connection with this Design-Build Contract.

Section 33A.6 Costs of Dispute Resolution

Each Party will bear its own attorneys' fees and costs in any Dispute or litigation arising out of or pertaining to this Design-Build Contract and no Party will seek or accept an award of attorneys' fees or costs except as otherwise expressly provided herein.

ARTICLE 34

CONSEQUENTIAL LOSSES; LIMITATIONS ON LIABILITY; DOUBLE RECOVERY; NON-EXCLUSIVE REMEDIES; PAYMENTS BY THE PORT AUTHORITY

Section 34.1 Consequential Losses; Limitations on Liability

(a) Neither party shall be liable to the other for any indirect or consequential losses suffered or incurred by such party; provided that:

(i) the Design-Builder shall be liable under this Design-Build Contract for the Delay LDs (subject to the limit on such Delay LDs under Section 34.1(b));

(ii) for the purposes of this Design-Build Contract, the following shall be deemed to be excluded from indirect or consequential losses:

(A) all damages, losses and costs arising from the compensation of Lenders or third-party costs arising from a termination of this Design-Build Contract to the extent attributable to a Design-Builder Event of Default;

(B) any reductions in payments to be made by the Port Authority to the Developer under the Lease, to the extent caused by the Design-Builder;

(C) all damages, losses and costs arising from any third party claim in respect of which the Design-Builder or the Developer indemnifies the other party under this Design-Build Contract; and

(D) all damages, losses and costs to the extent covered by insurance proceeds recovered from an insurance provider pursuant to insurance maintained by the relevant Party in accordance with the insurance requirements set forth in Article 20 or which could have been recovered through insurance which the relevant Party was required to maintain in accordance with such insurance requirements but failed to maintain.

(b) The aggregate liability of the Design-Builder to the Developer in respect of Delay LDs will be limited to eight percent (8%) of the Contract Price. Any amount recovered by the Design-Builder in respect of Delay LDs pursuant to Equivalent Project Relief shall not constitute a liability of the Design-Builder for purposes of this limitation.

(c) Except as otherwise explicitly provided in this Design-Build Contract, the maximum aggregate liability of the Design-Builder to the Developer (including amounts recovered under any D&C Guarantee, D&C Letter of Credit, surety bond or retainage, as applicable):

(i) for default under, breach or termination of this Design-Build Contract (or negligence or breach causing termination of any DB Project Document); and

(ii) in tort (including negligence and strict liability), for breach of a statutory duty or for any other cause of action in connection with this Design-Build Contract or related to the Construction Project, the DB Project Document or the DB D&C Work,

(inclusive of liability under clause (b) above), shall be limited to an amount equal to forty percent (40%) of the sum of the Contract Price until Partial Completion of the first, second and third New Facilities Construction Milestones and, thereafter, shall be limited to an amount equal to thirty percent (30%) of the sum of the Contract Price.

(d) The limitations on liability in clauses (b) and (c) above shall not apply to:

(i) insurance coverages maintained by the Design-Builder in accordance with the insurance requirements set forth in Article 20 of this Design-Build Contract (net of deductibles paid by the Design-Builder in respect of the event giving rise to such liability) or which could have been recovered through insurance which the Design-Builder was required to maintain in accordance with such insurance requirements but the Design-Builder failed to maintain;

(ii) liabilities of the Design-Builder (as opposed to liabilities of the Developer) that arise out of any third-party claims against the Design-Builder, including, without limitation, any such claims by any Patrons of LGA Airport or for damage or destruction of property or death or personal injury;

(iii) liabilities that arise out of (A) abandonment of the DB Work and Staging Area or the DB D&C Work by the Design-Builder that results in a Design-Builder Event of Default pursuant to Sections 23.1(f) or 23.1(g), or (B) gross negligence, willful misconduct or actual fraud of the Design-Builder or any DB Party;

(iv) liabilities of the Design-Builder to the Developer as a result of the Design-Builder's obligations with respect to indemnification pursuant to Article 21 of this Design-Build Contract;

(v) any cost overruns (which, for the avoidance of doubt, do not include any Delay LDs or other amounts the Design-Builder is required to pay the Developer pursuant to this Design-Build Contract) incurred by the Design-Builder in carrying out the DB D&C Work;

(vi) any costs paid or incurred in connection with the correction of Nonconforming Work or to correct a DB Work Defect; and

(vii) any amounts paid or owed by the Design-Builder in order to satisfy its obligation to deliver title, materials, equipment or systems permanently incorporated in the DB D&C Work free and clear of all liens, claims and encumbrances arising in connection with the DB D&C Work (other than liens resulting from the Developer's failure to pay an undisputed amount and subject to reimbursement of the Design-Builder for certain costs, as set forth in Section 3.3 of this Design-Build Contract).

