

**DESIGN BUILD AGREEMENT TERM SHEET**

**For The**

**JETBLUE T6-T7 RE-DEVELOPMENT PROGRAM**

**Between**

**VANTAGE AIRPORT GROUP LTD.,**

**RXR VAF III JFK MILLENNIUM PARTNERS VEHICLE LLC,**

**And**

**JETBLUE AIRWAYS CORPORATION**

**As Sponsors**

**And**

**HUNT CONSTRUCTION GROUP, INC.,**

**As Design-Builder**

**Dated: March 12, 2020**

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## TERM SHEET

This document (the “Term Sheet”) sets forth the key guiding principles, business terms and conditions that will form the basis of the design build agreement (the “DBA”) between a separate project company (the “Project Company”) to be formed by Vantage Airport Group Ltd. (“Vantage”), RXR VAF III JFK Millennium Partners Vehicle LLC (“RXR”), and JetBlue Airways Corporation (“JetBlue” and together with Vantage and RXR, collectively, “Sponsors” and, individually, each a “Sponsor”) and Hunt Construction Group, Inc., the design build contractor (“DB”).

After selection of DB and before the execution of a DBA, Sponsors and DB will enter into an interim agreement (the “Interim Agreement”) that will govern the parties’ relationship prior to execution of the DBA, including without limitation, DB’s provision of preconstruction services and potential early work. The parties may also enter into one or more Letter(s) of Intent (as defined below) for certain limited preconstruction services prior to the execution of the Interim Agreement.

### **1. PROJECT OVERVIEW AND KEY PRINCIPLES**

Sponsors intend to develop the project, consisting of the design, construction, development, financing, operation and maintenance of terminal facilities on the Terminal 6 and Terminal 7 (respectively, “T6” and “T7”) sites, as well as the design, construction and financing of supporting roadway infrastructure including, among other things, a new ground transportation center at the John F. Kennedy International Airport (“JFK”), located in Jamaica, New York (collectively, the “Project”). Sponsors’ proposal for the Project was selected by the Port Authority of New York and New Jersey (“PA”), and Sponsors and PA are in the process of negotiating a lease whereby Sponsors, through the Project Company, will lease the T6 site and, commencing at a future date (anticipated to be on or about December 1, 2022), T7 site constituting the premises from PA (the “Lease”). As used throughout this Term Sheet, the term “Lease” shall be also deemed to include all “Project Documents” as that term is defined in the Lease.

The Project is made up of certain underlying requirements, including without limitation those related to the development of the new T6 and T7 terminals, the connection to existing terminal 5i, the passenger and commercial curb front roadways, the terminal access and exit roadways and the ground transportation center in and around the “Yellow Garage” (collectively, the “Sponsor Requirements”). JetBlue is the intended anchor tenant for the new terminals.

Sponsors have been working with Corgan Associates Architects PC (“Corgan”) (as design architect) and Stantec Architecture and Engineering Inc. (“Stantec”) (as design engineer) for the Project’s preliminary design and preparation and incorporation of the Sponsor Requirements, which includes the terminal layout, apron design, base roadway, and ground transportation center layout (collectively, “Preliminary Facility Design”). PA has evaluated and initially accepted the Preliminary Facility Design, subject to PA’s reservation of its right to on-going input, review and approval throughout the remainder of the design process for the Project. In an effort to maximize the work performed to date and minimize overall Project costs, DB shall not reconsider, re-design or re-evaluate the Preliminary Facility Design, except to the extent permitted or required by a Letter of Intent, the Interim Agreement or the DBA (e.g., to comply with Applicable Laws (as defined in the Lease) or PA requirements).

By executing this Term Sheet, the parties acknowledge and agree that the following key guiding principles shall govern the relationship between Sponsors and DB in negotiation of a Letter of Intent, the Interim Agreement and the DBA and shall be incorporated within the DBA or be the standard to which specific provisions of the DBA shall adhere:

**A. Design and Construction.**

DB shall act as the design builder to design and construct the Project in accordance with the DBA and at a guaranteed maximum price (“GMP”). Sponsors intend to deliver the Project utilizing a two-step design build delivery method. The first part (Part 1 – Design) includes design services (“Part 1 Services”), while the second part (Part 2 – Construction) includes construction services (“Part 2 Services” and, together with Part 1 Services, the “Services”). Part 1 Services will be further separated into two sub-phases which include the Part 1A preliminary design services (“Part 1A Services”) and the Part 1B final design services (“Part 1B Services”). Similarly, Part 2 Services are expected to be further separated into two or more sub-phases, which will include, at a minimum, the construction of T6 and the construction of T7 (each such phase identified in the Interim Agreement and the DBA, a “Phase”). Part 1 Services and Part 2 Services may consist of multiple task authorizations at the option and discretion of Sponsors. The final GMP may be comprised of separate component GMPs for various Phases of the Project as determined by Sponsors.

**B. DB’s Design Team.**

DB shall have full discretion to: (1) select the Project’s architect of record; (2) select all sub-consultants; and (3) propose Corgan and Stantec for any role greater than the minimum requirement set forth herein. At a minimum, DB shall be required to retain Corgan to be involved in the delivery of architectural services as the lead designer and coordinator with PA, and shall be required to retain Stantec as a member of the interior design team, which Stantec is currently performing through a memorandum of understanding with Corgan. The Project’s Request for Proposals for Design-Build Services (“RFP”) solicitation documents provide greater detail about this requirement. DB is responsible for incorporating Corgan and Stantec into the design team as required by the RFP which also provides additional recommendations but not requirements regarding Stantec. Promptly upon the parties execution of the Interim Agreement, DB will execute a separate agreement with Corgan. Thereafter, DB shall be responsible for validating Corgan’s program development documents (the “PDD”) to ensure compliance with PA requirements, Applicable Laws and Applicable Standards (as defined in the Lease). Upon such validation and provided that Sponsors shall remain responsible for scope elements in the PDD, DB shall be responsible for the PDD design elements and requirements, and further developing and completing the Project’s design with their design team incorporating Corgan and Stantec as outlined above and in the RFP.

**C. Project Financing.**

Consistent with complex construction projects, financing will be required and the DBA will need to be structured to meet investment grade standards, including without limitation debt provider requirements, bonds, and other types of financing that may be contemplated by Sponsors and to achieve a sufficient financial rating acceptable to Sponsors (in their sole discretion) in a manner to facilitate such financing, including without limitation by establishing the applicable GMP(s) prior to closing the applicable Project financing. DB must provide security to the satisfaction of Sponsors and institutions providing the Project’s financing (“Lenders”) in the form of a parent company guarantee, letters of credit, payment and performance bonds, or other similar marketable documents. All Design Professionals (as defined below) and subcontractor agreements must be freely and unconditionally assignable to Sponsors, the Lenders and, as and to the extent required by the Lease, PA.

**D. Material Developer Changes.**

DB’s request for compensation and extensions of time for changes in the D&C Work (as defined in the Lease) could be detrimental to the Project’s success where they (a) create an environment in which DB is requesting compensation for changes in the D&C Work that do not materially increase DB’s cost, or (b) are typically expected on a project of the nature and complexity similar to the Project. Accordingly, DB



shall only be compensated (or provided time extensions) for changes that arise under two circumstances: Material Developer Changes (as defined below) and Equivalent Project Relief (as defined below). A change shall only be compensable as a Material Developer Change under the DBA if it satisfies the following criteria: (a) it is requested by Sponsors (including third-party requests that are solely made through authorized representatives of Sponsors); (b) it either (i) arises out of a specific right or entitlement granted to DB by the terms of the DBA (including allowances that when finalized exceed amounts agreed to in the GMP), or (ii) was not reasonably inferable from the Contract Documents (as defined below) by DB and was not capable of having been clarified by DB prior to the full execution of the DBA; (c) it cannot be reasonably anticipated from the Basis of Design (as defined below); and (d) it is material in nature (either alone or in the aggregate based on related changes) (a "Material Developer Change"). For the avoidance of doubt, the following without limitation shall not constitute Material Developer Changes: (1) any changes resulting from errors and omissions in the Project's Contract Documents, (2) coordinating with Separate Contractors (as defined below) as required by the Lease, any Letter of Intent, the Interim Agreement or DBA, (3) reasonably anticipated coordination of the D&C Work with separate contractors performing work on other construction projects underway at JFK, and (4) unforeseen conditions, including environmental conditions, except as otherwise set forth in Section 2.16 – "Unforeseen and Non-Environmental Subgrade Conditions" and Section 2.17 – "Environmental Conditions."

**E. Sponsors' Financial Risk Capped.**

DB shall guarantee that the cost to design and construct the Project shall not exceed the aggregate GMP and that the cost to design and construct (as applicable) each separate Phase shall not exceed the related component GMP, except in each case for costs compensable to DB pursuant to the DBA as either Material Developer Changes or Equivalent Project Relief. DB shall also complete the Project in strict compliance with the Project Schedule (as defined below) and by a date certain to be provided by Sponsors to DB.

**F. The Lease/Back-to-Back.**

To the fullest extent possible, DB shall be responsible to Sponsors for all of the obligations under the Lease pertaining to the D&C Work to the same extent Sponsors are responsible to PA except to the extent that such obligations can only be fulfilled by Sponsors. Notwithstanding anything to the contrary in a Letter of Intent, the Interim Agreement or the DBA, DB shall not be entitled to any additional compensation, extension of time or other relief from Sponsors in connection with the DBA or the Project unless such relief is expressly available to Sponsors, and to the same extent, under the Lease ("Equivalent Project Relief"), or to the extent of any Material Developer Changes. DB shall similarly comply with all of the applicable terms and conditions of the lease between The City of New York and PA dated November 24, 2004 insofar as they relate to the D&C Work ("Basic Lease"), as the same may be amended or modified by the parties thereto.

**G. Continuance with Design and Compliance with Schedule.**

DB shall manage the continued development of the Project design including refinements of the design and development of the construction documents and specifications (collectively, the "Contract Documents") in accordance with an integrated design and procurement schedule ("Design/Procurement Schedule") developed by the parties and annexed to the Interim Agreement. As further detailed in the RFP, the Project is anticipated to be complete within approximately 5½ years. Sponsors' current understanding of the schedule, which is subject to adjustment as required to comply with Sponsors' program subject to DB's rights with respect to Equivalent Project Relief and Material Developer Changes, includes the milestones set forth below. Sponsors anticipate that the milestone deadlines for DB (particularly with respect to substantial completion of T6 and T7 terminal Phases) to be included in the DBA (each, a

“Milestone”) will occur earlier than Sponsors’ deadlines with respect to such Phases under the Lease (if applicable) due to financing requirements. Certain of the milestones set forth below may be significantly progressed or completed prior to execution of the DBA, with such work being accomplished pursuant to the Interim Agreement among the parties.

- |   |                      |
|---|----------------------|
| • Part 1A – Preliminary Design (up through GMP) | 5-8 month duration   |
| • Part 1B – Final Design                        | 10-12 month duration |
| • Part 2A – Construction Phase 1                | 30-36 month duration |
| • Part 2B – Construction Phase 2                | 21-24 month duration |

Future refinements of the Design/Procurement Schedule shall set forth the detailed dates for design and submittal submissions by each Design Professional or subcontractor trade, for submission of packages for PA approvals, for trade procurement, and for purchase of long lead items.

#### **H. Open Book and Sponsors’ Access to Information/Documents.**

Due to certain requirements of PA or as set forth in the Lease, DB acknowledges that this Project is “open book,” and DB shall provide Sponsors with full access to all of the Project’s documents, cost records, trade bids, subcontracts, meetings, and information. DB shall also fully cooperate with Sponsors, Sponsors’ Executive Program Management Team, PA and any other parties interested in the Project. Further, but not by way of limitation, DB shall also maintain and cause its subcontractors to maintain books and records in accordance with the Lease.

#### **I. Letter of Intent for Preconstruction Services.**

Sponsors and DB intend to negotiate in good faith to enter into one or more preconstruction letters of intent (each, a “Letter of Intent”) whereby DB will perform certain preconstruction services on behalf of Sponsors. The parties acknowledge and agree that payment of DB’s fees arising from the preconstruction services shall be set forth within a Letter of Intent.

