

**MASSACHUSETTS BAY TRANSPORTATION AUTHORITY**

**LICENSE FOR ENTRY | MBTA – [00000]**

**RAILROAD AND TRANSIT PROPERTIES**

**[MUNICIPALITY], MASSACHUSETTS**

**[ENTITY.NAME]**

1. **The License for Entry**

The Massachusetts Bay Transportation Authority, 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, with a usual place of business at 10 Park Plaza, Boston, Massachusetts (the “MBTA”), hereby grants to [ENTITY.NAME], a [COMPANY.TYPE], with a usual place of business at (“Licensee”), the right and privilege to enter onto the Premises (as defined in Section 2.5 below) solely to conduct the Scope of License (as defined in Section 2.6 below), subject to the terms and conditions of this License for Entry.

2. **General Conditions**

Among the terms and conditions of this License for Entry are included the following General Conditions:

2.1 Effective Date: [MONTH/DAY/YEAR]

2.2 Licensee: [ENTITY.NAME]

2.3 Term: From the Effective Date to [MONTH/DAY/YEAR]; except that the MBTA may terminate this License for Entry with thirty (30) days written notice.

2.4 Fees:

Administrative Fee: \$ 1,000.00 paid with the application for this License for Entry.

License Fee: \$1,000.00 to be paid contemporaneously with the execution of the License for Entry.

Design and Construction Plan Review Fee: \$1,600.00 paid in accordance with Section 4.1(h) below.

2.5 Premises: Those certain areas of the [PROP.DESCRPTION] in [MUNICIPALITY], Massachusetts, as more fully described/shown in Exhibit A, attached hereto and incorporated herein, but only to the extent that use of such property is reasonably necessary to permit Licensee to conduct the activities described in Section 2.6 below.

2.6 Scope of License: Licensee may [SCOPE.OF.WORK], in accordance with the terms and conditions of this License for Entry and the plans and/or documentation attached as Exhibit A. No other investigations or activities of any kind may be performed on the Premises or any other property of the MBTA. Licensee shall have the right to permit its employees, contractors, and agents to use the Premises as permitted hereunder and acting by and

through Licensee, subject to all of the terms and conditions of this License for Entry. Licensee's activities on the Premises and all rights granted to Licensee pursuant to this License of Entry are subject to that certain Notice of Activity and Use Limitation dated , , recorded with the \_\_\_\_\_ County Registry of Deeds in Book \_\_\_\_\_, Page \_\_\_\_\_.

Licensee understands and agrees to the following terms and conditions:

1. Licensee shall adhere to the requirements set forth in the MBTA's Procedures for Environmental Data Collection and Monitoring Well Management on MBTA-Owned Property, hereto attached as Exhibit C and incorporated herein by reference.
2. Licensee shall adhere to the terms and conditions of the [MBTA.DEPARTMENT] correspondence dated [MONTH/DAY/YEAR], hereto attached as Exhibit D and incorporated herein by reference.
3. Licensee shall adhere to the terms and conditions of the [MBTA.DEPARTMENT] correspondence dated [MONTH/DAY/YEAR], hereto attached as Exhibit E and incorporated herein by reference.
4. Licensee shall adhere to the terms and conditions of the [MBTA.DEPARTMENT] correspondence dated [MONTH/DAY/YEAR], hereto attached as Exhibit F and incorporated herein by reference.

In the event of a conflict between the conditions stated in this Section 2.6 and other provisions of this License for Entry, whichever provisions are more restrictive of Licensee or impose a higher standard on Licensee shall control.

2.7 Notices:

**The MBTA:**

The MBTA Real Estate Department  
Massachusetts Bay Transportation Authority  
10 Park Plaza, Suite 5720  
Boston, Massachusetts 02116  
Attn: Chief of MBTA Real Estate

and

The MBTA Railroad Operations Department  
Engineering and Maintenance  
32 Cobble Hill Road  
Somerville, Massachusetts 02143  
Attn: Director of Engineering

and

The MBTA Orange Line Operations Department  
45 High Street  
Boston, Massachusetts 02110  
Attn: Division Chief

and

Keolis Commuter Services, LLC ("KCS")  
32 Cobble Hill Road  
Somerville, Massachusetts 02143  
Attn: John Connors

