

**THE NEW TERMINAL ONE  
JOHN F. KENNEDY INTERNATIONAL AIRPORT**

**THE NEW TERMINAL ONE**  
JFK INTERNATIONAL AIRPORT

**REQUEST FOR QUALIFICATION  
FOR  
VALE AND OTHER LOW EMISSIONS GRANT  
ADMINISTRATION**

**NTO-RFQ-VALE-202409**



For use by:

**JFK NTO LLC**  
ISSUED: August 30, 2024

**JFK NTO LLC – VALE and Other Low Emissions Grant Administration– NTO-RFQ-VALE-202409**

**SUMMARY**

<b>RFQ Name</b>	VALE And Other Low Emissions Grant Administration
<b>RFQ Number</b>	NTO-RFQ-VALE-202409
<b>Deadline to Submit Proposals</b>	October 1, 2024
<b>Proposals to be Submitted Electronically</b>	Via <u>ACONEX</u> (electronic document management system)
<b>Designated Contact Person</b>	Justin L. Deebrah Procurement Director JFK NTO LLC
<b>Delivery Address</b>	The New Terminal One JFK International Airport Building 111 154-20-154-42 134th Street, 3 <sup>rd</sup> floor Jamaica, NY 11430
<b>Contact Information</b>	E-mail: <a href="mailto:procurement@onejfk.com">procurement@onejfk.com</a>

**\*\* The information provided in this RFQ is for bidding purposes only and subject to change. \*\***

**JFK NTO LLC – VALE and Other Low Emissions Grant Administration– NTO-RFQ-VALE-202409**

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## 1 AN EXCITING NEW AIRPORT EXPERIENCE

JFK NTO LLC (“**Developer**”) invites proposers (“**Proposers**”) to submit Qualifications (each a “**Proposal**”) for the provision of VALE (Voluntary Airport Low Emissions Program) and other low emissions grant administration services (as further detailed in this RFQ) for the new terminal one (“**The New Terminal One**” or “**NTO**”) at John F. Kennedy International Airport (“**JFK**”). The New Terminal One program is a bold and exciting new aviation project to develop a world-class international terminal at JFK that aspires to achieve a global Top-5 Skytrax ranking, deliver an elevated customer experience, and immerse travelers in an iconic sense of place representative of New York City – the world’s gateway into the United States (the “**Project**”).

The New Terminal One is being built on the sites of the current Terminal 1, and former Terminals 2 and 3. It will be built in phases, with the first phase – Phase A – slated for completion in 2026 and full completion anticipated in approximately 2030. The plan is for the New Terminal One to be a 23-gate, state-of-the-art, international-only terminal. NTO’s sustainable and future-focused design will feature expansive, naturally lit, public spaces, cutting edge technology, and an array of amenities, all designed to enhance customer comfort and compete with the highest-rated airport terminals in the world. With more than 300,000 square feet of dining, retail, lounges, and recreational space planned, The New Terminal One will offer passengers a uniquely New York experience.

This Request for Qualification (“**RFQ**”) is intended to gather best-in-class value propositions from interested individuals, firms, or consortia to meet the ambitions of The New Terminal One project – to make every experience at our new terminal an extraordinary moment to remember.

### ***John F. Kennedy International Airport – Our Home***

John F. Kennedy International Airport (JFK) is the main international airport serving New York City. JFK is located in the Jamaica neighborhood of Queens, 16 miles (26 km) southeast of Midtown Manhattan. The airport features six passenger terminals and four runways. The airport is the busiest international air passenger gateway into North America, the 20<sup>th</sup>-busiest airport in the world, the 6<sup>th</sup>-busiest airport in the United States, and the busiest airport of the six airports in the New York airport system, having handled over 62.5 million passengers in 2019.

### ***The Port Authority of New York And New Jersey – Our Partner***

Developer has entered into a lease agreement (the “**Lease**”) with The Port Authority of New York and New Jersey (the “**PANYNJ**” or “**Port Authority**”), pursuant to which it is developing the New Terminal One. The Port Authority acts as lessor under the Lease. The Port Authority is a municipal corporate instrumentality and political subdivision of the States of New York and New Jersey, created and existing by virtue of the Compact of April 30, 1921, made by and between the two States, and thereafter consented to by the Congress of the United States. **The selected Proposer will require a permit to operate from the PANYNJ prior to commencing work.**

For more information about The New Terminal One project, please go to: <https://www.anewjfk.com/projects/the-new-terminal-one/>.

## 2 RFQ SCOPE & SPECIFICATIONS

### 2.1 Description of Services

NTO is seeking the professional services of an environmental consultant to support the preparation and submission of Federal Aviation Administration (FAA) grant applications for the installation of emission reduction devices on the *new* passenger terminal building. These devices will include, but are not limited to:

- High-efficiency heating and cooling,
- Evacuated tube solar collectors,
- Photo voltaic solar collectors,
- Pre-conditioned air gate units (PCA),
- 400Hz ground power,
- Alternative fuel snow melters,
- Electric buses,
- Electric ground support equipment chargers,
- Remote ground power.

NTO also intends to prepare and submit grant applications to the FAA for sustainability, energy efficiency, and zero-emission vehicles. These projects have the potential to make a significant impact, as NTO plans to request approval from the FAA through its Voluntary Airport Low Emission (VALE) Program, Section 511, and Section 512 programs to use funds to support the proposed projects that will provide surplus emission reductions and reduced associated fuel usage. NTO requests the Consultant to prepare grant applications and supporting documentation.

### 2.2 Scope of Services

#### 2.2.1 Task 1 – Negotiate Airport Emission Reduction Credits with NY DEC

A necessary condition for FAA approval of a VALE grant is a written assurance from the appropriate state air pollution control agency that it will grant airport emission reduction credits (AERC) for the proposed project. Therefore, it will be critical for TNTO to obtain early buy-in of the proposed project by the New York Department of Environmental Control (DEC). The Consultant will contact appropriate representatives with NY DEC to discuss the salient features of the proposed project and the emission calculation methodologies, identify those portions of the project that will result in emission reductions, and obtain agreement with NY DEC on those emission reductions generated by the project that will be creditable as surplus and what the life of those credits should be. Coordination with the FAA may also be necessary for this task.

#### 2.2.1 Task 2 – Data Collection

To characterize the current baseline properly and understand the equipment and configurations planned for the future baseline and the proposed project, the Consultant will gather all necessary data from TNTO to perform emission calculations and complete the VALE grant application. To facilitate this task, TNTO will receive a detailed list of data needs. The data anticipated for the application for both the baseline and proposed scenarios include the types and numbers of support vehicles and equipment, aircraft schedules, the expected duty cycle for all vehicles and equipment, relevant cost information, and other supporting data.

#### 2.2.1 Task 3 – Emission Modeling

The Consultant will use calculation methodologies approved by the FAA and NY DEC to determine the difference between future baseline and proposed emissions for the life of the proposed project. The FAA requires using its Aviation Environmental Design Tool (AEDT) for air quality analyses of airport aviation sources, notably to support VALE grant applications. The Consultant will use acceptable means to calculate emissions from aircraft. For this project, the FAA default of 20 years for equipment life will be used.

**2.2.1 Task 4 – Prepare VALE Grant Application**

The Consultant will prepare the documentation to meet the latest FAA VALE Technical Report requirements. The main body of each application will include the following types of information: project information, description of proposed emission reduction measures, emission reduction estimates, confirmation that estimated emission reductions meet Clean Air Act criteria, relationship to the state implementation plan, funding sources, cost-effectiveness, and schedule. In addition, the application will include the necessary FAA worksheets, emission support data, and a draft NY DEC AERC Letter of Assurance to the FAA.

**3 THE RFQ PROCESS**

**3.1 Proposed RFQ Schedule and Other Key Dates**

Activity	Date
RFQ Released	August 30, 2024
Questions Due in Writing	September 16, 2024
Addendum Released if necessary	September 23, 2024
Proposals Due, ‘Closing Date’	October 1, 2024
Proposer Presentations	October 15, 2024
Presumed Winner Selected	October 29, 2024
Contract Execution	November 2024

Developer’s Confidentiality Agreement

The Proposer must review and accept the Developer’s Confidentiality Agreement (“**NTO NDA**”) attached as **Exhibit C**. The Proposer must fill in, sign, date, scan, and upload the agreement to Aconex.

PANYNJ’s Non-Disclosure and Confidentiality Agreement

Attached as **Exhibit D-1**, is the Non-Disclosure and Confidentiality Agreement between the Developer and the PANYNJ (“**PANYNJ NDA**”). The Port Authority Information Security Handbook (“**Information Security Handbook**”) referenced in the NDA and that outlines protocols for storing and transmitting all Project-related material is available here: <https://www.panynj.gov/port-authority/en/business-opportunities/information-security-handbook-requirements.html>.

Attached as **Exhibit D-2** is the Port Authority’s Form of Acknowledgement by Related Party Entity (“**NDA Acknowledgement by Company**”). Every firm engaged with or in receipt of material directly related to or impacting the Project must review the NDA and Information Security Handbook and execute an NDA

Acknowledgement by Individual. Please note that a Microsoft Word version of the NDA Acknowledgement by Individual has been provided with fields 1, 2, and 3 unlocked to allow name, title, and company to be entered. These fields, plus the signature and date at the bottom are required for an NDA Acknowledgement by Individual to be complete.

Attached as **Exhibit D-3** is the Port Authority’s Form of Acknowledgement by Individual Related Party (“**NDA Acknowledgement by Individual**”). Each and every individual engaged with or in receipt of material directly related to or impacting the Project must review the NDA and Information Security Handbook and execute an NDA Acknowledgement by Individual. Please note that a Microsoft Word version of the NDA Acknowledgement by Individual has been provided with fields 1, 2, and 3 unlocked to allow name, title, and company to be entered. These fields, plus signature and date at the bottom are required for an NDA Acknowledgement by Individual to be complete.

Proposers must review the PANYNJ NDA and then complete, execute, and upload NDA Acknowledgment by Company and NDA Acknowledgment by all required individuals.

### **3.2 Process Understanding and Acceptance**

The Proposer acknowledges that the iterative process outlined herein is intended to facilitate the Developer’s evaluation of the Proposer’s capabilities to provide exceptional performance, team alignment, transparency, and collaboration to achieve results that meet or exceed the Developer’s expectations and requirements and that such evaluation is not limited to a Proposer’s pricing. The Developer’s evaluation shall be based on the totality of the Proposer’s capabilities, submissions, ability to reach an agreement on the terms and conditions for the Services and ability to work with all Project stakeholders and, specifically, the PANYNJ. The Developer’s evaluation and ultimately the selection of a service provider shall be in the Developer’s absolute and sole discretion.

By participating in this RFQ process, the Proposer warrants that it understands, accepts, and will not object to the evaluation and selection process outlined in this RFQ. The Proposer further waives and releases the Developer and its parent, subsidiaries and affiliates (existing currently or in the future), successors, and their respective officers, partners, members, managers, shareholders, directors, employees, agents and representatives from any and all liability and damage, including without limitation to costs, attorneys’ fee, loss, claims, demands and actions of any nature whatsoever with respect to the Developer’s evaluation and selection process for each of the two phases of this RFQ process.

### **3.3 Communications with Developer**

Proposers must communicate only with the Developer regarding this RFQ. Under no circumstances shall Proposers communicate directly with the PANYNJ regarding this RFQ, unless such communication is facilitated by the Developer. Communication with the Developer shall be through Aconex. Any communication outside the prescribed communication protocol is discouraged, and the Developer, in its sole and absolute discretion, may or may not respond any communication made outside of Aconex.

Aconex is the Document Management System (“**DMS**”) for the Project. All communication related to this RFQ will be transmitted through Aconex. Proposers will need to upload any questions, requests for clarification, or other communications to Aconex. The Developer will transmit all responses and addenda



via Aconex, and will transmit all responses and addenda, including Proposers' questions and requests for clarification, to all Proposers. The Developer will not respond to questions or requests for clarification marked "confidential" because all responses and addenda will be transmitted to all Proposers. The Developer will not accept telephone calls from Proposers.

**Access to Aconex:** Aconex is a web-based platform. Each Proposer must provide contact information for a designated Aconex Administrator from the Proposer's organization so that they can be registered in the system. Each Aconex Administrator will receive an email inviting them to each part of the RFQ process, as applicable. For issues regarding access to Aconex, please contact Document Controls Center at [dcc@onejfk.com](mailto:dcc@onejfk.com) or NTO Procurement at [procurement@onejfk.com](mailto:procurement@onejfk.com).

In addition, please use the following links for support on how to use the Aconex platform:  
<https://help.aconex.com/aconex/our-main-application/using-aconex/using-tenders-bids>  
<https://help.aconex.com/high-compliance-environments/en/high-compliance-environments>

### **3.4 Disclosures**

Each Proposer shall identify in its Proposal any facts that present a conflict of interest or would give rise to an appearance of a conflict of interest with any Project stakeholders (including the Port Authority).

TO MAINTAIN THE CONFIDENTIALITY, FAIR DEALINGS, AND INTEGRITY OF THIS RFQ PROCESS, PROPOSER SHALL SUBMIT WITH ITS CONFIDENTIALITY DOCUMENTATION A STATEMENT CONFIRMING THAT THE PROPOSER DID NOT DEVELOP OR DRAFT SPECIFICATIONS, REQUIREMENTS, STATEMENTS OF WORK, OR INVITATIONS FOR BIDS OR REQUESTS FOR PROPOSALS FOR THIS PROJECT. ANY SUCH PARTIES MUST BE EXCLUDED FROM COMPETING FOR THIS PROJECT.

### **3.5 Developer's Rights to Reject Proposals**

The Developer is under no obligation to select any Proposer, award an agreement, or include any term within any agreement if awarded pursuant to this RFQ process. The Developer reserves the right to reject any and all Proposals. The Developer reserves the right to use any other procurement method available under applicable law to obtain the Services or otherwise deliver the Project.

### **3.6 Developer's Right to Modify Proposers**

The Developer may at any time and for any reason in its absolute and sole discretion include additional Proposers or reject any Proposer during this RFQ Process.

### **3.7 Developer's Right to Revise or Revoke this RFQ Process**

The Developer may at any time and for any reason in its absolute and sole discretion revise or revoke this RFQ process in whole or in part. The Developer is not bound to accept any proposal or make any award from this Request for Qualification.



### 3.8 Ownership of Documents

All documents and information (including without limitation, plans, memoranda, notes, minutes, drawings, sketches, electronic data, contract documents, Proposals submitted by a Proposer as a submission to this RFQ, etc.) prepared by the Proposer or any of the Proposer’s team members including documents and designs produced as a part of the integrated design development process during the RFQ, or provided to the Proposer in connection with the procurement for the Project (“**Procurement Documents**”), shall be at all times and remain the sole and exclusive property of the Developer. The Proposer hereby grants to the Developer all ownership rights in such Procurement Documents.

The Proposer must identify, in writing, all copyrighted material, trade secrets or other proprietary information such as typical or standard details, depictions, instructions, systems, processes and specifications, regularly issued by the Proposer or its designers in the ordinary course of their practice (“**Standard Details**”) that the Proposer had included or will include in the Procurement Documents. Proposer (or the Proposer’s team member) shall retain all statutory and reserved rights, title, and interest, including copyrights, to its Standard Details and shall provide the Developer with a non-exclusive, irrevocable, royalty-free, transferable, perpetual license with respect to all portions, elements and aspects of the Standard Details included in the Procurement Documents.

### 3.9 No Liability for Costs or Damages

The Developer, its parent, subsidiaries and affiliates (existing currently or in the future), successors, and their respective officers, partners, members, managers, shareholders, directors, employees, agents and representatives are not responsible for, and the Proposer waives any rights it may have, now or in the future, to make any claim or demand or take any legal action of any nature whatsoever against them, for any costs or damages incurred by the Proposer, its team member(s), joint venture partners, subcontractors, or other interested parties in connection with this RFQ process, including without limitation to costs associated with preparing the responses and submittals and/or participation in any meetings, presentations or negotiations, all of which shall be borne by the Proposer.

## 4 PROPOSER SUBMISSIONS – REQUIRED INFORMATION & ACKNOWLEDGMENTS

### 4.1 Required Content of Proposal Phase Submissions

Proposers are advised to adhere to the submittal requirements of this RFQ. Proposal submissions must include the information listed in **Exhibit A**.

### 4.2 Proposal Format

Hard copies of Proposals will **not be accepted and should not be submitted**. The electronic submission, through Aconex, shall be considered a Proposer’s only submittal and supersedes any hard copies or other information that may be given to the Developer during this RFQ process.

Proposers are required to submit Proposals in the manner described below. Proposals not submitted in the manner described herein may be considered non-responsive and be subject to rejection. The content of the Proposal must be clear, concise, and organized to correlate with the sections below.

All documents shall be submitted using the following format and file naming convention:

ProjectID\_RFQ\_YYYY-MM-DD\_3-Letter Company Identifier Section File Description

**Example**

JFKR\_T1\_RFQ\_2021-03-02\_NTO\_(Perhaps “Sect#”) Proposer Profile

**4.3 Validity of the Proposals**

While the Developer intends to follow, to the extent feasible, the Procurement Schedule, any Proposer’s Proposal shall remain valid for 90 calendar days from the final date such Proposal is due (“**Validity Period**”). By submitting a Proposal, the Proposer guarantees that its offer is firm for the Validity Period. If an award is not made during that 60-day period, the Proposer shall automatically extend its offer for an additional 120 days, unless the Proposer indicates otherwise in writing to the Developer at least thirty (30) days prior to the last day of the Validity Period.

**4.4 Acknowledgment**

By submitting its Proposal, Proposer acknowledges that the Developer has the right to make any inquiry or investigation that it deems appropriate to substantiate or supplement information and authorizes the release to the Developer of any and all information sought in such inquiry or investigation.