#### **J. Design Build Agreement.**

Sponsors and DB shall negotiate in good faith to enter into a comprehensive DBA, with a guaranteed maximum price (“GMP”), that sets forth the parties’ rights and obligations whereby DB will act as the contractor to design and construct the Project. The parties acknowledge and agree that this Term Sheet sets forth the terms and conditions that will form the basis of the definitive DBA and that are binding upon the Parties with respect to the DBA, and that the refusal of a party to execute a DBA materially consistent with this Term Sheet shall be a breach of this Term Sheet. The parties also agree to negotiate in good faith the GMP, provided that the failure of the parties to agree upon the GMP shall not constitute a breach of this Term Sheet provided that the parties have engaged in negotiations in good faith. In the event that DB breaches this Term Sheet, then (i) Sponsors, at their sole and exclusive option and upon written notice to DB, may terminate this Term Sheet for cause, subject to a seven (7) day cure period; and (ii) Sponsors shall be entitled to reimbursement of any and all of DB’s staff costs actually paid to date to DB pursuant to the terms of any Letter of Intent and any Interim Agreement less the actual, demonstrated costs paid by DB to third-parties to provide services (e.g., architects and engineers) for the Project under any Letter of Intent and/or Interim Agreement, which amounts DB shall reimburse to Sponsors within ten (10) days after demand by Sponsors, provided that such reimbursement shall not exceed Ten Million Dollars (\$10,000,000) (the “DB Reimbursement”). Notwithstanding the above, Sponsors may terminate this Term Sheet for convenience at any time upon written notice to DB. In the event of such termination for convenience, DB shall not be required to pay the DB Reimbursement to Sponsors. In addition to and not in lieu of any other remedies available to Sponsors under this Term Sheet or at equity and law, Sponsors’



obligations pursuant to Paragraph 1.K – “Exclusivity” shall cease immediately upon delivery of a written notice of termination to DB, whether for cause or convenience. This Term Sheet shall be binding upon the parties hereto.

#### **K. Exclusivity.**

Except as otherwise set forth in Paragraph 1.J above, from the execution date of this Term Sheet until the earlier of the parties’ execution of the DBA or the termination of this Term Sheet, Sponsors shall not: (i) solicit, initiate or invite the making of any proposal or bid from a third-party that may constitute, or could reasonably be expected to lead to, an agreement with such third-party for the performance of D&C Work by such third-party in place of Design-Builder (an “Alternative DBA”); (ii) enter into or participate in any discussions or negotiations with a third-party regarding an Alternative DBA; or (iii) enter into an Alternative DBA, preconstruction letter(s) of intent, interim agreement, agreement, arrangement or understanding, including, without limitation, any letter of intent, term sheet or other similar document, relating to an Alternative DBA to perform the D&C Work.

By executing this Term Sheet, DB acknowledges and agrees that the following material terms shall be incorporated within the DBA, as the same may be amended, modified or supplemented to conform with applicable Lease requirements and provisions:

## **2. MATERIAL TERMS OF THE DBA**

Section and Subject	Terms
<b>2.1 Form of Agreement</b>	DBA with a GMP and a date certain for completion of the Project.
<b>2.2 Project Requirements</b>	<p>DB acknowledges the Project’s key elements include, but are not limited to, the following:</p> <ul style="list-style-type: none"> <li>• Development of Terminals 6 and 7 and its apron including airside utilities and interfaces with PA infrastructure;</li> <li>• Provide connectivity between Terminals 5i, 6, and 7;</li> <li>• Addition of domestic and international use gates to accommodate JetBlue and other carrier tenants;</li> <li>• Additional processor facilities;</li> <li>• Demolition of the existing Terminal 7 and its frontage roads, structures, and utilities;</li> <li>• Full design and construction of improvements to the existing Terminals 5, 6, and 7 curb front roadways and utilities;</li> <li>• Creation of a new ground transportation center in the Yellow Garage and a temporary ground transportation center in the Orange Garage; and</li> <li>• Development of additional facilities, terminal amenities and adjacent infrastructure that enhances the customer experience.</li> </ul> <p>During the duration of the Project, it is expected that other major construction projects will be underway at JFK, and DB shall be required to coordinate its D&amp;C Work with such other projects without an increase in the GMP or an extension of the Project Schedule.</p>

Section and Subject	Terms
<p><b>2.3 Design Consultants and Contractors</b></p>	<p>Promptly upon the parties execution of the Interim Agreement, DB will execute a separate agreement with Corgan and other design consultants (each a “<u>Design Professional</u>,” and collectively, the “<u>Design Professionals</u>”) for the Design Work. Upon execution of a separate agreement by and between DB and Corgan, DB shall be responsible for validating Corgan’s PDD to ensure compliance with PA requirements, Applicable Laws and Applicable Standards. Upon such validation, DB shall be responsible for Corgan’s PDD design elements and further developing and completing the Project’s design with their design team. DB shall retain consultants and contractors to aid in the Project’s design and construction, and DB shall be fully responsible to Sponsors for acts or omissions of DB’s employees, consultants, contractors, subcontractors, sub-subcontractors, suppliers, materialmen, or agents of any tier or their respective employees, and other persons, including the licensed Design Professionals performing any portion of DB’s obligations under the DBA. DB shall be responsible for the constructability of the working drawings prepared by its Design Professionals. Without limiting DB’s obligations for performance of the D&amp;C Work and except as due to the fault of DB or its consultants, DB’s liability with respect to errors and omissions or other actions of the Design Professionals arising after DB executes separate agreements with the Design Professionals shall be capped for each Design Professional at the amount of: (a) all practice insurance policies maintained by such Design Professional, plus (b) the amount of professional liability insurance DB is required to maintain pursuant to Section 3.7 of this Term Sheet (as amended by the DBA), plus (c) a percentage of each Design Professional’s profit earned on its performance of the D&amp;C Work which amount shall be negotiated by DB and each Design Professional and shall be subject to Sponsors’ approval, which shall not be unreasonably withheld.</p> <p>Sponsors and their consultants shall have the right to have unlimited access to DB’s Design Professionals and contractors for meetings and discussions regarding the Project’s design and the D&amp;C Work, and DB will be invited to attend such meetings. Sponsors and their consultants shall be invited to attend all Project design and construction meetings. DB shall be in breach of the DBA if it denies or fails to provide such access to Sponsors and their consultants or access to PA as required by the Lease. The following preconditions must be met prior to DB executing a contract with the Design Professionals: (i) Sponsors have paid all undisputed amounts due to each applicable design professional under any existing contract between such Design Professional and Sponsors as of the execution date of each such Design Professional’s respective replacement contract with the DB; and (ii) Design Professionals provide acknowledgements to DB that their design to date and/or design packages comply with Applicable Laws and Applicable Standards. DB shall not be responsible for disputes arising from payment of fees between Sponsors and the Design Professionals arising prior to the effective date of the execution of the design contracts with DB.</p>

Section and Subject	Terms
<p><b>2.4 Design to Budget</b></p>	<p>In consultation with DB and its Design Professionals, Sponsors shall prepare a statement of probable construction costs for the Project and establish an overall budget, which shall include the total contracted hard costs for the Project, plus reasonable contingencies related to these costs which, when agreed upon between DB and Sponsors shall represent the budget for Construction Work (as defined in the Lease) (the “<u>Construction Budget</u>”). The Construction Budget may be revised by Sponsors from time to time during the Project with DB’s written agreement. DB and its Design Professionals shall work with and cooperate with Sponsors in reviewing design options in response to efforts to accomplish the Project’s programmatic goals at the most reasonable cost with respect to the architectural and engineering components of the Construction Budget and within the available financing for the Project. The Design Professionals shall perform their Services in accordance with the standard of care in preparing the design for the Project so that the Project (including all components) can be constructed in accordance with the Construction Budget.</p> <p>The Construction Budget shall contain all hard costs to complete Construction Work, including without limitation: (i) direct work trade costs for subcontractors; (ii) costs for self-performed work, including labor and materials; (iii) General Conditions Costs; (iv) Contingency in an amount equal to five percent (5%) of the Cost of the Work plus any procurement savings, provided that the Contingency shall not exceed five percent (5%) of the Cost of the Work at the time of Sponsors’ acceptance of the GMP; (v) base fee for DB in an amount equal to four percent (4%) of the Cost of the Work; (vi) costs for payment and performance bonds; (vii) insurance costs; (viii) applicable construction security amounts; and (ix) allowances. The Construction Budget does not include any design contingency, which the parties acknowledge is being held by Sponsors outside of the Construction Budget.</p> <p>In the event the GMP prepared by DB is higher than the Construction Budget, DB shall be responsible for redesigning the Project (subject to Sponsors’ approval and in accordance with a Letter of Intent, the Interim Agreement, the DBA, Applicable Laws and PA requirements) at DB’s sole cost in order to reduce costs so that the GMP is equal to or less than the Construction Budget.</p> <p>If Sponsors require the Construction Budget to be reduced, Sponsors and DB shall conduct this work in collaboration in order to adjust the Project’s scope. In the event Sponsors desires to increase the Construction Budget, Sponsors will inform DB of the revised or new scope elements that such additional spending is intended to support.</p>
<p><b>2.5 Operational Readiness and Transition Team</b></p>	<p>DB shall work with, cooperate with, and assist Sponsors and Sponsors’ operational readiness and transition team including their consultants and contractors (“<u>ORAT Team</u>”) to minimize inconvenience to and interference with and ensure the operational integrity of operations at the existing Terminal 5, the existing Terminal 7, the new Terminals 6 and 7 and the</p>

Section and Subject	Terms
	<p>operation of the AirTrain and ground transportation center, as well as the seamless transition into the new Terminal 6 and 7 facilities. As the ORAT Team will undertake both commissioning and other ORAT activities, some activities are anticipated to run concurrently with and in the same locations as the D&amp;C Work. DB will work with Sponsors and Sponsors' ORAT Team to effectively schedule systems commissioning and to provide opportunities to advance other ORAT activities during the D&amp;C Work, where those are possible. The scheduling will be jointly coordinated at an early stage such that the D&amp;C Work completion may be effectively scheduled including commissioning and structured within the subcontract scopes of work.</p>
<p><b>2.6 Scope of Services</b></p>	<p><b><u>Design and Construction:</u></b> DB shall perform all D&amp;C Work necessary to design and construct the Project as required by a Letter of Intent, the Interim Agreement, DBA, Lease, and other Contract Documents, subject to approvals by Sponsors and PA as set forth in a Letter of Intent, the Interim Agreement, DBA and the Lease. DB acknowledges that the Project will be implemented through one or more Phases, and task orders will be issued for each Phase. DB shall request and receive Sponsors' approval before proceeding to the next Phase. DB shall cooperate with Sponsors to achieve value engineering or scope reduction (without reducing the quality of design or increasing schedule) to meet or reduce Sponsors' design to budget provided that such value engineering or scope reduction are in accordance with a Letter of Intent, the Interim Agreement, the DBA, Applicable Laws and PA requirements.</p> <p><b><u>Part 1A Preliminary Design Scope of Services:</u></b> To the extent required after DBA execution and as a continuation of its Services provided pursuant to the Interim Agreement, DB shall manage the continued development of the Preliminary Facility Design and its consultants as they refine the preliminary design and program definition and develop the schematic design, baggage screening system design, and program administration.</p> <p><b><u>Part 1B Scope of Services:</u></b> To the extent required after DBA execution and as a continuation of its Services provided pursuant to the Interim Agreement, DB shall perform final design scope of services, design development, preparation of the basis of design ("<u>Basis of Design</u>") for Sponsors and PA approval, pre-construction services, preparation of DB's GMP proposal ("<u>GMP Proposal</u>"), and construction. DB shall provide the Basis of Design and a consolidated GMP Proposal for the entire Project prior to Financial Close (as defined below) in accordance with the requirements set forth in Section 3.1 and 3.2 of this Term Sheet. Each DB GMP Proposal requested by Sponsors with respect to a Phase of D&amp;C Work shall be submitted when all elements of the D&amp;C Work for such Phase are sufficiently detailed for DB to tender a GMP for such Phase that has a high degree of cost certainty so that Sponsors fully understands all aspects of the Phase and is able to minimize potential risk. Each GMP Proposal shall be open book.</p> <p><b><u>Part 2 Construction Scope of Services:</u></b> DB shall perform all services and procurement necessary to finalize the design, construct, and complete the</p>