and

CSX Transportation, Inc. ("CSX")  
500 Water Street  
Jacksonville, Florida 32202  
Attn: Mark E. Austin

and

Pan Am Railways, Inc. ("Pan Am")  
1700 Iron Horse Park  
North Billerica, Massachusetts 01862

and

National Railroad Passenger Corporation ("Amtrak")  
30<sup>th</sup> Street Station, Box 64  
2955 Market Street  
Philadelphia, Pennsylvania 19104  
Attn: Kate McGrath  
215-349-1750

and

Massachusetts Realty Group  
20 Park Plaza, Suite 1120  
Boston, Massachusetts 02116  
Attn: MBTA License Management

**LICENSEE:**

COMPANY  
ADDRESS  
CITY, STATE ZIP  
Attn: CONTACT

**3. Consideration**

The rights contained in this License for Entry are granted for good and valuable consideration, the sufficiency of which is hereby acknowledged.

**4. Terms and Conditions of License for Entry**

This License for Entry is subject to the following terms and conditions:

**4.1 Scope of Activity**

(a) Scope of Activity:

The Scope of Activity is the Scope of License (Section 2.6) as modified by the terms of this License for Entry, including, without limitation, Exhibit B attached hereto and incorporated herein. Licensee shall minimize the disruption to and alteration of the Premises and, as soon as possible after each entry onto the Premises, shall return the Premises to the condition existing immediately prior to the initiation of the Scope of Activity and entry hereunder; except as specifically authorized under the Scope of License.

Except pursuant to an approved Access Plan, defined in Exhibit B, attached hereto and incorporated herein, or 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 applicable operations department(s), including [OPERATIONS DEPARTMENTS – i.e. MBTA's Railroad Operations Department and MBTA's Orange Line Operations Department], in accordance with this License for Entry at the address(es) noted above and shall also make arrangements at least ten (10) days in advance with the applicable Railroad Companies (as defined below) for access. The MBTA and the Railroad Companies (as defined below) may have an observer present at all times when Licensee is present on the Premises. See Exhibit B for required notice from Licensee when Licensee needs access because of an emergency. Licensee shall do all work in accordance with the Plan described in Exhibit B.

(b) 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 Scope of Activity. Licensee shall comply with Massachusetts General Laws, Chapter 82, Section 40 (said statute also 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 the MBTA, the Railroad Companies (as defined below), or parties acting on behalf of any of them, locate and mark railroad utilities in the railroad rights of way and appurtenant thereto, 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 and transit line(s) or used in connection with services or operations of the MBTA and/or the Railroad Companies (as defined below). 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, the MBTA, without being under any obligation to do so and without waiving Licensee's obligation hereunder, may repair any utilities damaged by Licensee immediately and without notice in case of emergency. In the event the MBTA exercises such right, Licensee shall pay to the MBTA immediately upon demand all of the MBTA's cost of performing such repairs plus a fee equal to twenty-five percent (25%) of the MBTA's cost of performing such repairs to reimburse the MBTA for its administrative costs.

(c) Subordination to the MBTA's Operating Requirements:

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

- (d) Environmental Cooperation:  
If for any reason Licensee is not responsible for Hazardous Materials, defined below, on the Premises then Licensee agrees to cooperate with the MBTA 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 of the rights granted to Licensee hereunder. The MBTA shall not be responsible for any damages incurred by Licensee as a result of such temporary adjustment. "Hazardous Materials" shall mean "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").
- (e) Remediation Obligation of Licensee:  
Whenever by law or the terms of this License for Entry, Licensee is responsible for remediation of Hazardous Materials on MBTA property, Licensee, upon written demand of the MBTA, shall conduct, at Licensee's sole cost and expense (or, at the MBTA's election, reimburse the MBTA for the cost and expense incurred by the MBTA in connection with the MBTA's conduct of), all response actions required by Chapter 21E and the MCP with respect to the Hazardous Materials (including the hiring of a Licensed Site Professional). 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 the MBTA, shall be completed in a timely manner to the reasonable satisfaction of the MBTA, and shall allow the MBTA to use the Premises, and/or adjacent or contiguous property owned by the MBTA, for its present use and for any future transportation use. Licensee shall also be responsible for the reasonable costs incurred by the MBTA in hiring consultants (including a Licensed Site Professional) to review, supervise and inspect any plans, specifications, proposed method of work, installation, operation and results.
- (f) Notice of Project Commencement and Completion:  
Upon commencement and completion of its work, Licensee shall provide written notice to the MBTA and the Railroad Companies (as defined below) at the notice addresses set forth in Section 2.7.
- (g) Evidence of Financial Responsibility:  
Prior to commencement of Licensee's activities hereunder, Licensee shall provide evidence to the MBTA's reasonable satisfaction that Licensee has sufficient financial resources available to discharge any anticipated obligations hereunder. Such resources may be in the form of Licensee's net worth, insurance coverage, a bond or such other financial security as may be acceptable to the MBTA in form and amount.
- (h) Plan Review Costs:

