

**Massachusetts Department of Transportation
Acting by and through the Massachusetts Bay Transportation Authority**

LICENSE AGREEMENT MDOT-# _____

[LICENSEE'S NAME]

_____, MASSACHUSETTS

_____ Railroad Line

THIS LICENSE AGREEMENT is entered into as of the _____ day of _____, 2014 by and between the **Massachusetts Department of Transportation**, established and existing pursuant to Chapter 6C of the Massachusetts General Laws ("MassDOT"), acting by and through its duly authorized agent, the **Massachusetts Bay Transportation Authority** ("MBTA"), a body politic and corporate and a political subdivision of the Commonwealth of Massachusetts, established and existing pursuant to Chapter 161A of the Massachusetts General Laws and having its office at Ten Park Plaza, Boston, Massachusetts, 02116 ("Licensor"), and _____, a _____ corporation, with a usual place of business at _____ hereinafter referred to as "Licensee").

WHEREAS, Licensor is the owner of the real property, right-of-way and track known as the _____ Railroad Line, a portion of which is located in _____, Massachusetts (the "Line"); and

WHEREAS, Licensor has entered or may enter into licenses, leases, operating or other agreements with certain railroads and/or other operators (entities hereinafter, "Railroad" or "Railroads" as the case may be and which term shall include the MBTA) to operate passenger, freight, related rail or other services on the Line (the "Railroad Agreements"); and

WHEREAS, MassDOT has designated the MBTA as its agent for the purposes of granting and administering licenses on railroad rights-of-way owned by MassDOT; and

WHEREAS, Licensee has applied to Licensor for a license to perform _____ to the _____ railroad right of way, _____, Massachusetts, and has submitted plans, drawings and/or specifications for the scope of work, as described below; and

WHEREAS, Licensor has agreed to grant to Licensee permission and license to use such certain portion of the Line, solely for the uses and subject to the terms, covenants and agreements set forth below;

NOW, THEREFORE, Licensor and Licensee in consideration of the mutual promises contained in this License and for other good and valuable consideration agree as follows:

Section 1: Reference to Key Terms

Each reference in this License to any of the following subjects shall be construed to incorporate the data stated for that subject in this Section 1.

Effective Date: _____, 2014

Premises: As set forth in Section 2.1 hereof

Licensor: MassDOT acting by and through its authorized agent the MBTA

Notice Address of Licensor:

Real Estate Department
Massachusetts Bay Transportation Authority
10 Park Plaza, Room 5750
Boston, MA 02116-3969
Attention: Assistant General Manager
Real Estate and Asset Development

Copies to:

Massachusetts Department of Transportation
10 Park Plaza, Room 3170
Boston, MA 02116
Attn: Ms. Chalita Belfield

MBTA Railroad Operations Department
32 Cobble Hill Road
Somerville, Massachusetts 02143
Attn: Section Chief

and

MBTA DESIGNATED REPRESENTATIVE:
Massachusetts Realty Group
20 Park Plaza, Suite 1120
Boston, MA 02116
Attention: MassDOT License Administration

Licensee:

Notice Address of Licensee:

Annual License Fee:

Initially as set forth in Section 4.2, and thereafter as may be adjusted pursuant to Sections 4.3 or 4.4 below.

Licensee's Improvements

Plans:

Plans, drawings and/or specifications for the _____ of the Premises and as approved in writing by Licensor and the Railroad(s) from time to time.

Permitted Uses:

The Premises shall be used solely for the performance of the _____

_____ as listed in Licensee's Improvements, above, all as approved in advance by Licensor and, if applicable, by the Railroad(s), pursuant to Section 5 hereof ("Work"). All Work (as further defined below) shall be conducted in exact accordance with the Plans and this License and all applicable laws, codes, ordinances, rules and regulations, and no departure shall at any time be made therefrom, except upon written permission of Licensor and the Railroad(s). No investigations of any

kind may be performed by or on behalf of Licensee in, on or under the Premises and/or any adjacent land owned by MassDOT or the MBTA without the prior written approval of Licensor.

Notwithstanding any provision in this License to the contrary, Licensee’s use of the Premises shall be subject to the following conditions:

Term: As set forth in Section 3.1 below

Required Insurance: As set forth in Section 9.5 below

Work: The approved activities of Licensee involving the Premises, including any and all entry upon the Premises.

Section 2: License of Premises

2.1 License of Premises

Licensor, pursuant to the authority contained in M.G.L. c. 161C §6(c)-(d), and insofar as it has the legal right to do so, for and in consideration of the covenants and agreements hereinafter contained on the part of Licensee to be paid, kept and performed, hereby grants permission and license to Licensee, on a non-exclusive and temporary basis, the right to enter upon, use and occupy the following described Premises solely for the Permitted Uses and subject to the terms and conditions set forth herein (the “License”):

_____, _____, Massachusetts,
shown on **Exhibit A** attached hereto (hereinafter called the “Premises”).

2.2 Construction as License

Under no circumstances shall this License be construed as generating in Licensee any right, title or interest of any kind or character in or about the Premises or other land or property of MassDOT.

2.3 Paramount Rights of Licensor and Railroad

Licensor and Railroad(s) shall have the right to paramount use of the Line and the Premises at all times. Without limiting in any manner the rights of Licensor or any Railroad (whether set forth in this License), a Railroad’s rights to use of the Premises for railroad purposes shall remain paramount to this License at all times, including, among other things:

- (a) The right for Licensor, the Railroad(s) and others to whom Licensor has granted and may hereafter grant similar rights, to operate railroad freight or passenger service and to operate such services in such manner as will best enable Licensor, the Railroad(s) and such other entities to each fulfill its own service requirements and to install, construct, maintain, repair, alter, improve, replace or relocate the Line, or any portion thereof, and all appurtenances, fittings and equipment necessary or related thereto. Licensor, the Railroad(s) and such other entities shall have the right at all times to paramount use of the tracks, right-of-way and related facilities on and about the Premises;

- (b) The right for Licensor, the Railroad(s) and such other entities to whom Licensor has granted and may hereafter grant similar rights, to each install, construct, repair, alter, improve, replace or relocate any utilities and all appurtenances, fittings and equipment necessary or related thereto and to operate such utilities in such manner as Licensor, the Railroad(s) and such other entities deem advisable;
- (c) The right for Licensor, the Railroad(s) and such other entities, to whom Licensor has granted and may hereafter grant similar rights, to each control, use and maintain the Premises for all surface and subsurface purposes for which said Premises may hereafter be customarily used and to install, construct, repair, alter, improve, replace or relocate such Premises and the Line in its sole discretion; and
- (d) The right for Licensor, the Railroad(s) and such other entities to whom Licensor has granted and may hereafter grant similar rights, to inspect, supervise and approve the use or condition of Premises, Licensee's Improvements and Licensee's use thereof from time to time.

Licensor, the Railroad(s) and such other entities shall not be liable for delays, obstructions, or like occurrences affecting the Licensee or the Premises, arising out of the activities of Licensor, the Railroad(s) and such other entities at or about the Premises.

Licensee acknowledges and agrees that the rights described in this Section 2.3 are superior, in all cases, to the rights granted to Licensee under this License.

2.4 Use Non-Exclusive

Licensor makes no representations or warranties, express or implied, that Licensee shall have sole or exclusive use of the Premises under this License. Licensee's use of the Premises is non-exclusive and is subject to all encumbrances, restrictions, reservations, other matters of record title and rights of possession in others, including without limitation, future grants of use to others. Licensee shall be responsible for coordinating its work and activities with that of other licensees and parties in interest. Licensor shall not be liable for delays, obstructions or like occurrences affecting the Licensee arising out of the work of Licensor, the Railroad(s), or other licensees or parties in interest.