Section and Subject	Terms
	<p>Project. DB shall manage the D&amp;C Work to ensure that its cost does not exceed the GMP and that the Project is constructed by the date certain as directed by Sponsors. DB shall perform all D&amp;C Work on an open book basis.</p>
<p><b>2.7 Site Logistics Plan</b></p>	<p>DB shall prepare and submit for Sponsors approval and approval by PA, if required, a Project site logistics plan that designates the field offices, storage areas, shanties, protection (netting, cables, etc.), hoists, cranes, fences and sidewalk bridges, temporary loading docks, temporary lighting, temporary protection, temporary circulation and routes, procedures for material delivery, location of equipment and certain other information as needed for the proper performance of the D&amp;C Work. DB shall at all times conduct the D&amp;C Work to ensure the continuity of the daily operation of occupied portions of the Project site or adjacent buildings and businesses so as not to inconvenience Sponsors (including JetBlue) or other tenant operations, PA, or other users of the Project site and JFK.</p> <p>In instances where D&amp;C Work activities cannot be accomplished with zero inconvenience to Sponsors, tenant operations, PA or other users of the Project site and JFK, as may be unforeseeable at this early stage, DB shall prepare a work plan and approach in accordance with any applicable requirements in the Lease and at an early enough timeframe during the course of the Project to allow for review and approval by Sponsors and PA. Review time to be agreed between Sponsors and DB, subject to any requirements set forth in the Lease.</p>
<p><b>2.8 Equivalent Project Relief</b></p>	<p>Notwithstanding anything to the contrary in the DBA and except for Material Developer Changes, DB shall not be entitled to any additional compensation, extension of time, or other relief from Sponsors in connection with the DBA or the Project, unless such relief is expressly available to Sponsors, and to the same extent, under the Lease (i.e., Equivalent Project Relief).</p> <p>Further, DB's compensation for any Compensation Event or Port Authority Change (as defined in the Lease) shall be subject to and limited to the extent of any actual recovery from PA for such Compensation Event or Port Authority Change as set forth in the Lease or as provided with respect to Material Developer Changes.</p>
<p><b>2.9 PA Requirements</b></p>	<p>The D&amp;C Work shall at all times comply with the Lease, including without limitation the following terms:</p> <ul style="list-style-type: none"> <li>• All applicable requirements set forth in the Lease, including all Project Documents;</li> <li>• All requirements of authorities having jurisdiction;</li> <li>• Reference Documents (as defined in the Lease);</li> <li>• Applicable Laws and Applicable Standards;</li> <li>• Rules and Regulations (as defined in the Lease), including without limitation:</li> </ul>



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	<ul style="list-style-type: none"> <li>○ The Policy on Code Conformance,</li> <li>○ Inspection, Testing and Maintenance Requirements for Fire Protection and Life Safety Systems,</li> <li>○ Tenant Construction and Alteration Process Manual ,</li> <li>○ E/A Design Division BIM Standard,</li> <li>○ Information Security Handbook,</li> <li>○ Airport Planning Standards and</li> <li>○ Good Order Requirements (as defined in the Lease);</li> <li>• Requirements and Provisions for Work (as defined in the Lease);</li> <li>• Port Authority’s Vendor’s Code of Ethics,</li> <li>• Utilities (<i>see e.g., Sec. 2(b)(2)(ii); Sec. 2(s); Sec. 2(t) of the Lease</i>);</li> <li>• Applicable access rights, including Temporary Rights of Access; (<i>see e.g., Sec. 2(b)(3) of Lease</i>);</li> <li>• Applicable sequencing and coordination requirements (<i>see e.g., Sec. 2(g)(2); Sec. 2(y); Sec. 2(z) of Lease</i>);</li> <li>• Project milestone requirements (<i>see e.g., Sec. 2(c)(6) of Lease</i>);</li> <li>• Applicable permitting and approvals requirements (<i>see e.g., Sec. 2(h); Sec. 6 of Lease</i>);</li> <li>• Applicable oversight requirements (<i>see e.g., Sec. 2(g); Sec. 2(dd) of Lease</i>);</li> <li>• Sponsors’ requirements, including the Basis of Design;</li> <li>• FAA, TSA, and Sponsors’ rules and regulations, safety and security regulations and procedures relative to access to, and work in, Airport Operations Areas and secured facilities. (<i>see e.g., Sec. 42 of Lease</i>); and</li> <li>• One JFK Environment requirements (<i>see e.g., Sec. 50 of the Lease</i>).</li> </ul> <p>The parties acknowledge and agree that the foregoing list is non-exhaustive and that the foregoing PA requirements are effective as of the Lease execution date. DB shall also comply with the obligations in the Port Authority Information Security Handbook, including without limitation implementing project-wide Protected Information Practices and Procedures and mandating that all consultants, subcontractors and other parties for which DB is responsible to comply with all applicable requirements.</p>
<b>2.10 Basic Lease Requirements</b>	<p>The D&amp;C Work shall at all times comply with the Basic Lease to the extent it relates to the D&amp;C Work, including without limitation the following:</p> <ul style="list-style-type: none"> <li>• the provisions related to any Retained Water System Property and Port Authority Water System Property (as those terms are defined in the Basic Lease); and</li> <li>• the provisions governing physical changes and construction, including the Performance Standards (as defined in the Basic Lease).</li> </ul>
<b>2.11 Anchor Tenant Requirements</b>	<p>Sponsors intend to enter into an anchor tenant agreement (the “<u>Anchor Tenant Agreement</u>”) with JetBlue. To the extent related to the D&amp;C Work, DB shall comply with the terms of the Anchor Tenant Agreement to the</p>

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	<p>same extent and manner as required by Sponsors under such applicable agreement. DB shall include the costs associated with the Anchor Tenant Agreement in its GMP provided that the Anchor Tenant requirements are made known to DB in accordance with the Design/Procurement Schedule, by a date to be agreed by the parties in the DBA. Otherwise, as between DB and Sponsors, Sponsors shall be responsible for said costs as a Material Developer Change. Non-compliance by DB with the terms of the Anchor Tenant Agreement shall constitute a breach of the DBA.</p> <p>JetBlue will provide detailed specifications for its exclusive spaces (“<u>Exclusive Spaces</u>”) within the Project, and DB shall cooperate with any separate construction contractors that may be retained by JetBlue with respect to completing the Exclusive Spaces D&amp;C Work. DB acknowledges that the Project site will have separate contractors performing work within the Exclusive Spaces. DB shall be responsible for coordinating the D&amp;C Work with the separate contractors.</p>
<b>2.12 Separate Contractors</b>	<p>DB and Sponsors, to the extent applicable, shall coordinate the D&amp;C Work with the work of any separate contractors that may be engaged by Sponsors or third-parties that are performing work at JFK (“<u>Separate Contractors</u>”), including but not limited to delivery, offloading, storage, protection, hoisting and distribution of equipment and materials, in order to facilitate the timely, efficient and safe completion of the D&amp;C Work and the work of the Separate Contractors, which coordination shall afford such Separate Contractors reasonable opportunity for the installation, execution and storage of their respective work and materials, and shall otherwise be performed in such manner as Sponsors or PA may direct. DB shall cooperate in good faith with the Separate Contractors in order for all contractors working on the Project to have the opportunity to complete their work on a timely, cost effective and safe basis. DB shall ensure Separate Contractors’ work spaces are available for fit out in accordance with the Project Schedule, Design/Procurement Schedule and any interface agreements (described below). If any Separate Contractors are unable to access their work spaces due to DB or its subcontractor’s D&amp;C Work, then DB shall be responsible for damages to the extent arising from such delay.</p> <p>DB shall not cause any unnecessary hindrance or delay to the progress of the work being performed by Separate Contractors. If any Separate Contractor sustains any damage through any act or omission of DB or its subcontractors, DB shall indemnify and hold harmless Sponsors from any losses incurred by Sponsors by reason of such damage. DB expressly acknowledges and agrees that it shall make no claim against PA or any of its contractors, developers, suppliers, lessees, occupants, and operators at JFK for any losses or damages arising out of or related to any interference or alleged interference by any Separate Contractors.</p> <p>DB shall coordinate with Separate Contractors, Sponsors and PA in accordance with the Lease and the Construction Coordination Agreement (as defined in the Lease) so that it has a full understanding of the extent of</p>

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	<p>the geographically overlapping work zones. DB shall coordinate with Sponsors and PA in advance of the D&amp;C Work such that both DB and Separate Contractors can agree to an approach that allows the work of each to proceed within their respective schedules. At times this will mean that the work of one will be in advance of the initial schedule and resulting effects will be absorbed accordingly by each.</p>
<b>2.13 Interface Agreements</b>	<p>DB acknowledges and agrees that Sponsors will enter into certain interface agreements as required by the Lease, including without limitation a Construction Coordination Agreement (as defined by the Lease) with PA and other redevelopments, and interface agreements with other terminal operators or contractors. DB shall provide input to Sponsors for such interface agreements. DB shall be required to comply with all of the terms of the interface agreements to the same extent required of Sponsors under such agreements to the extent the terms apply to the D&amp;C Work.</p> <p>The DBA shall incorporate applicable provisions from the interface agreements affecting the D&amp;C Work, off-premises work, or any other work to be performed by DB and shall require that all such provisions be incorporated into all subcontracts.</p>
<b>2.14 Key Personnel</b>	<p>Sponsors and DB acknowledge that DB will assign dedicated key personnel for the Project (“<b>Key Personnel</b>”), which are subject to Sponsors’ prior approval and, if required by the Lease, PA’s prior approval, to perform the D&amp;C Work. The Key Personnel shall have significant experience overseeing and managing projects similar in nature as this Project, including, but not limited to, experience working in the New York City metropolitan area and experience building airport facilities. DB’s Key Personnel shall devote all necessary time to the Project as may be appropriate to, and consistent with, full and timely performance of a Letter of Intent, the Interim Agreement and the DBA by DB.</p> <p>DB shall have the right, from time to time, to modify the particular persons that DB has assigned to perform the Services, with Sponsors’ prior approval; provided however, that Key Personnel shall not be removed, or time reallocated from the Project. If DB removes Key Personnel hereunder, then DB shall promptly replace such person with a similarly qualified individual subject to Sponsors’ prior approval.</p> <p>Sponsors shall have the absolute right to require DB to (i) remove, from the Project, at the request of Sponsors, any staff person or Key Personnel (including senior leadership or executives) assigned to the D&amp;C Work that Sponsors deem unfit to perform the task assigned or otherwise finds objectionable, and (ii) propose substitutes, and obtain Sponsors’ approval and, if applicable, PA’s approval thereof, for any staff person or Key Personnel assigned to the Services who either cease to be in DB’s employ or are removed from the Project by reason of Sponsors’ request. DB shall not receive any additional compensation or schedule extension in the event</p>

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	<p>that Sponsors require DB to remove and replace any staff person or Key Personnel.</p> <p>In addition to the foregoing, DB shall comply with and be subject to any restrictions on modifications, removal or replacement of staff, persons, employees or Key Personnel set forth in the Lease.</p>
<b>2.15 Sustainability</b>	<p>DB shall perform its D&amp;C Work in order to achieve the Project's sustainability requirements and goals as required by PA or otherwise set forth by Sponsors, which currently include achieving a LEED Silver rating, graywater capture and reuse, glycol recovery, preconditioned air and ground power, all electric GSE, and renewable energy. DB shall also comply with all sustainability requirements of the Lease (<i>see e.g., Sec. 61 of Lease</i>), including the Project Documents.</p> <p>DB shall also comply with any other reasonable requirements recommended by Sponsors' sustainability consultant provided to DB prior to establishment of the GMP. To the extent such requirements provided after the establishment of the GMP materially impact the GMP and the Project Schedule such requirements shall constitute a Material Developer Change.</p>
<b>2.16 Unforeseen and Non-Environmental Subgrade Conditions</b>	<p>DB shall perform any necessary D&amp;C Work at no additional cost to Sponsors to the extent that any unforeseen and non-environmental subsurface condition (a) was caused by DB or any party for which it is responsible, (b) was known to DB, (c) could have reasonably been identified by an appropriately qualified and experienced contractor exercising due care and skill and Best Management Practice (as defined in the Lease) in the same or equivalent circumstances through review and analysis of the Project Documents or reasonably available public information, or (d) should have been known to DB consistent with reasonable expectations of an appropriately qualified experienced contractor exercising due care and skill and Best Management Practice in the same or equivalent circumstances of the type, nature, and location of the Project. DB shall perform any necessary D&amp;C Work, provided however that such D&amp;C Work that is material in nature and does not qualify as (a) – (d) shall constitute a Material Developer Change.</p>
<b>2.17 Environmental Conditions</b>	<p>DB shall perform its services and the D&amp;C Work in compliance with the Design/Procurement Schedule and all requirements of the Lease, including without limitation Environmental Requirements (as defined in the Lease), provided however that DB shall without interruption or suspension perform all D&amp;C Work unless, and only to the extent that, any such work is ordered to cease by any Governmental Authorities with jurisdiction or PA.</p> <p>DB shall perform any necessary environmental remediation work at no additional cost to Sponsors to the extent that such environmental condition (a) was caused by DB or any party for which it is responsible, (b) was known to DB, (c) could have reasonably been identified by an appropriately qualified and experienced contractor exercising due care and skill and Best</p>