In addition to the Fees allocated in Section 2.4 above, Licensee shall also be responsible for any additional costs that may be incurred by the MBTA for Design and Construction Plan Review within thirty (30) days of being invoiced for same. Such costs and Fees are in addition to the Administrative Fee and the License Fee, and are included within the Licensee's indemnity obligations in Section 4.2(a) below.

#### **4.2 Indemnification and Release of the MBTA**

(a) Licensee shall indemnify, defend (at the option of the MBTA) and save the MBTA, [SPECIFIC.RAILROAD.COMPANIES (KCS, Amtrak, CSX, Pan Am)], and any other company operating on the rights-of-way (collectively, except for the MBTA, the "Railroad Companies"; and individually, each a "Railroad Company") 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 of any nature whatsoever including, without limitation, those related to Hazardous Materials that may be imposed upon, incurred by, or asserted against the MBTA or the Railroad Companies by reason of any of the following occurrences:

- (1) the activities of Licensee hereunder or the exercise by Licensee of any rights or privileges hereby granted; or
- (2) the presence, discovery or revealing of any pre-existing Hazardous Materials on the Premises (or other property of the MBTA adjacent to the Premises) (i) which discovery is a result of 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 Licensee or for which Licensee is a potentially responsible party as defined under Chapter 21E; or
- (3) the placement or accidental release of any Hazardous Materials onto the Premises (or other property of the MBTA 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; or
- (4) any use, condition or occupation of the Premises or any part thereof by Licensee; or
- (5) any failure of Licensee to perform or comply with any of the terms hereof, or of any contracts, agreements or restrictions, statutes, laws, ordinances or regulations affecting the activities or any part thereof.

In subsection (2) above, Licensee's previous occupancies of the Premises include occupancies by the predecessors in interest of Licensee.

(b) Licensee has inspected the Premises and decided that the Premises are suitable for the uses Licensee contemplates. Licensee assumes all the risk of entry on to the Premises.

- (c) Licensee hereby releases the MBTA and the Railroad Companies from any responsibility for Licensee's losses or damages related to the condition of the Premises, and Licensee covenants and agrees that it will not assert or bring, nor cause any third-party to assert or bring, any claim, demand, lawsuit or cause of action (whether by way of original claim, cross claim, counterclaim, contribution claim, indemnification claim, third-party claim or any other claim) (hereinafter "Claims") against the MBTA or the Railroad Companies, including, without limitation, claims for response actions, response costs, assessments, containment, removal and remedial costs, governmental oversight charges, including any overhead or response action costs incurred or assessed by DEP, fines or penalties, permit and annual compliance fees, reasonable attorney and expert fees, natural resource damages, property damages, including diminution in property value claims, and personal injury damages and damages related to a person's death relating to, or arising from, the condition of the Premises.

Licensee shall obtain a written release of liability similar to the one in this Section 4.2(c) and including the language of Section 4.2(d) in favor of the MBTA and the Railroad Companies from each of Licensee's consultants and contractors before they enter onto the Premises.