2.5 As-is Condition of Premises

Licensee agrees and acknowledges that it accepts the Premises in their present "as-is" condition, including without limitation, subsurface conditions, existing structures or improvements thereon, the presence of any Hazardous Materials, defined below, located on the Premises or on the abutting right-of-way, legal title, the present uses and non-uses of the Premises and laws, ordinances and regulations affecting the same and accepts the same in the same condition in which they or any part thereof now are, and assumes all risks in connection therewith, without any representation or warranty, express or implied, in fact or by law, on the part of Licensor and without recourse to Licensor.

Section 3: Term

3.1 Term

The Term of this License shall be for a period of _____, 2014, commencing on the Effective Date and expiring as of 11:59 p.m. on _____, 2015 (the "Term"), unless earlier terminated as provided for herein.

3.2 Holding-over

If Licensee desires to continue the work defined in the Scope of Activity after the termination of this License, the resulting License shall be on a month-to-month basis and may be terminated by either party at any time by providing the other party with thirty (30) days prior written notice of termination. During the Holding-over period, a monthly fee equal to three (3) times the equivalent monthly License Fee

(calculated based on the length of the original term and the original License Fee established hereunder) shall be paid monthly in advance by Licensee to the MBTA. During such Holding-over period, Licensee shall be bound by all applicable provisions of this License.

Section 4: Fees and Charges

4.1 Administrative Fees

Licensee shall pay Licensor an Administrative Fee in the amount of One Thousand and 00/100 Dollars (\$1,000.00- to be paid with License execution) upon the execution of this License as reimbursement for the costs and expenses incident to the preparation and review of this License.

Licensor reserves the right to charge an additional administrative fee upon any subsequent amendment of this License. Licensee shall also pay to the Railroad(s) a reasonable administrative fee for review of this License and related plans and documents by each Railroad. If at any time Licensor or the Railroad(s) perform any obligation of Licensee as permitted herein (except a purely monetary obligation) then in addition to reimbursing the party performing such obligation, Licensee shall pay the performing party an additional administrative fee equal to twenty-five (25%) percent of such direct costs.

4.2 Annual License Fee

Licensee shall also pay Licensor an annual fee in the amount of One Thousand and 00/100 Dollars (\$ 1,000.00) (the "Annual License Fee" to be paid with License execution) for the use of Licensor's property during each year that this License is in effect, commencing as of the Effective Date, and due annually thereafter on the anniversary of the Effective Date throughout the Term, and monthly during any Holding-over period as set forth in Section 3.2 above. The Annual License Fee shall be due in advance and without demand, and may be adjusted from time to time in accordance in Section 4.4 below.

(a) Pro-rata refund.

In the event this License is terminated by Licensor on a date other than the anniversary of the Effective Date, and Licensee is not then in arrears of any payment required hereunder or otherwise in default of this License, Licensee shall be entitled to a pro-rata refund of the Annual License Fee paid for that year.

4.3 Annual Maintenance Fee

Additional costs associated with any non-incident or extraordinary maintenance to, or any capital replacement of any portion of the Premises required as a result of Licensee's use of or presence at the Premises (the "Annual Maintenance Fee"), shall be paid by Licensee in addition to Licensee's payment of the Annual License Fee and shall be paid within thirty (30) days of demand therefore by Licensor.

4.4 Adjustments to Annual License

(a) Other Adjustments

Licensor reserves the right to make other adjustments in the Annual License Fee during any Holding-over period upon written notice to Licensee issued no later than thirty (30) days prior to the date upon which such adjustment is to take effect.

4.5 Additional Charges and Fees

Licensee shall pay to Licensor and Railroad(s) the additional charges and fees identified herein. Such charges and fees shall be paid in accordance with Section 4.6 below and as otherwise provided in this License.

4.6 Method of Payment

From and after the Effective Date, Licensee shall pay the Annual License Fee to the Licensor and the Railroad(s), respectively, in advance without demand on the anniversary of the Effective Date, whether or not any invoice is received by Licensee. Licensee shall pay all other fees and charges due hereunder within thirty (30) days after receipt of an invoice from Licensor (or the Railroad). All payments shall be made without offset, deduction or

abatement. Notwithstanding the preceding, from time to time the Railroad(s) may require that some or all costs to be incurred by the Railroad(s) related to the Work or Licensee's Improvements be paid in advance through a prepaid account (a "Force Account"). All payments due hereunder shall be made payable to MBTA in lawful money of the United States of America and addressed to MBTA, P.O. Box 845142, Boston, Massachusetts 02284-5142 or at such other place as Licensor may from time to time designate by notice to Licensee.

4.7 Late Payment

Without prejudice to any other rights and remedies of the Licensor or the Railroad(s), in the event of default of Licensee, overdue payments shall bear interest in favor of the Licensor or the Railroad(s), as appropriate, at the rate of the lower of (a) one and one-half (1 ½%) percent per month or (b) the maximum interest permitted by law from the date such payments were due until the date of full payment.

Section 5: Licensee's Use of the Premises

5.1 Permitted Uses

Licensee shall use the Premises solely for the Permitted Uses set forth in Section 1 above and for no other uses. All Work shall be conducted in exact accordance with the Plans and no departure therefrom shall be made at any time except upon written permission of Licensor and the Railroad(s); provided, however, that if any commission or other regulatory body having jurisdiction over the Premises has determined or fixed the manner and means of construction, maintenance, repair, alteration, renewal, relocation or removal thereof, then, to the extent there is a conflict with the Plans or an addition or amendment to the Plans, said manner and means shall prevail. Licensee shall comply with all terms and conditions set forth in Exhibit B attached hereto and incorporated herein. Except in case of emergency, Licensee shall provide at least ten (10) days' prior written notice of its desire to enter the Premises to the MBTA's Railroad Operations Department at the addresses noted above and shall make arrangements at least five (5) days in advance with the MBTA and the Railroads for access.

The work permitted herein shall be subordinate to the requirements of the MBTA and the Railroads in maintaining and operating a transportation system and may be stopped or delayed, at any time, in response to each such requirement. The MBTA and MassDOT shall not be responsible for any damages incurred by Licensee as a result of any such work stoppage, delay or required relocation.

5.2 Construction

Licensee shall undertake, and shall diligently and continuously prosecute to completion all Work at the Premises under such general conditions, including access to the site, as are satisfactory to Licensor and the Railroad(s), and as will not interfere with the proper and safe use of Licensor's property by Licensor and the Railroad(s).

All Plans for and materials used in the Work shall be subject to Licensor's and the Railroad's prior written approval. Licensee shall submit to Licensee and the Railroad(s) its proposed methods of installation and construction and a proposed schedule for access to the Premises. Licensee understands that access may be limited to times when the Line is not in use. No access to the Premises will be permitted and no Work shall occur unless and until the methods of installation and construction, the schedules for all Work and all other related matters (including, without limitation, receipt of all required third party permits and approvals) have been approved by Licensor and the Railroad(s). Licensor and the Railroad(s) shall have the right, but not the obligation, to supervise the location of the Work and to inspect the Work at any time at the sole cost of Licensee.