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	<p>Management Practice in the same or equivalent circumstances through review and analysis of the Project Documents or publicly available information, or (d) should have been known to DB consistent with reasonable expectations of an appropriately qualified experienced contractor exercising due care and skill and Best Management Practice in the same or equivalent circumstances of the type, nature, and location of the Project. DB shall perform any necessary remediation work, provided however that such D&amp;C Work that is material in nature and does not qualify as (a) – (d) shall constitute a Material Developer Change.</p>
<p><b>2.18 Testing and Inspection</b></p>	<p>DB shall identify all tests and inspections as shall be necessary or appropriate and shall cause to be conducted by an independent testing laboratory or entity acceptable to Sponsors, PA, and any other governmental authorities having jurisdiction (“<u>Governmental Authorities</u>”) over the Project. DB shall give Sponsors and, if required, PA and any other Governmental Authorities timely notice of when and where tests and inspections are to be made so that they may observe the same.</p> <p>If any such tests or inspections reveal failure of any portion of the D&amp;C Work to comply with requirements established by the Contract Documents, DB (subject to use of the Contingency, if applicable) also shall bear the costs of additional tests and inspections and all additional costs made necessary by such failure.</p> <p>Acceptance by Sponsors, PA or any other Governmental Authority of test data or inspections of any portion of the D&amp;C Work shall not relieve DB of its obligation to cause the D&amp;C Work to be performed in accordance with the Contract Documents.</p> <p>With respect to all inspections, including special inspections, DB shall provide access to the D&amp;C Work for representatives and inspectors of Governmental Authorities and independent testing laboratories to inspect and observe the D&amp;C Work, and, if requested by Sponsors or otherwise required by the Contract Documents, shall give such representatives timely notice of the time and location of scheduled tests and inspections.</p> <p>DB shall develop a plan and schedule for commissioning and testing the D&amp;C Work, subject to Sponsors’ approval, that shall allow ORAT Team to complete all commissioning and testing to permit DBO by the applicable Milestone Event dates in coordination with Sponsors and in accordance with the Lease.</p> <p>ORAT Team shall schedule and perform the commissioning and testing. ORAT Team and/or DB shall promptly correct any deficiencies identified during the commissioning and testing process, depending on the party responsible for the noted deficiencies.</p>



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<b>2.19 Project Management System</b>	The parties shall agree on the use of a project management document control system, which system shall be consistent with the Requirements and Provisions for Work. Furthermore, DB shall provide parties designated by Sponsors with uninterrupted access to applicable project software. DB shall also provide Sponsors with access to the record of the job in the applicable native format, upon Sponsors' request.
<b>2.20 Changes to the Design or Contract Documents</b>	Subject to DB's review pre-GMP of any aspect of Project design previously approved by Sponsors and/or PA, DB shall not revise or modify any aspects of the Project's design (e.g., layout, materials, finishes, sizes of spaces and elements within the Project) or any Contract Documents that have been previously approved by Sponsors and, if applicable, PA without in each instance Sponsors' prior written approval and, if applicable, PA approval in accordance with the Lease.

### 3. CONTRACT SUM

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<b>3.1 GMP Timing</b>	<p>Unless otherwise agreed to by the parties, but in no event later than Financial Close, DB's GMP Proposal shall be submitted when all elements of the D&amp;C Work are sufficiently detailed for DB to tender a GMP that has a high degree of cost certainty so that Sponsors fully understand all aspects of the Project and are able to minimize potential risk. The final GMP may be comprised of separate component GMPs for various phases of the Project as determined by Sponsors (each a "<u>Component GMP</u>") provided that the proposals for the Component GMPs must be submitted prior to Financial Close. Upon receipt of DB's GMP Proposal, Sponsors may (a) accept the GMP Proposal and issue a notice to proceed with Part 2 Services for such phase, in which case that shall be deemed to be the GMP for that phase of the D&amp;C Work, (b) enter into a negotiation with DB on the scope, pricing and/or schedule, in order to achieve a mutually acceptable GMP for such phase, or (c) reject DB's GMP Proposal. If Sponsors reject DB's GMP Proposal Sponsors may, at their election, contract with Separate Contractors to perform such D&amp;C Work, or portions thereof.</p> <p>The GMP shall take into consideration (i) prioritizing pricing of major early packages (e.g., excavation, foundation, steel, etc.) in accordance with the Design/Procurement Schedule, (ii) completion of design, including delegated design or design-assist through subcontractors, and (iii) out of sequence construction.</p> <p>While DB will not be required to guarantee individual line items within a GMP, DB must advise Sponsors of each transfer between line items with respect to D&amp;C Work covered by a Component GMP.</p>

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	<p>In no event shall the total Project cost paid to DB or incurred by Sponsors exceed such GMP, except as otherwise provided by the DBA.</p> <p>In addition, the amounts payable to DB shall be subject to Sponsors' right to withhold disputed amounts or amounts payable to Sponsors by DB, to be further set forth in the DBA.</p>
<b>3.2 Components of GMP Proposal</b>	<p>DB's GMP Proposal shall include, but is not limited to, the following:</p> <ul style="list-style-type: none"> <li>• Summary of D&amp;C Work, including a list of all construction documents,</li> <li>• GMP price summary with line item schedule of values,</li> <li>• Scope clarifications and assumptions,</li> <li>• Procurement plan,</li> <li>• GMP construction schedule,</li> <li>• Analysis of GMP on the total Construction Budget and Project Schedule,</li> <li>• M/WBE participation, including a total to date participation status report,</li> <li>• Permitting plan,</li> <li>• Risk plan,</li> <li>• Construction work plan,</li> <li>• Commissioning plan and activation plan, and</li> <li>• Project manuals.</li> </ul>
<b>3.3 Part 1A and 1B Fee</b>	<p>To the extent covered by the DBA rather than a Letter of Intent or the Interim Agreement, DB shall be compensated under the DBA for Part 1 Services as a not-to-exceed amount set forth within each task order, which shall be based on a negotiated proposed fee included within DB's response to the request for proposal. Sponsors will request a preconstruction proposal from DB including an estimate of certain preconstruction or early work costs and the percentage of costs that DB will complete "at risk" prior to Financial Close and assignment of key team members.</p> <p>The "at risk" portion of the costs and the success fee as described in a Letter of Intent, the Interim Agreement or DBA, will be fully paid by Sponsors at the time in which Sponsors close the Project's financing ("<u>Financial Close</u>").</p>
<b>3.4 Base Fee for Part 2</b>	<p>The "at risk" portion of the costs and the success fee as described in a Letter of Intent, the Interim Agreement or DBA, will be fully paid by Sponsors at Financial Close.</p> <p>"<u>Direct Work Costs</u>" shall mean the cost of all work, labor, services, materials, general requirements and equipment provided by the trade subcontractors or DB. "<u>Cost of the Work</u>" shall mean the Direct Work Costs and General Conditions Costs (as defined below), but excluding</p>

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	Contingency, insurance, SDI, bonds, and financial security (with respect to each, no fee shall be paid).
3.5 Retention	<p>Except with respect to M/WBE vendor participation, during Part 2 Services, Sponsors shall withhold ten percent (10%) retention on Direct Work Costs until DB achieves fifty percent (50%) completion of the Part 2 Services, at which time Sponsors may agree that no further retention will be withheld. Requests for reduction of retention after DB achieves fifty percent (50%) completion of the Part 2 Services shall not be unreasonably withheld or denied by Sponsors, provided that such requests may be based upon factors, including without limitation, subcontractor's performance of its Construction Work.</p> <p>The remaining retention shall be released upon Project's substantial completion in accordance with the terms of the DBA.</p>
3.6 General Conditions Costs	<p>"General Conditions Costs" shall mean the fixed incurred costs of performing the D&amp;C Work that DB shall perform including, without limitation, the furnishing of supervision, facilities, materials and general labor for items and requirements of the D&amp;C Work that do not lend themselves readily to inclusion in one of the separate subcontracts and are not included in any subcontracts. Parties will agree on the DB's General Conditions Cost schedule prior to the acceptance of the GMP.</p> <p>General Conditions Costs will be billed on costs and actual man hours at an agreed to billable rate and on an open-book basis with possible conversion to a lump sum amount at GMP if agreed to by Sponsors in their reasonable discretion. The only allowable General Conditions Costs are those permitted by the terms of the DBA in accordance with the approved budget and staffing plan as set forth in the GMP approved by Sponsors.</p> <p>Non-allowable items (without limitation):</p> <ul style="list-style-type: none"> <li>• The salary of any officer or executive, unless assigned to the Project and subject to Sponsors' prior approval;</li> <li>• The salary of any person employed in any office other than the site office at the Project, unless assigned to the Project and subject to Sponsors' prior approval;</li> <li>• Personnel costs related to the administration of any profit sharing, bonus, incentive and training programs;</li> <li>• Overhead or other expenses of any kind for any office other than the site office at the Project;</li> <li>• Interest on capital employed either in equipment or in expenditures on the D&amp;C Work;</li> <li>• DB's management of human resources, labor and other related services;</li> <li>• Full replacement costs for equipment utilized during the D&amp;C Work; and</li> </ul>

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	<ul style="list-style-type: none"> <li>Fines or penalties imposed by PA or any other Governmental Authorities, provided, however, Contingency funds may be used for this item.</li> </ul>
<b>3.7 Insurance</b>	<p>Sponsors, at their sole discretion, shall have the option to procure an owner-controlled insurance program (“OCIP”). If elected, DB shall comply with all obligations and requirements of the OCIP, including any requirements to procure and maintain insurance coverage outside the OCIP.</p> <p>In the event Sponsors elect to not implement an OCIP, DB shall obtain and maintain insurance policies compliant with the requirements of the Lease, and shall, at a minimum, procure and maintain the following insurance policies and levels of coverage through traditional coverage or a CCIP as approved by Sponsors:</p> <ul style="list-style-type: none"> <li>Property insurance (full replacement cost);</li> <li>General liability insurance (\$300MM per occurrence);</li> <li>Environmental liability (\$50MM per occurrence);</li> <li>Automobile insurance (\$25MM per accident);</li> <li>Worker’s Compensation insurance and Employer’s Liability (each in accordance with the requirements of law);</li> <li>Professional liability insurance (\$25MM per claim) contractor and designer;</li> <li>Crime (\$1-5MM per occurrence);</li> <li>Cyber Liability insurance (\$25MM per occurrence);</li> <li>Builder’s Risk insurance (on a Completed Value form) and Delay Start Up; and</li> <li>Contractor’s Equipment.</li> </ul> <p>The foregoing list is non-exhaustive and DB acknowledges that additional insurance policies or coverage amounts may be required by Sponsors or their Lenders, which DB shall obtain. The insurance policies shall include a waiver of subrogation given in favor of all additional insureds, contractual liability coverage, no cross-liability exclusions, a Governmental Immunity endorsement and comply with all other applicable requirements under the Lease and the Basic Lease.</p>
<b>3.8 Additional Insureds</b>	<p>DB shall name, at a minimum, as additional insureds on applicable policies, the following:</p> <ol style="list-style-type: none"> <li>Vantage Airport Group Ltd., RXR VAF III JFK Millennium Partners Vehicle LLC, JetBlue Airways Corporation, and each of their respective affiliates, shareholders, members, managers, partners (including partners of partners), subsidiaries, agents, authorized representatives and related parties, and any successors and/or assigns of such entities;</li> </ol>

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	<ol style="list-style-type: none"> <li>2. Sponsors' Executive Program Management Team and Sponsors' ORAT Team;</li> <li>3. any present or future lender or mortgagee which encumbers an interest in the land or improvements located at the Project site, together with their respective directors, officers, employees, and any successors and assigns of such entities;</li> <li>4. The Port Authority of New York and New Jersey and each of its commissioners, officers, directors, agents, employees, and authorized representatives;</li> <li>5. The City of New York and each of its officers, directors, agents, employees and authorized representatives;</li> <li>6. New York City Economic Development Corporation and each of its officers, directors, agents, employees and authorized representatives; and</li> <li>7. such other and further entities and/or individuals as may be reasonably identified by Sponsors to DB in writing.</li> </ol>
<b>3.9 Contingency</b>	<p>"<u>Contingency</u>" will be five percent (5%) of the Cost of the Work at the time the GMP is established.</p>
<b>3.10 Use of Contingency</b>	<p>Sponsors' prior written approval shall be required for all Contingency spends in excess of Five Hundred Thousand Dollars (\$500,000); provided that, once Contingency spending in the aggregate exceeds fifty percent (50%) of the initial Contingency, then all Contingency spends in excess of Two Hundred Fifty Thousand Dollars (\$250,000). Any impermissible Contingency spend may be back-charged to DB for the full amount.</p> <p>Contingency shall not be used to pay for Material Developer Changes or for Equivalent Project Relief.</p> <p>Contingency shall be used by DB solely to cover the following costs to the extent they are not recoverable from a subcontractor or consultant or from insurance, SDI, or bonds (provided, however, that any SDI or other insurance deductibles shall not be paid from contingency). Use of Contingency may be considered by Sponsors for the following:</p> <ul style="list-style-type: none"> <li>• Those items that were included in the proposal drawings and specifications that DB missed in proposing the GMP;</li> <li>• Those items that were included in the proposal drawings and specifications that DB underpriced in proposing the GMP;</li> <li>• Those items that arise from errors and omissions (including mis-coordination) in the Basis of Design or plans and specifications;</li> </ul>