Section 34.2 No Double Recovery

Notwithstanding any other provisions of this Design-Build Contract to the contrary, neither Party shall be entitled to recover compensation or make a claim under this Design-Build Contract in respect of any Loss that it has incurred to the extent that it has already been compensated in respect of that Loss pursuant to this Design-Build Contract or otherwise.

Section 34.3 Remedies to be Non-Exclusive

Except as otherwise expressly provided in this Design-Build Contract, all remedies provided in this Design-Build Contract shall be deemed cumulative and additional and not in lieu of or exclusive of each other or of any other remedy available to the Developer or to the Design-Builder at law or in equity, and the exercise of any remedy, or the existence herein of other remedies or indemnities shall not prevent the exercise of any other remedy.

Section 34.4 NOT USED

ARTICLE 35

MISCELLANEOUS

Section 35.1 Entire Agreement

This Design-Build Contract, together with all attachments, exhibits, schedules, appendices or annexes hereto, contains all of the promises, agreements, conditions, inducements and understandings between the Developer and the Design-Builder concerning the DB D&C Work and the Premises, and there are no promises, agreements, conditions, understandings, inducements, warranties or representations, oral or written, express or implied, between them other than as expressly set forth herein and therein or as may be expressly contained in any enforceable written agreements or instruments executed simultaneously herewith by the Parties hereto.

Section 35.2 Amendments

No covenant, agreement, term or condition of this Design-Build Contract or any other DB Project Document to which the Developer and the Design-Builder are parties shall be changed, modified, altered, waived or terminated except by a written instrument of change, modification, alteration, waiver or termination executed by the Design-Builder and the Developer and, to the extent required pursuant to the terms of the Lease (including Section 19.1(c)(xxi) thereof), with the consent of the Port Authority.

Section 35.3 Waiver

No failure by the Developer to insist upon the strict performance of any agreement, covenant, term or condition of this Design-Build Contract or to exercise any right or remedy consequent upon the breach or default of any agreement, covenant, term, or condition of this Design-Build Contract, and no extension, supplement or amendment of this Design-Build Contract during or after such breach or default, unless expressly stated to be a waiver, and no acceptance by the Developer of any payment or reimbursement after or during the continuance of any such breach or default, shall constitute the waiver of such breach or default. No waiver of any default shall affect or alter this Design-Build Contract, but each and every agreement, covenant, term and condition of this Design-Build Contract shall continue in full force and effect with respect to any other then existing or subsequent default thereof.

Section 35.4 Relationship between the Parties

(a) Nothing in the DB Project Documents is intended or shall be construed to create any partnership, joint venture or similar relationship between the Developer and the Design-Builder for any purpose, including federal, state and local income tax purposes. In no event shall either Party take a position in any tax return or other writing of any kind that a partnership, joint venture or similar relationship exists.

(b) NOT USED.

(c) In no event shall the relationship between the Developer and the Design-Builder be construed as creating any relationship whatsoever between the Developer and the Design-Builder's employees. Neither the Design-Builder nor any of its employees is or shall be deemed to be an employee of the Developer. Except as otherwise specified in the Contract Documents, the Design-Builder has sole authority and responsibility to employ, discharge and otherwise control its employees and has complete and sole responsibility as a principal for its agents, for all DB Subcontractors and Suppliers and for all other Persons that the Design-Builder or any DB Subcontractor or Supplier hires to perform or assist in performing the DB D&C Work.

(d) NOT USED.

(e) Each of the members of the joint venture that constitutes the Design-Builder will be jointly and severally liable to the Developer for the performance of the obligations of the Design-Builder under this Design-Build Contract.

Section 35.5 Successors and Assigns

The Contract Documents to which the Developer and Design-Builder, as applicable, are parties shall be binding upon and inure to the benefit of and be enforced by the Developer and the Design-Builder and their respective permitted successors and assigns, whether so expressed or not.