5.3 Costs

All costs and expenses in connection with the design, construction, maintenance, repair, renewal, alteration, relocation or removal of Licensee's Improvements shall be borne by Licensee, including, without limitation, all costs incurred by Licensor and the Railroad(s) relating to the review of Licensee's Plans and other submissions, all supervision and inspections, all flagmen and watchmen, and any other costs associated with Licensee's Work and/or Licensee's Improvements. In the event that Licensor or the Railroad(s) perform work or furnish materials pursuant to this License, Licensee agrees to reimburse Licensor and the Railroad(s) for all such costs and expenses, including both internal (including labor, material and overhead charges) and third-party costs incurred in

connection with such work. Licensee agrees to pay such costs promptly upon receipt of invoices therefore, or through a Force Account as Licensor or the Railroad(s) may direct.

5.4 Settlement

Licensee shall be responsible for any settlement caused to the roadbed, right-of-way and/or tracks, facilities and appurtenances of Licensor or the Railroad(s), arising from or as a result of any Work or other Licensee activities at the Premises for a period of two (2) years from the date of completion of the Work, and Licensee agrees to pay Licensor and/or the Railroad(s), the full cost and expense of repair or restoration to Licensor's and/or Railroad's facilities, promptly upon receipt of invoices therefore.

5.5 Inspection, Protection and Supervision

(a) Licensee, at its own cost and expense, when performing any Work in connection with the Premises or Licensee's Improvements, shall request Licensor and the Railroad(s) to furnish any inspectors, flagmen or watchmen or any other persons for the protection of any person or property, including persons not parties hereto and their property. Licensor and the Railroad(s) shall be notified at least three (3) weeks in advance of the performance of any such Work.

(b) In addition to, but not in limitation of any of the foregoing provisions, if at any time Licensor or the Railroad(s) should deem it necessary or appropriate to place inspectors, flagmen, watchmen or any other persons upon the Premises during the Work to (1) protect any persons or property or (2) inspect the Work being performed, Licensee shall be solely responsible for the costs of providing such inspectors, flagmen, watchmen and other persons. Upon receipt of an invoice for such costs from the Railroad(s), Licensee shall promptly pay Licensor and the Railroad(s) the full cost and expense of providing the above described persons. The furnishing or failure to furnish any or all of the above described persons by Licensor or the Railroad(s) under this Section 5.5, however, shall not release Licensee from any and all other liabilities assumed by Licensee under the terms of this License.

5.6 Repairs

Licensee shall, at its sole cost and expense, throughout the Term, and any holdover period, maintain, repair and/or replace as necessary Licensee's Improvements so as to keep same in good working order and condition and in compliance with all applicable laws, codes, ordinances, rules and regulations. If Licensee desires, or is required by Licensor or the Railroad(s), to repair or renew any part of the Licensee's Improvements in any manner whatsoever, Licensee shall submit plans to Licensor and the Railroad(s) and obtain their written approval thereto before any repair or renewal work is performed. Such repair plans shall include drawings and or specifications, and shall address the materials, methods of repair and a time schedule for access to the Premises to perform such repairs and any such work shall be at Licensee's sole cost and expense. Nothing herein shall be construed as creating any obligation on the part of Licensor to repair, replace or maintain the Premises or any improvements thereon.

5.7 Removal of Debris

Licensee shall provide, at its sole cost and expense, all maintenance, security and other services required to keep the Premises in a clean, safe and attractive condition, free from trash, debris, refuse, and other pollution. No foreign material or debris shall be permitted to enter a waterway or drainage system. Licensee shall follow the reasonable directions of Licensor and the Railroad(s) with regard to the collection and disposal of refuse and shall properly dispose of all refuse (according to all laws, ordinances, regulations, orders and decrees). If Licensee fails to comply with this Section, Licensor and the Railroad(s) may provide such services at the sole cost and expense of Licensee.

5.8 Daily Clean-Up

During any Work, Licensee shall leave the Premises, Licensor's Facilities (defined below) and the Railroad's Facilities (defined below) in a neat, safe and orderly condition at the end of each work shift, ready to be used for transportation and other authorized purposes. If Licensee shall fail to leave the Premises in a suitable condition, Licensor or the Railroad(s) may perform such clean up at the sole cost of Licensee, and Licensee shall also be responsible for any additional costs incurred by Licensor or the Railroad(s) associated with delays in their use of the

Line for railroad transportation or other authorized uses of the Premises or the Line, including the expense of alternate transportation. Licensee shall pay all such costs promptly upon receipt of invoices therefor.

5.9 End of Work Restoration

Upon the completion of the Work, Licensee shall remove all equipment and supplies (other than Licensee's Improvements) from the Premises and shall leave the Premises in a neat, safe and orderly condition ready to be used for transportation or other authorized purposes. The Premises shall be restored to grade and to its original paving condition. Licensee shall ensure that neither soil nor groundwater has become contaminated from its activities and if it has, that appropriate notifications are made to the Licensor's Manager of Railroad Properties. Any such soil or groundwater contamination shall be the sole responsibility of Licensee. If Licensee shall fail to undertake any of the obligations referenced above, Licensor or the Railroad(s) may perform such work at the sole cost of Licensee, and Licensee shall also be responsible for any additional costs incurred by Licensor or the Railroad(s) associated with delays in their use of the Line for railroad transportation or other authorized uses of the Premises or the Line and such additional costs may include the expense of alternate transportation. Licensee shall pay all such costs promptly upon receipt of invoices therefore.

5.10 No Waste

Licensee shall neither cause nor suffer any waste of the Premises, ordinary wear and tear excluded.

5.11 Provision of Utilities

Licensee shall, at its own expense, provide or arrange for all temporary or permanent water, heat and electricity required during the performance of the Work or needed during the Term following completion of the Work. Licensee shall be solely responsible for furnishing portable power units or other equipment, and for the proper use and operation of such equipment. Any and all temporary and long term utility needs shall be addressed in the Plans and all related Work, Improvements and related activities shall be subject to Licensor's prior approval.

5.12 Notice of Project Completion and Record Drawings

Upon completion of the Work conducted upon the Premises, Licensee shall provide written notice ("Notice of Project Completion") of the date of project completion to Licensor's Manager of Railroad Properties. Licensee shall also provide the Manager of Railroad Properties and the Railroad(s) with one reproducible "As-Built" copy of each approved construction drawing marked to indicate all changes and deviations (if any) from the original approved plans and recording the final conditions of the Premises ("Record Drawings") upon completion of the work authorized hereunder. All Record Drawings shall be due no more than thirty (30) days after completion of the Work, and must be received and accepted by the Licensor and the Railroad(s) prior to final inspection.

The Notice of Project Completion and the Record Drawings shall be delivered to MassDOT and to the Railroad(s), at the Notice Addresses set forth in Section 1 and Section 16.7 respectively. Should Licensee fail to deliver the Record Drawings as required herein, Licensee shall pay Licensor a penalty fee of Two Hundred and Fifty (\$250) Dollars per day from the day such Record Drawings were due until they are delivered. This penalty shall be treated as a fee for payment purposes.

Section 6: Licensor and Railroads' Right to Repair and Change Location

Without limiting the rights reserved to Licensor and the Railroad(s) herein, Licensee shall, at its sole cost and expense, upon receipt of Licensor's written request at any time during the Term, promptly make such adjustments to the configuration or the location of Licensee's Improvements or the use or occupancy of the Premises as Licensor shall request, insofar as Licensee's Improvements are located upon, over or in the property or facilities of Licensor, to relocate the Premises to another location on Licensor's property within the Premises or the Line or other land now or hereafter owned or controlled by Licensor, for transportations system purposes including, without limitation, to permit or accommodate changes of grade or alignment, improvements or additions to facilities of Licensor ("Licensor's Facilities") or facilities owned or used by the Railroad(s) ("Railroad's Facilities").