**4.5 Withdrawal**

No Proposal may be withdrawn after it has been submitted to the Developer unless the Proposer submits a withdrawal request and such request is received by the Developer before the time set for receiving Proposals. No Proposal may be withdrawn after the scheduled due date for a period of 180 calendar days, unless the Developer publishes an addendum stating otherwise.

**4.6 No Collusion**

Proposer represents and warrants that any indicative price estimate or pricing proposal submitted in this RFQ Process was arrived at independently, without consultation, communication, or agreement with any other Proposer for the purpose of restricting competition; the prices quoted were not knowingly disclosed by Proposer to any other Proposer; and no attempt was made by Proposer to induce any other Proposer to submit or not to submit a Proposal for the purpose of restricting competition.

**4.7 RFQ Information and Notices**

It is important for the proper comparison of Proposals that no unauthorized alterations be made to the Procurement documents. Proposals containing unauthorized alterations or qualifications may be rejected. If you consider that changes are necessary, your proposals for such changes must be submitted to us at once, in writing for consideration and if NTO approves them, they will be circulated to all other Proposers.

#### **4.8 Attachments**

Any attachments/additions that are not identified or are general sales material may be excluded at no liability to NTO. You are therefore asked not to enclose any documents, brochures or other materials unless you are specifically requested to do so. You must retain the sequence of the questions and the numbering in your response. Any attachments should be sent as a separate attachment. Answers should be provided within the text boxes provided adjacent the questions or in the accompanying annexes.

#### **4.9 Addenda**

If it becomes necessary to revise or expand upon any part of this RFQ, the Developer will send an addendum to all Proposers via Aconex.

If discrepancies or omissions are found by any Proposer or there is doubt as to the true meaning of any part of this RFQ, a written request for clarification or interpretation shall be submitted via Aconex before the deadline set forth in this RFQ. Questions submitted after this time will not be considered. Any clarification, interpretation or change to the RFQ will be by written addendum and distributed by Aconex to all Proposers. The Developer is not responsible for any explanation, clarification, interpretation, or approval made or given in any manner except by written addendum. Each addendum will be posted on the Developer's procurement page in Aconex. Any addenda published by the Developer as specified herein, shall be considered a part of the RFQ document.

**THE DEVELOPER AND ITS OFFICERS, AGENTS, AND EMPLOYEES WILL NOT BE RESPONSIBLE FOR ANY ORAL INSTRUCTION, MODIFICATION, OR CLARIFICATION RELATED TO THIS RFQ. PROPOSERS SHALL NOT RELY UPON ORAL COMMUNICATIONS.**

## **5 CONFIDENTIALITY**

### **5.1 Confidentiality of this RFQ**

All information in this RFQ is considered confidential. The Proposer shall take measures to ensure that this confidentiality is protected. The Proposer shall not use the Developer's name as a potential customer of the Proposer. As directed in this RFQ, the Proposer shall execute and submit as directed the NTO NDA and the Port Authority's Form of Acknowledgement by Individual Related Party.

### **5.2 Confidentiality of Proposals**

Proposals will remain confidential until the Developer has concluded negotiations with the successful Proposer.

## **6 SELECTION CRITERIA**

6.1 Proposers must present clear Proposals that demonstrate their ability to provide the Services for the full term of the engagement, while also presenting credible qualifications in their Proposals.

Evaluations will be a measure of the extent to which you have met the requirements of the specifications set out in this RFQ. The evidence you provide in terms of the quality information you submit will be assessed and scored accordingly. Developer will review and score each Proposal received. Developer will assess each submission and award a collective score after deliberation. Proposals will be evaluated against the criteria set out below. In considering a Proposal, Developer may, in its sole discretion, consider monetary and non-monetary implications of a Proposal.

Evaluation Category	Total Points Available
Qualification and Experience	40
Methodology and Approach	30
Diversity & Inclusion	30
<b>Total</b>	<b>100</b>

Proposals may be shortlisted with Proposers invited to undertake further discussions, prior to the selection of a Proposer. Only those Proposers shortlisted and asked to provide a presentation will be given a presentation score.

The following minimum requirements of a Proposal are evaluated only for their compliance with the standards and specifications herein and, as such, are not scored:

- Overall quality and completeness of proposal;
- References;
- Diversity and inclusion approach and commitment; and
- Compliance with insurance requirements.

After consideration of these factors, the Developer may enter into negotiations with the Proposer deemed best qualified in terms of the foregoing factors to perform the Services, however, contract negotiations are neither an offer nor a guarantee that a contract will be executed.

Developer’s acceptance of a Proposal shall be in writing and subject to acceptance of Developer’s general terms and conditions, which are supplied as part of our Proposal requirements.

**7 DIVERSITY & INCLUSION**

7.1 Every consultant, contractor, service provider, and supplier supporting The New Terminal One at JFK in areas of work that include federal assistance must maximize capacity building for Disadvantaged Business Enterprise (DBE) businesses as defined by 49 CFR Part 26. The Developer’s team will work closely with all partners to achieve these goals. Partners shall seek to ensure diversity within the pool of DBE work providers. The Developer will review DBE Participation Plans, considering the size and scope of all work being performed, to ensure meaningful utilization of DBE firms.

In the event a DBE Participation Plan is deemed to lack meaningful or sufficient participation, partners may be asked to include additional DBE firms.

All Respondents are to consider strategic partnerships with DBE firms. In addition, DBE firms are encouraged to submit a Proposal in response to this RFQ.

All Respondents must submit a Diversity Participation Plan indicating a strategy to achieve and/or exceed The Port Authority of New York and New Jersey's overall goal of 14 % DBE participation. Please identify specific names, addresses, and roles of DBE firms that will form your team. DBEs must be or become certified by a program authorized by the United States Department of Transportation.

**EXHIBIT A**

**PROPOSER’S CHECKLIST FOR PROPOSAL SUBMISSION**

Proposers are required to submit this Checklist and the following information, providing the content in the sequence shown below. If documentation provided is incomplete, the Proposer may be ineligible for award of a contract. Please check each box next to the item if included in your proposal package.

1. Developer’s Confidentiality Agreement (NTO NDA) attached as Exhibit C.	
2. Port Authority’s Form of Acknowledgement by Related Party Entity (NDA Acknowledgement by Company) in the form attached as Exhibit D-2.	
3. Port Authority’s Form of Acknowledgement by Individual Related Party (NDA Acknowledgement by Individual) in the form attached as Exhibit D-3.	
4. Provide all items noted in the Proposer’s Qualification listing, attached as Exhibit A-1.	
a. Firm's Experience and Expertise	
b. Key Personnel Qualifications	
c. Understanding of Project Scope	
d. Past Performance	
e. Knowledge of FAA Regulations and Procedures	
f. Project Management and Organizational Capability	
g. Schedule Adherence	
h. DBE Participation - DBE Participation Plan - Plans and related materials to achieve and/or exceed the Developer’s diversity and inclusion objectives. specified in Section 7.	
5. Certificates of insurance evidencing Proposer’s compliance with the requirements specified by the Developer in the attached Exhibit E.	
6. Evidence of all business licenses, permits, and/or authorizations applicable to the provision of the Services.	
7. Review and comments to NTO Terms and Conditions, attached as Exhibit F.	

**EXHIBIT B**

**PROPOSER’S QUALIFICATIONS**

Proposers are required to submit the information and content referenced in the table below. Proposers must comply with the FAA’s DBE program as outlined in 49 CFR Part 26, which governs participation by DBEs in federally funded contracts, including reporting, certification, and good faith efforts. If the documentation is incomplete, the Proposer may be ineligible to advance to the next phase of the procurement process.

<b>Firm's Experience and Expertise</b>
1. Relevant Project Experience: A detailed description of the firm’s experience with projects similar in scope, complexity, and size, particularly in the aviation sector or FAA-funded projects.
2. Technical Expertise: Expertise in specific areas relevant to the project, such as design, planning, environmental analysis, or construction management.
3. Experience with FAA Standards: Demonstration of experience with FAA guidelines, regulations, and Advisory Circulars (ACs), particularly with FAA-funded projects under AC 150/5100-14E.
<b>Key Personnel Qualifications</b>
4. Resumes of Key Personnel: Detailed qualifications of key individuals proposed for the project, including their education, certifications, and relevant experience.
5. Project Roles: Identification of roles and responsibilities of each key team member for the project.
6. Availability: A statement of the availability of key personnel for the project and their ability to dedicate the necessary time and resources to meet the project schedule.
<b>Understanding of Project Scope</b>
7. Project Approach: A narrative that demonstrates the proposer’s understanding of the project’s scope and objectives, including any potential challenges and how they would address them.
8. Work Plan and Methodology: A detailed outline of the firm’s proposed work plan and methodology to accomplish the project’s goals.
<b>Past Performance</b>
9. Client References: A list of client references from similar projects, including contact information, project descriptions, and the proposer’s role in those projects.
10. Performance Metrics: Past performance on similar projects, including adherence to budgets, timelines, quality of work, and ability to resolve challenges.



11. FAA Project Experience: Examples of past work completed for the FAA or other aviation-related projects, particularly those funded under the FAA’s Airport Improvement Program (AIP).
<b>Knowledge of FAA Regulations and Procedures</b>
12. Familiarity with FAA Requirements: Demonstration of familiarity with FAA design standards, Advisory Circulars, and policies, especially those related to AC 150/5100-14E.
13. Experience with FAA Funding and Grants: Understanding of FAA grant administration and compliance with FAA’s Disadvantaged Business Enterprise (DBE) program requirements.
<b>Project Management and Organizational Capability</b>
14. Organizational Structure: A description of the firm’s organizational structure and management approach for ensuring quality and timely completion of the project.
15. Quality Assurance/Quality Control (QA/QC): Explanation of the firm’s QA/QC processes to ensure project deliverables meet all necessary standards and requirements.
16. Resource Capacity: Demonstration of the firm’s ability to handle the project in terms of staffing, resources, and technical support.
<b>Schedule Adherence</b>
17. Proposed Timeline: A preliminary project timeline showing major milestones and deliverables.
18. Ability to Meet Deadlines: A description of the firm’s ability to meet project deadlines, including past performance on meeting schedules in previous projects
<b>DBE Participation</b>
19. DBE Participation Plan: A statement of how the proposer plans to meet any DBE participation goals as required in this RFQ, including identification of any DBE firms and a description of their role in the project.

## EXHIBIT C

### DEVELOPER'S CONFIDENTIALITY AGREEMENT

Dear Recipient,

In connection with the consideration by \_\_\_\_\_ (“you”) of providing a response in the form of a Proposal to a Request for Qualification (“RFQ”) (the “Transaction”) to JFK NTO LLC (“Developer”) and you and the Developer collectively, the “Parties” and each a “Party”) in connection with The New Terminal One at John F. Kennedy International Airport project (the “Project”), certain information and materials shall be made available to you to assist you in evaluating and responding to the RFQ, subject to such information being held in strict confidence, on the terms set out herein.

This agreement relates to all information provided to you by or on behalf of the Developer or the Project at any time, both before and after the date of this agreement, in any form (including, without limitation, orally, in writing, in a visual or electronic form, or in a magnetic or digital form) which relates to the Developer and its affiliates, agents, designees or the Project and which may include, without limitation:

- i. copies, analyses, compilations, data, forecasts, studies, the information memorandum, or other documents concerning NTO or the Project;
- ii. the existence of this agreement and its contents;
- iii. the fact that you have received, or intend to receive, any information from NTO concerning the Project;
- iv. the fact that discussions/negotiations regarding the Project are taking place and information concerning the status or progress of such discussions;
- v. information concerning the structure of the Project; and
- vi. the potential price (or elements thereof) to be paid by NTO to consummate the Project

(“Confidential Information”). Confidential Information also includes any notes, analyses, reports, or memorandum that may have been prepared by you or on your behalf based on the Confidential Information.

In consideration of the disclosure of Confidential Information, you agree with and undertake to NTO as follows:

1. The Confidential Information will be used by you and your Representatives (as defined below) solely and exclusively for the purpose of the Services and any use of the Confidential Information for any other purpose, now or in the future, is strictly prohibited. For the avoidance of doubt, neither you nor your Representatives shall use the Confidential Information so as to procure any commercial advantage over us or NTO generally, or otherwise in connection with the Project.
2. You will keep all Confidential Information strictly confidential and will not disclose, copy, reproduce, or distribute any of it to any corporation, company, partnership, limited liability company, joint venture, entity or individual (each, a “Person”) other than to those of your directors, officers, employees, agents, counsel, auditors, and advisors who are directly involved with the Project and need access to the Confidential Information to assist with your evaluation of the Project (“Representatives”), and only to the extent that their access to the Confidential Information is essential for these purposes. You hereby acknowledge and agree that all Confidential Information shall be and remain the exclusive property of the Developer (or, as applicable, third Persons conducting business with the Developer). You agree not to reveal or seek to reveal the trade secrets or know-how underlying any software, technology, or other embodiment of intellectual property within the Confidential Information.

3. You shall ensure that each of your Representatives is aware of the confidential nature of the Confidential Information, has been provided with a copy of this agreement, and agrees to comply with all the provisions of this agreement as if they were a party to it. Accordingly, you shall be liable for any breach by any of your Representatives of the provisions of this agreement. You will use reasonable precautions, in any event no less rigorous than the precautions you take to protect your own confidential information in accordance with applicable law, to safeguard the Confidential Information, and you will take reasonable measures to restrict access to the Confidential Information and prevent prohibited or unauthorized disclosure or use of the Confidential Information by your Representatives.
4. Confidential Information shall not include any information which:
  - i. was already in the public domain prior to the date of disclosure to you or your Representatives, or that subsequently enters the public domain (other than by breach of this agreement by you or your Representatives);
  - ii. is obtained by you or a Representative from a third party which, after reasonable investigation, you are unaware of having been obtained by such third party in violation of any contractual, legal, fiduciary, or other confidentiality obligation; or
  - iii. was lawfully in your (or your Representatives) possession prior to the date of disclosure, as evidenced by written records.
5. Unless paragraph 6 applies, you shall not, without our prior written consent, make a public announcement of any Confidential Information. In the event of a breach of this provision, we shall be entitled to publish whatever statement we consider necessary or desirable (including a corrective statement) to protect our interests.
6. Where a disclosure or announcement of the type mentioned in paragraph 5 is required by law or regulatory authority, the disclosure or announcement shall be made by you only after consultation with us, to the extent legally permissible, and, after taking into account our reasonable requirements as to the timing, content, and manner of making or objecting to such disclosure or announcement including but not limited to co-operating with us in seeking an appropriate protective order. If a protective order is not available, you agree to disclose only the minimum amount necessary to satisfy the applicable obligation, and to use your best efforts to preserve the confidentiality of the Confidential Information post disclosure. If you are unable to consult with us before the disclosure or announcement is made, you must inform us of the circumstances, timing, content, and manner of making of the disclosure or announcement immediately after such disclosure or announcement is made and use your best efforts to preserve the confidentiality of the Confidential Information post disclosure.
7. You hereby acknowledge and agree that you are aware, and that you will advise each of your Representatives to whom Confidential Information is provided, that U.S. securities laws prohibit any Person, including, without limitation, the media (whether electronic, print, broadcast, or other), who has material non-public information concerning the matters which are subject of this agreement from purchasing or selling securities of the Developer or any entity that is formed for the purpose of consummating the Project, or from communicating such material non-public information to any other Person under circumstances in which it is reasonably foreseeable that such Person is likely to purchase or sell securities.
8. Upon request, you shall:

- i. immediately destroy or return the Confidential Information in the form in which it was provided to you or your Representatives, without retaining any copies thereof;
- ii. use your best efforts to expunge from any computer, word processor, or other containing device under your control any document, disk, or file containing, reflecting, or generated from any Confidential Information and you undertake, following such erasure, not to attempt to recover such material; and
- iii. provide us with written confirmation of compliance with the obligations contained in this paragraph.

Notwithstanding the foregoing, you and your Representatives (i) may retain copies of that portion of Confidential Information that is required to be retained by applicable law or in accordance with your and your Representatives' bona fide internal document retention policies that have been implemented in order to comply with applicable law, regulation, or professional standards, and (ii) shall not be obligated to destroy electronically stored back-up copies of the Confidential Information to the extent such destruction is not reasonably practicable; provided that in all cases involving such retention or non-destruction of Confidential Information, you shall maintain the confidentiality of such Confidential Information and you and your Representatives shall not disclose or use such Confidential Information (other than to the extent explicitly permitted under this agreement) for as long as you or your Representatives retain any such Confidential Information.