Section 35.6 Designation of Representatives; Cooperation With Representatives

The Developer and the Design-Builder shall each designate an individual or individuals who shall be authorized or shall be able to procure proper authorization to make decisions and bind the Parties on matters relating to the DB Project Documents, save for any limits on the authority of each Party's representative(s) which each respective Party may specify by written notice to the other Party (each, a "**DB Contract Authorized Representative**"). Each Party's DB Contract Authorized Representative shall give and receive all notices, applications, consents, approvals, instructions and other communications on behalf of his/her respective Party in connection with this Design-Build Contract and the other DB Project Documents and generally act on behalf of his/her respective Party under this Design-Build Contract. Upon written notice to the other Party, each Party's DB Contract Authorized Representative may delegate any of his/her functions to one or more authorized delegees. The Design-Builder shall from time to time designate in writing an office within the Port of New York District and an officer or representative whose regular place of business is at such office upon whom Notices may be served. Exhibit 9 to this Design-Build Contract provides the DB Contract Authorized Representative designations, which may be updated from time to time by a subsequent writing delivered to the other Party in accordance with Section 35.12.

Section 35.7 Survival

The Design-Builder's and the Developer's representations and warranties, the dispute resolution procedures contained in Article 33 and Article 33A, the indemnifications and releases contained in Article 21, the rights to all indemnities and compensation contained in Article 23, Article 24, Article 27 and Article 27A, and any other obligations to pay amounts hereunder and under the other DB Project Documents, Article 31, Article 35, Section 3.3, any obligation or liability accrued or incurred prior to the expiration or termination of this Design-Build Contract, and all other provisions, which by their inherent character should survive expiration or termination and/or completion of the DB D&C Work under this Design-Build Contract, shall survive the expiration or termination and/or the completion of the DB D&C Work under this Design-Build Contract. The fact that certain of the terms and provisions hereunder are expressly stated to survive expiration or termination and/or the completion of the DB D&C Work under this Design-Build Contract shall not mean that those provisions hereunder which are not expressly stated to survive shall terminate or expire on the expiration or termination and/or the completion of the DB D&C Work under this Design-Build Contract and do not survive such expiration or termination and/or the completion of the DB D&C Work under this Design-Build Contract.

Section 35.8 Limitation on Third-Party Beneficiaries

Except as specified in this Section 35.8, there shall be no third-party beneficiaries of this Design-Build Contract. This Design-Build Contract shall be effective only as between the Parties hereto (and their successors and assigns, if, as and to the extent permitted under this Design-Build Contract), and shall not be construed as creating or conferring upon any person or entity any right, remedy or claim under or by reason of this Design-Build Contract. Notwithstanding the foregoing, (a) a Collateral Agent shall be a third-party beneficiary of only the rights and obligations expressly accorded to it pursuant to Article 18 and any other provision in this Design-Build Contract that expressly accords rights and obligations to the Collateral Agent, (b) an Indemnified Party (other than the Developer or the Design-Builder, as applicable) shall be a third-party beneficiary of only the rights and obligations expressly accorded to it pursuant to Article 21, and (c) the Port Authority shall be a third-party beneficiary of all Design-Builder representations and warranties contained in this Design-Build Contract; provided, that, pursuant to Section 19.1(f) of the Lease, the Port Authority shall have the right to exercise such rights hereunder only so long as the Developer or a Lender is not pursuing remedies thereunder and, to the extent the Port Authority makes claims exercising such rights of the Developer, Section 19.1(f) of the Lease provides that the Port Authority shall be responsible for its own acts or omissions in respect of such claims found to be in violation of this Design-Build Contract.

Section 35.9 Submission to Jurisdiction

Subject to the provisions of Article 33A, the Developer and the Design-Builder each agree to submit, to the fullest extent permitted by Applicable Law, to the exclusive jurisdiction of any New York State court or the U.S. District Court for the Southern District of New York sitting in the City and County of New York, and any appellate court from any thereof, for the settlement of any dispute in connection with this Design-Build Contract or any transaction

contemplated hereby. The Design-Builder and the Developer each also waive, to the fullest extent permitted by Applicable Law, any objection that it may have now or hereafter to the laying of venue in such courts on the grounds of inconvenient forum or otherwise in relation to proceedings in connection with this Design-Build Contract or any transaction contemplated hereby.