Further, in the event of the lease, sale or other disposition of the Premises or any part thereof affected by Licensee's Improvements or this License, Licensee shall make such adjustments to the configuration or the location

of the portion of Licensee's Improvements or use or occupancy of the Premises affected by this License as may be required by Licensor or any of its grantees.

In addition, if Licensee desires or is required by Licensor or the Railroad(s) to repair or renew Licensee's Improvements in any manner whatsoever, Licensee shall submit plans to Licensor and Railroad(s) and obtain their written approval thereto before any Work is performed in connection with such repair or renewal.

Any Work associated with such alterations or change in location shall comply at all times with the terms and conditions of this License, and shall be subject to the approval of Licensor and any affected Railroad(s). If Licensee should fail or refuse to comply herewith, then Licensor or the Railroad(s) may terminate this License, or perform such relocation or make such repairs or adjustments or changes and provide necessary material therefore, at the sole cost and expense of Licensee.

Section 7: Safety and Security of Premises

7.1 Activities for Safe Operation

Licensee shall be solely responsible for and obligated to perform its activities and operations, maintenance, renewal or other Work as may be required for the safe operation and maintenance of Licensee's Improvements, the Premises, Licensor's Facilities, the Railroad's Facilities and the other property of Licensor, the Railroad(s) and other lessees, licensees and invitees of Licensor using all due care, particularly as such activities and operations will occur at or near an active rail line. Licensee shall take or cause to be taken all precautionary measures as may be necessary to avoid injury to or death of persons or damage to or destruction of property by or on account of Licensee's Improvements or its use or occupancy of the Premises.

However, if necessary to protect the property, traffic, patrons or employees of Licensor, the Railroad(s), or any other person, from damage or injury (where each such situation shall be an "Emergency Situation"), Licensor or the Railroad(s) may, at any time, with or without notice to Licensee, take such precautionary measures, make such repairs and renewals thereto and furnish such material therefor as it deems adequate and necessary, all at the sole cost and expense of Licensee. Any costs incurred by Licensor or the Railroad(s) shall be promptly reimbursed by Licensee upon receipt of invoice.

7.2 Delivery and Storage of Materials and Equipment

During performance of the Work, materials and equipment not in use shall be stored or parked in designated secure areas. The nature of equipment and materials to be stored, and the location of such designated secure areas shall be subject to prior approval by Licensor and the Railroad(s), and, upon receipt of such approval, shall become temporarily part of the Premises. Licensee shall be responsible for restricting its personnel and equipment to authorized areas and shall take such precautions as are necessary in the opinion of Licensor or the Railroad(s) to assure compliance with these requirements. All Licensee property (and third party property brought onto Licensor's property by Licensee and those claiming under Licensee) stored in the secured areas or anywhere else on the Premises or on Licensor's property shall be solely at the risk of Licensee.

7.3 No Interference with Railroad Operations

The Licensee shall at all times conduct its activities at the Premises or on abutting Licensor property so as to create no hindrance, hazard or obstacle to the operations of Licensor and/or the Railroad(s).

7.4 Action by Licensor or Railroad(s)

If Licensor or the Railroad(s) should at any time request Licensee to take any other measures to protect Licensee's Improvements or the Premises or other property of Licensor abutting the Premises, Licensee, at its sole cost and expense, shall promptly cause the measures requested or directed by Licensor or the Railroad(s) to be taken. In the event Licensee fails promptly to take such measures, Licensor or the Railroad(s) may, at their option, take such measures, and Licensee hereby agrees to pay in the first instance or to reimburse Licensor or the Railroad(s) for the cost and expense thereof.

7.5 MBTA Railroad Operations Directorate

Licensee shall comply with all applicable MBTA Railroad Operations Directorate requirements including, but not limited to, those entitled: "I - Guidelines and Procedures for Construction on MBTA Railroad Property" dated May 1994, "II - Maintenance and Protection of Railroad Traffic" dated May 1994, "III – Insurance Specifications" dated May 1994 . To the extent that there is an irreconcilable conflict between the aforementioned requirements and this License, the terms and conditions contained in the MBTA Railroad Operations Directorate Procedures shall control unless the requirements in this License are more strict. This Directorate may be seen at www.mbtarealty.com, License section.

Section 8: Utilities

8.1 Presence of Existing Utilities

Licensee acknowledges that there may be surface and subsurface utilities on and adjacent to the Premises and agrees to exercise extreme caution in performance of the activities permitted hereunder. Licensee shall comply with Massachusetts General Laws, Chapter 82, Section 40 (known as the "Dig Safe" law) and the regulations promulgated pursuant thereto including but not limited to the Code of Massachusetts Regulations, more particularly, 220 CMR 99.00 et seq. To the extent Licensor, the Railroad(s) or parties acting on behalf of either, locate and mark railroad utilities, facilities or appurtenances thereto in or about the railroad rights of way on behalf of Licensee, Licensee shall be responsible for payment to such parties for such services, which may include, but not be limited to, locating and marking utilities, facilities and appurtenances thereto serving the railroad line(s) or used in connection with services or operations of the MBTA and/or the Railroad Companies, and Licensee hereby agrees to pay in the first instance or to reimburse Licensor or the Railroad(s) for the cost and expense thereof as well as an administrative fee payable to Licensor equal to for a twenty five percent (25%) of the total of such cost and expenses.

8.2 Damage

Any damage to any utilities on or near the Premises caused by Licensee shall be the sole responsibility of Licensee. If Licensee does not immediately repair any utilities it has damaged, Licensor or the Railroad(s), without being under any obligation to do so and without waiving the Licensee's obligation hereunder, may repair any utilities damaged by the Licensee immediately and without notice in case of emergency. In the event the Licensor or the Railroad(s) exercise such right, the Licensee shall pay to Licensor or the Railroad(s) promptly upon invoice all of Licensor's or the Railroad's cost of performing such repairs plus all engineering, environmental, legal, regulatory and other technical costs and expenses.

8.3 Rights Subordinate

Licensee acknowledges and agrees that this License is subject to all existing easements, licenses and permits granted to public or private utilities, and further agrees to permit these utilities, their agents, employees or contractors to enter upon the Premises to perform all necessary regular and emergency repairs and maintenance.

Section 9: Indemnification and Insurance

9.1 Liability

It is understood between the parties hereto that the presence of Licensee's Improvements at the Premises and Licensee's use of the Premises, as well as the railroad operations at or near said Premises, involve significant risk, and Licensee, as part of the consideration for this License, hereby releases both Licensor, Keolis Commuter Services, LLC ("Keolis"), Amtrak and the Railroad(s) and waives any right to ask for or demand damages for or on account of loss of or injury to Licensee, its employees, agents and contractors, the Licensee's Improvements or other property of Licensee that is over, under, upon or in Licensor's property or Licensor's Facilities or the Railroad's Facilities, including the loss of or interference with service or use of Licensee's Improvements and whether attributable to the fault, failure or negligence of Licensor, the Railroad(s), or otherwise, or for any indirect, special, consequential or exemplary damages or lost profits even if Licensor or the Railroad(s) have been advised of the possibility of such damages.

All the furnishings, fixtures, equipment, effects and property of every kind, nature and description of Licensee and of all persons claiming by, through or under Licensee which, during the continuance of this License or any

occupancy of the Premises by Licensee or anyone claiming under Licensee, may be on the Premises shall be at the sole risk and hazard of Licensee, and if the whole or any part thereof shall be destroyed or damaged by fire, water or otherwise, by theft, or from any other cause, no part of said loss or damage is to be charged to or to be borne by Licensor or the Railroad(s).