- (d) 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 the MBTA) and save the MBTA and the Railroad Companies 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; except if the "Claim" arose because of the gross negligence or willful misconduct of the MBTA or the Railroad Companies. 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 for Entry.
- (e) Licensee shall be notified, in writing, by the MBTA and each of the affected Railroad Companies of the assertion of any claim against it that Licensee has agreed to indemnify above (the "Indemnified Claim").
- (1) If the MBTA decides to itself conduct the defense of an Indemnified Claim against it or to conduct any other response itself, Licensee shall reimburse the MBTA for all costs and expenses (including, without limitation, reasonable attorneys' fees and expenses) incurred by the MBTA in connection with the MBTA'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 the MBTA on behalf of Licensee or any other action that would materially prejudice the rights of Licensee without Licensee's express written approval. Licensee shall cooperate fully and promptly with the MBTA in the defense of any Indemnified Claim. This same right of self-defense and the right to Licensee reimbursement shall apply to each of the Railroad Companies that has an Indemnified Claim against it.

- (2) If the MBTA decides to have Licensee defend the Indemnified Claim or handle the response action, the MBTA shall notify Licensee of that decision in writing and 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 the MBTA is fully indemnified by 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 Licensee on behalf of the MBTA or any other action that would materially prejudice the rights of the MBTA without the MBTA's express written approval. The MBTA shall cooperate with Licensee in the defense of any Indemnified Claim. If any of the Railroad Companies want Licensee to defend it against an Indemnified Claim, then they must agree to this Section 4.2(e)(2).

If any response action due to the presence of Hazardous Material or the threat of release of Hazardous Waste onto the Premises (or other property of the MBTA which abuts the Premises), is performed by Licensee, the response action shall be performed in accordance with Section 4.1(e).

- (f) Licensee and contractor shall provide to the MBTA financial assurance guaranteeing Licensee's performance of the obligations of this License for Entry in a form satisfactory to the MBTA.

For purposes of this Section 4, Licensee shall include Licensee and its directors, officers, employees, agents, successors and assigns and the MBTA shall include the MBTA and its directors, officers, employees, agents, successors and assigns.

The provisions of Sections 4.1 and 4.2 shall survive the termination or expiration of this License for Entry.

#### **4.3 Insurance**

Prior to entry hereunder, Licensee and its consultants and contractors shall provide the MBTA, [SPECIFIC.RAILROAD.COMPANIES (KCS, Amtrak, CSX, Pan Am)], and the Railroad Companies with a certificate or certificates of insurance and shall, during the Term hereof, renew and replace any expired certificate, evidencing the insurance of the activities permitted hereunder, and Licensee's covenant of indemnification hereinabove, with companies that are reasonably acceptable to the MBTA, as stated below, in which the MBTA and others hereinafter specified are either additional insureds as their interests may appear or named insureds and which provide minimum liability coverage as follows:

- (a) Commercial General Liability Insurance:  
Insuring Licensee, the MBTA, the Railroad Companies, the Premises, and all activities allowed hereunder as well as Licensee's indemnification obligations contained in Section 4 with minimum liability coverage for personal injury, bodily injury and property damage with limits not less than One Million Dollars (\$1,000,000.00) per occurrence and Three Million Dollars (\$3,000,000.00) in aggregate. Umbrella liability coverage with limits of not less than Ten Million

Dollars (\$10,000,000.00) covering all work performed must also be provided. Such insurance shall be written on an occurrence basis (as opposed to a claims made basis). These policies shall name the MBTA and the Railroad Companies as additional insureds.

(b) Workers' Compensation and Employers' Liability 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 the MBTA, the Railroad Companies, or the Premises with (i) Workers' Compensation Insurance providing statutory coverage as required by the Massachusetts General Laws, Chapter 152, as amended and (ii) Employers' Liability Insurance Coverage with limits of not less than One Million Dollars (\$1,000,000.00) per accident. The policy shall contain a clause waiving the right of subrogation in favor of the MBTA and the Railroad Companies. Each of Licensee's subcontractors and consultants shall have similar policies covering their employees.

(c) Railroad Protective Liability Insurance:

While working within fifty (50) feet of the tracks on the right of way, insuring the MBTA and the Railroad Companies as named insureds with limits of not less than Five Million Dollars (\$5,000,000.00) per occurrence and Ten Million Dollars (\$10,000,000.00) in aggregate combined bodily injury property damage. KCS shall be provided with an original policy of Railroad Protective Liability Insurance and the MBTA and the remaining Railroad Companies shall be provided with certificates of insurance.