Section 35.10 Waiver of Right to Trial by Jury

THE DESIGN-BUILDER WAIVES ITS RIGHT TO TRIAL BY JURY IN ANY SUMMARY PROCEEDING OR ACTION THAT MAY HEREAFTER BE INSTITUTED BY THE DEVELOPER OR THE PORT AUTHORITY AGAINST THE DESIGN-BUILDER IN RESPECT OF THE PREMISES AND/OR IN ANY ACTION THAT MAY BE BROUGHT BY THE DEVELOPER OR THE PORT AUTHORITY TO RECOVER FEES, DAMAGES, OR OTHER SUMS DUE AND OWING UNDER THIS DESIGN-BUILD CONTRACT. THE DESIGN-BUILDER SPECIFICALLY AGREES THAT IT SHALL NOT INTERPOSE ANY CLAIMS AS COUNTERCLAIMS IN ANY SUMMARY PROCEEDING OR ACTION FOR NON-PAYMENT OF CHARGES, FEES OR OTHER AMOUNTS WHICH MAY BE BROUGHT BY THE DEVELOPER OR THE PORT AUTHORITY UNLESS SUCH CLAIMS WOULD BE DEEMED WAIVED IF NOT SO INTERPOSED.

Section 35.11 Governing Law

THIS DESIGN-BUILD CONTRACT AND ANY CLAIM, CONTROVERSY OR DISPUTE ARISING UNDER OR RELATED TO THIS DESIGN-BUILD CONTRACT SHALL BE GOVERNED BY, AND BE CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK APPLICABLE TO CONTRACTS MADE, AND TO BE PERFORMED SOLELY WITHIN, SUCH STATE, WITHOUT REGARD TO CHOICE OF LAW PRINCIPLES.

Section 35.12 Notices and Communications

(a) Except where expressly required or permitted herein to be oral, all notices, directions, requests, consents and approvals required to be given to or by either party (each, a “**Notice**”) shall be in writing, and each Notice shall be (i) personally delivered to the duly designated officer or representative of such Party; (ii) delivered to the office of such officer or representative during regular business hours or (iii) forwarded to such officer or representative at such address by certified or registered mail or a reputable express overnight courier, with delivery receipt requested.

(i) All notices, correspondence and other communications to the Design-Builder shall be delivered to the following addresses or as otherwise directed by the Design-Builder’s DB Contract Authorized Representative:

SKANSKA USA BUILDING INC.

389 Interpace Parkway, Floor 5
Parsippany, NJ 07054

Attention: Richard Kennedy

Phone: (973) 753-3456
Email: Richard.kennedy@skanska.com

SKANSKA USA CIVIL NORTHEAST INC. 75-20 Astoria Blvd., Suite 200
East Elmhurst, NY 11370

Attention: Mike Viggiano
Phone: (718) 340-0875
Email: Michael.Viggiano@skanska.com

WALSH CONSTRUCTION COMPANY II, 929 West Adams Street
LLC Chicago, IL 60607

Attention: Michael Whelan
Phone: (312) 563-5400
Email: mwhelan@walshgroup.com

With a copy to:

Attention: Peter Glimco
Email: Pglimco@walshgroup.com

(ii) All notices, correspondence and other communications to the Developer shall be marked as regarding the Premises and shall be delivered to the following address or as otherwise directed by the Developer's DB Contract Authorized Representative:

LaGuardia Gateway Partners, LLC
LaGuardia Airport CTB
Room #3862
Flushing, NY 11371
United States
Attention: Stewart Steeves
Phone: (604) 269-3803
Email: ssteeves@laguardiacentral.com

(b) 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. If mailed, the Notices herein required to be served shall be deemed effective and served as of the date of the return of verification of delivery of certified or registered mailing thereof, or one (1) day after deposit with a reputable express overnight courier.

Section 35.13 Severability

If any term or provision of this Design-Build Contract or the application thereof to any Person or circumstances shall to any extent be held invalid and unenforceable, the remainder of

this Design-Build Contract, or the application of such term or provision to Persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Design-Build Contract shall be valid and shall be enforced to the extent permitted by Applicable Law.