Notwithstanding any other provision of this License to the contrary, Licensee hereby waives any rights of recovery against Licensor and/or the Railroad(s) for injury or loss on account of hazards covered by insurance required to be carried under this License (whether or not self-insured) to the extent of the amount of insurance proceeds that Licensee would have received under that insurance if it had maintained all insurance it is required to maintain under this License.

9.2 Indemnification

Licensee covenants and agrees to, and shall at all times indemnify, defend (at the option of Licensor), protect and save harmless Licensor and the Railroad(s), and their respective members or directors, officers and employees from and against all costs and expenses resulting from any and all losses, liabilities, damages, detriments, suits, causes of action, claims, demands, costs and charges (including, without limitation, reasonable attorneys' fees, engineering fees and other consultants' fees) which Licensor or the Railroad(s) may directly or indirectly suffer, sustain or be subjected to by reason of or arising out of (a) any work, use, occupation, condition, operation, or thing done with the Premises or in the vicinity thereof, by the Licensee or any of its agents, contractors, servants, or employees; (b) any act or omission on the part of Licensee or any of its agents, contractors, servants or employees; (c) any accident, injury (including death) or damage to any person or property occurring on the Premises or in the vicinity thereof arising out of any use thereof by the Licensee or any of its agents, contractors, servants or employees; (d) any failure on the part of Licensee to perform or comply with any of the covenants, terms, or conditions in this License, or be suffered or sustained by other persons or corporations, including Licensee, its employees and agents who may seek to hold Licensor or the Railroad(s) liable therefor, and whether attributable to the fault, failure or negligence of Licensor, the Railroad(s), or otherwise; (e) the presence, discovery or revealing of any pre-existing Hazardous Materials on the Premises (or other property of the MBTA or MassDOT adjacent to the Premises) (i) which discovery is a result of the Licensee's activities hereunder; (ii) where said Hazardous Materials are present because of Licensee's previous occupancies of the Premises, whether those occupancies were unauthorized or permitted pursuant to prior agreements between the parties; or (iii) where those pre-existing Hazardous Materials migrated from land now or previously owned, leased, occupied or operated by the Licensee or for which the Licensee is a potentially responsible party as defined under Chapter 21E; (f) the placement or accidental release of any Hazardous Materials onto the Premises (or other property of the MBTA or MassDOT adjacent to the Premises) by Licensee or its employees, agents, contractors or consultants or by the employees, agents, or consultants of Licensee's contractors or subcontractors.

In clarification of the above release and covenants of defense and indemnification, and not in limitation of them, Licensee shall indemnify, defend (at the option of Licensor) and save Licensor harmless from and against any and all liabilities, losses, damages, costs, expenses (including reasonable attorneys' expenses and fees), causes of action, suits, claims, demands or judgments related to the injury, illness or death of any employee of Licensee or of an employee of Licensee's contractors or consultants (collectively, "Claim"); except if the Claim arose because of Licensor's grossly negligent or willful misconduct. It shall not be grossly negligent to allow access to the Premises that are in substantially the condition they were in when Licensee inspected the Premises before accepting this License.

Licensee shall obtain a written release of liability similar to the one in this Section in favor of Licensor and the Railroad(s) from each of Licensee's consultants and contractors before they enter onto the Premises.

The express obligations of indemnification set forth above shall not be construed to negate or abridge any other obligation or indemnification running to Licensor or the Railroad(s) that would exist at common law or under any other provision of this License, and the extent of the obligations of indemnification shall not be limited by any provision of insurance undertaken in accordance with this License. The obligation to defend and indemnify the Licensor and the Railroad(s) shall survive any termination or expiration of this License.

9.3 Storage of Goods not Owned by Licensee.

The parties to this License acknowledge that all or a part of the Premises may be used for the storage and shipment of goods not owned by Licensee, and Licensor is not willing to enter into this License unless Licensee indemnifies Licensor and the Railroad(s) to Licensor's satisfaction from any liability on the part of Licensor or the Railroad(s) to the owner(s) of such goods for damage to the same arising out of any acts or omissions of Licensor or the Railroad(s). As a material inducement to Licensor to enter into this License, Licensee agrees to defend, indemnify and hold Licensor and the Railroad(s) harmless from and against any and all losses, claims, liabilities, obligations and damages imposed upon or incurred or asserted against Licensor or the Railroad(s) by reason of damage to goods of persons storing such goods with Licensee.

9.4 Defense

If a claim or action is made or brought against Licensor by reason of any claim arising out of any of the occurrences that Licensee is required, pursuant to the preceding Sections or any other provisions of this License, to indemnify and save Licensor harmless against and from (each an "Indemnified Claim"), then Licensee, upon written notice from Licensor, shall at Licensee's expense defend such action or proceeding using legal counsel reasonably satisfactory to Licensee; provided, however that:

- (a) If Licensor decides to itself conduct the defense of an Indemnified Claim against it or to conduct any other response itself, Licensee shall reimburse Licensor for all costs and expenses (including, without limitation, reasonable attorneys' fees and expenses) incurred by Licensor in connection with Licensor's defense of the Indemnified Claim against it and/or the conduct of all response actions, including, without limitation, those required by Chapter 21E and the MCP. The settlement or compromise of any Indemnified Claim shall not include the admission of guilt (or comparable plea), wrongdoing or negligence or the permitting or imposition of civil or criminal penalties or indictments, or the entering of consent decrees or orders of any kind by Licensor on behalf of the Licensee or any other action that would materially prejudice the rights of the Licensee without the Licensee's express written approval. The Licensee shall cooperate with Licensor in the defense of any Indemnified Claim. This same right of self defense and the right to reimbursement from the Licensee shall apply to each of the Railroad(s) that has an Indemnified Claim against it.
- (b) If Licensor decides to have Licensee defend the Indemnified Claim or handle the response action, Licensor shall notify Licensee of that decision in writing and the Licensee shall bear the entire cost thereof and shall have sole control of the defense of any Indemnified Claim and all negotiations for its settlement or compromise provided that Licensor is fully indemnified by the Licensee and provided further that the settlement or compromise shall not include the admission of guilt (or comparable plea), wrongdoing or negligence or the permitting or imposition of civil or criminal penalties or indictments, or the entering of consent decrees or orders of any kind by the Licensee on behalf of Licensor or any other action that would materially prejudice the rights of Licensor without Licensor's express written approval. Licensor shall cooperate with the Licensee in the defense of any Indemnified Claim. If any of the Railroads wants the Licensee to defend it against an Indemnified Claim, then they must agree to this paragraph.

If any response action due to the presence of Hazardous Materials on the Premises (or other property of Licensor which abuts the Premises), is performed by Licensee, the response action shall be performed in accordance with Chapter 21E and the MCP.

9.5 Insurance

(a) Carriers, Policies

All insurance provided for in this Section 9.5 shall be effected under valid and enforceable policies, issued by insurers of recognized responsibility licensed and doing business in Massachusetts and having a so-called Best's Rating of "A" or better. Upon execution of this License and thereafter not less than sixty (60) days prior to the expiration dates from time to time of the policies required pursuant to this Section, certificates of such insurance or, upon request, duplicate originals of the policies, in either case bearing

notations evidencing the payment of premiums reasonably satisfactory to Licensor, shall be delivered to Licensor and the Railroad(s).

(b) Waiver of Subrogation

All policies of insurance required to be carried by Licensee hereunder shall include a clause or endorsement denying to the insurer rights by way of subrogation against Licensor or the Railroad(s).