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	<ul style="list-style-type: none"> <li>Schedule acceleration as required to meet contract milestones, or as deemed necessary by DB to improve the Project Schedule when required;</li> <li>Increased General Conditions Costs, subject to a cap to be agreed upon by the parties;</li> <li>Costs reasonably incurred and resulting from termination of a subcontractor;</li> <li>Costs associated with changes required by PA or other Governmental Authorities following establishment of the GMP that is not a Material Developer Change or Equivalent Project Relief;</li> <li>Construction costs associated to complete the D&amp;C Work that is not a Material Developer Change or Equivalent Project Relief subject to all other limitations herein;</li> <li>Costs for repairs for unassignable damage to D&amp;C Work;</li> <li>Unknown Conditions (as defined in the Lease);</li> <li>Field conditions and environmental remediation for which DB is responsible for under the DBA;</li> <li>Work stoppages;</li> <li>Safety and protection; or</li> <li>Other costs approved by Sponsors.</li> </ul> <p>DB may not use contingency to pay for Liquidated Damages. All unused Contingency shall be subject to a sharing mechanism as agreed to between Sponsors and DB. Any costs subsequently recovered by DB from an alternative source with respect to prior spending from Contingency shall be used to replenish the Contingency.</p> <p>For clarification, GMP budget items (exposure holds) not initially consumed by contract award(s) will remain in the respective line item, available for later use by DB subject to Sponsors' prior approval. These line items are not Contingency funds. Unused GMP budget items (exposure holds) shall be added to a separate Project savings fund, the use and allocation of which is to be determined by the parties in the DBA.</p>
<b>3.11 Project Labor Agreement(s)</b>	DB shall enter into and comply with the terms and conditions of project labor agreement(s) (" <u>PLA</u> ") with The Building and Construction Trades Council of Greater New York for the D&C Work, subject to Sponsors' approval of the terms. DB acknowledges and agrees that the terms of the PLA shall be consistent with the labor harmony requirements of PA and the Lease.
<b>3.12 PA Limitations</b>	The terms and conditions of the DBA shall be back-to-back with the relevant terms of the Lease related to costs, expenses and savings, including without limitation the following:

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	<ul style="list-style-type: none"> <li>• Port Authority financial contributions, cost savings and unused contingencies, (see Sec. 81 of Lease);</li> <li>• Milestone remedies, (see e.g., Sec. 2(c)(6) of Lease);</li> <li>• Recovery claim, (see e.g., Sec. 2(c)(5) of Lease); and</li> <li>• Risk allocation, (see e.g., Secs. 2(d) &amp; 2(ee) of Lease).</li> </ul>
<b>3.13 Cost Management</b>	<p>DB shall develop and maintain an effective system of Project cost control. DB shall refine and update the approved GMP, incorporate Sponsor-approved changes as they occur, and develop reports and forecasts as needed, or as directed by Sponsors or as required by the Lease. DB shall identify variances between actual and estimated costs and advise Sponsors whenever projected cost exceeds allowances or estimates.</p>
<b>3.14 Discounts, Rebates and Refunds</b>	<p>Cash discounts obtained on payments made by DB shall accrue to Sponsors if (1) before making the payment, DB included them in an application for payment and received payment from Sponsors, or (2) Sponsors have deposited funds with DB with which to make payments; otherwise, cash discounts shall accrue to DB. Trade discounts, rebates, refunds and amounts received from sales of surplus materials and equipment shall accrue to Sponsors, and DB shall make provisions so that they can be secured.</p>
<b>3.15 Bidding of Work</b>	<p>DB shall solicit and receive competitive bids on all trade packages and/or materials (including design assist subcontractors) and self-performed work.</p> <p>DB shall utilize approved Contract Documents as prepared by DB to prepare scopes of work for each trade package. Each scope of work shall include, but not be limited to, anticipated work hours to address the coordination between or among trades, outages and any other conditions that may impact the bids/proposals. DB shall review the General Conditions Costs section in detail before preparing the scope of work of each trade to ensure the trade packages are consistent with the requirements of that section. DB shall verify that the scopes of work do not include items covered under DB General Conditions or DB fees.</p> <p>DB shall conduct a prequalification process for all prospective major subcontractors (as agreed with Sponsors and in conformance with any Lease requirements) prior to solicitation of bids for trade packages and/or materials for the GMP Proposal to ensure that all bidders/proposers have the necessary expertise required for the Project. DB shall submit a general procedure and master schedule for all prequalification packages to Sponsors for review and approval. Prequalification procedures, including any forms to be used for this purpose, are to be submitted to Sponsors for review and approval in advance of any DB solicitation of subcontractors for this purpose.</p> <p><u>Self-Performed D&amp;C Work:</u> DB may self-perform certain D&amp;C Work that</p>

Section and Subject	Terms
	<p>may benefit the Project, including without limitation the following items:</p> <ol style="list-style-type: none"> <li>1. Project Rigging and Hoisting,</li> <li>2. Foundations,</li> <li>3. Concrete,</li> <li>4. Roadways,</li> <li>5. Apron work,</li> <li>6. Taxiway Work,</li> <li>7. Site Utilities,</li> <li>8. Hardscape/softscape,</li> <li>9. General Requirements,</li> <li>10. Direct work equipment, and</li> <li>11. Equipment.</li> </ol> <p>If DB determines that the foregoing items or other portions of the D&amp;C Work will be self-performed, then DB shall propose a method of validating the competitive nature of the proposed self-performed D&amp;C Work to Sponsors. At Sponsors discretion, Sponsors may utilize DB's method (or another method chosen by Sponsors) to ensure that the proposed pricing for DB's self-performed Work is competitive in the marketplace. Such procedures may include, without limitation requiring DB to bid out the self-performed work subject to oversight by Sponsors. DB acknowledges and agrees that any self-performed D&amp;C Work shall at all times comply with the requirements of this Term Sheet, any Letter of Intent, the Interim Agreement, the DBA, and the Lease including, without limitation competitive bidding requirements.</p> <p><u>Design Assist Subcontractors for D&amp;C Work:</u> DB acknowledges and agrees that the procurement and use of all subcontractors who perform both design and construction portions of the D&amp;C Work shall at all times comply with the requirements of this Term Sheet, any Letter of Intent, the Interim Agreement, the DBA, and the Lease including, without limitation competitive bidding requirements. The parties shall agree upon a method of validating the competitive nature of the continued use of such design assist subcontractors for the Construction Work portion of the Project, which will be set forth in the DBA.</p>

#### 4. SECURITY

Section and Subject	Terms
<b>4.1 Payment and Performance Bonds</b>	<p>DB shall require all subcontractors to post payment and performance bonds, at DB's discretion, and as permitted by PA, Sponsors, and Lenders. Sponsors may also implement DB's subcontractor default insurance ("SDI") program to cover certain subcontractors as approved by PA or Sponsors'</p>

Section and Subject	Terms
	Lenders. Sponsors or PA may require DB to post a payment and performance bond in an amount equal to the GMP(s).
<b>4.2 Parent Company Guaranty</b>	<p>DB has agreed to provide a parent company guaranty ("PCG") of no less than Five Hundred Million Dollars (\$500,000,000) in a form acceptable to DB, Sponsors, PA, and Lenders at a cost of 0.005 times Five Hundred Million Dollars (\$500,000,000). DB has received approval to increase the PCG to an amount not to exceed One Billion Dollars (\$1,000,000,000) if and only if required by Sponsors in writing. In such event, increased PGC amounts in excess of the initial Five Hundred Million Dollars (\$500,000,000) PCG shall be charged at a cost of 0.010 times Five Hundred Million Dollars (\$500,000,000). The parent providing a PCG shall be liable under the PCG, guaranteeing the full performance of DB's obligations under the DBA.</p> <p>The PCG shall provide for a "sunset date" which will be no earlier than the end of the construction warranty period, but, subject to Lender approval, in no event longer than two (2) years after Substantial Completion. DB's PCG cost shall be fully reimbursable by Sponsors at the time the PCG is issued, provided however that under no circumstances shall Sponsors be liable for PCG costs in excess of Seven Million Five Hundred Thousand Dollars (\$7,500,000).</p>
<b>4.3 Letters of Credit</b>	DB shall provide performance security in amounts and forms acceptable to DB, Sponsors, PA, and Lenders, including standby letters of credit or equivalent liquid security in an amount equal to the greater of (a) ten percent (10%) of the GMP, or (b) a minimum amount for payment of twelve (12) months of Liquidated Damages. The parties will negotiate the costs for the standby letters of credit, which may be included in the initial Mobilization Payment from Sponsors, upon mutually acceptable terms.
<b>4.4 Assignability of Subcontracts</b>	Sponsors shall have the right (but not the obligation) to take assignment of any and all subcontracts, in their sole discretion, following a termination of the DBA with or without cause. All subcontracts shall include the necessary terms and conditions to facilitate such assignments, which will not trigger any adjustment to the contract price or terms. DB and subcontractors may be required to execute assignments to be held in escrow by Sponsors. Subcontracts shall also be assignable to PA as and to the extent required by the Lease.

## 5. INCENTIVE FEES

Section and Subject	Terms
<b>5.1 Incentive Fees</b>	During the course of the Project, DB may earn certain incentive fees, up to an aggregate cap of two percent (2%) of the Cost of the Work. Incentive fees shall be based on DB's achievement of specified schedule

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	<p>improvements and cost savings targets as agreed to by the parties and as set forth within the DBA. As a precondition to the establishment of any incentive, Sponsors must be receiving a benefit with regards to the Project's schedule and cost-components.</p> <p>Any incentives fees payable to DB pursuant to the DBA shall be paid to DB at final completion of the Project, except for safety-related incentives, if any, which shall be paid no more often than once per year. A portion of the incentive fees shall be allocated for bonuses to DB's staff in amounts to be agreed upon by the parties in the DBA.</p>

## 6. SCHEDULE

Section and Subject	Terms
<b>6.1 Project Schedule</b>	<p>Time is of the essence in the performance of the D&amp;C Work.</p> <p>In continuation of DB's Services performed pursuant to a Letter of Intent or the Interim Agreement, DB shall continue to revise the Project schedule at the time the DBA is executed ("<u>Project Schedule</u>"), which shall be (i) subject to Sponsors' and PA's approval, (ii) consistent with the Design/Procurement Schedule, and (iii) comply with the terms of the Lease and the other Project Documents (including the Requirements and Provisions for Work), as the same may be revised from time to time during the term of the DBA. The Project Schedule shall set forth all of the critical events necessary for the timely completion of the D&amp;C Work including, without limitation, substantial completion of each Milestone and final completion ("<u>Milestone Events</u>"). The Project Schedule shall be produced using Primavera P6 software in "CPM" format with monthly updates in ".prx" format, ".pdf" format, and in hard copy. DB shall also provide Sponsors with Primavera P6 native files (during initial submission and monthly updates) or as otherwise required by the Requirements and Provisions for Work.</p> <p>The Project Schedule shall fully describe the intended method of accomplishing all portions of the D&amp;C Work and related activities necessary to complete the D&amp;C Work. The Project Schedule shall demonstrate, to Sponsors' reasonable satisfaction, an expeditious, practicable and reasonable plan for achieving the Milestone Events. In no event shall the Project Schedule contain any extension of a Milestone Event or any other revisions which would result in any Milestone Event not being achieved, without in either instance obtaining Sponsors' prior written consent to such extension or other revision based on a Material Developer Change or Equivalent Project Relief and, if required by the Lease, PA approval. DB shall reference the Project Schedule in all schedule reporting.</p>



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	<p>The Project Schedule shall be coordinated with the schedules of other concurrent redevelopments at JFK. The Project Schedule shall be subject to the scheduling requirements in the Lease, including the Project Documents and shall account for Sponsors' requirements related to the scheduled opening the Project, including without limitation building in time to commission and test the D&amp;C Work and to allow the ORAT Team to complete the ORAT Team's trials in advance of such scheduled opening.</p> <p>With respect to the Project Schedule, DB shall (a) perform daily monitoring for conformance with resource loading (quantity and labor measurements by trade and activity), (b) perform monthly updates to compare the Project's progress against float gained or lost, critical path activities, and near critical path activities, and (c) provide Sponsors with monthly (or more frequently, if required by the Lease) Project Schedule narratives highlighting progress on key activities, risk, mitigations, and opportunities.</p> <p>The Project Schedule shall require Substantial Completion, the achievement of which shall occur by dates mutually agreed to by and between Sponsors and DB in the DBA.</p> <p>DB acknowledges and agrees that (1) the requirements set forth in this Section 6.1 are subject to change based on the final Requirements and Provisions for Work, and (2) unless otherwise agreed to by the PA, the Project Baseline Schedule must be finalized before financial close.</p>
<b>6.2 Schedule Requirements</b>	<p>In addition to the foregoing, the Project Schedule shall indicate the Milestone Events, durations and sequencing of all activities of the D&amp;C Work and show the integration with the D&amp;C Work of the Project activities of Sponsors, PA, Sponsors' ORAT Team, sublessees (including airlines and concessions), the Design Professionals, contractors and the Separate Contractors, including, without limitation:</p> <ul style="list-style-type: none"> <li>• a Preliminary Baseline Schedule and Detailed Baseline Schedule (as those terms are described in the Requirements and Provisions for Work), cost and resource loaded;</li> <li>• a construction phasing plan</li> <li>• payments and Milestone Events, including Completion Milestones (as defined in the Lease);</li> <li>• permit and approval process;</li> <li>• verification of the assumptions in the budget relative to the intended schedule;</li> <li>• dates for the receipt of design deliverables from the Design Professionals required for subcontracting and procurement including sufficient time for the review and approval by Sponsors of the design documents and the subcontract bid packages;</li> <li>• activities related to the procurement of subcontractors;</li> </ul>