Section 35.14 Counterparts

This Design-Build Contract and any attached DB Project Document or Exhibit requiring signatures may be executed in any number of counterparts, but not facsimile counterparts, each of which shall constitute an original agreement, and all of which taken together shall be deemed one and the same document.

Section 35.15 Non-liability of Individuals

Without limiting any other exclusion from liability expressly provided in this Design-Build Contract, no officer, agent or employee of the Developer shall be charged personally with any liability or held personally liable under any term or provision of this Design-Build Contract or because of acts or omissions of any such individual or because of any breach or attempted or alleged breach of any of the provisions of this Design-Build Contract, it being understood that all such liability, if any, shall be that of the Developer alone.

Section 35.16 Late and Service Charges

(a) Late Charges. Any amount payable from one Party to another hereunder, if not paid when due, will bear interest at the Default Interest Rate from the due date of the amount until the date of payment; provided, however, that any late payments hereunder that are directly caused by a late payment by the Port Authority under the Lease shall not be subject to payment of interest by the Developer at the Default Interest Rate pursuant to this Section 35.16(a) (unless such payment is not made by the Developer within five (5) Business Days of receipt of sufficient funds for such purpose from the Port Authority or the payment otherwise becomes payable by the Developer pursuant to Section 9A.4) and, in such case, the Design-Builder shall only be entitled to receipt of any late payment penalties received by the Developer with respect to such late payment by the Port Authority pursuant to the Lease.

(b) NOT USED.

Section 35.17 Public Release of Information

The Design-Builder shall not, and shall cause (by way of contract and enforcement thereof) all DB Party not to, issue or permit to be issued any press release, advertisement, public statement or literature of any kind, or make any statements or comments through the media (including print, television or internet) which refers to the Port Authority, the Developer, the Work (including the DB D&C Work), the Premises or any of the services or obligations to be performed in connection with the DB Project Documents, without first obtaining the prior written approval of the Port Authority and the Developer. Such approval may be withheld if for any reason the Port Authority or the Developer, as applicable, believes that the publication of such information would be harmful to the public interest or is any way undesirable.

Section 35.18 Confidentiality

(a) Subject to clause (c) below, the Design-Builder shall, and shall cause all DB Party to, treat confidentially, and shall not, and shall cause all DB Party not to, disclose, all information relating to the Work (including the DB D&C Work), the Premises, the Developer or the Port Authority that has been identified as “confidential” in writing; provided, that the Design-Builder shall have the right to disclose such information with the approval of the Port Authority (which Section 35.18 of the Lease provides will not be unreasonably withheld) and the approval of the Developer (which approval from the Developer shall not be unreasonably withheld), to (i) its DB Subcontractors, to the extent necessary for the performance of obligations under this Design-Build Contract, (ii) each of the members of the joint venture that constitutes the Design-Builder, to the extent necessary for management or board approval of the transactions contemplated under this Design-Build Contract or (iii) pursuant to a request or demand made by a regulatory body with jurisdiction over any of the foregoing. The Design-Builder shall inform its DB Subcontractors, Suppliers, vendors, officers, directors, managers (if the Design-Builder is a limited liability entity), members (if the Design-Builder is a limited liability entity or joint venture), partners (if the Design-Builder is a partnership) and employees of its obligations under this Section 35.18 and shall cause each of them to be subject to the confidentiality obligations consistent with this Section 35.18.

(b) Subject to clauses (c) and (d) below, the Developer shall treat confidentially, and shall not disclose, all information provided to the Developer by the Design-Builder relating to the DB D&C Work, the Premises, the Design-Builder, the DB Subcontractors or the Suppliers that has been identified as “confidential” in writing; provided, however, in each case, that such confidential information may be provided to the Port Authority or the Lenders if withholding such confidential information is prohibited by the Lease, the DB Direct Agreement or the DB Lenders’ Direct Agreement.