(c) Non-cancellation

Each policy or certificate issued by an insurer shall contain an agreement by the insurer that such policy shall not be canceled, non-renewed or substantially modified without at least sixty (60) days prior written notice to Licensee and the Railroad(s).

(d) Railroad Protective Liability

Licensee shall furnish to the Railroad(s) a signed copy of said policy of insurance prior to entry upon the railroad right of way, and shall simultaneously provide a certificate of the policy to Licensor, insuring Licensor and the Railroad Companies as named insureds with limits of not less than \$5,000,000.00 per occurrence and \$10,000,000.00 in aggregate combined bodily injury property damage. MassDOT shall be provided with an original policy of Railroad Protective Liability Insurance and the MBTA and each of the other Railroad Companies shall be provided with certificates of insurance.

The above insurance hereinbefore specified and the insurance required in subparagraphs (f) and (g) below shall be carried until all Work required or permitted to be performed under the terms of this License is satisfactorily completed, as evidenced by the formal written approval of Licensor and the Railroad(s). Failure to keep or carry such insurance in force as required herein until all Work is satisfactorily completed shall constitute a material breach and a default of this License.

(e) General Commercial Liability Insurance

At all times during the Term, Licensee shall procure and maintain Commercial General Liability Insurance, insuring Licensee and all activities permitted or required hereunder, as well as Licensee's indemnification obligations contained in this License, with minimum liability coverage limits for personal injury, bodily injury and property damage of not less than One Million Dollars (\$1,000,000) per occurrence and Three Million Dollars (\$3,000,000) in the aggregate. Umbrella liability coverage with limits of not less than Five Million Dollars (\$5,000,000) covering all Work performed must also be provided. Such insurance shall be written on an-occurrence basis (rather than a claims-made basis). This policy shall name Licensor and the Railroad(s) as additional insureds.

(f) Automobile Liability Insurance

Licensee shall procure and maintain automobile liability insurance with limits of not less than One Million Dollars (\$1,000,000) covering all owned, non-owned, hired, rented or leased vehicles of Licensee and its employees, officers and invitees that are used in the activities permitted hereunder. This policy shall name Licensor and the Railroad(s) as additional insureds. Each of Licensee's contractors, subcontractors and consultants shall have similar coverage of vehicles that are used at or near the Premises.

(g) Workers Compensation Insurance

Licensee shall maintain Workers Compensation Insurance insuring all persons employed by Licensee in connection with any work done on or about the Premises, with respect to which claims for death or bodily injury could be asserted against Licensor or the Railroad(s), or the Premises, with limits of liability of not less than those required by Massachusetts General Laws, Chapter 152, as amended. Each of Licensee's contractors, subcontractors and consultants shall have similar policies covering their employees.

(h) Self Help

If at any time Licensor or the Railroad(s) learns that any of Licensee's required insurance coverage is not in place or has lapsed or been terminated and any part of Licensee's Improvements remain on the Premises,

then Licensor or the Railroad(s) may, but shall have no obligation to, procure sure insurance on behalf of Licensee and at Licensee's sole cost.

(i) Increases in Coverage

Licensor may require reasonable increases in the limits of the above insurance coverages during the Extended Term.

Section 10: Compliance with Laws

10.1 Compliance with Laws

Licensee shall comply with, and shall cause all work performed by its agents, employees, contractors, subcontractors and consultants to comply with all Federal, state, county, municipal and other governmental statutes, laws, rules, orders, regulations and ordinances, as are now existing or hereinafter promulgated, including, without limitation, those having to do with zoning matters, environmental controls and pollution of the environment in its operations at or near and occupancy of the Premises, and to indemnify and hold harmless Licensor against all fines, damages, costs, expenses and other penalties for violations thereof.

10.2 Permits

Licensee shall also be responsible for obtaining any and all Federal, state, and/or local permits and/or approvals necessary to carry out the activities permitted hereunder.

10.3 Rules and Regulations

Licensee shall faithfully observe and comply with all rules and regulations promulgated by the Licensor and/or the Railroad(s) whether existing as of the Effective Date or promulgated or amended during the Term.

Section 11: Environmental Cooperation and Remediation

11.1 Environmental Cooperation

If, as a result of Licensee's activities hereunder, "oil" or "hazardous materials", as those terms are defined in Massachusetts General Laws, Chapter 21E ("Chapter 21E") and the regulations promulgated pursuant thereto, the Massachusetts Contingency Plan, 310 CMR 40.0000 et seq. (the "MCP") (collectively, "Hazardous Materials") are discovered on the Premises, and Licensee is not liable for remediation of such Hazardous Materials pursuant to either Chapter 21E or this License, the Licensee agrees to cooperate with Licensor in the determination of the party liable for the remediation of the Premises under applicable Federal and/or state law. Such cooperation may include the temporary adjustment or termination of the rights granted to Licensee hereunder. Licensor shall not be responsible for any damages incurred by the Licensee as a result of such temporary adjustment or permanent termination.

11.2 Remediation Obligation of Licensee

Notwithstanding and in addition to the obligation of Licensee stated above and the obligation to indemnify the Licensor and others pursuant hereto, Licensee, upon written demand of the Licensor, shall conduct, at Licensee's sole cost and expense (or, at the Licensor's election, reimburse Licensor for the cost and expense incurred by the Licensor in connection with Licensor's conduct of), all response actions required by Chapter 21E and the MCP (including the hiring of a Licensed Site Professional) with respect to all Hazardous Materials that are present, discovered or revealed on the Premises (or on other property of Licensor adjacent to the Premises) as a result of (a) the Licensee's activities hereunder, or (b) the migration of such Hazardous Materials from land now or previously owned, leased, occupied or operated by the Licensee or for which Licensee is a potentially responsible party under Chapter 21E. Any such response action, if performed by Licensee, shall be performed in accordance with Chapter 21E, the MCP, any other applicable statutes and regulations, and in accordance with plans and specifications approved by Licensor, shall be completed in a timely manner to the reasonable satisfaction of Licensor, and shall allow Licensor to use the Premises, and/or adjacent or contiguous property, for its present use and for any future transportation use. Licensee shall also be responsible for the reasonable costs incurred by Licensor in hiring consultants to review, supervise and inspect any plans, specifications, proposed method of work,

installation, operation and results and for the costs of obtaining legal counsel with respect to enforcement of Licensor's rights.

Section 12: Nondiscrimination

12.1 Licensee shall not discriminate against any person, employee or applicant for employment because of race, color, creed, national origin, age, sex, sexual orientation, disability or Vietnam era veteran status in its activities at the Premises, including without limitation, the hiring and discharging of employees, the provision or use of services and the selection of suppliers, contractors, or subcontractors.

12.2 Licensee shall not exclude from, or deny use of the Premises or the services provided thereon to any person on the grounds of race, color, creed, national origin, age, sex, sexual orientation, disability or Vietnam-era veteran status.

12.3 Consistent with the law, Licensee shall use reasonable efforts to contact, encourage and utilize minority and female business enterprises in the procurement of materials and service under this License Agreement.

12.4 With respect to its exercise of all rights and privileges herein granted, Licensee shall undertake affirmative action as required by Federal and state laws, rules and regulations pertinent to Civil Rights and Equal Opportunity unless otherwise exempted therefrom. Licensee agrees that it shall comply with any and all required affirmative action plans submitted pursuant to the directives of any Federal agency and in accordance with applicable Federal law and applicable state laws, rules and regulations.