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	<ul style="list-style-type: none"> <li>• a purchasing schedule including a listing of all long-lead material, building systems and equipment items and a schedule for the acquisition and delivery of such items;</li> <li>• a schedule for the engineering, submittals submission, fabrication, testing, and delivery of all major components fabricated off-site;</li> <li>• one or more “critical paths;”</li> <li>• activities for coordination of the D&amp;C Work with the work of Separate Contractors, PA, JetBlue (whether in T5 or otherwise) and other airlines operating at T6 or T7 and other JFK airport users, as applicable;</li> <li>• construction completion and closeout activities including appropriate time for punch list completion;</li> <li>• activities related to approvals required to be obtained from authorities having jurisdiction over the Project;</li> <li>• activities of the Design Professionals necessary for mock-up construction;</li> <li>• durations and sequencing of utilities and telecommunications including, but not limited to, permit applications and the installations;</li> <li>• commissioning activities including dates for commencement and completion of startup, testing, and commissioning of equipment and systems;</li> <li>• certain scheduling requirements in the Anchor Tenant Agreement, which will specify the dates DB shall be required to hand over the Exclusive Spaces to JetBlue; and</li> <li>• all other scheduling requirements of PA including those set forth in the Requirements and Provisions for Work.</li> </ul> <p>DB shall prepare detailed trade-by-trade critical-path-method schedules for each subcontract, providing for all purchasing, engineering, submittal, fabrication, delivery, construction, testing, commissioning and close-out activities. The Project Schedule shall be broken down into subcontract schedules (“<u>Subcontract Schedules</u>”) and the Project Schedule and subcontract schedules shall include identification of critical-path activities and early-start, late-start and finish dates. All subcontract schedules shall be integrated into the Project Schedule. For critical, highly complex items of D&amp;C Work or for such other elements of the D&amp;C Work as Sponsors may specify, DB may be required to prepare additional, more detailed schedules consistent with the Project Schedule.</p> <p>DB acknowledges and agrees that the requirements set forth in this Section 6.2 are subject to change based on the final Requirements and Provisions for Work.</p>

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<p><b>6.3 Reporting Requirements; Books and Records</b></p>	<p>DB shall prepare and maintain an on-site record keeping system, including daily logs of all changes in the D&amp;C Work, revisions to the Project Schedule, daily manpower and trade breakdowns, shop drawing logs, material lists, monthly job-progress reports and full and complete records and books of account (maintained in accordance with generally accepted accounting principles) related to its performance of its obligations under a Letter of Intent, the Interim Agreement and the DBA, which, in each case, must be maintained in English, kept for at least seven (7) years (unless such records are material to litigation initiated within that time, in which event they shall be maintained until final determination of the controversy) and comply with all applicable Lease requirements, including, for the avoidance of doubt, those set forth in the Requirements and Provisions for Work. DB shall utilize project management software acceptable to Sponsors and otherwise consistent with the requirements set forth in the Lease, including, for the avoidance of doubt, those set forth in the Requirements and Provisions for Work, to upload and manage all Project-related documents and correspondence.</p> <p>DB shall submit daily reports detailing DB's activities, ongoing trade work, daily and cumulative summaries of materials-in-place and subcontractors on site, accident notifications, including incidents or interference with traffic or passengers and any incident concerning public safety or personal injury, job site inspections, description of weather, and in each instance a statement of any unusual happening that occurred.</p> <p>DB shall also provide weekly and monthly reports (or more frequent reports, if required by the Lease, including, for the avoidance of doubt, those set forth in the Requirements and Provisions for Work) summarizing the following:</p> <ul style="list-style-type: none"> <li>• daily reports from the prior week or month;</li> <li>• outstanding RFI's and submittals;</li> <li>• upcoming D&amp;C Work and meetings;</li> <li>• changes in the outlook from prior reports;</li> <li>• updates in the Progress Schedule (as that term is defined in the Requirements and Provisions for Work);</li> <li>• all changes in the Progress Schedule versus the Detailed Baseline Schedule (to be provided in a comparison Primavera P6 report or other format approved by Sponsors and PA);</li> <li>• detailed description of Design Work that was completed in the prior month, including an update on the status of the Design Work;</li> <li>• detailed description of the Construction Work that was completed in the prior month including photographs showing the progress of the Construction Work;</li> <li>• amounts paid to date and other Project financials;</li> <li>• status of material and equipment deliveries;</li> </ul>

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	<ul style="list-style-type: none"> <li>• Designated Debris Material Assessment Summary (as that term is defined in the Requirements and Provisions for Work);</li> <li>• Health and Safety Report (as that term is defined in the Requirements and Provisions for Work);</li> <li>• descriptions of potential problems with the D&amp;C Work;</li> <li>• current and anticipated delaying factors and their potential impact;</li> <li>• monthly progress photos; and</li> <li>• other information requested by Sponsors, including any information necessary to assist Sponsors in fulfilling their obligations under the Lease, including the requirement to provide all other information reasonably requested by PA related to the D&amp;C Work, Applicable Laws, and Applicable Standards.</li> </ul>
<b>6.4 Schedule Recovery</b>	<p>DB shall submit reports of any delay in the D&amp;C Work, which reports shall identify the cause for the delay, the estimated duration and cost of the delay, and a specific remedy of the delay. To the extent possible, notifications shall be submitted to Sponsors in advance of the anticipated delay to allow for all reasonable action on behalf of all involved parties to achieve a resolution minimizing schedule or cost impact. DB shall prepare a recovery plan and accelerated D&amp;C Work schedule for any Milestone Event that is observed to be falling behind the Project Schedule, and any such recovery plan and accelerated D&amp;C Work schedule shall satisfy Sponsors' relevant requirements under the Lease, including those requirements to prepare and submit a Time Impact Analysis as set forth in the Requirements and Provisions for Work. Subject to Sponsors' prior written approval in their sole discretion and at DB's sole cost and expense, DB shall work premium time / shifts and incur any other costs necessary to recover the Project Schedule with no increase in the GMP or the General Conditions Costs.</p>
<b>6.5 Unavoidable Delays</b>	<p>The following delays are considered unavoidable delays ("<u>Unavoidable Delays</u>"):</p> <ul style="list-style-type: none"> <li>i. terrorism or war;</li> <li>ii. strikes (not specific to the Project) that are beyond DB's or its subcontractors' reasonable control;</li> <li>iii. fire or other casualty not caused by DB or any subcontractor's negligence or willful misconduct;</li> <li>iv. other Force Majeure events (as defined in the Lease); and</li> <li>v. delays directly caused by acts or omissions or willful misconduct of Sponsors, Sponsors' agents, including without limitation ORAT Team and Sponsors' operation and maintenance contractors (but only to the extent not otherwise subject to Equivalent Project Relief), provided however that any remedy to DB for a delay pursuant to this</li> </ul>

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	<p>subsection (v) shall be subject to a notice and ten (10) day opportunity to cure.</p> <p>To the extent any Unavoidable Delay described in subsections (i) through (iv) above occurs, DB shall only be entitled to non-compensatory relief unless Sponsors are granted Equivalent Project Relief. An Unavoidable Delay in subsection (v) shall be deemed a Material Developer Change. The additional compensation and extension of Milestone dates provided herein shall constitute DB’s sole and exclusive remedies for Unavoidable Delays.</p> <p>DB acknowledges that the following events shall not constitute Unavoidable Delays, and that DB shall not be entitled to an extension of time as a result of such events: (a) incomplete or uncoordinated Contract Documents; (b) normal weather delays or conditions based on NOAA standards; (c) the acts, omissions, or enforcement by PA or other governmental authority, other than PA caused events subject to the above limitations; (d) errors and omissions in the plans and specifications; and (e) existing conditions which were or should have been known to DB. DB’s sole remedy in such instances shall be the use of Contingency as and to the extent permitted by the DBA.</p> <p>Notwithstanding anything to the contrary in the DBA, DB shall not be entitled to receive any additional compensation for a Material Developer Change to the extent such delay occurs concurrently with delay due to or caused by DB. Failure of DB to notify Sponsors in writing of any claimed Unavoidable Delays within seven (7) days of DB’s knowledge of the occurrence giving rise to the delay, which notice shall detail the alleged delay and its estimated effect on the critical path, and the actions taken by DB to mitigate any such delays, shall result in a waiver of such claim.</p>						
6.6 Liquidated Damages	<p>For purposes of delays, DB shall pay to Sponsors liquidated damages (“<u>Liquidated Damages</u>”) in the following daily amounts, corresponding to the applicable Milestone Events, provided however, that the Milestone Events subject to Liquidated Damages, Milestone Dates, and daily Liquidated Damages rate may be adjusted in accordance with the terms of the DBA:</p> <table><tr><th><u>Milestone Event</u></th><th><u>Milestone Date</u></th><th><u>Daily Liquidated Damages Rate</u></th></tr><tr><td>Substantial completion of Off-Premises Work (as defined in the Lease) and Port Authority Enabling Work (as defined in the Lease)</td><td>TBD in DBA</td><td>No less than \$200,000 and no greater than \$300,000</td></tr></table>	<u>Milestone Event</u>	<u>Milestone Date</u>	<u>Daily Liquidated Damages Rate</u>	Substantial completion of Off-Premises Work (as defined in the Lease) and Port Authority Enabling Work (as defined in the Lease)	TBD in DBA	No less than \$200,000 and no greater than \$300,000
<u>Milestone Event</u>	<u>Milestone Date</u>	<u>Daily Liquidated Damages Rate</u>					
Substantial completion of Off-Premises Work (as defined in the Lease) and Port Authority Enabling Work (as defined in the Lease)	TBD in DBA	No less than \$200,000 and no greater than \$300,000					



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	Substantial Completion of Phase 1	TBD in DBA	No less than \$200,000 and no greater than \$300,000
	Substantial Completion of Phase 2	TBD in DBA	No less than \$200,000 and no greater than \$300,000
	<p>Liquidated Damages shall be assessed for each day that DB fails to achieve substantial completion after a grace period (if any) of such Milestone Event until such Milestone Event is achieved, subject to an overall cap to be agreed to by the parties provided such grace period and cap shall be (a) customary for projects of this nature and acceptable to Sponsors' Lenders, as described in 1.C above, and (b) subject to certain carve-outs for (i) DB's gross negligence or willful misconduct, (ii) claims covered by DB's insurance required to be maintained pursuant to the DBA, (iii) DB's failure to continue to perform services in an event of dispute (provided that Sponsors continue to make undisputed payments to DB), (iv) DB's failure to assign contracts to Sponsors upon termination, (v) DB preventing Sponsors' personnel reasonable access to any portion of the Project Site or D&amp;C Work, and (vi) DB breaching any anti-bribery and anti-corruption covenants (including OFAC), in each case to the extent same actually delays Sponsors.</p> <p>Subject to the foregoing carve-outs, the Liquidated Damages shall be capped at an amount equal to no less than ten percent (10%) of the GMP, provided that such Limitation of Liability is acceptable to Sponsors' Lenders, as described in Paragraph 1.C above.</p> <p>Sponsors may withhold any amounts payable to DB to pay Liquidated Damages.</p>		
6.7 Substantial Completion	<p>In addition to meeting all requirements of substantial completion as set forth in the Lease, substantial completion of any particular Milestone will not occur until the point at which, for each such Milestone (a) the D&amp;C Work (or designated Phase thereof), is sufficiently complete in accordance with the Contract Documents, with all needed systems and equipment operational, to enable Sponsors to occupy any Phase of the Project and to allow beneficial use of such Phase of the Project for its intended purpose, (b) (i) after completion of the items identified in the lists prepared, only minor punch list items or similar minor corrective work remains to be completed that, individually or in the aggregate, do not adversely affect the beneficial use of such Phase of the Project for its intended purpose or the preparedness of the Project Site or the designated portion thereof for the next phase of the Project, (ii) all regulatory approvals to lawfully use and occupy the Project (or a Phase thereof)</p>		