9. You further agree that neither you nor any of your Representatives acting on your behalf will, without our prior written consent, directly or indirectly, communicate regarding the Project with any third parties (whether such Persons may be under a similar confidentiality agreement or not) nor disclose Confidential Information to any such Person, including as it may relate to any joint ventures or other teaming arrangements. You hereby acknowledge and agree that the Company may grant or withhold its consent to any such communications for any reason (or for no reason) and we may condition any such consent on such Persons' prior entry into a written confidentiality agreement in form and substance satisfactory to us.
10. No license, proprietary interest or 'authority to use' is granted to you or any Representative in relation to the Confidential Information except as is expressly set out in this agreement. The Developer and each of its affiliates, directors, shareholders, and advisors will have the right to enforce their respective rights under this agreement. The parties to this agreement do not require the consent of any Person having such a right to rescind or vary this agreement at any time. No other Person who is not a party to this agreement has any rights to enforce any term herein, without prejudice to any right or remedy of a third party which otherwise exists.
11. You understand, acknowledge, and agree that neither the Developer nor any other Person who provides Confidential Information to you or your Representatives pursuant to this agreement (collectively, the "**Disclosing Parties**") is making any representation or warranty, expressed or implied, as to the accuracy or completeness of the Confidential Information or of any other information concerning the Project, or any other matter, in each case provided or prepared by or for the Disclosing Parties, and none of the Disclosing Parties will have any liability to you or any other Person resulting from or relating to your or their use of the Confidential Information or any of such other information. You agree that in determining to enter into and perform this agreement you are not relying upon any representation, statement, promise, commitment, understanding, or agreement made by or on behalf of the Developer or any other Person, except as expressly set forth herein.
12. You understand and agree that (other than this agreement) no contract, agreement or understanding with respect to the Project exists nor shall one be deemed to exist between you and the Developer

unless and until a definitive agreement has been duly executed and delivered by all parties thereto, and you hereby waive, in advance, any claims (including, without limitation, claims for breach of contract), in connection with the Project unless and until a definitive agreement has been duly executed and delivered by all parties thereto. You also agree that the Developer will not have any obligation of any kind whatsoever with respect to the Project by virtue of this agreement or any other written or oral expression with respect to the Project except in the case of this agreement, for the matters specifically agreed to herein. You further understand and agree that:

- i. The Developer shall have sole discretion in determining the process for the Project;
  - ii. any procedures relating to the Project may be changed at any time without notice to you or any other Person; and
  - iii. The Developer may postpone or abandon its efforts to engage in the Project at any time without any notice to you.
13. Each Party hereby agrees to bear its own internal costs and the costs of any legal, tax, financial or other professional advisors separately retained by such Party in connection with this agreement and in relation to the Project.
14. Damages may not be an adequate remedy for a breach of this agreement and/or breach of confidence, and the Developer may be entitled to seek the remedies of injunction, specific performance, and other equitable relief for a threatened or actual breach of this agreement and/or breach of confidence. Such remedy shall not be deemed to be the exclusive remedy for breach of this agreement but shall be in addition to all other remedies available to the Developer.
15. You shall be responsible for any breach of this agreement by you, or your Representatives and you will be directly liable to us from and against all claims, costs, expenses, loss, or damage (including, but not limited to, legal costs) which may arise directly or indirectly from such breach or by enforcing the rights under this agreement.
16. Should one or more provisions of this agreement be invalid or unenforceable in part or as a whole, the validity of the remaining provisions shall not be affected. The Parties agree to replace any such invalid or unenforceable provision by a valid and enforceable provision that, in economic terms, comes as close as possible to the purpose of the invalid or unenforceable provision.
17. The failure or delay in exercising a right or remedy provided by this agreement does not impair or constitute a waiver of the right or remedy, or an impairment of, or waiver of, any other rights or remedies. No single or partial exercise of a right or remedy provided by this agreement prevents further exercise of that right or remedy or the exercise of another right or remedy as may be available (whether contractual, equitable, proprietary, or otherwise).
18. You agree that, to the extent that any Confidential Information is covered or protected by privilege, disclosing such Confidential Information to you or to any Representative does not constitute a waiver of such privilege. You further agree that you and any Representative will assert such privilege in response to any attempt to compel disclosure of the Confidential Information.
19. You confirm that you are acting as principal, and not as agent or broker for any other Person.
20. Your obligations under this agreement, except: (i) the obligations with respect to any Confidential Information retained pursuant to Section 8 hereof, (ii) to the extent that any portion of the Confidential Information constitutes a “trade secret” under applicable law, the terms and conditions of this agreement as to such portion of Confidential Information shall survive such termination for

as long as that portion remains a trade secret, and (iii) as described in Sections 17, 18, 21, 22, and 23 hereof and this Section 20, shall terminate three years from the date hereof provided that such termination shall not relieve you of liability for breach by you or your Representatives prior to termination.

21. This agreement is the complete and exclusive statement of confidentiality between the Parties and supersedes all prior written and oral communications relating to the subject matter hereof. This agreement is for the benefit of the Developer and shall bind and inure to the benefit of the Parties and their respective successors and assigns (provided, however, that you may not assign this agreement or any rights or obligations hereunder, without developer's prior written consent, failing which such purported assignment shall be null and void). No provision of this agreement can be waived or amended except by written consent of the developer.
22. This agreement shall be governed by and construed in accordance with the laws of the State of New York without giving effect to the conflicts of laws principles thereof to the extent such principles or rules are not mandatorily applicable by statute and would require or permit the application of the laws of another jurisdiction. You irrevocably (i) consent to the exclusive jurisdiction and venue of the state and federal courts sitting in New York, New York in any such action, (ii) agree that such courts are convenient forums for the purpose, and shall not seek to dismiss, transfer, or remove such action to any other forum on grounds of lack of personal jurisdiction, improper venue, forum non convenient, or any similar doctrine, (iii) consent to service of process in any such action effected by delivery via nationally recognized overnight courier service, addressed to you, at the address set forth above, in addition to any other method of service provided by applicable law, (iv) agree that such service of process shall be valid, and (v) agree that such action shall be commenced and determined only in such courts. Notwithstanding the foregoing, actions or proceedings may be commenced in any jurisdiction to enforce or satisfy orders or judgments of such courts.
23. To the extent not prohibited by applicable law that cannot be waived, the Parties hereby waive, and agree that they will not assert (whether as plaintiff, defendant, or otherwise), any right to trial by jury in any action that may arise out of or in connection with this agreement. The Parties hereby agree that either of them may file a copy of this paragraph with any court as written evidence of the knowing, voluntary, and bargained-for agreement between the Parties irrevocably to waive their right to trial by jury in any such action and that any such action will instead be tried by a judge sitting without a jury.

For matter of clarification, this letter solely governs confidentiality obligations and does neither constitute nor shall be construed as an engagement proposal or as a mandate. If you agree with the terms of this agreement, please sign this agreement and return it to us.

[Signature page follows]

Sincerely,

**JFK NTO LLC**

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

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

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

We accept the terms of this agreement,

\_\_\_\_\_

**ENTITY**

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

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

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



**EXHIBIT D-1**

**PORT AUTHORITY'S NON-DISCLOSURE AND CONFIDENTIALITY AGREEMENT**

**(attached)**

*[Remainder of this page intentionally left blank]*

Execution Version

**NON-DISCLOSURE AND CONFIDENTIALITY AGREEMENT  
AMONG**

**JFKTERMINALONECO, LLC,**

**AND**

**THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY**

**THIS NON-DISCLOSURE AND CONFIDENTIALITY AGREEMENT** (this “**Agreement**”) is made as of this 27th day of June, 2019, by and between **THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY** (the “**Port Authority**”) a body corporate and politic created by Compact between the States of New York and New Jersey, with the consent of the Congress of the United States, and having an office and place of business at 4 World Trade Center, 150 Greenwich Street, New York, New York, 10007, and **JFKTERMINALONECO, LLC** (“**TerminalCo**” as “**Recipient**”).

**WHEREAS**, the Port Authority desires, subject to the terms and conditions set forth below, to disclose to the Recipient, Protected Information (as defined below) in connection with the JFK Terminal 1, 2 and 3 (collectively, the “**Project(s)**”, or “**Proposed Project(s)**”); and

**WHEREAS**, the Recipient acknowledge that the Port Authority, in furtherance of its performance of essential and critical governmental functions relating to the Project, has existing and significant interests and obligations in establishing, maintaining and protecting the security and safety of the Project site and surrounding areas and related public welfare matters; and

**WHEREAS**, in furtherance of critical governmental interests regarding public welfare, safety and security at the Project site, the Port Authority has collected information and undertaken the development of certain plans and recommendations regarding the security, safety and protection of the Project site, including the physical construction and current and future operations; and

**WHEREAS**, the Port Authority and the Recipient (collectively, the “**Parties**”) acknowledge that in order for Recipient to undertake its duties and/or obligations with regard to its involvement in the Project, the Port Authority may provide Recipient or certain of its Related Parties (as defined below) certain information in the possession of the Port Authority, which may contain or include protected, confidential, privileged, classified, commercial, proprietary or sensitive information, documents and plans, relating to the Project or their occupants or other matters, the unauthorized disclosure of which could result in significant public safety, financial and other damage to the Port Authority, the Project, their occupants, and the surrounding communities; and

**WHEREAS**, the Recipient recognizes and acknowledges that providing unauthorized access to, or disclosing such information to third parties in violation of the terms of this Agreement could compromise or undermine the existing or future guidelines, techniques and procedures implemented for the protection against terrorist acts or for law enforcement,

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investigation and prosecutorial purposes, and accordingly could result in significant irreparable harm and injury; and

**WHEREAS**, in order to protect and preserve the privilege attaching to and the confidentiality of the aforementioned information as well as to limit access to such information to a strict need to know basis, the Port Authority requires, as a condition of its sharing or providing access to such protected, confidential, privileged, classified, commercial, proprietary or sensitive information, documents and plans, that the Recipient enters into this Agreement and that its Related Parties thereafter acknowledge and agree that they will be required to treat as strictly confidential and/or privileged any of such information so provided, as well as the work product and conclusions of any assessments and evaluations or any recommendations relating thereto, and to also fully comply with applicable federal rules and regulations with respect thereto; and

**WHEREAS**, as a condition to the provision of such information to the Recipient and its Related Parties, the Recipient has agreed to enter into this Agreement with respect to the handling and use of such information and to cause its Related Parties to join in and be bound by the terms and conditions of this Agreement.

**NOW, THEREFORE**, in consideration of the provision by Port Authority of Information for Project Purposes (as each such term is defined below) and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the Recipient and each Related Party that receives such Information, the Recipient and each such Related Party agree, as follows:

1. **Defined Terms.** In addition to the terms defined in the Recitals above, the following terms shall have the meanings set forth below:

(a) **“Authorized Disclosure”** means the disclosure of Protected Information strictly in accordance with the Confidentiality Control Procedures applicable thereto: (i) as to all Protected Information, only to a Related Party that has a need to know such Protected Information strictly for Project Purposes and in addition, (ii) as to any Confidential Privileged Information, only to a Related Party which (x) if it is a Related Party under subparagraphs (i) or (ii) of the definition of that term, is covered by the Recipient’s obligations hereunder or (y) if a Related Party under subparagraph (iii) of the definition of that term, is covered by that individual’s agreement to be bound by the terms of this Agreement as set forth in an executed Acknowledgment in the Form of Exhibit A; and Confidential Privileged Information, only to the extent expressly approved by the Port Authority to be disclosed pursuant to this Agreement, in writing in advance of disclosure (and shall be deemed to have been given in writing when information is marked as “Confidential Privileged Information”, “Sensitive Security Information” or “Critical Infrastructure Information” and is delivered by an authorized Port Authority representative), and then only the particular Confidential Privileged Information that is required to accomplish an essential element of the Project; and (iii) to the extent required as described in Section 3 hereof.

(b) **“Information”** means, collectively, all information, documents, data, reports, notes, studies, projections, records, manuals, graphs, electronic files, computer generated data or

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information, drawings, charts, tables, diagrams, photographs, and other media or renderings containing or otherwise incorporating information that may be provided or made accessible at any time, whether in writing, orally, visually, photographically, electronically or in any other form or medium, including, without limitation, any and all copies, duplicates or extracts of the foregoing.

(c) **“Protected Information”** means and includes collectively, Confidential Information, Confidential Privileged Information, (including Sensitive Security Information (SSI), Critical Infrastructure Information (CII) or Health Insurance Portability and Accountability Act (HIPAA)) Information and Information that is labeled, marked or otherwise identified by or on behalf of the Port Authority so as to reasonably connote that such information is confidential, privileged, sensitive or proprietary in nature and in the case of Confidential Privileged Information is marked as such (or as “Sensitive Security Information” or “Critical Infrastructure Information or “HIPAA information”). The term Protected Information shall also include all work product that contains any of the foregoing, whether in whole or in part, regardless of whether prepared by the Recipient, the Port Authority or others, or when the Port Authority receives such information from others and agrees to treat such information as Protected. The following Information shall not constitute Protected Information for the purpose of this Agreement:

- (i) Particular Information, other than Confidential Privileged Information, that is provided to the Recipient by a source other than the Port Authority, provided that such source has not provided such Confidential Privileged Information in breach of a confidentiality agreement, or similar obligation that it has with or for the benefit of the Port Authority, with respect to such Information and that the identity of such source is not itself part of such Protected Information.
- (ii) Information that is or becomes generally available to the public other than as a result of a disclosure by the Recipient or a Related Party in violation of this Agreement.
- (iii) Information that is known to or was in the possession of the Recipient or a Related Party on a non-confidential basis prior to the disclosure of such Information by the Port Authority.
- (iv) Information that is furnished to the Recipient by a third party who is not subject to a confidentiality agreement or similar obligation that it has with or for the benefit of the Port Authority with respect to such Information.
- (v) Information that is independently developed by the Recipient and is not derived by the Recipient from the Protected Information of the Port Authority.

(d) **“Confidential Information”** means and includes collectively, any and all Information, documents and materials entitled to protection as a public interest privilege under

New York State law, and as may be deemed to be afforded or entitled to the protection of any other privilege recognized under New York and/or New Jersey state laws or Federal laws. It also includes information that contains sensitive financial, commercial or other proprietary business information concerning or relating to the Port Authority, its projects, operations or facilities that would be exempt from release under the Port Authority Freedom of Information Code.

(e) **“Confidential Privileged Information”** means and includes collectively, (i) Information (including Confidential Information marked to indicate “security sensitivity” or words of substantially similar effect, Sensitive Security Information, Critical Infrastructure Information and information obtained through Sensitive Security Information, Critical Infrastructure Information and information conveyed as a result of unescorted access to secure areas) that reveals security risks, threats, vulnerabilities, documentation that identifies specific physical security vulnerabilities or revealing specific security vulnerabilities details related to emergency response protocols, egress plans, flow paths, egress capacities, (diagrams, codes, standards) etc., which is not publicly available, and (ii) any and all Information, documents and materials entitled to protection as a public interest privilege under New York State law and as may be deemed to be afforded or entitled to the protection of any other privilege recognized under New York and/or New Jersey state laws or Federal laws, and (ii) certain identified Critical Infrastructure Information or Sensitive Security Information or information subject to the HIPAA.

(f) **“Confidentiality Control Procedures”** means procedures, safeguards and requirements for the identification, processing, protection, handling, care, tracking and storage of Protected Information which are developed by a Party and are sufficient to meet the requirements of applicable federal or state law, the Port Authority Handbook, and by the terms of this Agreement.

(g) **“Critical Infrastructure Information”** (CII) has the meaning set forth in the Homeland Security Act of 2002, under the subtitle Critical Infrastructure Information Act of 2002 (6 U.S.C. §131-134), and any rules or regulations enacted pursuant thereto, including, without limitation, the Office of the Secretary, Department of Homeland Security Rules and Regulations, 6 C.F.R. Part 29 and any amendments thereto. CII may also be referred to as “Protected Critical Infrastructure Information” or “PCII”, as provided for in the referenced rules and regulations and any amendments thereto.

(h) **“Sensitive Security Information”** (SSI) has the definition and requirements set forth in the Transportation Security Administrative Rules & Regulations, 49 CFR 1520, (49 U.S.C. §114) and in the Office of the Secretary of Transportation Rules & Regulations, 49 CFR 15, (49 U.S.C. §40119).

(i) **“Health Insurance Portability and Accountability Act”** (HIPAA) Information Employees, associates or other contract personnel who have access to Protected Health Information (PHI) must refer to, and comply with, the Privacy Policies and Procedures to Protect Personal Health Information. Privacy regulations issued under the Health Insurance Portability and Accountability Act of 1996 (“HIPAA” or “Privacy Laws”) place restrictions on the Group Health Plans of the Port Authority and PATH (the “Plans”) ability to use and disclose Protected Health Information (“PHI”).

(j) **“Port Authority Handbook”** means The Port Authority of New York and New Jersey. Information Security Handbook, as may be amended by the Port Authority, from time to time.

(k) **“Project Purposes”** means the use of Protected Information strictly and only for purposes related to the Recipient’s and its Related Parties’ participation and involvement in the Project, and only for such period of time during which the Recipient and its Related Parties are involved in Project related activities.

(l) **“Related Party”** and **“Related Parties”** means (i) the directors, employees, officers, partners or members of the Recipient, as applicable, (ii) the Recipient’s outside consultants, attorneys, advisors, accountants, architects, engineers or subcontractors or sub-consultants to the extent such parties are entities and not individuals, and (iii) the respective directors, employees, officers, partners or members of the parties specified in subparagraph (ii), who are individuals, in each case to whom any Protected Information is disclosed or made available.

2. **Use of Protected Information.** All Protected Information shall be used by the Recipient in accordance with the following requirements:

(a) All Protected Information shall be held in confidence and shall be processed, treated, disclosed and used by the Recipient and its Related Parties only for Project Purposes and in accordance with the Confidentiality Control Procedures established pursuant to Paragraph 2(c), below, including, without limitation, the Port Authority Handbook. In addition, for Confidential Privileged Information (which also includes Critical Infrastructure Information, Sensitive Security Information and unescorted access to secure areas), and such Protected Information may be disclosed, only if and to the extent that such disclosure is an Authorized Disclosure. The Recipient is acknowledging its obligations hereunder and the obligation shall be separately acknowledged by its Related Party under subparagraph (iii) of the definition of that term by signing the Acknowledgement attached hereto as Exhibit A. The Recipient shall be fully responsible for its Related Parties’ compliance with this Agreement. Any breach of the terms of this Agreement by the Recipient’s Related Party shall be deemed to be a breach by the Recipient.

(b) The Recipient and each Related Party acknowledges and agrees that (i) any violation by the Recipient or any of its Related Parties of the terms, conditions or restrictions of this Agreement relating to Protected Information may result in penalties and other enforcement or corrective action as set forth in such statutes and regulations, including, without limitation, the issuance of orders requiring retrieval of Sensitive Security Information and Critical Infrastructure Information to remedy unauthorized disclosure and to cease future unauthorized disclosure and (ii) pursuant to the aforementioned Federal Regulations, including, without limitation, 49 C.F.R. §§ 15.17 and 1520.17, any such violation thereof or mishandling of information therein defined may constitute grounds for a civil penalty and other enforcement or corrective action by the United States Department of Transportation and the United States Department of Homeland Security, and appropriate personnel actions for Federal employees.