Section 13: Default and Termination

13.1 Termination

Following the expiration of the Initial Term, this License may be terminated at any time by either party hereto upon not less than thirty (30) days' written notice to the other; and upon the expiration of said thirty (30) days after service of said notice, this License and the privileges hereby granted shall absolutely cease and terminate, subject to the provisions of this License which by their terms or nature shall survive the termination of this License.

13.2 Events of Default

If any one or more of the following events (herein called "Events of Default") shall occur:

- (a) If default shall be made in the due and punctual payment of any fees, charges or any other sums payable under this License, or any part thereof, when and as the same shall become due and payable (including payments due either to Licensor, the Railroad(s) or third parties and such default shall continue for a period of ten (10) days after written notice from Licensor to Licensee specifying the items in default; or
- (b) If the Premises are used or maintained in violation of any law or in aid of any unlawful act or undertaking and such use continues for ten (10) days following receipt of written notice thereof from Licensor; or if any permit or other authorization which may be required by any governmental authority for the use, construction, operation or maintenance of Licensee's Improvements is revoked, denied, suspended or not granted; or
- (c) If the Licensee fails to carry the insurance required under Section 9 hereof; or
- (d) If the Licensee assigns or transfers, or attempts to assign or transfer, the rights conferred under this License;
- (e) If the Licensee fails to comply with and perform any other terms or conditions of this License within thirty (30) days after receipt of written notice of such failure, unless the failure is of such a nature

that it cannot reasonably be cured in time but Licensee has commenced making such cure and is in diligent prosecution thereof;

- (f) If the Licensee makes any assignment for the benefit of creditors or files petition for relief under bankruptcy law;
- (g) If the Licensee has a bankruptcy petition filed against it that is not dismissed within sixty (60) days; or
- (h) If the Licensee has its estate taken by process of law, proceeding in bankruptcy or insolvency or otherwise,

then, and in any such event, Licensor may at any time thereafter give written notice to Licensee specifying such Event or Events of Default and stating that this License shall expire and terminate on the date specified in such notice, which shall be at least ten (10) days after the giving of such notice, and, upon the date specified in such notice, this License shall expire and terminate.

Notwithstanding the preceding, if the Event of Default is one that threatens the safety of the public or the ability of the MBTA or a Railroad Company to operate the railroad, then it shall be considered an Emergency Default and if Licensee does not affect an immediate cure, the Licensor/MBTA may terminate the License upon reasonable notice and use self help at the expense of Licensee and Licensee shall be responsible for such expenses as well as for a twenty five percent (25%) administrative fee above the expenses.

From and after the expiration and termination of this License as aforesaid, Licensor may deny access to the Premises and expel Licensee and those claiming through or under Licensee and remove Licensee's Improvements and other property from the Premises without prejudice to any remedies which might otherwise be available for such breach of covenant. Licensee agrees to pay any expenses including reasonable attorneys' fees incurred by the Licensor in enforcing any of Licensee's obligations hereunder.

13.3 Retention of Fees

In the event this License is terminated on account of Licensee's default, Licensor and the Railroad(s) shall retain any prepaid Administrative and Annual License and Maintenance Fees as partial damages, without prejudice to its right to claim additional damages or Licensor's or the Railroad(s) right to exercise other rights or remedies.

13.4 Yield Up

At the expiration of the Term or earlier termination of this License, Licensee shall: (a) yield up and vacate the Premises, (b) remove all of its fixtures and personal property from the Premises, (c) remove Licensee's Improvements as Licensor may request, (d) remove all Licensee signs wherever located; (e) repair all damage caused by such removal and (f) restore the Premises to good order to the satisfaction of Licensor and the Railroad(s). Any property not so removed shall be deemed abandoned, and, if Licensor so elects, shall be deemed to be Licensor's property and may be retained or removed and disposed of by Licensor in such manner as Licensor shall determine. Licensee shall reimburse Licensor for the entire cost and expense incurred by it in effecting such removal and disposition and in making any repairs and replacements to the Premises after Licensee's vacancy of the Premises. To the maximum extent permitted by law, Licensee shall indemnify, defend and hold harmless Licensor from and against all loss, cost, expense and damage arising out of or resulting from Licensee's failure to vacate the Premises and remove its property therefrom as directed by Licensor by not later than the expiration of the Term or earlier termination of this License. The obligation to defend and indemnify the Licensor shall survive any termination or expiration of this License.

Section 14: Taxes and Liabilities

Licensee shall be solely responsible for the payment of any taxes, levies, betterments or assessments, fees or charges, whether in existence on the date hereof or becoming applicable during the Term or any holdover period, which may

be assessed against Licensee, or Licensor or the Railroad(s) which are directly attributable to Licensee's installations in, or use of, the Premises, or any personal property or fixtures of Licensee located thereon (collectively referred to as "Taxes"). Licensee shall pay all Taxes directly to the taxing authority before delinquency and before any fine, interest or penalty shall become due or be imposed by operation of law for their nonpayment. Such payments shall constitute a fee hereunder.

Licensee may contest, in good faith for its own account and at its own expense, the validity or amount of any Taxes, provided Licensee shall indemnify and hold harmless Licensor and the Railroad(s) against any resulting loss, cost and expense. Licensee shall not permit a lien or encumbrance on the Premises by reason of failure to pay any taxes.

Section 15: Prohibition Against Assignment or Transfer

The rights conferred herein shall be personal to Licensee only and no assignment or transfer hereof shall be made.

Upon any receipt of any purported notice of assignment or transfer, or request to assign or transfer such rights, Licensor may in its sole discretion immediately terminate this License and any purported assignment or transfer shall be void and without recourse thereto.

Section 16: Miscellaneous

16.1 Successors and Assigns Bound

The provisions of this License shall be binding on and inure to the benefit of the parties hereto and their respective successors and assigns, subject, however, to the provisions of Section 15 above.

16.2 Railroads' Successors in Interest

The terms "Railroad" or "Railroad(s)" as they appear in this License refers to any entity, its successors or assigns granted the right by Licensor to operate passenger, freight or related rail services upon the Premises or Licensor's other property. If future actions by Licensee affect such Railroads, Licensee shall be bound to the terms and conditions set forth herein to the same extent it would be bound to Licensor or the Railroad(s) specifically named herein.

16.3 Work in Harmony

Licensee agrees that in any work performed in, on or about the Premises, it will employ only labor that can work in harmony with all elements of labor being employed by Licensor and the Railroad(s).

16.4 No Third-Party Beneficiaries

This License shall not be construed to create any third party beneficiary rights or privileges in favor of any other persons except for the third party rights granted herein to the Railroad(s).

16.5 Results

If this License explicitly allows Licensee to conduct certain investigations, assessments, surveys or studies involving the Premises or any other portion of Licensor's property, then Licensee agrees to provide to Licensor, at no cost, a copy of the results of such activities (including data, analysis and reports) and all other work conducted under this License ("Data") in both hard copy form and in a digital format specified by Licensor regardless of whether the report was prepared by Licensee, its agent, consultant or contractor. All Data shall be provided to Licensor within ten (10) days of receipt of such Data by Licensee. Unless otherwise required to do so by law, Licensee agrees to consult with Licensor prior to contacting any governmental entity regarding any Data pertaining to the Premises. Licensee shall give Licensor a copy of any Data (including but not limited to reports or notifications, including release notifications), prior to submitting the same to any governmental entity. Notwithstanding the preceding, for any Chapter 21E investigations performed by or on behalf of Licensee, Licensee shall only provide Licensor with the Data if requested to do so by Licensor in writing and then Licensee shall do so promptly.