(c) If either Party is required pursuant to the provisions of this Section 35.18 to keep or maintain any data or information which it may acquire from the other in confidence, such Party shall prevent the disclosure thereof to any person or organization, other than to employees, contractors and consultants of such Party, who, in the regular course of their duties will have access thereto, in the case of the Developer to its Lenders and potential Lenders, to the Equity Members and to regulatory bodies with jurisdiction over any of the foregoing; and in the case of the Design-Builder to its members; provided, however, that a Party keeping or maintaining any data or information that it may acquire from the other in confidence shall not be required to prevent the disclosure of, and shall not be liable for the disclosure of any information which:

- (i) was in the public domain at the time it was disclosed;
- (ii) was known to the Party receiving it at the time of disclosure;
- (iii) was disclosed with the prior approval of the other Party;

(iv) the Party's attorneys or accountants are required to disclose by rules of professional responsibility; or

subject to clause (d) below, the Party is required to disclose pursuant to Applicable Law or court order.

(d) In the event that either Party is requested by subpoena, court order or other similar process to disclose information relating to the Work (including the DB D&C Work), the Premises, the Port Authority, the Developer or any DB Party that has been identified as confidential by the other Party, the party receiving such request (the "**Disclosing Party**") shall (unless prohibited by Applicable Law) promptly, but in all cases prior to complying with such subpoena, court order or similar process, provide the other Party (the "**Other Party**") with written notice of such request, including a description of the documents or information requested thereby, and to the extent that the Other Party determines that the requested documents or information contain trade secrets or other proprietary or confidential information, then the Other Party shall provide to the Disclosing Party within ten (10) Business Days of notification a letter setting forth which documents or information it seeks to have withheld and the basis for its determination. If, after reviewing such request to withhold documents or information, the Disclosing Party determines that it must disclose or cause its agents or representatives to disclose any such requested documents or information, it shall (unless prohibited by Applicable Law) promptly notify the Other Party of such determination. The Disclosing Party shall not release or share such documents or information until after said ten (10)-Business Day period, except to the extent required by Applicable Law.

Section 35.19 Brokerage


The Developer and the Design-Builder each represent and warrant that no broker has been concerned on its behalf in the negotiation of this Design-Build Contract and that there is no broker who is or may be entitled to be paid a commission in connection therewith and, to the extent that either Party retains a broker, such Party will be solely responsible for the payment of any commission or fees to such broker. The Design-Builder shall indemnify and save harmless the Developer of and from any claim for commission or brokerage made by any and all persons, firms or corporations whatsoever for services rendered to the Design-Builder in connection with the negotiation and execution of this Design-Build Contract.

Section 35.20 NOT USED

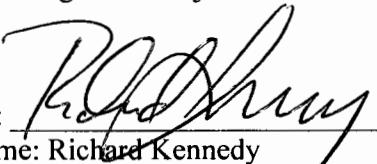
[Remainder of the page intentionally left blank. Signatures follow.]

IN WITNESS WHEREOF, the Parties have caused this Design-Build Contract to be executed by their respective duly authorized officers as of the date first written above.

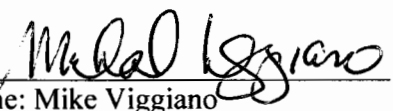
LAGUARDIA GATEWAY PARTNERS, LLC

By: 
Name: Stewart Steeves
Title: Authorized Person

SKANSKA USA BUILDING INC., a Member of
the Design/Builder joint venture

By: 
Name: Richard Kennedy
Title: Co-Chief Operating Officer

SKANSKA USA CIVIL NORTHEAST INC., a
Member of the Design/Builder joint venture

By: 
Name: Mike Viggiano
Title: Executive Vice President

WALSH CONSTRUCTION COMPANY II, LLC,
a Member of the Design/Builder joint venture

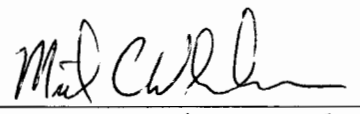
By: 
Name: ~~Sean Walsh~~ Michael C. Whelan
Title: President, Building

EXHIBIT 35-A

NEW FACILITIES CONSTRUCTION MILESTONES AND GUARANTEED NEW FACILITIES CONSTRUCTION MILESTONE COMPLETION DATES

Milestone	New Facilities Construction Milestone	Guaranteed New Facilities Construction Milestone Completion Date
1	Partial Completion of Concourse B1	May 30, 2018
2	Partial Completion of Concourse B2	August 30, 2018
3	Partial Completion of Head House	January 6, 2020
4	Partial Completion of Concourse A1	July 30, 2020
5	Partial Completion of Concourse A2	December 10, 2021