(c) The Recipient covenants to the Port Authority, for itself and its Related Parties which are not individuals, that it and its non-individual Related Parties have established and



implemented Confidentiality Control Procedures that will apply to the handling, receipt, care, and storage of Protected Information and which have been or will be implemented to control and safeguard against any violation of the requirements of this Agreement and against any unauthorized access, disclosure, modification, loss or misuse of Protected Information. The Recipient and its Related Parties shall undertake reasonable steps consistent with such Confidentiality Control Procedures to assure that disclosure of Protected Information is compartmentalized, such that all Protected Information shall be disclosed only to those persons and entities authorized to receive such Information as an Authorized Disclosure under this Agreement and applicable Confidentiality Control Procedures. The Recipient's or its Related Party's Confidentiality Control Procedures shall, at a minimum, adhere to, and shall not be inconsistent with, the procedures and practices established in the Port Authority Handbook.

(d) The Port Authority reserves the right to audit the Recipient's Confidentiality Control Procedures and those of its Related Parties required to have procedures hereunder, as applicable, to ensure that it is in compliance with the terms of this Agreement.

(e) The Port Authority may request in writing that the Recipient or its Related Parties apply different or more stringent controls on the handling, care, storage and disclosure of particular items of Protected Information as a precondition for its disclosure. The Port Authority may decline any request by the Recipient or any of its Related Parties to provide such item of Protected Information if the Recipient or any of its Related Parties does not agree in writing to apply such controls.

(f) Nothing in this Agreement shall require the Port Authority to tender or provide access to or possession of any Protected Information to the Recipient or its Related Parties, whether or not the requirements of this Agreement are otherwise satisfied. However, if such Protected Information is provided and accepted, the Recipient and its Related Parties shall abide by the terms, conditions and requirements of this Agreement.

(g) The Recipient agrees to be responsible for enforcing the provisions of this Agreement with respect to its Related Parties, in accordance with its Confidentiality Control Procedures. Except as required by law pursuant to written advice of competent legal counsel, or with the Port Authority's prior written consent, neither the Recipient, nor any of its Related Parties shall disclose to any third party, person or entity: (i) any Protected Information under circumstances where the Recipient is not fully satisfied that the person or entity to whom such disclosure is about to be made shall act in accordance with the Confidentiality Control Procedures whether or not such person or entity has agreed in writing to be bound by the terms of this Agreement or any "Acknowledgement" of its terms or (ii) the fact that Protected Information has been made available to the Recipient or such Related Parties, or the content or import of such Protected Information. The Recipient is responsible for collecting and managing the Acknowledgments signed by any of its Related Parties as required hereunder. Recipient shall, at the Port Authority's request, provide the Port Authority a list of all Related Parties who have signed an Acknowledgment, and copies of such Acknowledgments.

(h) As to all Protected Information provided by or on behalf of the Port Authority, nothing in this Agreement shall constitute or be construed as a waiver of any public interest privilege or other protections established under applicable state or federal law.



3. **Disclosures and Discovery Requests.** If a subpoena, discovery request, Court Order, Freedom of Information Request, or any other request or demand authorized by law seeking disclosure of the Protected Information is received by the Recipient or its Related Party, the Recipient shall notify the Port Authority thereof, to the extent permitted by law, with sufficient promptness so as to enable the Port Authority to investigate the circumstances, prepare any appropriate documentation and seek to quash the subpoena, to seek a protective order, or to take such other action regarding the request as it deems appropriate. In the absence of a protective order, disclosure shall be made, in consultation with the Port Authority, of only that part of the Protected Information as is legally required to be disclosed. If at any time Protected Information is disclosed in violation of this Agreement, the Recipient shall immediately give the Port Authority written notice of that fact and a detailed account of the circumstances regarding such disclosure to the Port Authority.

4. **Retention Limitations; Return of Protected Information.** Upon the Port Authority's written request, such Protected Information, all writings and material describing, analyzing or containing any part of such Protected Information, including any and all portions of Protected Information that may be stored, depicted or contained in electronic or other media and all copies of the foregoing shall be promptly delivered to the Port Authority at Recipient's expense. In addition, as to Protected Information that may be stored in electronic or similar form, such Protected Information shall be deleted and completely removed so that such Protected Information is incapable of being recovered from all computer databases of the Recipient's and its Related Parties, if requested by the Port Authority. The Recipient may request in writing that the Port Authority consent to destruction of Protected Information, writings and materials in lieu of delivery thereof to the Port Authority. The Port Authority shall not unreasonably withhold its consent to such request. If the Port Authority consents to such destruction, the Recipient and each of its Related Parties shall deliver to the Port Authority a written certification by such Recipient and such Related Parties that such Protected Information, writings and materials have been so destroyed within such period as may be imposed by the Port Authority. Notwithstanding the foregoing, to the extent required for legal or compliance purposes, such Recipient may retain copies of Protected Information (in any format), provided that (a) the Port Authority is notified in writing that information has been retained; and (b) such Recipient continues to abide by the requirements of this Agreement with respect to the protection of such Protected Information.

5. **Duration and Survival of Confidentiality Obligations.** The obligations under this Agreement shall be perpetual and remain in effect until and unless the parties agree that some or all of the Protected Information does not require further protection or until such time as the Protected Information is no longer considered protected, confidential and/or privileged by the Port Authority.

6. **Severability.** Each provision of this Agreement is severable and if a court should find any provision of this Agreement to be unenforceable, all other provisions of this Agreement shall remain in full force and effect.

7. **Injunctive and Other Relief.** The Recipient and its Related Parties acknowledge that the unauthorized disclosure and handling of Protected Information is likely to have a material adverse and detrimental impact on public safety and security and could significantly endanger the Port Authority, its facilities (including, without limitation, the Project site), its patrons and

the general public and that damages at law are an inadequate remedy for any breach, or threatened breach, of this Agreement by the Recipient or its Related Parties. The Port Authority shall be entitled, in addition to all other rights or remedies, to seek such restraining orders and injunctions as it may deem appropriate for any breach of this Agreement, without being required to show any actual damage or to post any bond or other security.

8. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of New York, without regard to conflict of laws principles. The Port Authority (subject to the terms of the Port Authority Legislation (as defined below)) and the Recipient specifically and irrevocably consent to the exclusive jurisdiction of any federal or state court in the County of New York and State of New York with respect to all matters concerning this Agreement and its enforcement. The Port Authority (subject to the terms of the Port Authority Legislation (as defined below)) and the Recipient agree that the execution and performance of this Agreement shall have a New York situs and, accordingly, they each consent (and solely with respect to the Port Authority, subject to the terms of the Port Authority Legislation (as defined below)) to personal jurisdiction in the State of New York for all purposes and proceedings arising from this Agreement. “**Port Authority Legislation**” shall mean the concurrent legislation of the State of New York and State of New Jersey set forth at Chapter 301 of the Laws of New York of 1950, as amended by Chapter 938 of the Laws of New York of 1974 (McKinney’s Unconsolidated Laws §§7101-7112) and Chapter 204 of the Laws of New Jersey of 1951 (N.J.S.A. 32:1-157 to 32:1-168).

9. **Notices.** Any notice, demand or other communication (each, a “**notice**”) that is given or rendered pursuant to this Agreement by either party to the other party, shall be: (i) given or rendered, in writing, (ii) addressed to the other party at its required address(es) for notices delivered to it as set forth below, and (iii) delivered by either (x) hand delivery, or (y) nationally recognized courier service (e.g., Federal Express, Express Mail). Any such notice shall be deemed given or rendered, and effective for purposes of this Agreement, as of the date actually delivered to the other party at such address(es) (whether or not the same is then received by other party due to a change of address of which no notice was given, or any rejection or refusal to accept delivery). Notices from either party (to the other) may be given by its counsel.

The required address(es) of each party for notices delivered to it is (are) as set forth below. Each party, however, may, from time to time, designate an additional or substitute required address(es) for notices delivered to it, provided that such designation must be made by notice given in accordance with this Paragraph 9.

Original to the Port Authority: Jim Steven  
The Port Authority of New York and New Jersey  
JFK Building 14, 3<sup>rd</sup> Floor - Redevelopment  
Jamaica NY 11430

with a copy to: The Port Authority of New York and New Jersey  
4 World Trade Center  
150 Greenwich Street, 24<sup>th</sup> Floor  
New York, NY 10007  
Attn: General Counsel's Office c/o Caroline Ioannou, Law DISO

If to the Recipient: TerminalCo:  
1001 Pennsylvania Avenue, NW  
Washington, DC 20004-2505  
Attention: Peter Taylor /Kevin Gasque /Amit Rikhy  
Email: Peter.Taylor@carlyle.com/ Kevin.Gasque@carlyle.com/  
arikhy@cagholdings.com

10. **Entire Agreement.**

(a) This Agreement contains the complete statement of all the agreements among the parties hereto with respect to the subject matter thereof, and all prior agreements among the parties hereto respecting the subject matter hereof, whether written or oral, are merged herein and shall be of no further force or effect.

(b) Notwithstanding subsection (a) above, the mutual non-disclosure and confidentiality agreement entered into by and between Terminal One Group Association, L.P. (“**TOGA**”) and the Port Authority dated February 26, 2018 (as amended from time to time, the “**Existing NDA**”) shall continue in full force and effect (x) in respect of TOGA, until such time as it executes a new non-disclosure and confidentiality agreement substantially in the form of this Agreement (which it must do in order to access Confidential Privileged Information) and (y) in respect of TerminalCo, as it relates to (i) information (including Protected Information) exchanges between the Parties prior to the date hereof and (ii) all confidential information (as described in the Existing NDA) provided to the Port Authority or its related parties under the Existing NDA, as Recipients thereunder. This Agreement may not be changed, modified, discharged, or terminated, except by an instrument in writing signed by all of the parties hereto.

11. **Existing NDA.** The Parties agree that from and after the date hereof TerminalCo shall be deemed a direct Party to the Existing NDA, and its Confidential Information treated in accordance therewith, as if it had been an original signatory to the Existing NDA.

12. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original, but all of which shall be one and the same document.

13. **Parties Bound.** This Agreement shall be binding upon the Recipient and its successors. The foregoing shall not be affected by the failure of any Related Party to comply with the terms of this Agreement.

14. **Authority.** The Recipient represents that the undersigned individual(s) executing this Agreement on behalf of the Recipient below is authorized to execute this Agreement on behalf of such Recipient and to legally bind such party.

15. **Disclosure of Ownership Rights or License.** Nothing contained herein shall be construed as the granting or conferring by the Port Authority of any rights by ownership, license or otherwise in any Information.

16. **No Liability.** No Recipient, the Commissioners of the Port Authority, nor any of them, nor any officer, agent or employee thereof, shall be charged personally with any liability, or held liable to under any term or provision of this Agreement, or because of its execution or attempted execution or because of any breach, or attempted or alleged breach thereof.


17. **Construction.** This Agreement is the joint product of the parties hereto and each provision of this Agreement has been subject to the mutual consultation, negotiation, and agreement of the parties hereto, and shall not be construed for or against any party hereto. The captions of the various sections in this Agreement are for convenience only and do not, and shall not be deemed to, define, limit or construe the contents of such Sections.

*[Signature page to follow]*

**RECIPIENT:**

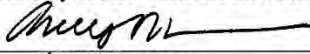
JFKTerminalOneCo, LLC

By: CAG Mars, LLC, its Managing Member

By:   
Name: Peter Taylor  
Title: Managing Director

**PORT AUTHORITY:**

The Port Authority of New York and New Jersey

By:   
Name: AMY FISHER  
Title: FIRST DEPUTY GENERAL COUNSEL

**EXHIBIT D-2**

**FORM OF ACKNOWLEDGEMENT BY RELATED PARTY ENTITY**

The undersigned, [1. Name], is the [2. Title] of [3. Company], a [4. Indicated whether entity is LLC, Corp, Inc. etc and jurisdiction of formation State] (“**Related Party**”), located at [5. Full street address, city, state and zip code], and is duly authorized to execute this Acknowledgment on behalf of the above Related Party. The above Related Party is involved with the functions of [6. Function(s)] in connection with JFK Terminal One for The Port Authority of New York and New Jersey (the “**Port Authority**”). I acknowledge and confirm that the above named Related Party has been provided with a copy of and shall be bound and shall abide by all of the terms, requirements and conditions set forth in the Non- Disclosure and Confidentiality Agreement dated June 27, 2019 between JFK NTO LLC (the “**Recipient**”) and the Port Authority (hereinafter the “**Agreement**”), and by the Port Authority Handbook described in the Agreement. Appropriate and responsible officers and employees of the Related Party have carefully read and understand the terms and conditions of the Agreement. The Related Party has notice and acknowledges that any breach or violation of such terms, requirements and conditions may result in the imposition of remedies or sanctions as set forth or otherwise described therein against such Related Party.

Signature: \_\_\_\_\_

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

Date: \_\_\_\_\_

**EXHIBIT D-3**

**FORM OF ACKNOWLEDGEMENT BY INDIVIDUAL RELATED PARTY**

I, **[1]** (“**Individual Related Party**”), am employed as a(n) **[2]** by **[3]**. I have been provided with and have read the Non-Disclosure and Confidentiality Agreement between JFKTerminalOneCo, LLC (the “**Recipient**”) and The Port Authority of New York and New Jersey (the “**Port Authority**”) dated June 27th, 2019, (hereinafter the “**Agreement**”), and the Port Authority Handbook attached to the Agreement. I understand that because of my employer’s relationship with JFKTerminalOneCo, LLC, both my employer and I may be provided with access to, and/or copies of, Confidential Privileged Information (as defined in the Agreement). If it is required for me to review or receive Confidential Privileged Information, I acknowledge that I will be bound by each and every term and provision contained therein, and that failure to do so may include, but is not limited to, the imposition of disciplinary action and sanctions, and/or the institution of legal action seeking injunctive relief, monetary and/or criminal penalties for violation of law and/or Port Authority policies and procedures, as well as for violation of federal and/or state regulations.

To the extent that I am currently in the possession of, or have previously come into contact with, Confidential Privileged Information as it relates to the aforementioned Agreement, I agree to conform my handling procedures for the above information to the practices and procedures set forth and defined herein, or risk loss of access to said Confidential Privileged Information, removal from said Project and/or subjecting myself to the aforementioned disciplinary actions and/or civil and criminal penalties.

Signature: \_\_\_\_\_

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

Date: \_\_\_\_\_



**EXHIBIT E**

**INSURANCE REQUIREMENTS**

**SECTION I. Minimum Insurance Requirements**

- a) Contractor shall provide, pay for, and maintain in effect the following types and amounts of coverage with insurance companies duly licensed and admitted to do business in the State of New York, with an AM Best Rating of A, VIII or better and/or approved by the Port Authority and with policy forms acceptable to NTO. Coverage shall be maintained for the duration of the Agreement, or as otherwise specified in this Agreement. All Contractor’s insurance shall be primary insurance and shall not be considered contributory insurance with any insurance policies of NTO or any other Additional Insureds. The insurance maintained by NTO or any other Additional Insureds shall apply in excess of all insurance coverage herein requested of Contractor, regardless of whether such Contractor insurance coverage is primary, contingent or on any other basis, and whether such insurance is valid or collectible.
  
- b) Contractor shall require any subcontractor of all tiers, or any other party performing work or rendering services on behalf of Contractor in the performance of this Agreement, to maintain and provide evidence of similar coverage as stated herein or as otherwise instructed by NTO. Before the commencement of the Services, Contractor shall provide NTO with evidence of insurance satisfactory to NTO including, but not limited to, certificates of insurance accompanied by any endorsements necessary to demonstrate compliance with the requirements herein, policy declarations pages from each policy, the forms listing of each policy, and the underlying schedule of insurance from the Umbrella/Excess policy. NTO reserves the right to request a copy of all policies stated herein. Such copies must be certified by Contractor’s insurance broker as true and original copies and will be provided within ten (10) days of being requested.