(d) Automobile Liability Insurance:

Automobile liability insurance with limits of not less than One Million Dollars (\$1,000,000.00) covering all owned, non-owned, hired, rented or leased vehicles of Licensee and its consultants and contractors that are used in the activities permitted hereunder.

The required insurance coverages hereinbefore specified shall be placed with insurance companies licensed by the Massachusetts Division of Insurance to do business in the Commonwealth of Massachusetts and having a Best's rating of B+ or better, shall be taken out before the use and occupancy is commenced and be kept in full force and effect throughout the term of this License for Entry, shall be primary to and non-contributory to any insurance or self-insurance maintained by the MBTA, and shall require that the MBTA be given at least thirty (30) days advance written notice in the event of any cancellation or materially adverse change in coverage. All such required insurance shall be written on an occurrence basis form, as opposed to a claim made basis form. The MBTA shall be named as an additional insured under the Commercial General Liability, Automobile Liability, Umbrella Insurance policies, as applicable. The MBTA shall be named as a named insured under the Railroad Protective Liability Insurance policy, as applicable. The Workers' Compensation and Employers' Liability Insurance Policies shall include a waiver of subrogation in favor of the MBTA and the Railroad Companies which precludes these insurers from being able to make any subrogation claims against the MBTA or the Railroad Companies. All such required insurance shall not contain any exclusions for acts of terrorism, and shall fully cover any acts of terrorism, irrespective of whether such acts of terrorism are caused by domestic or foreign terrorists, and irrespective of whether such acts of terrorism are certified or non-certified by the Secretary of the Treasury, in concurrence with the Secretary of Homeland Security, to be an act of terrorism pursuant to the federal Terrorism Risk Insurance Act of 2002, as amended. All such insurance as is required of Licensee shall be provided by or on behalf of all contractors and

subcontractors to cover their operations performed. Licensee shall be held responsible for any modifications, deviations or omissions in the compliance with these requirements by the contractors and subcontractors. At the inception date of this License for Entry and throughout the term of this License for Entry, the MBTA shall be provided with certificates of insurance evidencing that such insurance policies are in place and provide coverage as required.

ALL CERTIFICATES OF INSURANCE PERTAINING TO THIS REQUEST (AS WELL AS RENEWAL CERTIFICATES) SHOULD DESCRIBE THE SITE THAT IS COVERED.

**4.4 Compliance with Laws**

Licensee shall comply with, and shall cause all work performed to comply with all federal, state, county, municipal and other governmental statutes, laws, rules, orders, regulations and ordinances.

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.

**4.5 Non-Exclusive Use**

The MBTA makes no representations or warranty, express or implied, that Licensee shall have sole or exclusive use of the Premises under this License for Entry. In the event other agreements, licenses, or easements have been or are granted, Licensee shall be responsible for coordinating its work and activities with that of other licensees and parties in interest. The MBTA shall not be liable for delays, obstructions, or like occurrences affecting Licensee, arising out of the work of the MBTA or other licensees or parties in interest.

Licensee's rights herein are granted subject to easements and rights of record and existing leases and licenses.

**4.6 No Warranty**

Licensee accepts the Premises "As Is" and the MBTA makes no warranty, express or implied, as to the condition of the Premises.

**4.7 Termination**

At the termination of this License for Entry, Licensee agrees to restore the Premises promptly to the condition it was in at the commencement of the term hereof, and to remove all of Licensee's personal property and debris from the Premises. Should Licensee not perform such restoration at the end of the Term, the MBTA may perform any and all necessary restoration at the sole expense of Licensee. Any personal property not so removed shall, at the option of the MBTA, either become the property of the MBTA or be removed by the MBTA and disposed of without any liability in the MBTA for such removal and disposition, all at the sole expense of Licensee.

**4.8 Assignment**

Licensee shall not, without the prior written consent of the MBTA, transfer or assign this License for Entry or any part hereof. Such consent may be withheld in the sole discretion of the MBTA. Any assignment made by Licensee without the prior written consent of the MBTA shall render this License for Entry null, void, and of no further force or effect.