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	<p>have been issued, and (iii) all required certificates and sign offs to the applicable Phase of the D&amp;C Work have been issued, and (c) any Off-Premises Facilities (as defined in the Lease) that are necessary for the normal use, operation and maintenance of such portion of the Project shall have been completed by DB and DB shall have satisfied all applicable conditions with respect to completion of such Off-Premises Facilities.</p>
<p><b>6.8 Facilitation of Base Building Infrastructure</b></p>	<p>DB shall manage the connection of fire alarms, electrical, mechanical, plumbing, utilities and other related systems to the base building infrastructure when the spaces are turned over to either Separate Contractors or sublessees.</p> <p>Sponsors shall provide to DB the provisions and requirements of sublessee Separate Contractors within the Project Site during the Preliminary Design Phase and will coordinate with DB in development of strategies to minimize the impact of sublessee Separate Contractors to the D&amp;C Work at the late stages of delivery of each Phase. This is to effectively plan for changes to utility services required to sublessee spaces due to future designs by sublessees and construction of those designs by Separate Contractors.</p>
<p><b>6.9 Commissioning and Testing</b></p>	<p>DB shall develop any other required plan and schedule for commissioning and testing the D&amp;C Work which shall be subject to Sponsors' approval, that shall allow the ORAT Team to complete all commissioning and testing to meet the applicable Milestone Event dates. DB shall also coordinate testing, commissioning and balancing of building systems with Separate Contractors, sublessees, independent inspectors, architect of record, engineer of record, Sponsors, and PA.</p> <p>The ORAT Team shall schedule and perform the commissioning and testing. The ORAT Team and/or DB (as determined by Sponsors) shall promptly correct any deficiencies identified during the commissioning and testing process, depending on the party responsible for the noted deficiencies.</p>
<p><b>6.10 Final Completion</b></p>	<p>In addition to meeting all requirements for issuance by PA of a "Final Certificate of Authorization to Occupy or Use" with respect to the Project (or a Phase thereof) as set forth in the Lease, final completion for the Project shall be deemed to have occurred when all of the following have been achieved, as memorialized by the issuance of a certificate of final completion and as determined by Sponsors: (i) DB shall have completed all of the D&amp;C Work in accordance with the Contract Documents to the satisfaction of Sponsors; (ii) the satisfactory operation of all equipment, by means of acceptance tests; (iii) completion or correction, as the case may be, of all punch list items to the satisfaction of Sponsors and PA; (iv) release of all mechanic's, materialmen's and similar liens, or provision of adequate security, as determined by Sponsors in their sole discretion, against such liens; (v) delivery of all warranties, guarantees,</p>

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	air balance reports, equipment operation and maintenance manuals; (vi) removal of all rubbish, tools, scaffolding and surplus materials and equipment from the Project site; (vii) delivery of DB's final affidavit and release of claims; (viii) delivery of the subcontractors' final affidavit and release of claims executed by all subcontractors and any person who has filed a lien against the Project site and with respect to which DB has not provided adequate security as required; and (ix) delivery of a BIM model that matches the as-built conditions in strict accordance with the BIM standards developed by Sponsors.

## 7. CHANGES

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<b>7.1 Materiality Standard</b>	<p>Other than Equivalent Project Relief (which is subject to the terms of the Lease), only Material Developer Changes will be compensable after the GMP is finalized.</p> <p>DB is responsible for costs of changes during normal design development after execution of new agreements with the Design Professionals to the extent the changes do not exceed the materiality threshold.</p>
<b>7.2 Port Authority Changes</b>	Sponsors shall hold a reserve of Fifty Million Dollars (\$50,000,000) to be set aside for the purpose of funding any "PA Change," subject to the terms and condition of the Lease, including without limitation the procedures for Equivalent Project Relief. DB acknowledges that, subject to the terms of the DBA, it shall perform the D&C Work necessary for PA Changes.
<b>7.3 Changes to Subleased Exclusive Spaces</b>	Project changes that adversely affect JetBlue's Exclusive Spaces shall require JetBlue's prior written approval in each instance. DB shall cooperate with Sponsors with respect to requests for changes related to any subleased spaces. Within three (3) weeks of JetBlue's submission of requests for changes to the specifications as provided for in the Anchor Tenant Agreement, DB will notify JetBlue of the estimated cost of delivering any such changes.
<b>7.4 Permitted Mark-Ups on Change Orders</b>	DB may recover any actual increase to the Direct Work Costs attributable to changes to the extent recoverable through Equivalent Project Relief.

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	<p>With respect to Material Developer Changes, there shall be no increase in Base Fee on change orders until the aggregate value of all change orders exceeds one percent (1%) of the Cost of the Work; Base Fee on change orders thereafter will be agreed upon in the DBA.</p> <p>With respect to Material Developer Changes, there shall be no increase to General Conditions Costs unless the change extends the Project Schedule or increases the staff required for the D&amp;C Work, or except as otherwise agreed to in the DBA.</p>
<b>7.5 Notice Requirements</b>	<p>DB shall notify Sponsors within seven (7) days of any claim that it may have for a Material Developer Change, calculated from the date that DB has knowledge or should have had knowledge that the subject event will cause or is causing an increase in cost or delay to schedule. No claim made after such seven (7) day period shall be valid, and DB shall be deemed to have waived its right to additional costs and time related to such event. DB shall provide detailed pricing for any such claim within thirty (30) days of any claim that it may have for a change order. No claim shall be valid if it is not substantiated with detailed pricing within such thirty (30) day period, except in the event of an on-going event.</p> <p>All changes that require PA approval and all claims with respect to Equivalent Project Relief shall be subject to the notice requirements set forth in the Lease.</p>
<b>7.6 Directed Changes</b>	<p>“Change Order Proposal” shall mean a written proposal delivered within timeframes to be described in the DBA setting forth, in such detail as required by Sponsors, any request by DB for adjustments to the GMP or General Conditions Costs, or extension of any Milestone Event that is attributable to the changes set forth in a request for a Material Developer Change, but only if and to the extent such adjustments or extensions are permitted by the terms of the DBA.</p> <p>“Directed Change Order” shall refer to a change order that Sponsors may issue directing DB to proceed with a change in the D&amp;C Work.</p> <p>If within five (5) days after the issuance of the Change Order Proposal requesting any such adjustment, Sponsors and DB are unable to agree upon a change order with respect to such adjustments, Sponsors nevertheless shall have the right to issue a Directed Change Order directing DB to proceed with the D&amp;C Work constituting such change and, if applicable, providing for any adjustment in the GMP, General Conditions Costs or Milestone Events resulting from such change and subject to a Disputed Work Cap (as defined below).</p>

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	<p>Subject to the Materiality Standard for changes set forth in Section 7.1 of this Term Sheet, Sponsors shall compensate DB for the Directed Change as follow:</p> <ul style="list-style-type: none"> <li>(a) the GMP or General Conditions Costs shall be the actual net increase or decrease, as the case may be, in the fee, Direct Work Cost and General Conditions Costs (all based on daily cost records), attributable to such change; and</li> <li>(b) the Milestone Events, if applicable, shall, at Sponsors' election, equal <ul style="list-style-type: none"> <li>(i) the period of time set forth in such Directed Change Order, or</li> <li>(ii) the period of time, if any, fairly attributable, in the aggregate, to such change which can be shown to have impacted the Milestone Events.</li> </ul> </li> </ul> <p>Upon DB's receipt of a Directed Change Order, DB shall proceed with the D&amp;C Work constituting the change provided for therein, promptly after such receipt or as otherwise may be required in such Directed Change Order. Regardless, DB shall maintain daily cost records for the D&amp;C Work (manpower, materials, equipment, etc.).</p> <p>If DB fails to object to a Directed Change Order or any portion thereof within ten (10) days after DB's receipt of same, then DB shall thereby be deemed to have (a) waived any right to object to any adjustments in the GMP, General Conditions Costs, or Milestone Events provided for in such Directed Change Order or portion thereof, (b) agreed to any such adjustment, and (c) acknowledged that such adjustments, if any, shall constitute the complete and final consideration for all costs, claims, delays, or damages incurred by DB as a consequence of the change provided for in such Directed Change Order or portion thereof; in such event, such Directed Change Order or portion thereof shall thereupon be deemed to constitute a change order for all purposes under the DBA.</p> <p>For changes directed by PA, DB compensation and schedule adjustments shall be subject to Equivalent Project Relief.</p>



## 8. DISPUTE RESOLUTION

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<b>8.1 Continuation of Services During Dispute</b>	<p>Notwithstanding any dispute that may arise between Sponsors and DB with respect to DB's compensation or any other term of a Letter of Intent, the Interim Agreement or the DBA, DB shall continue to perform its obligations under such agreement and Sponsors shall pay all undisputed amounts on a timely basis.</p> <p>The parties will agree to an interim dispute resolution process that will commence when the value of disputed amounts arising from the D&amp;C Work exceeds the "<u>Disputed Work Cap</u>." However, DB acknowledges and agrees that the existence of a dispute in excess of the Disputed Work Cap shall not entitle DB to suspend the D&amp;C Work.</p> <p>Provided Sponsors continue to make payment for undisputed amounts as set forth in a Letter of Intent, the Interim Agreement or the DBA, if DB stops performing the D&amp;C Work, DB shall be liable for all direct, indirect, consequential, and liquidated damages arising from the breach.</p>
<b>8.2 Interim Dispute Resolution</b>	<p>Whenever a dispute arises during the Project that exceeds the negotiated Disputed Work Cap or days of delay, such dispute shall be resolved through the following procedures:</p> <ul style="list-style-type: none"> <li>• First, within five (5) days of receipt of written notice from an aggrieved party, the field-level project managers will mutually confer;</li> <li>• Within ten (10) days of the field-level project manager meeting, designated principals of the parties shall meet to discuss a potential resolution; and</li> <li>• After an additional fourteen (14) days, the parties will proceed to interim dispute resolution before a designated interim arbitrator. The arbitrator's decision shall be binding on both parties during the pendency of the Project. Both parties reserve the right to adjudicate the dispute <i>de novo</i> following completion of the Project.</li> </ul> <p>This process will be repeated whenever the negotiated threshold is triggered during the course of the Project.</p> <p>All disputes involving claims by or against PA or with respect to Lease requirements shall be subject to determination in accordance with the Lease rather than this section, including determination of technical disputes and other matters thereunder by the Chief Engineer as and to the extent provided for in the Lease. In the event of a conflict between an arbitration decision issued under this section and a court's ruling in</p>

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	litigation brought pursuant to a Letter of Intent, the Interim Agreement, DBA or the Lease, the court's ruling shall control.
<b>8.3 Final Dispute Resolution</b>	<p>The final, binding dispute resolution method shall be litigation, in the form of a bench trial, before New York State court or the U.S. District Court for the Southern District of New York sitting in the City and County of New York, and any appellate court from any thereof, unless otherwise provided for in the Lease.</p> <p>EACH OF THE PARTIES HERETO HEREBY KNOWINGLY, VOLUNTARILY, AND INTENTIONALLY WAIVES ANY RIGHTS IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BETWEEN THE PARTIES OR ARISING OUT OF, UNDER, OR IN CONNECTION WITH THE DBA OR ANY OTHER DOCUMENTS ENTERED INTO IN CONNECTION HERewith.</p>
<b>8.4 Final Payment and Claims</b>	Final payment to DB shall not be deemed to have occurred until the resolution of all claims between the parties.

## 9. OTHER PROVISIONS

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<b>9.1 Indemnity</b>	<p>DB shall be required to indemnify Sponsors and other individuals and entities set forth in Section 3.8 (collectively, the "<u>Indemnitees</u>") to the extent required by the Lease for matters related to the D&amp;C Work.</p> <p>Additionally, DB is required to defend, indemnify, and hold the Indemnitees harmless for claims arising in whole or in part from the following acts or omissions by DB or anyone for whom DB is responsible:</p> <ul style="list-style-type: none"> <li>• the negligent performance of the D&amp;C Work or services;</li> <li>• the infringement of any intellectual property right;</li> <li>• the negligence or willful misconduct of DB or its subcontractors;</li> <li>• personal injury or property damage; and</li> <li>• the failure to comply with the applicable terms of the Lease or the City Lease or to pay any amounts due thereunder, or causing Sponsors to fail to comply with the terms of the Lease or the City Lease or to pay any amounts due thereunder.</li> </ul>
<b>9.2 Warranty and Guaranty</b>	Except for materials that are incorporated within the D&C Work and have extended manufacturer guaranty periods (e.g., roofing), the <u>guaranty period</u> for Phase 1 D&C Work shall be for a term of two