<b>Workers’ Compensation and Employers’ Liability</b>		
<b>Minimum Required Limits:</b>		Workers’ Compensation - Statutory Limits Employers’ liability: <ul style="list-style-type: none"><li>- \$1,000,000 Each Accident for Bodily Injury by Accident</li><li>- \$1,000,000 Each Employee for Bodily Injury by Disease</li><li>- \$1,000,000 Aggregate Policy Limit for Bodily Injury by Disease</li></ul>
<b>Required Terms and Conditions:</b>		NCCI Workers’ Compensation and Employers’ Liability Insurance Policy form Waiver of Subrogation in favor of the Additional Insureds

<b>Commercial General Liability</b>	
<p>Contractor will maintain Commercial General Liability insurance covering all ongoing and completed operations by or on behalf of Contractor on an occurrence basis against claims for bodily injury, property damage (including the loss of use thereof), personal injury and advertising injury. Such insurance will have these minimum limits, terms and conditions:</p>	
<b>Minimum Required Limits:</b>	<p>Each Occurrence: \$5,000,000</p> <p>General Aggregate: \$5,000,000</p> <p>Personal &amp; Advertising Injury: \$5,000,000</p> <p>Products and Completed Operations Aggregate: \$5,000,000</p> <p>(Limits may be a combination of Primary and Umbrella/Excess policies)</p>
<b>Required Terms and Conditions:</b>	<p>ISO Commercial General Liability Policy (Occurrence Form) Form CG 00 01 04/13 or equivalent</p> <p>Products and Completed Operations coverage maintained the longer of the applicable statute of repose or six (6) years after contract completion</p> <p>Blanket Contractual Liability</p> <p>Independent Contractors</p> <p>Broad Form Property Damage</p> <p>Cross Liability and Severability of Interest</p> <p>No exclusion for Explosion, Collapse and Underground (XCU) coverage</p> <p>No exclusion for Labor Law Action Over Claims</p> <p>Personal Injury and Advertising Injury</p> <p>Incidental Medical Malpractice</p> <p>Acts of Terrorism</p> <p>No exclusion for care, custody and control.</p> <p>No exclusion for damage to aircraft.</p> <p>No insured vs. insured exclusion.</p> <p>No exclusion for demolition.</p> <p>Include coverage for sprinkler leakage and water damage legal liability.</p> <p>Include as Additional Insureds – NTO and the other Additional Insureds utilizing the ISO CG 2010 04/13 and CG 2037 04/13 or their equivalent</p> <p>Waiver of Subrogation in favor of NTO and all other Additional Insureds in this Agreement</p> <p>Annually reinstating limits of insurance</p> <p>If Services described herein include handling of cargo and/or baggage, coverage shall extend to liability arising out of such Services</p> <p>Aggregate limits on a per project basis</p>

<b>Automobile Liability</b>	
Contractor will maintain Business Auto Liability covering liability arising out of the use of any automobiles (including owned, non-owned and hired automobiles)	
<b>Minimum Required Limits:</b>	\$25,000,000 Combined Single Limit Each Accident – Airside only \$5,000,000 Combined Single Limit Each Accident – Non-Airside
<b>Required Terms and Conditions:</b>	ISO Business Auto Policy or Equivalent Waiver of Subrogation in favor of NTO and all other Additional Insureds Include as Additional Insureds – NTO and the other Additional Insureds

<b>Professional Liability (Errors and Omissions)</b>	
Contractor will purchase and maintain Professional Liability insurance covering the Professional Services provided in this Agreement	
<b>Minimum Required Limits:</b>	\$10,000,000 per claim and in the aggregate
<b>Required Terms and Conditions:</b>	Insured’s Interest in Joint Ventures (if applicable) Punitive Damages Coverage (where not prohibited by law) Limited Contractual Liability Retroactive Date Prior to Start of Services Extended Reporting Period of one hundred twenty (120) Months Waiver of Subrogation in favor of NTO and all other Additional Insureds in this Agreement

<b>Pollution Liability</b>	
Contractor will purchase and maintain Pollution Liability insurance covering third-party injury and property damage claims, including cleanup costs, as a result of pollution conditions arising from the Services.	
<b>Minimum Required Limits:</b>	\$5,000,000 per claim and in the aggregate
<b>Required Terms and Conditions:</b>	NTO and all Additional Insureds included as Additional Insured Retroactive Date Prior to Start of Work Completed Operations to continue in force for seventy-two (72) months after completion of the Services Separation of Insured clause with no exclusion for Insured versus Insured claims Waiver of Subrogation in favor of NTO and all other Additional Insureds in this Agreement

<b>Cyber Liability</b>	
<p>Cyber liability insurance is required for contractors or subcontractors that provide IT-related services and/or collect, process, manage or store sensitive patient data, personal or financial data, or if they have access to NTO networks/systems or connect to any of the Port Authority's infrastructure systems.</p>	
<b>Minimum Required Limits:</b>	\$5,000,000 per claim and in the aggregate
<b>Required Terms and Conditions:</b>	<p>Waiver of Subrogation in favor of NTO and all other Additional Insureds                      Coverage shall be maintained by Contractor for duration of works and six (6) years thereafter                      Include as Additional Insureds – NTO and the other Additional Insureds                      Such insurance shall include the following coverages:</p> <p style="padding-left: 40px;">(1) liability arising from theft, dissemination and/or use of confidential information stored or transmitted in electronic form; (2) liability arising from the introduction of a computer virus into, or otherwise causing damage to, a customer’s or third person’s computer, computer system, network or similar computer-related property and the data, software and programs stored thereon; (3) the interruption of services directly or ancillary to the operation of critical infrastructure systems of the Port Authority. (4) coverage for loss, disclosure and theft of data in any form; media and content rights infringement and liability, including but not limited to, software copyright infringement; and network security failure or breach, including but not limited to, denial of service attacks and transmission of malicious code; (5) coverage for data breach regulatory fines and penalties, the cost of notifying individuals of a security or data breach, the cost of credit monitoring services and any other causally related crisis management expense for the duration of the claim.</p> <p>Coverage shall include contractual liability                      Coverage shall include a severability of interests clause</p>

**Excess Liability**

Limits required herein may be accomplished through the use of excess liability policies. Such policies shall be written on no less than a follow form basis (no more restrictive than the underlying insurance). Umbrella coverage shall be maintained by Contractor for six (6) years, after Contractor ceases to operate at the Premises. Underlying insurance shall include general liability, employers liability, automobile liability, and other policies as needed to meet minimum limit requirements.

**SECTION II. Other Provisions**

- A. Waiver of Subrogation: To the fullest extent permitted by law, Service provider hereby waives all rights of recovery whether under subrogation or otherwise, because of deductible clauses, inadequacy of limits of any insurance policy, limitations or exclusions of coverage, against Developer and all Additional Insureds, and any other party performing work or rendering

- services on behalf of Developer in connection with the planning, development and construction of the Project. Service provider shall also require that all insurance policies of any subcontractors retained by Service provider include clauses providing that each insurance underwriter shall waive all of its rights of recovery by subrogation or otherwise against Developer and all Additional Insureds, and any other party performing work or rendering services on behalf of Developer in connection with the planning, development and construction of the Project. A waiver of subrogation shall be effective as to any individual or entity even if such individual or entity (a) would otherwise have a duty of indemnification, contractual or otherwise, (b) did not pay the insurance premium directly or indirectly, and (c) whether or not such individual or entity has an insurable interest in the property damaged.
- B. Sole Responsibility: The aforementioned coverage, as well as any other coverage that Service provider may consider necessary, are Service provider’s sole responsibility, and any deficiency in the coverage or policy limits of Service provider’s insurance will be the sole responsibility of Service provider.
- C. Additional Insureds: All policies, with the exception of workers compensation and professional liability, must name the entities listed in Section III and any of their direct or indirect members, partners, subsidiaries and/or affiliates, heirs, assigns, successors, agents, officers, directors and/or employees, and such other entities hereafter as may be reasonably requested by Developer, as additional insureds (the “**Additional Insureds**”). Coverage afforded to the Additional Insureds shall apply on a primary basis, Endorsement form CG 20 10 11/85 (Form B) or its equivalent (combination of forms CG 2010 04/13 and CG 2037 04/13 is acceptable) and must provide coverage within the Products and Completed Operations coverage section.
- D. Developer’s receipt of or failure to object to any insurance certificates or policies submitted by Service provider does not release or diminish in any manner the liability or obligations of Service provider, or constitute a waiver of any of the insurance requirements under this Agreement.
- E. Replacement certificates of insurance evidencing continuation of Service provider’s coverage must be furnished to Developer at least 10 days prior to the expiration of the current policies.
- F. The limits of liability shown for each type of insurance coverage to be provided by the Service provider pursuant to this agreement are minimum limits only and do not limit Service provider’s liability or obligations. In the event the Service provider maintains any of the foregoing insurance in limits greater than aforesaid, the Additional Insureds shall be included therein as an additional insured to the full extent of all such insurance in accordance with all terms and provisions hereof.
- G. Service provider must pay all deductible amounts associated with the required insurance. Service provider must also timely pay the premiums for all insurance required under the agreement.
- H. Each policy must include a cross-liability and severability of interests clause.
- I. Each policy shall be endorsed to provide a notice of cancellation to Client with at least 90 days for any reason and 30 days for non payment.
- J. Failure of Service provider to comply with the requirements of this Section is a material breach of this agreement. If Service provider fails to comply with requirements of this Section, then

in addition to its other remedies, Developer may direct Service provider to suspend performance of the work until Service provider demonstrates compliance.

K. Developer may, at any such time, require commercially reasonable additions, deletions, amendments or modifications to the above-scheduled insurance requirements, or may require such other and additional insurance, in such reasonable amounts, against such other insurable hazards, as the Developer may deem required.

L. Certificate Holder:

JFK NTO LLC  
JFK Building 111  
154-20-154-42 134th St. 3rd floor  
Jamaica, New York 11430  
Attn: Legal Department; Insurance

M. Additional Insureds

JFKTerminalOneCo, L.P.  
JFKTerminalOneCo, LLC  
JFK TerminalCo GP, LLC  
JFK NTO TRS LLC  
JFK NTO LLC  
JFK NTO HoldCo LLC  
JFK NTO Sponsor Aggregator LLC  
Mars NTO LLC  
Ferrovia S.E.  
Ferrovia Airports Holding US Corp.  
Ferrovia Airports US Terminal One, LLC  
Ferrovia Airports US Operation and Management Services, LLC  
Ferrovia Holding US Corp.  
Cintra Infraestructuras SE  
Ferrovia International SE  
Ullico Infrastructure JFK Financial Aggregator Holdco, LLC  
Ullico Infrastructure JFK Holdco, LLC  
Ullico Infrastructure JFK REIT, LLC  
UIF GP, LLC  
JLC JFK Aggregator L.P.  
JLC JFK LLC  
JLC GP I LLC

MJE-Loop Capital Partners LLC

CAG Mars LLC

CAG Holdings, LLC

CGI Phoenix Aggregator, L.P.

The Carlyle Group

Project Management Office

The City of New York

The Economic Development Council

The Collateral Agent

The Port Authority of New York and New Jersey, each Commissioner of the Port Authority of New York and New Jersey and each officer, director, agent, employee and authorized representative of the City of New York, the Economic Development Council, and the Port Authority of New York and New Jersey,

- and -

with respect to each of the entities listed herein, each of their parents, subsidiaries and affiliates (existing currently or in the future), successors, and their respective officers, partners, members, managers, shareholders, directors, employees, agents, tenants, property managers, and representatives, such other individuals and/or entities as may be designated by NTO, and NTO's current lenders and co-investors and/or future lender(s) or co-investor(s).

The foregoing list of Additional Insureds specified herein may be amended by NTO from time to time to add additional NTO entities as may be reasonably required and any party required by NTO's current or future lender(s).

JFK NTO LLC – Vale and Other Low Emissions Grant Administration– NTO-RFQ-VALE-202409

EXHIBIT F

NTO GENERAL TERMS AND CONDITIONS

**I. DEFINITIONS**

Unless otherwise defined herein, the capitalized terms used in this Exhibit shall be defined as follows:

“**Affiliate**” of a Person means any other Person directly or indirectly Controlling or Controlled by, or under direct or indirect common Control with, such Person (including persons managed or advised by an entity under common control with it).

“**Airport**” shall mean the John F. Kennedy International Airport.

“**Applicable Standards**” means (i) the Rules and Regulations, and (ii) Good Order Requirements.

“**Best Management Practices**” means the exercise of the degree of skill, diligence, prudence, and foresight that would reasonably and ordinarily be expected from time to time from a skilled and experienced contractor or provider in the Contractor’s business, seeking in good faith to comply with its contractual obligations, with the Agreement, all Applicable Laws, and Applicable Standards, and engaged in the same type of undertaking under similar circumstances and conditions. Best Management Practice is not static, but rather, will change over time; provided, however, that Best Management Practice with respect to any specific activity will be determined at the time when such specific activity is performed.

“**City**” means the City of New York.

“**Claims**” shall mean any and all losses, liabilities, damages, obligations, expenses, fines, penalties, costs, claims, causes of action, and judgments, whether based on contract, tort, or any other theory. The term “**Claims**” also includes reasonable attorneys’ fees, court costs, and other reasonable costs of litigation resulting from the defense of any claim or cause of action within the scope of the indemnities in this Agreement.

“**Compensation**” shall mean the compensation detailed in Schedule B to the Agreement.

“**Contractor Representations and Warranties**” shall include all such representations and warranties made by the Contractor herein, including, without limitation, such representations and warranties delineated in Article II of this Schedule A with respect to matters concerning OFAC, Port Authority Requirements, and Environmental Health and Safety Laws, and the Unauthorized Payments Representations.

“**Control**” means the power to direct the management and policies of such Person, directly or indirectly, whether through the ownership of voting securities or otherwise, and the terms “Controlling” and “Controlled” have meanings correlative to the foregoing.

“**EDC**” means the New York City Economic Development Corporation.

“**Environmental Health and Safety Laws**” means all applicable federal, state, local and foreign laws, statutes, ordinances, rules, regulations, orders and directives, including the Airport’s, NTO’s, or the Port Authority’s rules, regulations, policies, or requirements relating to pollution or the environment, including, without limitation, laws and regulations relating to emissions to the air, discharges to surface and subsurface waters, safe drinking water, the storage, release, disposal, transport or handling of chemicals, pollutants, contaminants, wastes, Hazardous Materials, or petroleum products, requirements



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of the Occupational Safety and Health Agency, and aircraft noise, vibration, exhaust, and overflight.

“**Excusable Delays**” means (a) acts of God, war, terrorism, warlike operations, insurrections, or riots; (b) fires, floods or explosions; serious accidents; epidemics or quarantine restrictions; and (c) any act of governmental priorities, governmental allocation regulations or orders affecting the Services.

“**FAA**” means the Federal Aviation Administration.

“**Hazardous Materials**” means any substance, material, chemical, or waste that is listed, defined, designated or classified as, or otherwise determined to be, hazardous, radioactive or toxic or a pollutant or a contaminant under any Environmental Health and Safety Laws, including any admixture or solution thereof, and including petroleum and all derivatives thereof, polychlorinated biphenyls and asbestos or asbestos-containing materials.

“**Lease**” means that certain Agreement of Lease between the Port Authority and NTO with respect to the New Terminal One at the Airport.

“**Minority Business Enterprises**” or “**MBEs**” means a business entity which is at least 51% owned and controlled by one or more members of one or more minority groups, or, in the case of a publicly held corporation, at least 51% of the stock which is owned by one or more minority groups, and which management and daily business operations are controlled by one or more such individuals who are citizens or permanent resident aliens of the United States of America.

“**NTO Directives**” means any and all standard operating procedures, bulletins, directives, and restrictions, including, without limitation, all customer care guidelines, guest experience standards, and safety & security policies, published, promulgated, or distributed, whether directly communicated to the Contractor or otherwise made generally available to all NTO contractors, which may be established by or on behalf of NTO from time to time with respect to NTO’s operation of the Airport and all attendant matters.

“**Person**” means, where the context permits or requires, any natural person, business, corporation, company, association, limited liability company, partnership, limited partnership, limited liability partnership, joint venture, business enterprise, trust, governmental authority or other legal entity.

“**Port Authority**” or “**PANYNJ**” means The Port Authority of New York and New Jersey.

“**Project**” means that certain project pursuant to which Terminal Three, and certain other areas and facilities at the Airport, Terminal Two, and the existing Terminal One at the Airport will be demolished and replaced, and NTO will lease, design, construct, finance, maintain, and operate the new Terminal One at the Airport (“**New Terminal One**”).

“**Subcontractors**” means the subcontractors, agents, or other related or unrelated third parties engaged by the Contractor to provide a certain portion of the Services, in each case, with the prior written consent of NTO in accordance with the T&C.

“**TSA**” means Transportation Security Administration.

“**Women-Owned Business Enterprises**” or “**WBEs**” means a business enterprise which is at least 51% owned by one or more women, or, in the case of a publicly held corporation, at least 51% of the stock which is owned by one or more women, and which management and daily business operations are controlled by one or more women who are citizens or permanent resident aliens of the United States of America.

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**II. OPERATIONAL REQUIREMENTS; STANDARDS AND SPECIFICATIONS**

2.1 **Rules and Regulations.** Contractor shall comply with all statutes, laws, codes, regulations, ordinances, rules, common law, judgments, judicial or administrative orders, decrees, directives or other requirements having the force of law or other governmental restriction (including those resulting from the initiative or referendum process) or any similar form of decision of or determination by any governmental authority (including any applicable regulation, order or statement of policy of the Administrator of the FAA or any other governmental officer or body having jurisdiction over the enforcement of the obligations of the Port Authority under federal law), including any environmental requirements enshrined therein, and any NTO Directives, whether taking effect before or after the Effective Date of the Agreement, in each case, as amended, revised, supplemented or otherwise modified from time to time, in each case, applicable to the Services (collectively, “Applicable Law(s)”).

2.2 **OFAC.**

- i. Contractor hereby represents and warrants to NTO and the Port Authority that neither Contractor, nor any Affiliate of Contractor, nor any other Person Controlling, Controlled by or under common Control with Contractor: (i) is a Person or entity with whom NTO or the Port Authority is restricted from doing business under the regulations of the Office of Foreign Assets Control (“**OFAC**”) 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.*) or other governmental action related to national security, the violation of which would also constitute a violation of law (such persons being referred to herein as “**Blocked Persons**,” and such regulations, statutes, executive orders and governmental actions being referred to herein as “**Blocked Persons Laws**”), and (ii) is engaging in any dealings or transactions or otherwise associated with Blocked Persons in violation of any Blocked Persons Laws. Contractor acknowledges that NTO is entering into this Agreement in reliance on the foregoing representations and warranties and that such representations and warranties are a material element of the consideration inducing NTO to enter into and execute this Agreement.
- ii. Contractor covenants that during the term of the Agreement none of Contractor, nor any Affiliate of Contractor, nor any other Person Controlling, Controlled by or under common Control with Contractor shall (i) become a Blocked Person, nor (ii) engage in any dealings or transactions directly or indirectly with Blocked Persons. In the event of any breach of the aforesaid covenant, the same shall constitute an Event of Default under this Agreement, which may subject Contractor to termination of this Agreement.
- iii. Contractor hereby represents and warrants to NTO that: (i) it has not offered, promised, given or agreed to give and shall not during the term of this Agreement directly or indirectly offer, promise, give or agree to give to any Person or entity any bribe on behalf of NTO or otherwise with the object of obtaining a business advantage for NTO or otherwise, (ii) it will not engage in any activity or practice which would constitute an offence under any

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Applicable Laws regarding anti-bribery and/or anti-corruption laws, including but not limited to the United States Foreign Corrupt Practices Act of 1977, as amended (the “Anti-Corruption Laws”, (iii) it has, and will maintain in place, its own policies and procedures to ensure compliance with any applicable Anti-Corruption Laws, (iv) it will take reasonable steps to ensure that any Person who performs or has performed Services for or on its behalf in connection with this Agreement complies with the terms and conditions set forth in this Section, (v) it has, and will maintain in place, effective accounting procedures and internal controls necessary to record all expenditures in connection with this Agreement, which enable Contractor and NTO to readily identify Contractor’s financial and related records in connection with this Agreement, (vi) from time to time during the term of this Agreement, at the reasonable request of NTO, Contractor will confirm in writing that it has complied with its warranties under this Section, (vii) shall notify NTO as soon as practicable of any breach of any of the undertakings contained in this Section, and (viii) it shall explicitly include the obligations in this acknowledgement in any subcontracts or agreements formed between the Contractor and any Subcontractors to the extent that those subcontracts or agreements relate to fulfillment of Contractor’s obligations to NTO under this Agreement.