**5. Notices**

All notices, demands, requests, consents, approvals and other instruments required or permitted to be given pursuant to the terms hereof (hereinafter "Notice"), shall be in writing and shall be deemed to have been properly given when deposited in registered or certified United States mail, postage prepaid, return receipt requested, addressed, as described in Section 2.7 or when delivered by messenger or overnight mail service to the correct addressee. Notice shall be deemed received when actually received or when the proffered Notice has been refused by the addressee. The signature of an employee, servant or agent of the addressee shall be determinative on the issue of actual receipt.

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

**6. Results**

If this License for Entry explicitly allows Licensee to conduct certain investigations on MBTA owned land, then if asked to do so by the MBTA in writing, Licensee agrees to provide to the MBTA, at no cost, a copy of the results of such investigations (including data and analysis) and all other work conducted under this License for Entry in both hard copy form and in a digital format specified by the MBTA regardless of whether the report was prepared by Licensee, its agent, consultant or contractor, or prepared on behalf of Licensee. All results and reports shall be provided to the MBTA within ten (10) days of Licensee's receipt of the written request of the MBTA. Licensee agrees to consult with the MBTA prior to contacting any governmental entity, regarding any information, results of analysis or reports regarding the Premises. Licensee shall give the MBTA a copy of any reports or notifications, including but not limited to release notifications, prior to submitting the same to any governmental entity.

**7. Default and Termination**

(a) Termination for Non-Payment:

In the event that Licensee shall neglect or fail to pay any sum herein specified to be paid upon the due date hereunder, Licensee shall be in default and the MBTA shall have the right at any time thereafter to terminate this License for Entry by giving Licensee two (2) weeks written notice of the MBTA's decision to terminate for non-payment ("Termination Notice"). Licensee shall not be entitled to cure any such default by tendering payment after the expiration of the two (2) week grace period which starts upon Licensee's, or Licensee's servants, agents or employee's receipt of (or refusal to accept) the MBTA's Termination Notice. Any amount due hereunder that is not paid when due shall be charged to 1.5% per month and 18% per annum.

(b) Default of Terms and Conditions:

Licensee shall also be in default if Licensee:

- (1) fails to perform or observe any of the other covenants or agreements contained in this instrument and on its part to be performed or observed, or
- (2) makes any assignment for the benefit of creditors or files petition for relief under bankruptcy law, or
- (3) has a bankruptcy petition filed against it that is not dismissed within sixty (60) days, or
- (4) has its estate taken by process of law, proceeding in bankruptcy or insolvency or otherwise,

and if such defaults continue after two (2) weeks' written notice given by the MBTA to Licensee to cure, the MBTA may terminate this License for Entry by written notice to Licensee and/or deny access to the Premises and expel Licensee and those claiming through or under Licensee and remove Licensee's effects from the Premises without prejudice to any remedies which might otherwise be available for such breach of covenant, and, upon entry as aforesaid, the rights of Licensee created by this License for Entry shall terminate. Notwithstanding the preceding, if Licensee begins to cure a default as soon as possible within said two (2) week period and thereafter continues to pursue a cure with all due diligence, then the MBTA shall not terminate this License for Entry until and unless Licensee ceases to pursue a cure with all due diligence and has not in fact cured said default. Licensee agrees to pay any expense including reasonable attorneys' fees incurred by the MBTA in enforcing any of Licensee's obligations hereunder.

Notwithstanding the preceding, if the default is one that threatens the safety of the public or the ability of the MBTA or a Railroad Company to operate its transportation system, then it shall be considered an emergency default ("Emergency Default") and if Licensee does not affect an immediate cure, the MBTA may terminate the License for Entry 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.

In the event this License for Entry is terminated pursuant to this Section 7, the MBTA shall retain the License Fee as partial damages, without prejudice to its right to claim additional damages as a result of the breach.

**8. Holding Over**

If Licensee desires to continue the work defined in the Scope of Activity after the expiration or termination of this License for Entry, 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 for Entry.

**9. Work in Harmony**

Licensee agrees that in any work performed in or about the Premises, it will employ only labor which can work in harmony with all elements of labor being employed by the MBTA or the Railroad Companies.