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	<p>(2)years from the issuance by PA of the Phase 1 Completion Certificate (as defined in the Lease) and the guaranty period for Phase 2 D&amp;C Work shall be for a term of two (2) years from the issuance by PA of the Completion Certificate (as defined in the Lease). For any portion of the D&amp;C Work that is repaired in the applicable guaranty period, such guaranty period shall be for an additional two (2) years from the date of repair or replacement of the non-conforming D&amp;C Work, provided however, that such additional guaranty period(s) for any D&amp;C Work that is repaired shall not extend past four (4) years from either (a) the Phase 1 Completion Certificate for the Phase 1 D&amp;C Work, or (b) the Completion Certificate for the Phase 2 D&amp;C Work, as applicable.</p> <p>DB shall also comply with the obligations set forth in Section 2(i)(1), (2), (4) and (5) of the Lease.</p>
<b>9.3 Confidentiality</b>	<p>DB shall keep all non-public information of any form obtained in the performance of the D&amp;C Work confidential and shall not disclose such information to any third-party for the duration of a Letter of Intent, the Interim Agreement and the DBA, except to the extent required for the performance of the D&amp;C Work. For purposes of this Section 9.3, Sponsors' consultants and contractors shall not be considered third-parties. In addition, DB shall act in accordance with (and shall cause its consultants and contractors to act in accordance with) PA's confidentiality requirements.</p>
<b>9.4 Suspension</b>	<p>Sponsors may suspend the Project, in whole or in part, at any time. Suspension by Sponsors that is not otherwise subject to Equivalent Project Relief under the Lease (i.e., PA suspensions) shall constitute an Unavoidable Delay.</p> <p>If Sponsors fail to make any undisputed payments due to DB hereunder without cause, DB may suspend the D&amp;C Work after providing written notice and fourteen (14) days' opportunity to cure to Sponsors and provided further that Sponsors fail to cure within such fourteen (14) day period.</p>
<b>9.5 Mutual Waiver of Consequential Damages</b>	<p>The parties shall mutually waive consequential damages, except to the extent of (i) either parties' gross negligence or willful misconduct, (ii) third-party claims, including without limitation claims by PA arising from the Lease, (iii) DB's refusal to perform because Sponsors exercise their right to withhold or DB stops work during the pendency of a dispute (provided that Sponsors continue to pay undisputed amounts to DB), (iv) personal injury and property damage claims, including without limitation damage to the Project itself to the extent such damage is not covered by builder's risk insurance through no fault of the Sponsors; (v) DB's failure to assign contracts upon termination, (vi) DB's preventing Sponsors' personnel reasonable access to any portion of the Project Site or the D&amp;C Work; (vii) DB breaching any anti-bribery and anti-corruption</p>

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	covenants, including OFAC, or (viii) Sponsors' wrongful withholding of payment to DB.
<b>9.6 Limitation of Liability</b>	Except with respect to (i) claims arising out of DB's gross negligence or willful misconduct, (ii) third-party claims, (iii) DB's refusal to perform because Sponsors exercise their right to withhold or DB stops work during the pendency of a dispute, (iv) personal injury and property damage claims, (v) DB's failure to assign contracts upon termination, to the fullest extent permitted by law, (vi) DB's failure to provide Sponsors' personnel reasonable access to any portion of the Project Site or D&C Work, (vii) any damages payable by Sponsors under the Lease which in any way arise from DB's acts or omissions, or (viii) DB breaching any anti-bribery and anti-corruption covenants, including OFAC, DB's total aggregate liability in connection with this Term Sheet, a Letter of Intent, the Interim Agreement, and the DBA shall be limited to a cap equal to an amount of thirty-five percent (35%) of the GMP (" <u>Limitation of Liability</u> "), provided that such Limitation of Liability is acceptable to Sponsors' Lenders, as described in Paragraph 1.C above.
<b>9.7 No Individual Liability</b>	In no event shall any members, partners, officers, shareholders, directors, managing directors, employees or affiliates of Sponsors or DB have any liability to the other under a Letter of Intent, the Interim Agreement, DBA or otherwise in connection with the Project, except for liabilities arising out of or related to the issuance of a parent company guaranty or any other similar Construction Security (as defined in the Lease).
<b>9.8 Termination for Convenience</b>	Subject to the requirements of the Lease and the Lenders, Sponsors may at any time terminate DB, in whole or in part, for convenience upon written notice. In the event DB's termination is for convenience, Sponsors shall pay DB for services properly performed and the reasonable and actual demobilization costs incurred by DB prior to such termination; provided, however, DB shall not be entitled to any anticipated or lost profits or overhead as a result of such termination.
<b>9.9 Termination for Cause; Lease Termination</b>	<p>Sponsors may at any time terminate a Letter of Intent, the Interim Agreement or the DBA for cause, in whole or in part, upon written notice to DB for specific events of default, subject to certain cure periods, or in the event the Lease terminates (subject to PA's rights under the Lease and any Lenders' rights under any direct agreements with such Lenders). Among other events of default, the DBA shall include the Events of Default under the Lease (with earlier deadlines to avoid default under the Lease and any lender agreements).</p> <p>In the event of default, DB shall be responsible for all costs to complete the Project beyond the GMP. Liability for Liquidated Damages may also continue to accrue upon termination.</p>

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<b>9.10 Diversity and Non-Discrimination</b>	<p>DB shall include in all contracts and comply with PA's standard non-discrimination provisions, Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part DOT CFR, Part 21 Non-discrimination in Federally-assisted programs of the Department of Transportation- Effectuation of Title VI of the Civil Rights Act of 1964 (as amended) regulations relative to non-discrimination in federally assisted programs, and all other applicable diversity and non- discrimination requirements (as may be revised or updated from time to time), including those related to Minority Business Enterprises ("<u>MBE</u>"), Women-Owned Business Enterprises ("<u>WBE</u>", and together with MBE, ("<u>M/WBE</u>"), Local Business Enterprises, affirmative action and equal opportunity. Additionally, DB shall comply with all other obligations including reporting requirements as set forth in the Lease or directed by Sponsors and PA with respect to these requirements or goals. The Project is subject to the M/WBE participation goals as set forth in <u>Schedule E</u> to the Lease. DB shall adhere to the M/WBE participation goals as set forth in Schedule E to the Lease to the extent applicable to the D&amp;C Work.</p> <p>DB acknowledges and agrees that DB's failure to comply with the M/WBE good faith efforts requirements in the Lease may be a breach of a Letter of Intent, the Interim Agreement or DBA, and Sponsors may impose M/WBE Liquidated Damages as set forth in the Lease.</p>
<b>9.11 Lease Reporting Requirements</b>	<p>In addition to the requirements set forth in Section 6.3, DB shall assist Sponsors in the preparation of all reports (regardless of frequency) required in accordance with the terms of the Lease, including without limitation those requirements as set forth in the Project Documents.</p>
<b>9.12 Terms for the Benefit of PA</b>	<p>All Letters of Intent, the Interim Agreement and the DBA shall include any terms required by PA under the Lease or otherwise which are expected to include, but not be limited to, the following terms for the direct benefit of PA:</p> <ul style="list-style-type: none"> <li>• all representations, warranties and guarantees, express or implied, will inure to the benefit of PA, and PA will be accorded third-party beneficiary rights thereto;</li> <li>• sufficient notice and step-in rights to PA prior to any suspension of performance by DB or termination of a Letter of Intent, the Interim Agreement or the DBA;</li> <li>• the right of PA to enter into a replacement contract with DB if the DBA is rejected or disaffirmed in bankruptcy or similar proceeding;</li> <li>• PA and its related parties to be named as additional insureds; and</li> <li>• the obligation to enter into a direct agreement for the benefit of PA upon request of PA.</li> </ul>



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<b>9.13 Site Access</b>	Sponsors and PA shall have the right to access the Project Site, and any portion of the Project throughout the duration of the D&C Work without exception. DB shall take no action to interfere, hinder, or delay Sponsors' or PA's rights to access the Project Site. Sponsors and DB agree to reasonably coordinate regarding Sponsors' representatives having appropriate credentials, such as OSHA, scaffold and site-specific safety training. Sponsors, PA and DB will work through the details of access by emergency response personnel.
<b>9.14 Anti-Bribery and Anti-Corruption</b>	<p>In consideration of Sponsors entering into a Letter of Intent, the Interim Agreement and DBA with DB, DB hereby acknowledges, certifies, warrants and undertakes to Sponsors that:</p> <ul style="list-style-type: none"> <li>i. it has not offered, promised, given, or agreed to give and shall not, during the term of this Term Sheet, offer, promise, give, or agree to give to any person or entity any bribe on behalf of Sponsors or otherwise with the object of obtaining a business advantage for Sponsors or otherwise;</li> <li>ii. it will not engage in any activity or practice which would constitute an offence under any applicable anti-bribery and anti-corruption laws, including but not limited to the United States Foreign Corrupt Practices Act of 1977, as amended, 15 U.S.C. §§78dd-1, et seq.;</li> <li>iii. it has, and will maintain in place without interruption, its own policies and procedures to ensure compliance with any applicable anti-corruption laws;</li> <li>iv. it will strive to ensure that any person or entity who performs or has performed services for or on its behalf in connection with the D&amp;C Work complies with the terms and conditions set forth in this Section;</li> <li>v. it has, and will maintain in place without interruption, effective accounting procedures and internal controls necessary to record all expenditures in connection with this Term Sheet, which enable Sponsors to readily identify DB's financial and related records in connection with this Term Sheet;</li> <li>vi. from time to time during the term of this Term Sheet, all Letters of Intent, the Interim Agreement, and the DBA, at the reasonable request of Sponsors, DB will confirm in writing that it has complied with its undertakings under this Section; shall notify Sponsors as soon as practicable of any breach of any of the undertakings contained in this Section of which it becomes aware; and</li> <li>vii. it shall explicitly include the obligations in this Section in any subcontracts or agreements formed between DB and any subcontractors, to the extent that those subcontracts or agreements relate to fulfillment of DB's obligations to Sponsors under this Term Sheet.</li> </ul>

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<b>9.15 OFAC</b>	<p>As an inducement to enter into this Term Sheet, DB represents and certifies that neither DB, nor any partner, officer, or member of DB, nor any owner of a direct or indirect interest in DB: (i) is a person or entity with whom Sponsors or PA is prohibited without authorization from doing business under the regulations of the Office of Foreign Assets Control (“<u>OFAC</u>”) of the United States Department of the Treasury (including, without limitation, those named on OFAC’s Specially Designated and Blocked Persons list) or under any statute, executive order or other regulation relating to national security or foreign policy (including, without limitation, (A) Executive Order 13224 of September 23, 2001, Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten To Commit, or Support Terrorism, (B) the USA PATRIOT Act (including the anti-terrorism provisions thereof), (C) the International Emergency Economic Powers Act, 50 U.S.C. §§ 1701, et seq., and (D) the Trading with the Enemy Act, 50 U.S.C. App. 1 et seq.) (such persons being referred to herein as “<u>Blocked Persons</u>”, and such regulations, statutes, and executive orders and governmental actions being referred to herein as “<u>Blocked Persons Laws</u>”) and (ii) is engaging in any dealings or transactions or otherwise associated with Blocked Persons in violation of any Blocked Persons Laws. DB shall also covenant that during the term of this Term Sheet and the DBA that neither DB, nor any affiliate of DB with a direct or indirect ownership interest in DB, shall (i) become a Blocked Person nor (ii) engage in any dealings or transactions with Blocked Persons in violation of any Blocked Persons Laws. To the fullest extent permitted by law, DB agrees to defend, indemnify and hold harmless Sponsors, and their Indemnitees, from and against any and all claims, damages, losses, risks, liability and expenses (including attorneys’ fees and costs) arising from or related to any breach of the foregoing certification. This provision shall survive the completion of DB’s D&amp;C Work under any Letters of Intent, the Interim Agreement and the DBA and the expiration or termination of all Letters of Intent, the Interim Agreement and the DBA.</p>
<b>9.16 Mobilization</b>	<p>Sponsors shall provide a mobilization payment to fund DB’s General Conditions Costs for a period of not more than sixty (60) days (the “<u>Mobilization Payment</u>”). Unless otherwise agreed to by the parties, mobilization shall occur after Sponsors’ acceptance of the GMP. The Mobilization Payment will be made from an imprest account advanced by Sponsors in amounts mutually agreed upon by Sponsors and DB (“<u>Imprest Account</u>”). The parties anticipate that the initial amount of the Imprest Account will be within the range of Ten Million Dollars (\$10,000,000) to Twenty-Five Million Dollars (\$25,000,000). Such Imprest Account will be and remain Sponsors’ property, and any interest earned on such Imprest Account shall be credited to Sponsors. The parties shall agree to the terms and conditions relating to the Imprest Account within the DBA.</p> <p>In addition to the Mobilization Payment, Sponsors shall pay certain other up-front costs associated with the security requirements described</p>

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	herein which payment details shall be agreed to by the parties and set forth in the Interim Agreement or DBA.

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ACCEPTED and AGREED  
as of \_\_\_\_\_, 2020 by

**HUNT CONSTRUCTION GROUP, INC.**

By: \_\_\_\_\_  
Name: KEVIN L. JORDAN  
Title: President

**VANTAGE AIRPORT GROUP LTD.**

By: \_\_\_\_\_  
Name: STEPHEN MARTIN  
Title: Chief Commercial Officer

DocuSigned by:  
**RXR VAF III JFK MILLENNIUM PARTNERS VEHICLE LLC**  
Jason Barnett  
Per: \_\_\_\_\_  
C0390300D0D0474...

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

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

**JETBLUE AIRWAYS CORPORATION**

By: \_\_\_\_\_

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

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