**2.3 Port Authority Requirements & Related Matters.**

- 2.3.1 Contractor shall perform the Services subject to any applicable Port Authority requirements which are publicly available or otherwise provided by NTO to Contractor, including without limitation requirements relating to performance and design standards, access, security and badging requirements, safety requirements, diversity, MBE, SDVOB, WBE, and LBE requirements and local requirements, submittal requirements, and ethical requirements (the “Port Authority Requirements”).
- 2.3.2 Contractor shall comply with all applicable Port Authority rules, regulations, policies, manuals, publications, standards, practices and guidelines issued or published by the Port Authority (including without limitation any bulletin, directive or other official instruction issued by the General Manager of the Airport or the Chief Security Officer of the Port Authority and any code of ethics established by the Port Authority applicable to the Services); in each case, as may be amended, revised, supplemented or otherwise modified from time to time by the Port Authority (“Rules and Regulations”), including without limitation the Port Authority Airport Rules and Regulations issued by the Port Authority Aviation Department dated August 4, 2009, and the Port Authority Information Security Handbook dated April 2, 2018 (and as amended or modified during the course of the Agreement).
- 2.3.3 Contractor and Contractor’s Subcontractors, Affiliates, employees, and personnel shall cooperate fully with the Port Authority’s Office of Inspector General and the Office of Investigations and the Audit Department (collectively, the “OIG”) in all relevant matters, and shall cooperate fully with the OIG’s Project Integrity Monitor (as such term may be defined by the OIG). Such cooperation will include but is not limited to, providing the Port Authority and NTO complete access to all personnel and records in any way related to the Services, and reimbursing the Port Authority for its costs arising from such investigations. A failure to cooperate with the OIG or the Project Integrity Monitor shall constitute an Event of Default hereunder.
- 2.3.4 Operation of the Airport by the Port Authority is governed by federal statutes and regulations, in addition to other Applicable Laws and Applicable Standards. Contractor

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acknowledges that Port Authority is an airport operator for purposes of the FAA and accordingly is subject to compliance with obligations that require the airport operator to maintain and operate the Airport safely, efficiently, and in accordance with specified conditions, including certain maintenance and operational conditions. Contractor covenants and agrees that if the Administrator of the FAA, the TSA, the Secretary of the Department of Transportation, or any other governmental officer or body having jurisdiction over the enforcement of the obligations of the Port Authority in connection with the federal regulation of the Airport shall make any orders, recommendations or suggestions in written form respecting the performance of the Services by Contractor, Contractor shall promptly comply therewith, at the time or times when and to the extent that the Port Authority or NTO may direct.

- 2.3.5 Contractor acknowledges and understands that the Port Authority has applied for and received a grant or grants of money from the Administrator of the FAA pursuant to the Airport and Airways Development Act of 1970, 49 U.S.C. 1703, as the same has been and may hereafter be amended and supplemented or superseded by similar federal legislation, and under prior federal statutes which such Act superseded and the Port Authority may in the future apply for and receive further such grants, and the Port Authority has applied for and received permission to collect and use Passenger Facility Charges (as defined in the Lease) pursuant to An Act To Revise, Codify, And Enact Without Substantive Change Certain General And Permanent Laws, Related To Transportation, Pub: Law 103-272, 108 Stat 745 (July 5, 1994), as the same has been and may hereafter be amended and supplemented or superseded by similar federal legislation, and under prior federal statutes which such Act superseded, and any other grants the Port Authority may in the future apply for and receive. In connection therewith, the Port Authority has undertaken and may in the future undertake certain obligations respecting its operation of the Airport and the activities of its contractors, lessees and permittees thereon. The performance by Contractor of the covenants, promises and obligations contained in this Section is therefore a special consideration and inducement to the execution of this Agreement by NTO, and Contractor further covenants and agrees that if the Administrator of the FAA or any other governmental officer or body having jurisdiction over the enforcement of the obligations of the Port Authority in connection with the federal airport aid, shall make any orders, recommendations or suggestions in written form respecting the performance by Contractor of such covenants, promises and obligations, Contractor will promptly comply therewith, at Contractor's cost and expense, at the time or times when and to the extent that the Port Authority or NTO may direct.
- 2.3.6 Contractor acknowledges and agrees that (i) any discussions between the Port Authority or its designated representatives and Contractor or its Subcontractors in connection with the performance of the Services by Contractor or any such Subcontractors are intended to be advisory in nature and do not constitute directives from the Port Authority, unless otherwise expressly provided for in writing, (ii) the Port Authority is neither responsible for the supervision of the Services performed by Contractor or any such Subcontractor nor the performance of the Services (including all means and methods) by Contractor or any such Subcontractor, and (iii) that, notwithstanding the incorporation of the Port Authority Requirements in this Agreement or any subcontract, and any rights the Port Authority may have reserved to itself under this Agreement or any subcontract, the Port Authority shall have no liabilities or obligations of any kind to Contractor or any Subcontractor. Notwithstanding anything to the contrary in this Agreement, NTO shall be copied on all correspondence between Contractor and the Port Authority.

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- 2.3.7 The Port Authority shall be an express third-party beneficiary of this Section and of any other applicable provisions inuring in its favor, which provisions shall not be amended without the prior written consent of the Port Authority.

**2.4 Environmental Compliance**

- 2.4.1 With respect to all matters that relate to or may affect the environment, Contractor agrees to conduct its operations in a prudent manner, taking reasonable preventive measures to avoid environmental liabilities under any Environmental Health and Safety Laws, including, without limitations, measures to prevent unpermitted releases of Hazardous Materials to the environment. If in the course of conducting Services under this Agreement Contractor encounters conditions that could give rise to liability under any Environmental Health and Safety Laws or which otherwise could harm human health, safety or the environment, Contractor shall promptly notify NTO of such conditions.
- 2.4.2 Contractor agrees, at its own expense, to conduct its operations in compliance with all applicable Environmental Health and Safety Laws, including ensuring its employees are trained in the procedures required to meet all applicable Environmental Health and Safety Laws. If NTO provides any information, instruction, or materials to Contractor relating to its obligations under any Environmental Health and Safety Laws, Contractor agrees that this shall not in any way relieve Contractor of its obligation to comply with Environmental Health and Safety Laws. Contractor further agrees that any such information shall constitute Confidential Information hereunder.
- 2.4.3 Contractor shall perform its services under this Agreement so as to minimize the generation of waste materials, including source reduction and considering proper re- use or recycling options. If requested by NTO, Contractor shall replace specific products used in its operations with less toxic products, as long as there is a reasonable replacement available. Contractor shall be responsible for ensuring that any waste materials it generates in performing the Services under the Agreement are managed in accordance with all applicable Environmental Health and Safety Laws, with Contractor assuming responsibility as the legal generator of such waste materials. To assist in identification of the impact to environment from waste, Contractor shall, upon request, use its best reasonable efforts to provide to NTO a summary of recycled waste volumes from Contractor’s maintenance, office or other activities at locations serviced by Contractor under the Agreement and to cooperate with NTO in implementing aluminum and other material-recycling programs in feasible locations.
- 2.4.4 For any leased areas serviced by Contractor under this Agreement that are jointly operated by both Contractor and NTO, if, and as applicable, Contractor shall ensure its own activities comply with applicable Environmental Health and Safety Laws, which may include, when appropriate, reasonable coordination with NTO, such as to identify spill prevention procedures. If any tanks for ground support equipment fueling are shared, both Parties must ensure the fuel complies with applicable sulfur concentration limitations required under Section 211(g) of the Clean Air Act, and its implementing regulations at 40 CFR Part 80, (including any amendments, revisions, or succeeding statues and regulations), and provide appropriate documentation if requested by NTO.
- 2.4.5 Except for *de minimis* amounts which are immediately and fully remediated to pre-existing



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conditions, Contractor shall promptly notify NTO of any spills, leaks, or releases of Hazardous Materials to the environment, including petroleum substances, arising out of Contractor’s Services conducted under the Agreement, and provide copies to NTO of any related written reports provided to the applicable agencies and/or Airport authorities. Contractor shall promptly undertake all actions to remediate any such spills, leaks, or releases as required by applicable Environmental Health and Safety Laws and as required by NTO to reduce the risk of future enforcement, pursuant to work plans and schedules reviewed and approved by NTO, which approvals shall not be unreasonably withheld. Contractor shall timely provide copies to NTO of any written reports, correspondence or other documents prepared in response to such spills, leaks, or releases and provided to any governmental agencies and/or Airport authorities. In the event that Contractor fails to timely fulfill its remediation obligations related to such spills, leaks, or releases under applicable Environmental Health and Safety Laws, NTO, following written notice to Contractor including a reasonable opportunity for Contractor to fulfill such obligation, may undertake such actions to fulfill such obligations at the sole cost and expense of Contractor, which costs and expenses may be offset or deducted from any Compensation due to Contractor hereunder.

2.4.6 Contractor shall promptly provide NTO copies of any notices of violations for environmental compliance received from any third party, environmental agency, or Airport authority, associated with Contractor’s activities conducted under the Agreement. Contractor shall promptly undertake all actions necessary to resolve such notices as required by applicable Environmental Health and Safety Laws and to the reasonable satisfaction of NTO, including, if applicable, the payment of appropriate fines and penalties. In the event that Contractor fails to timely fulfill its obligations related to such notices to the satisfaction of NTO, NTO, following written notice to Contractor including a reasonable opportunity for Contractor to fulfill such obligation, may undertake such actions to fulfill such obligations at the sole cost and expense of Contractor, which costs and expenses may be offset or deducted from any Compensation due to Contractor hereunder.

2.4.7 If requested by NTO, Contractor shall conduct a review and provide information to demonstrating compliance with this Environmental Compliance provision. If requested, such a review may include conducting an environmental compliance audit of Contractor’s activities with respect to its obligations under this Section pursuant to a work plan approved by NTO. Contractor shall provide NTO with a summary of the results of the audit, provide an opportunity to review the report, and shall ensure that any non-compliance identified is promptly corrected. Similarly, if non-compliance is identified outside of such an audit, Contractor shall promptly address the non-compliance so identified.

2.4.8 Upon the termination of operations at a space used to support the Services under this Agreement, Contractor shall ensure the removal and proper management of any and all Hazardous Materials and shall comply with any other applicable Environmental Health and Safety Laws.

**2.5 Background Investigations**

- i. All Contractor personnel must be a minimum of eighteen (18) years of age. Any requested deviation from the age standard must be approved in writing by NTO.

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- ii. If the Services are to be performed at the Airport or other premises under the jurisdiction of the FAA, Contractor must have a program in place, which meets all FAA, local Airport authority, TSA, and Department of Transportation requirements including, but not limited to those pertaining to alcohol misuse and drug testing. Contractor shall conduct background investigations of each of its personnel who shall have access to any secure or restricted area of an Airport or other premises. Background investigations shall include, at a minimum, verification of prior employment (ten years where available, shorter periods as applicable for those entering the workforce directly from school) to the extent permitted by law.
- iii. Each background investigation shall be reduced to writing and Contractor shall provide NTO a written verification of the investigation. NTO reserves the right to verify independently the results of any investigation, and to, without penalty, terminate this Agreement, in whole or in part, upon written notice to Contractor upon discovery of a materially inaccurate investigation, which shall constitute an Event of Default hereunder.
- iv. Contractor shall be responsible for conducting fingerprinting on all of its personnel prior to their reporting for duty. No applicant shall be employed or engaged if his or her criminal history indicates a conviction of a disqualifying crime. (A "disqualifying crime" is defined as any crime deemed disqualifying by the TSA.) Contractor shall also verify the personal references listed by the applicant on their application.

**2.6 Audit and Required Records**

- 2.6.1 Upon request by NTO, Contractor shall make available to NTO for inspection and, if necessary, copying, a complete set of all daily time sheets, listing each of the employees or personnel of Contractor engaged in performance of Services under this Agreement, including name, date, and number of hours worked. Each listing shall be acknowledged and verified by the supervisor of each such employee.
- 2.6.2 Contractor shall maintain such books, records, and accounts as NTO reasonably requires to verify the accuracy of Contractor's Invoices, Contractor's data security, disaster recovery, and back up practices or any performance of Services by Contractor under this Agreement, including without limitation time sheets, payroll registers, canceled payroll checks, and any other work records of all personnel regarding all work included in any Invoice of Contractor under this Agreement. NTO may inspect any such books, records, and accounts, during normal business hours and upon reasonable prior written notice to Contractor throughout the term of this Agreement and for a period of two (2) years after expiration or other termination thereof.
- 2.6.3 Upon notice to Contractor, Contractor shall permit NTO, its auditors, its regulators and designated audit representatives of the payment card industry to audit and inspect Contractor's facilities where NTO's Confidential Information is stored or maintained, any computerized systems used to share, store, disseminate or otherwise exchange Confidential Information, and Contractor's security and data retention practices and procedures, data protection, business continuity and recovery facilities, resources, plans and procedures. The audit and inspection rights hereunder shall be, at a minimum, for the purpose of verifying Contractor's compliance with this Agreement, the PCI Standards, and all Applicable Laws. Upon NTO's request: (i) Contractor shall provide NTO with information reasonably requested by NTO, its auditors, its regulators or designated audit

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representatives of the payment card industry regarding Contractor’s compliance with this Agreement with respect to NTO’s Confidential Information including, but not limited to, responding to any security questionnaires provided by NTO, its auditors, its regulators or designated audit representatives of the payment card industry; and (ii) an officer of Contractor shall provide written certification that Contractor has and is complying with all of the obligations and requirements of this Agreement with respect to Confidential Information.

**2.7 Good Order Requirements.** Contractor shall perform the Services in accordance with actions instituted to preserve, maintain, improve or restore good order at the Airport which result in, or alleviate circumstances which derogate from, the Port Authority’s ability to (i) provide predictable, consistent or non-discriminatory service to Airport users or (ii) mitigate the risks that chaotic or uncontrolled situations arise on Airport premises which may, in the Port Authority’s sole and absolute discretion, lead to unsafe or insecure conditions (“Good Order Requirements”).

**2.8 Confidential Information.**

- i. It may be necessary from time to time for one Party hereto (“Owner”) to disclose to the other Party (“Recipient”) information or other oral, visual, written or electronic material which Owner deems proprietary and confidential (“Confidential Information”). The terms and conditions of this Agreement shall be deemed Confidential Information. Information shall be deemed “Confidential Information” if, given the Agreement and/or the nature of Owner's business, a reasonable Person would consider such information confidential. Further, any personally-identifying information provided to Contractor by or on behalf of NTO or collected by Contractor in connection with the Services (collectively, “Personal Information”) shall be considered the Confidential Information hereunder.
- ii. Confidential Information shall not include any information that (a) was in the public domain prior to the Effective Date or subsequently came into the public domain other than as a result of disclosure by Recipient, (b) was already known to Recipient (except such information obtained under an obligation of confidentiality) at the time of its disclosure to Recipient or is independently developed by Recipient without use of or reliance on Owner's Confidential Information, or (c) is approved for release by written authorization of Owner.
- iii. Each Party agrees to hold and keep the other Party's Confidential Information in confidence and not to divulge, disseminate, or otherwise disclose the Confidential Information of the other Party to any third party without the other Party's prior written consent. Such confidentiality obligation shall continue until three (3) years after the expiration of the term of this Agreement, provided this shall not apply to Personal Information which shall be kept confidential indefinitely and not be released or disclosed by Contractor for any reason without the prior written consent of NTO.
- iv. Each Party shall take all measures reasonably necessary to ensure the confidentiality of the other Party's Confidential Information and to protect the other Party's Confidential Information against unauthorized access, use, disclosure or possession. Each Party shall not disclose it to anyone except to a limited group of its respective employees, Affiliates, officers, directors, or professional advisors, who have a need to know such information in connection with the Services (collectively, its “Representatives”). A Party or its



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Representative who is requested to disclose the other Party's Confidential Information pursuant to law, rule, regulation, or in connection with any legal or administrative proceeding or investigation, shall (a) notify the other Party promptly of the existence, terms and circumstances surrounding such a request so the other Party may seek a protective order or other appropriate remedy and/or waive compliance with the provisions of this Agreement, and (b) if, in the absence of a protective order, such disclosure is required in the opinion of counsel, the Party who has been requested to disclose Confidential Information may make such disclosure without liability hereunder, provided such Party furnishes only that portion of the Confidential Information legally required, such Party gives the other Party notice of the information disclosed as far in advance of its disclosure as practicable and, upon the other Party's request and at the other Party's expense, the Party or such Representative who has been requested to disclose Confidential Information shall use its reasonable best efforts to ensure confidential treatment shall be accorded to all such disclosed Confidential Information. Each Party further agrees to be responsible for any breach of this Agreement by any of its Representatives. Notwithstanding the foregoing, no notice or further action shall be required in respect of disclosure of Confidential Information (or provision of access thereto) to regulatory authorities or self-regulatory organizations having authority over NTO or its Representatives in connection with a routine regulatory examination or pursuant to statutory requirements that are not targeted at the Contractor, the Services, or the Confidential Information.