**10. Promotional Material**

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

**11. Nondiscrimination**

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.

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 military 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.

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 for Entry.

**12. Taxes**

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, which may be assessed against Licensee or the MBTA 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 an additional License 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 the MBTA 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.

**13. No Third-Party Beneficiaries**

This License for Entry shall not be construed to create any third-party beneficiary rights in favor of any other parties (except the explicit rights granted to the Railroad Companies) or any right or privilege for the benefit of any other parties.

**14. Entire Agreement**

This License for Entry contains the entire agreement of the parties hereto with respect to the subject matter hereof, and no representations, inducements, promises, or agreements, oral or otherwise, between the parties hereto with respect to the subject matter hereof not embodied herein shall be of any force or effect.

**15. Governing Law**

This License for Entry shall be construed and interpreted under and pursuant to the laws of the Commonwealth of Massachusetts, and the Massachusetts and Federal conflict of laws provisions shall not be applied if the result is that other than Massachusetts law shall govern.

**16. Successors and Assigns**

The provisions of this License for Entry shall be binding on and inure to the benefit of the parties hereto and their respective successors and assigns.

**17. Limitation on Damages**

The MBTA 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.

**18. No Waiver**

No failure by the MBTA 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 the MBTA of any amount less than the full amount due to the MBTA hereunder shall not be deemed a waiver by the MBTA of its right to collect the full amount due. The MBTA 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 the MBTA of any term, covenant or condition hereof shall not be effective unless such waiver is in writing.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties hereto have caused this License for Entry to be executed as of the Effective Date.

**MASSACHUSETTS BAY TRANSPORTATION  
AUTHORITY, AS LICENSOR**

**[COMPANY.NAME], AS LICENSEE**

By: \_\_\_\_\_  
David M. Lepore  
Chief of MBTA Real Estate

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
(Duly Authorized Representative)

**EXHIBIT A**  
**PLAN OF PREMISES**

## EXHIBIT B

### SCOPE OF ACTIVITY

Subject to the terms and conditions in this License for Entry Agreement, Licensee, its agents, employees, contractors, subcontractors, and/or representatives are hereby granted a license to enter upon the Premises for the sole purpose as described in Section 2.6.

Licensee shall conduct all activities within the Premises in a safe manner and immediately notify the MBTA and the applicable Railroad Companies 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, the 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, \_\_\_\_\_, and other applicable Railroad Companies. Licensee shall not enter the Premises until the Plan has been approved by the MBTA and the applicable Railroad Company or Railroad Companies. Such approval may be withheld in the MBTA's, or the applicable Railroad Company'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 for Entry. Licensee shall also provide the MBTA 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 and the applicable Railroad Companies 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 the applicable Railroad Companies, Licensee agrees to give, each time it desires entry, at least ten (10) days' prior written notification to the MBTA and the applicable Railroad Companies (except in cases of emergency when notice shall be given to the MBTA and the applicable Railroad Companies as quickly as possible) of its need to access the Premises for all work to be performed under this License for Entry. Licensee understands that the more notice given to the MBTA and the applicable Railroad Companies, the more likely it will be that Licensee can gain access at the times requested. The 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 617-222-5278.

No activities permitted herein may be performed by Licensee 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, either the MBTA or the applicable Railroad Company should, in its sole and absolute discretion, deem flagmen, watchmen, communications/signaling personnel, electric traction personnel, inspectors assigned to construction crews, and/or other measures, including but not limited to train re-routing, 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. 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, 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 and Transit Properties", "II - Maintenance and Protection of Railroad Traffic", "III - Insurance Specifications" dated August 2014 and MBTA Special Instructions dated April 2003. To the extent that there is an irreconcilable conflict between the aforementioned requirements and this License for Entry, the terms and conditions contained in the MBTA Railroad Operations Directorate Procedures shall control, unless the requirements in this License for Entry are more strict.

No individual, including representatives and employees of Licensee, may enter onto the Premises unless that individual has first attended \_\_\_\_\_'s Roadway Worker Protection ("RWP") class.

**EXHIBIT C**

**EXHIBIT D**

**EXHIBIT E**

**EXHIBIT F**