16.6 Promotional Materials

Licensee shall not, without the prior written approval of Licensor, refer to Licensor or the Railroad(s) in any promotional matter or material, including, but not limited to advertising, letterheads, bills, invoices and brochures.

16.7 Notices

All notices which may be or are required to be given or served or sent by any party to the other parties pursuant to this License shall be in writing and shall be deemed to have been properly given or sent if hand delivered (including delivery by a nationally recognized overnight delivery company) or mailed by certified mail, return receipt requested.

Each notice which shall be mailed as aforesaid shall be deemed sufficiently given, served or sent at the time such notice shall be deposited in the mail properly addressed, and in any event, upon receipt of the addressee or when receipt is refused by addressee. Each notice which is hand delivered shall be deemed sufficiently given when received or when receipt is refused by an employee of the party notified. In the case of notices to Licensor and/or Licensee, notices shall be sent to the Notice Addresses set forth in Section 1 above.

Licensor, the Railroad(s) and Licensee shall, at any time and from time to time, have the right to specify as their Notice Addresses for purposes of this License any other address or addresses giving fifteen (15) days' written notice thereof to the other party.

16.8 Governing Law

This License shall be construed and interpreted under and governed by the laws of the Commonwealth of Massachusetts.

16.9 Validity of Provisions

The invalidity of any provision of this License shall in no way affect the validity of any other provision.

16.10 Entire Agreement

The provisions of this License represent the entire agreement and understanding between the parties and may not be changed or modified except by written agreement executed by the parties.

16.11 Limitation On Damages

The MBTA and MASSDOT shall not be liable to Licensee for any loss of business or any indirect, incidental, special, consequential or exemplary damages or lost profits unless specified herein.

16.12 No Waiver

No failure by Licensor to insist upon strict performance of any term, covenant or condition hereof, or to exercise any right or remedy consequent upon a breach thereof shall constitute a waiver of any such breach or of any such term, covenant or condition. The acceptance by Licensor of any amount less than the full amount due to Licensor hereunder shall not be deemed a waiver by Licensor of its right to collect the full amount due. Licensor may deposit checks or drafts that state "final payment", "payment in full" or the like without being deemed to have waived its right to receive all amounts due hereunder. Any waiver by Licensor of any term, covenant or condition hereof shall not be effective unless such waiver is in writing.

[Remainder of page intentionally left blank.]

IN WITNESS WHEREOF, the parties hereto have caused this License to be duly executed and delivered as of the day and year first written above.

Licensor:

**MASSACHUSETTS DEPARTMENT OF TRANSPORTATION
BY ITS DULY AUTHORIZED AGENT,
MASSACHUSETTS BAY TRANSPORTATION AUTHORITY**

By: _____
Name: Mark E. Boyle
Title: Assistant General Manager,
Real Estate and Asset Development

Licensee:

[LICENSEE'S NAME]

By: _____
Name: _____
Title: _____

EXHIBIT A

PLAN OF PREMISES

EXHIBIT B

SCOPE OF ACTIVITY

Subject to the terms and conditions in this License Agreement, the Licensee is hereby granted a license to enter upon the Premises for the sole purposes of performing the Work, subject to the following terms and conditions.

Licensee shall perform the Work and use Licensee's Improvements in a safe manner and immediately notify the MBTA if any problem occurs which may result in a safety hazard. If any unsafe situation should occur, Licensee will correct the situation by eliminating any safety hazard immediately or, if the situation cannot be reasonably cured immediately, then in such longer time as is reasonably required, and in all such unsafe situations, MBTA Railroad Operations Safety Procedures shall be followed.

Licensee shall submit a plan and detailed specifications (including the materials to be used) and the proposed methods of performing the work, or any part thereof (the "Plan") to the MBTA. Licensee shall not enter the Premises until the Plan has been approved by the MBTA and _____. Such approval may be withheld in the MBTA's sole discretion. The Scope of Activity for said construction, installation, maintenance, operation and/or replacement will be more fully defined in the approved Plan, which approved Plan will automatically be incorporated herein by reference and made part of this License. The Licensee shall also provide the MBTA and _____ with a detailed schedule of times when Licensee, its employees, contractors, subcontractors, or agents would like to be on the Premises to undertake the Scope of Activity (the "Access Plan"). The MBTA shall have full power to make a final determination of when Licensee may be on the Premises as it is necessary to coordinate the work of all those desiring or having the right to access the Premises.

Unless entry is made pursuant to an Access Plan approved by both the MBTA and _____, Licensee agrees to give, each time it desires entry, at least ten (10) days' prior written notification to the MBTA (except in cases of emergency when notice shall be given to the MBTA and the Railroad Companies as quickly as possible) of its need to access the Premises for all work to be performed under this License by contacting _____ for access. Licensee understands that the more notice given to the MBTA and _____ the more likely it will be that Licensee can gain access at the times requested. **Licensee shall present evidence of the required insurance coverage before each entry. In the case of an emergency, Licensee shall as soon as possible contact the MBTA Control Center at 617-222-5278.**

No activities may be performed by Licensee on the Premises except as approved in writing by the MBTA; and no method of testing, installation or construction shall be used by Licensee except with prior written approvals or written approvals received in the field from the MBTA's/ _____ representatives at the time the work is performed.

If at any time during the work of installation or connection, the MBTA or an affected Railroad Company should, in its sole and absolute discretion, inspectors assigned to construction crews, and/or other measures including, but not limited to, desirable or necessary to protect its operations, its property or its employees or other persons on or near the Premises, the MBTA and/or a Railroad Company shall upon notice to Licensee (where such notice is feasible) have the right to place such personnel, including personnel of the MBTA's or the Railroad Company's agents or to take such measures, at the sole cost and expense of Licensee. Licensee shall contact with personnel named in Permitted Uses section for access to the railroad.

Such cost and expense shall include the current wages and fringe benefits due and owing to such personnel in and for the performance of such measures. Licensee hereby covenants and agrees to bear the full cost and expense thereof and to reimburse the MBTA and/or the Railroad Company within thirty (30) days of receiving an itemized, written invoice for such reimbursement. The MBTA's or a Railroad Company's failure to furnish such personnel or take such measures shall not relieve Licensee of any obligation or liability it might otherwise have assumed, and shall not give rise to any liability to Licensee on the part of the MBTA or the Railroad Companies. Upon being

notified that the personnel or measures referred to in the first sentence of this Paragraph have been deemed desirable or necessary by the MBTA and/or a Railroad Company, Licensee shall not commence or continue construction or repair measures, as the case may be, unless and until such personnel or measures are in place.

If Licensee shall deem any requirement for flagging or the like by the MBTA or a Railroad Company or one of their agents for supervision of the activity hereunder as unreasonable, Licensee shall nevertheless pay for such flagging and the like, but may take exception in writing thereto as an unreasonable requirement in each instance. The parties agree to review such exceptions at the times of billings for such services and attempt to adjust them as the MBTA may deem appropriate. This reimbursement is in addition to the License Fee and Administrative Fee required hereunder.

Licensee shall comply with all applicable MBTA Railroad Operations Directorate requirements including, but not limited to, those entitled: "I - Guidelines and Procedures for Construction on MBTA Railroad Property" dated May 1994, "II - Maintenance and Protection of Railroad Traffic" dated May 1994, "III – Insurance Specifications" dated May 1994. To the extent that there is an irreconcilable conflict between the aforementioned requirements and this License, the terms and conditions contained in the MBTA Railroad Operations Directorate Procedures shall control unless the requirements in this License are more strict.