- v. Recipient and its Representatives shall not use any Confidential Information other than in connection with the Agreement. Contractor agrees to notify NTO immediately (which in no event shall be longer than twenty (24) hours) whenever NTO's Confidential Information has been, or Contractor reasonably believes or suspects that it has been, acquired, destroyed, modified, used, disclosed or accessed by any Person in an unauthorized manner or for an unauthorized purpose (collectively, "Security Breach"). Contractor further agrees to provide all reasonable assistance requested by NTO or NTO's designated representatives, in the furtherance of any correction, remediation, investigation, enforcement or litigation with respect to a Security Breach, including but not limited to, any notification that NTO may determine appropriate to send to individuals impacted or potentially impacted by a Security Breach.
- vi. Recipient acknowledges that any failure by Recipient to maintain the confidentiality of Owner's Confidential Information shall cause irreparable harm to Owner for which no adequate remedy at law exists. The Parties agree that, in addition to any other remedies and rights available to Owner, Owner may seek a court order or injunction without further notice and without posting bond to protect its Confidential Information and to halt its unauthorized disclosure.
- vii. NTO shall have the right, in its sole and absolute discretion at any time and from time to time for any reason, to restrict, discontinue, suspend, cancel, terminate, or modify Contractor's right to use, obtain, access, hold, or process NTO's Confidential Information. Upon NTO's request, Contractor shall return, in a manner and format reasonably requested by NTO, or, if specifically directed by NTO, destroy (in a manner that assures same is rendered unintelligible and unrecoverable), NTO's Confidential Information in Contractor's or its Representatives' possession, power, or control. Upon NTO's instruction to destroy or return all NTO's Confidential Information, all copies of NTO's Confidential Information shall be permanently removed from all of Contractor's or its Representatives' facilities, systems, records, archives, and backups, and all subsequent use of such information by

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Contractor or its Representatives shall cease.

viii. If Contractor receives or reviews any Confidential Privileged Information (as this term is defined in the Non-Disclosure and Confidentiality Agreement, dated June 27, 2019, between JFKTerminalOneCo, LLC and The Port Authority of New York and New Jersey (the “**PA NDA**”)) Contractor will be bound by each and every term and provision contained the PA NDA.

**2.9 Disaster Recovery Plan.** Contractor will provide NTO with its contingency and disaster recovery plan concerning the Services (“Disaster Recovery Plan”). Upon the occurrence of any disaster, security breach, or any such other event that would trigger the activation of the Disaster Recovery Plan, the Contractor will immediately implement the Disaster Recovery Plan and, unless the Parties agree otherwise, make best efforts to resume operations of the Services. The Contractor will promptly inform NTO of any changes to the Disaster Recovery Plan and will notify NTO immediately if it encounters any circumstances or events that may have a material impact on the Services.

**2.10 Customer Support.** Contractor shall assign one of its employees (hereinafter referred to as the “Contract Manager”) to facilitate the implementation of the Agreement and be responsible for the management and administration of NTO’s account. The Contract Manager shall prepare and furnish to NTO all requested reports, documentation, and instruments, and shall represent Contractor at meetings with respect to the Agreement. Contractor shall remove the Contract Manager upon request from NTO. If the Contract Manager is removed or if Contractor transfers or reassigns the Contract Manager from this Agreement, Contractor shall promptly (a) notify NTO, and (b) appoint a replacement.

**2.11 Reimbursable Expenses.** In connection with the Services, NTO will only reimburse such expenses actually incurred by the Contractor which (i) are of the type delineated in Exhibit D to the Agreement and pre-approved by NTO in writing, and (ii) comply with all terms hereof (the “Reimbursable Expenses”). Reimbursable Expenses must be (i) a legitimate business expense and (ii) **reasonable** and necessary to conduct the Services.

**2.11.1 Supporting Documentation.** Sufficient supporting documentation must be timely and orderly submitted to NTO to enable NTO to ascertain the nature and validity of each expense claimed by the Contractor as a Reimbursable Expense (“Supporting Documentation”). Requests for reimbursement for any Reimbursable Expenses must be presented to NTO, together with all Supporting Documentation, at the time the then-current Contractor’s Invoice is provided to NTO, as delineated in this Schedule A.

**2.11.2 Clawback.** NTO shall be permitted to withhold from any Compensation due to Contractor for Services rendered hereunder an amount commensurate with such sums that have been paid to the Contractor as a Reimbursable Expense but which are later adjudicated or discovered by NTO (i) to have exceed the allowable limits set forth in Exhibit D, or (ii) not to qualify as a Reimbursable Expense.

**2.11.3 Right to Terminate.** NTO reserves the right to terminate at any time and for any, or no reason, the Contractor’s right to seek Reimbursable Expenses and to be entitled to payment thereon, at which time NTO shall no longer be liable for any Reimbursable Expenses incurred as of such date.

**2.12 Contractor Notification Requirement.** Contractor shall notify NTO promptly in writing, and in

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any event no later than twenty four (24) hours, of any damage, defect, deficiency, circumstance, nuisance, or condition in, or to, any portion of the Airport, or any areas appurtenant thereto, of which the Contractor becomes aware, whether or not such condition was caused by Contractor, the Contractor’s officers, employees, Subcontractors, or agents, and which (i) may affect the Services or NTO, or (ii) may impact the operation of the Airport.

**2.13 Emergency Operations.**

2.13.1 Procedures. In the event of any accidents, catastrophes, upheavals, civil unrest, Labor Troubles, disruptions, strikes, interruptions, system failures, natural calamities, or any circumstance that threatens the health, safety or life of persons, or serious or immediate damage to property, or other emergencies as designated by federal, state, or local authorities, including, without limitation, the Port Authority, the FAA, the Department of Transportation, the City, the TSA, or NTO (each, an “Emergency”), Contractor shall:

2.13.1.1 Without special instruction or authorization from NTO, use its best efforts to prevent and/or mitigate any such threatened damage, injury, or loss posed by the Emergency; and

2.13.1.2 Promptly comply with all NTO Directives, Applicable Laws, and Applicable Standards, and provide any Emergency services in connection therewith, which may include but not be limited to, assistance handling, salvaging, triage, and processing (the “Emergency Services”).

2.13.2 Terms and Conditions.

2.13.2.1 Contractor must be capable of providing Emergency Services within two (2) hours of notification by NTO or as soon thereafter as is reasonably practical in light of the circumstances.

2.13.2.2 Emergency Services which exceed Contractor’s scope of Services, as defined in Exhibit A, shall be compensated as agreed between the Parties as soon as reasonably practicable after the Emergency has ceased.

2.13.2.3 If Contractor cannot provide the requested Emergency Services, NTO and the Port Authority shall have the right to temporarily take possession of the Contractor’s equipment and materials for the purposes of providing the Emergency Services in accordance with this Section.

2.13.2.4 Contractor shall notify NTO promptly if the Contractor believes any significant changes in the scope of Services have been caused by the Emergency.

2.14 **Community Initiative Obligation.** NTO is committed to supporting better outcomes for the residents and stakeholders of the local community, particularly in the 37 ZIP codes that surround the Airport and, without limitation, including such ZIP codes highlighted in Addendum 3 and enumerated in Addendum 4, Article VI, Part I(c) and Part II(b). Throughout the term of the Agreement, the Contractor shall undertake community outreach activities, at least on an annual basis, in furtherance of such commitment, which activities may include, for example, offering internships or apprenticeships, support to local schools, volunteering at local events, partnering with community organizations, and participating in community service projects. Upon request by NTO,

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Contactor shall produce a detailed summary of any such community outreach activities undertaken pursuant hereto.

**III. SAFETY AND SECURITY STANDARDS & REQUIREMENTS**

- 3.1 Contractor shall at all times comply with, and cause its employees, agents, and any Subcontractors to comply with, the following safety procedures:
- 3.2 Any Persons entering the “aircraft operations area” within the Airport (the “AOA”) shall at all times:
- 3.2.1 Comply with NTO’s Directives, Applicable Laws, Applicable Standards, and the Port Authority’s Safety and Security Plans (as communicated to the Contractor directly, or as generally promulgated thereby);
  - 3.2.2 Wear personal protective equipment (including safety shoes, hearing protection, reflective safety vest and eye protection) where appropriate;
  - 3.2.3 Display the Airport identification card (unless under escort by an authorized designee);
  - 3.2.4 Carry, and produce upon request, a valid government-issued photographic identification;
  - 3.2.5 With respect to any vehicle operators, carry and produce upon request a valid driving license and comply with the Port Authority’s AOA driver operating requirements;
  - 3.2.6 Refrain from engaging in any activity or work that would endanger operations;
  - 3.2.7 Refrain from entering upon or remaining upon or allowing any materials to enter or remain upon the AOA if in the opinion of the Port Authority’s authorized designee, such materials may cause a hazard to aircraft or Airport operations;
  - 3.2.8 Refrain from smoking and participate in NTO’s Foreign Object Debris program (as communicated to the Contractor directly, or as generally promulgated thereby);
  - 3.2.9 Report any and all hazards and unsafe conditions to a member of NTO’s staff; and
  - 3.2.10 Participate in NTO’s Breach of Rule (BOR) program (as communicated to the Contractor directly, or as generally promulgated by the NTO or the Port Authority).
- 3.3 Contractor shall at all times comply with, and cause its employees, agents, and any Subcontractors to comply with, any and all applicable rules, regulations, and directives issued by the Occupational Health and Safety Administration, including, without limitation, the obligation to employ or engage *Competent Persons*, as such term is defined, used, and regulated by 29 CFR 1926.32(f), and all relevant provisions of the Code of Federal Regulations, as applicable to the Services.

**IV. TAXES**

- 4.1 **Responsibility.** Contractor is and shall be solely responsible for the payment of all employer payroll, employer health, income, withholding and other taxes, employment insurance, and workers’ compensation or workplace safety & insurance in respect of each of its employees and other persons rendering services to on behalf of Contractor in connection with the Services in each jurisdiction where the Services are performed, or to which the Contractor is subject. Contractor shall pay any sales or use taxes imposed by any taxing authority and required to be paid as a result of the sale and receipt of the Services provided under this Agreement.
- 4.2 **Claims.** If a Claim is made against NTO for any taxes that are to be paid by Contractor under this Agreement, NTO shall notify Contractor. If NTO so requests in writing, Contractor shall take such action as NTO may reasonably direct with respect to such taxes, including payment of such taxes under protest. If the tax has been paid, if requested by NTO, Contractor shall, at NTO’s expense, take

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such action as NTO may reasonably direct, including allowing NTO to file a claim or commence legal action in Contractor’s name, to recover such tax payment. In the event of refund or recovery of any tax, or part thereof, Contractor shall pay to NTO promptly that portion of the tax paid by NTO, including any interest received thereon.

- 4.3 **Indemnification.** All payments made by NTO to Contractor under this Agreement shall be made net of any required income tax withholding. Contractor shall pay and agrees to indemnify and hold harmless from any income tax withholding, including any interest or penalties thereon, required to be made due to any payments made by NTO to Contractor under this Agreement. If Contractor does not qualify as a United States Person as such term is defined under Article 7701(a)(30) of the Internal Revenue Code of 1986 as amended, Contractor shall either execute and furnish NTO the appropriate income tax withholding exemption form required under Treasury Regulation 1.1441 or notify NTO to withhold the applicable U.S. income tax from any payments required under this Agreement. If Contractor qualifies as a United States Person but Contractor is not a corporation, Contractor shall execute and furnish NTO a Form W-9 before NTO is obligated to make any payments under this Agreement. If Contractor renders services under this Agreement within California, the Contractor shall either execute and furnish to NTO California Form 590 or instruct NTO to withhold the applicable California income tax from any payments.
- 4.4 **Tax Assessment.** Contractor agrees to advise NTO promptly of any tax assessments applicable or potentially applicable to this Agreement. Contractor shall promptly remit to the applicable tax authority all amounts collected or received from NTO on account of NTO’s tax obligations.

**V. INDEPENDENT CONTRACTOR STATUS; EMPLOYEES OF CONTRACTOR**

Contractor’s relationship to NTO in the performance of this Agreement shall be that of an independent contractor. All personnel performing services for Contractor shall at all times be under Contractor’s exclusive direction and control and shall be employees or Subcontractors of Contractor and not of NTO. Contractor shall have full and complete responsibility for all of its employees, agents, and, where permitted, Subcontractors and shall be fully liable for acts or omissions of said employees, agents, or Subcontractors. Contractor shall pay all wages, salaries and other amounts due its employees, agents, or Subcontractors in connection with this Agreement, and Contractor shall be responsible for all reports and obligations respecting them relating to Social Security, Income Withholding, Unemployment Compensation, and similar matters. Discipline of Contractor’s employees, agents, and Subcontractors while performing Services hereunder shall be solely the responsibility of Contractor. While on NTO’s premises, Contractor’s employees, agents, Subcontractors, and personnel shall obey all applicable NTO rules. Neither Party nor its agents or employees are the representatives of the other Party for any purpose and neither Party has the right, power or authority (nor shall such Party represent itself as having any right, power or authority) as agent, employee, or any other capacity to (a) represent, act for, bind, or otherwise create or assume any obligation on behalf of the other Party for any purpose whatsoever, or commit the other Party to any course of action or forbearance, or (b) waive, modify or agree to waive or modify any right or obligation of the other Party, or otherwise to act as the representative of the other Party, unless expressly authorized in writing by the other Party in each and every instance.

NTO shall have the right to approve any key personnel of the Contractor involved in the provision of Services, before they are assigned to such capacity, including the Contract Manager, if such key personnel (i) is assigned to liaise directly with NTO with respect to the Services, or (ii) has authority or responsibility for the management of the Services, or is otherwise involved in the handling of Confidential Information; it being understood and agreed that the forgoing proviso does not, and is not intended to, grant NTO the power to direct or control the methodology or manner in which the Services



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are rendered hereunder and that the foregoing restriction does not affect the Parties' independent contractor status.

**VI. SUBCONTRACTING**

Contractor may not subcontract this Agreement to any other Person or party, in whole or in part, without the prior written consent of NTO. If Contractor requests to subcontract any part of the Services and such request is expressly authorized by NTO, Contractor warrants that all the terms of this Agreement, including all Exhibits, Addenda, and Schedules, shall be included in each subcontract and that the provisions of this Agreement shall apply to the Subcontractor's performance of the subcontracted work. All Subcontractors shall be duly qualified and capable of performing the Services in accordance with this Agreement. Contractor shall be liable for any damages suffered by NTO, the City, EDC, the Port Authority, the Additional Insured, and their Affiliates and representatives, or any third party, as a result of any breach of this Agreement by the Contractor or its Subcontractors.

Any Subcontractors of Contractor shall perform the Services, as applicable, in accordance with the terms of the Agreement, including without limitation any Applicable Laws and Best Management Practices.

In all events, and notwithstanding NTO's consent, Contractor shall remain responsible to NTO for the performance of the Services in accordance with this Agreement, and for the performances of Services by any Subcontractor as if Contractor itself was performing such Services.

**VII. DEFAULT**

7 **Events of Default.** The occurrence of any of the events set forth in this Article, in addition to such other events otherwise identified herein, and the continuance of same beyond any applicable notice and cure period set forth herein, shall constitute an "Event of Default" on the part of the Contractor. In the case of any event set forth below, which can be cured within ten (10) business days after the date of receipt by Contractor of written notice from NTO, then the Contractor shall have such ten (10) day period in which to cure such event (the "Cure Period"); provided that if a different notice and cure period relating to any such event is expressly set forth elsewhere in this Agreement, then such different notice and cure period shall apply thereto:

7.1.1 If the Contractor materially fails to perform its obligations under this Agreement and such failure to perform is not attributable to an Excusable Delay.

7.1.2 Initiation by Contractor of proceedings of any nature under the United States Bankruptcy Code, or any similar state or federal law for the relief of debtors.

7.1.3 A general assignment by Contractor for the benefit of creditors.

7.1.4 Admission by Contractor of its inability to pay its debts as they mature or to perform its obligations under this Agreement.

7.1.5 The breach or inaccuracy in any material respect of any representation, warranty or statement made in this Agreement or in any certificate or statement furnished pursuant to this Agreement by or on behalf of the Contractor or by or on behalf of any Person which is an Affiliate of the Contractor.

7.1.6 The taking by the Contractor of any action which requires the consent of NTO under this Agreement without first obtaining such consent.

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7.1.7 The commission of an act by the Contractor, its Affiliates, Subcontractors, or agents, or any of the foregoing's senior management employees involving a felony, dishonesty, fraud, misappropriation, willful misconduct, gross negligence or knowing violation of law that has a material adverse effect on the Project, the Airport, NTO, the Port Authority, or their Affiliates, in any such case in connection with the performance of its or their respective duties under this Agreement or any agreement ancillary thereto.

7.1.8 If there is a Change of Ownership.

7.2 **Remedies on Event of Default.** Upon the occurrence and during the continuance of any Event of Default, NTO shall be entitled to (i) obtain specific performance of the obligations of the Contractor under this Agreement, (ii) exercise any other right or remedy provided for in this Agreement, and (iii) terminate this Agreement. NTO shall not be required to elect among remedies and shall be entitled to exercise any or all remedies specified above or available at law or in equity.

**VIII. TERMINATION**

9.1 **For Convenience.** NTO may, at any time, terminate this Agreement, in whole or in part, by giving written notice to Contractor at least sixty (60) days prior to the effective date of such termination ("Termination for Convenience").

9.2 **Reimbursement for Termination Costs.** Upon termination of this Agreement pursuant to this Article or the immediately preceding Article, NTO is not obligated to pay Contractor's costs, even if any exist, associated with such termination, and shall not be liable in connection therewith with incidental, indirect, or consequential damages (including without limitation, damages resulting from loss of use, loss of profits, interruption or loss of business, lost goodwill, lost revenue, or lost opportunity).

9.3 **Right to Cover.** If and when NTO terminates this Agreement due to an Event of Default, Contractor shall be liable for any expenses incurred by NTO in connection therewith.

9.4 **Transition.** Contractor shall ensure an orderly transition to a new contractor in the event that NTO changes supplier/contractor for Services; whether due to (a) termination due to an Event of Default, (b) Termination for Convenience, or (c) selection by NTO of a different supplier/contractor at the expiration of this Agreement.

9.5 **Procedures.** In the event of any termination of this Agreement by NTO, Contractor shall immediately on receipt of NTO's termination notice cease all Services and surrender all documents (including all Project Documents) relating to the Services, as requested, to NTO.

**10.1 Non-Discrimination.**

10.1.1 Without limiting the generality of any of the provisions of the Agreement, Contractor, for itself, its successors in interest and assigns, as part of the consideration hereof, does hereby covenant that: (i) no Person on the grounds of race, creed or religion, color, sex, national origin, handicap or disability, or age shall be excluded from participation in, denied the benefits of, or otherwise subjected to discrimination in the use of the Airport by it; (ii) in the construction of any improvements on, over, or under the Airport and furnishing of services thereof by it, no Person on the ground of race, creed or religion, color sex, national origin, handicap or disability, or age shall be excluded from

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participation in, denied the benefits of, or otherwise be subject to discrimination; and (iii) that Contractor shall use the Airport in compliance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Non-discrimination in federally assisted programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964, and said regulations, may be amended, and any other Applicable Laws or Applicable Standards, which from time to time may be applicable to Contractor's Services, whether by reason of agreement between the Port Authority and any governmental authority or otherwise.

- 10.1.2 Contractor shall request each employment agency, labor union and authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish it with a written statement that such employment agency, labor union or representative shall not discriminate because of race, creed, color, religion, national origin, ancestry, sex, age, disability or marital status and that such agency, union or representative shall cooperate in the implementation of Contractor's obligations hereunder.
- 10.1.3 Contractor shall state in all solicitations or advertisements for employees placed by or on behalf of Contractor that all qualified applicants shall be afforded equal employment opportunities without discrimination because of race, creed, color, religion, national origin, ancestry, sex, age, disability or marital status.
- 10.1.4 Contractor shall include in all Subcontractor agreements the foregoing provisions of this Section in such a manner that such provisions shall be binding upon the Subcontractor and enforceable by Contractor and NTO. Contractor shall take such action as may be necessary to enforce the foregoing provisions, and shall promptly notify NTO of any litigation commenced by or against it arising out of the application or enforcement of these provisions, and NTO may intervene in any such litigation.

**IX. PAYMENT PROCESS**

- 11.1 **Process.** Contractor shall submit each and every invoice ("Invoice") in connection with the Services to be rendered hereunder on a NTO-approved form to NTO by the first (1<sup>st</sup>) day of each month but not later than the fifth (5<sup>th</sup>) day of each month, which shall set forth: (a) the contracted amount(s) as set forth in Exhibit B, plus any additional amount approved by NTO for Additional Services, if any, in accordance with this Agreement; (b) the payment breakdown for each category of Services; (c) the amounts paid to date against each category of Services; (d) the amount due in the current invoice for Services performed in the prior month; (e) the amount of pre-approved Reimbursable Expenses incurred (if any); and (f) the balance to complete the Services. Undisputed invoices received before the 5<sup>th</sup> day of the month will be paid within forty-five (45) days of receipt and undisputed invoices received after the 5<sup>th</sup> of the month will be paid within sixty (60) days of receipt. Each request for payment by Contractor shall be a representation that all the partial payments then requested have been incurred on account of the Services or is justly due to Contractor on account thereof, and that the Services that are the subject of such request for payment have been performed by Contractor in strict accordance with this Agreement. For Additional Services billed on the basis of time, NTO has the right to request copies of Contractor's payrolls and a level of effort report supported by time sheets. Contractor shall not invoice NTO for materials furnished in connection with such Services, except with the specific prior written approval of an authorized



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designee of NTO. All invoices shall show taxes, if any are applicable, as separate line items which, for the avoidance of doubt, shall be due and payable by the Contractor in accordance herewith. Contractor shall submit invoices to [invoices@onejfk.com](mailto:invoices@onejfk.com), or any other method designated by NTO. Any other invoice methods must be agreed to by the Parties in advance of any invoicing. Contractor must provide electronic invoices as specified by NTO. NTO shall not be responsible for reviewing Contractor's website for invoicing information. Contractor's invoice and payment shall be denominated in U.S. Dollars. All invoices must be received within ninety (90) days from the end of the month in which Services were rendered or in which Reimbursable Expenses are incurred. NTO shall have no liability for Invoices, Compensation, or Reimbursable Expenses received after such date.

- 11.2 **Discounts.** Contractor agrees that NTO shall apply a two-and-one half percent (2½%) discount for payments made within ten (10) days of receipt of any Invoice.
- 11.3 **Invoice Disputes.** The payment of any Invoice shall not preclude or affect NTO's right to dispute any charge made. Any disputed amounts may be withheld by NTO, until the resolution of any such dispute in accordance herewith, in an interest-bearing account. NTO shall have the right to recover any amounts previously paid in error. In the event of a dispute between NTO and Contractor with respect to Contractor's Compensation or any other term of the Agreement, Contractor shall continue to fully perform its Services under this Agreement, provided NTO makes timely payment of undisputed Compensation and Reimbursable Expenses. Contractor's failure to perform in accordance with this Section shall be a breach of this Agreement and Contractor shall be responsible for all of NTO's damages arising therefrom.

**X. CHANGE OF OWNERSHIP**

If any Person or business entity that does not presently have a controlling interest in the Contractor obtains a controlling interest therein, whether by merger, acquisition, or otherwise (a "Change of Ownership"), Contractor shall immediately notify NTO in writing, and NTO may, at its election, terminate this Agreement without further obligation or liability on NTO.

**XI. DATA SECURITY AND NETWORK REQUIREMENTS**

- 13.1 **Data Security; Privacy Laws.** The Contractor agrees to abide by and maintain adequate data security measures, consistent with standards and best practices within the Contractor's industry, and to protect Confidential Information from unauthorized disclosure or acquisition by an unauthorized Person. The Contractor further agrees to comply with all applicable data protection and privacy laws and regulations.
- 13.2 **Information Security.** Contractor shall establish and maintain environmental, safety and facility procedures, data security procedures, and technical, physical, administrative and other safeguards to protect against the destruction, loss, and unauthorized access, use, possession or alteration of Confidential Information in the possession of Contractor. Such procedures and practices shall be compliant, at a minimum, with (a) Contractor's security and document retention requirements as may be issued to NTO prior to the Effective Date which shall not be materially revised without NTO's consent, (b) to the extent applicable, the security standards for the protection of cardholder information with which the payment card companies collectively or individually require merchants to comply including but not limited to the Payment Card Industry Data Security Standards currently

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in effect and as may be updated from time to time while Contractor has such information in its possession (“PCI Standards”), and (c) all applicable laws, rules, regulations, directives, ordinances, codes or similar enactments that apply to NTO and the Contractor in the conduct of its business (“Data Security Laws”). All such procedures and practices shall take into account the nature of the Confidential Information and the commensurate risks associated with such Confidential Information. Contractor shall maintain a complete audit trail of all access to, and use of, NTO’s Confidential Information including, but not limited to, transactions and activities associated with NTO’s Confidential Information. Contractor shall also implement and maintain appropriate business continuity, contingency and disaster recovery plans in order to maintain the availability, security, and confidentiality of NTO’s Confidential Information and restore normal operating procedures as promptly as possible in the event of a major disruption, business interruption, or failure.

**XII. TERMINAL SYSTEMS**

12.1 Contractor represents and warrants that it shall comply with NTO’s applicable technical requirements in connection with the Services (“Technical Requirements”). In the event that NTO determines that Contractor has not complied, or Contractor determines at any time that it has not complied or will not be able to comply with any Technical Requirements, Contractor shall work in good faith with NTO to determine how it will reach compliance with the Technical Requirements or otherwise resolve the actual or projected noncompliance with the Technical Requirements.

**XIII. CERTIFICATION OF NO DISQUALIFICATION**

13.1 Contractor hereby certifies that neither Contractor nor any of its Affiliates has (a) been indicted or convicted in any jurisdiction; (b) been suspended, debarred, in found not responsible or otherwise disqualified from entering into contracts with any governmental agency or been denied a government contract for failure to meet prequalification standards; (c) had a contract terminated by any governmental agency for breach of contract or for any cause related directly or indirectly to an indictment or conviction; (d) changed its name and/or no Employer Identification Number (taxpayer identification number) following its having been indicted, convicted, suspended, debarred or otherwise disqualified, or had a contract terminated as more fully provided in (a), (b) and (c) above; (e) ever used a name, trade name or abbreviated name, or an Employer Identification Number different from that in the Agreement or in any documents tendered to NTO with respect thereto; (f) been denied a contract by any governmental agency for failure to provide the required security, including bid, payment or performance bonds or any alternative security deemed acceptable by the agency letting the contract; (g) failed to file any required tax returns or failed to pay any applicable federal, state or local taxes; (h) had a lien imposed upon its property based on taxes owed and fines and penalties assessed by any agency of the federal, state or local government; (i) been, and is not currently, the subject of a criminal investigation by any federal, state or local prosecuting or investigative agency and/or a civil anti-trust investigation by any federal, state or local prosecuting or investigative agency, including an inspector general of a governmental agency or public authority; (j) had any sanctions imposed as a result of a judicial or administrative proceeding with respect to any professional license held or with respect to any violation of a federal, state or local

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environmental law, rule or regulation; and (k) shared space, staff, or equipment with any business entity.

- 13.2 The certification set forth in this Article shall be deemed to have been made: (i) if Contractor is a corporation, not only with respect to Contractor, but also with respect to each director and officer, as well as, to the best of Contractor’s knowledge and belief, each stockholder with an ownership interest in excess of 10%; (ii) if Contractor is a partnership or limited liability company, not only with respect to Contractor, but also with respect to each manager, partner or member thereof; and (iii) in either case shall be deemed to have been authorized by Contractor’s board of directors or other management body.

**XIV. COOPERATION**

- 16.1 **Cooperation With Lender.** For the purposes of this Agreement “Lender” shall mean any institution providing financing or favorable tax treatment in connection with the Project. Contractor shall cooperate with any Lender and its representatives, collateral agents, or technical advisers in the course of the performance of its Services, and shall issue such certifications as Lender may reasonably require from time to time, provided such certifications are submitted or made available to Contractor at least fourteen (14) days in advance for Contractor’s review. Contractor shall not be required to execute certifications that would require knowledge beyond the scope of this Agreement. Contractor may be required, if this Agreement is assigned and assumed by Lender, to perform its obligations under this Agreement for the benefit of the Lender. Contractor shall make such minor changes, modifications or amendments to this Agreement as may be reasonably requested by NTO acting at the request of any Lender or as requested by Lender; provided such minor changes, modifications or amendments do not require knowledge, Services or responsibilities of Contractor beyond the scope of this Agreement and do not materially increase Contractor’s obligations or diminish its rights under this Agreement. If requested, Contractor shall execute a “Consent to Assignment” in form customarily required by the Lender provided that Lender assumes this Agreement and the obligations under this Agreement, including responsibility for NTO’s payment obligations hereunder and on a going forward basis and such Consent to Assignment does not materially increase Contractor’s obligations or diminishes its rights under this Agreement.

- 16.2 **Certification of Compliance with Applicable Laws.** Contractor shall certify to NTO and Lender that all Services provided by it pursuant to this Agreement conform to all Applicable Laws.

- 16.3 **Attornment.** Contractor agrees that, if NTO shall default under the provisions of this Agreement or under any agreement between NTO and Lender that would give Contractor the right to terminate this Agreement, Contractor shall continue to perform its obligations under this Agreement for Lender provided Lender cures such default by NTO within thirty (30) days after notice from Contractor to NTO or Lender. Lender shall agree in writing to perform all obligations of NTO after the date Lender succeeds to NTO’s rights and obligations, inclusive of making payments of all outstanding invoices and Services payable pursuant to the terms of this Agreement due and owing prior to and through the effective date of such assignment, including any prior defaults by NTO.

**XV. INSURANCE**

- 15.1 Contractor shall provide, pay for, and maintain in effect the types and amounts of coverage delineated in Exhibit E (*Insurance Requirements*), and include the Additional Insureds set forth in Section III of Exhibit E (*Additional Insureds*) as additional insureds, with insurance companies

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duly licensed and admitted to do business in the state where the Services are to be rendered. Coverage shall be maintained for the duration of the Services. All Contractor's insurance shall be primary insurance and shall not be considered contributory insurance with any insurance policies of NTO or any other Indemnitee. The insurance maintained by NTO or any other Indemnitee shall apply in excess of all insurance coverage herein requested of Contractor, regardless of whether such Contractor insurance coverage is primary, contingent or on any other basis, and whether such insurance is valid or collectible.

Contractor shall require any approved Subcontractor to maintain and provide evidence of coverage of the same type and scope of insurance as is required of the Contractor, as stipulated in Exhibit E, or as otherwise instructed by NTO. Contractor shall provide NTO with evidence of insurance satisfactory to NTO including, but not limited to, certificates of insurance accompanied by any endorsements necessary to demonstrate compliance with the requirements herein, policy declarations pages from each policy, the forms listing of each policy, and the underlying schedule of insurance from the Umbrella/Excess policy. NTO reserves the right to request a copy of all policies stated herein. Such copies must be certified by Contractor's insurance broker as true and original copies.

All insurance required hereunder shall provide to NTO and the Port Authority thirty (30) calendar days advance written notice of cancellation, substantial modification, or non-renewal, and shall waive all rights of subrogation against NTO and the Port Authority. Contractor shall, as and when applicable, furnish renewal certificates of insurance to NTO and the Port Authority.

**XVI. INDEMNITY AND RELEASE**

- 16.1 To the fullest extent permitted by law, Contractor shall indemnify, defend, and hold harmless NTO, the Port Authority, any Lender, the City, EDC, the Additional Insureds, and their respective Affiliates, employees, officers, directors, shareholders, partners, representatives, agents, successors, and assigns (collectively, the "Indemnitees") from and against any and all Claims, including without limitation reasonable attorneys' fees and expenses, including those actually or allegedly arising out of, or in connection with: (1) the Services provided by Contractor, Contractor's Subcontractors, or any other third-party acting on their behalf, including by reason of negligent acts, errors therein, or omissions therefrom; (2) a breach of this Agreement, or of any of the representations and warranties made herein (including all Contractor Representations and Warranties) by, or attributable to, the Contractor or any Subcontractor; (3) the Contractor's failure to timely and/or wholly pay Contractor's Subcontractors, employees, or any other third party having rendered services to the Contractor in relation hereto; (4) Contractor's infringement upon intellectual property rights belonging to third parties or in any way violating or failing to follow Applicable Laws (including Environmental Health and Safety Laws); (5) from claims for personal injury and/or property damage to the extent caused, directly or indirectly, by Contractor, its Subcontractors, or any other third-party acting on their behalf; and (5) any Liens arising hereunder.
- 16.2 With regard to any and all Claims against any Indemnitee by any employee of Contractor, its Subcontractors or agents, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation under this Agreement shall not be limited in any way by the amount or type of damages, compensation or benefits payable by or for Contractor, its Subcontractors or agents under workers' compensation acts, disability benefit acts or other employee benefit acts. Contractor waives any immunity from or limitation on its indemnity or

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contribution liability to NTO based upon such acts.

- 16.3 The indemnity obligations created hereunder are in addition to Contractor’s obligations to procure insurance.
- 16.4 Contractor shall require its Subcontractors of all tiers to provide similar indemnities to Contractor, NTO, and the other Indemnitees in a form acceptable to NTO.
- 16.5 Upon the request of NTO or the Port Authority, Contractor shall at its own expense defend any suit based upon any such Claim (even if such suit, or Claim is groundless, false or fraudulent) and in handling such Claim the Contractor shall not, without obtaining express advance permission from the General Counsel of the Port Authority, raise any defense involving in any way the jurisdiction of any court, tribunal, agency, special district, commission or other authority exercising judicial or regulatory functions over the Person of NTO or the Port Authority, the immunity of the Port Authority, its commissioners, officers, agents, employees, their Affiliates, successors and/or assigns, the governmental nature of the Port Authority, or the provision of any statutes respecting suits against the Port Authority.
- 16.6 In the event that Contractor or its Subcontractors breaches any of the indemnity obligations hereunder or under any other contractual or common law indemnity: (i) Contractor shall pay to NTO all liabilities, loss, cost, or expense (including reasonable attorney’s fees) incurred as a result of said breach, and the reasonable value of time expended by the party being indemnified and its employees as a result of said breach; and (ii) the Indemnitees may deduct and offset from any amounts due to Contractor under this Agreement any amounts owed by Contractor to an Indemnitee pursuant to this Agreement.
- 16.7 The terms of this Article shall survive the termination or expiration of this Agreement.

**XVII. LIMITED LIABILITY**

- 17.1 NTO shall not be liable to the Contractor, or any other party, for any indirect, incidental or consequential damages (including without limitation, damages resulting from loss of use, loss of profits, interruption or loss of business, lost goodwill, lost revenue, or lost opportunity) arising out of, or in connection with, this Agreement. The foregoing limitation of liability and exclusion of damages applies even if NTO had or should have had knowledge, actual or constructive, of the possibility of such damages. The foregoing limitation of liability and exclusion of damages shall apply whether a Claim is based on breach of contract, breach of warranty, tort (including negligence), product liability, strict liability or otherwise.
- 17.2 The Port Authority is not a party to this Agreement and the Port Authority in no way will be responsible to any party for any and all claims of any nature whatsoever arising or which may arise from this Agreement. Contractor acknowledges that under no circumstances whatsoever shall Contractor have any right to assert a claim against the Port Authority, and no act, omission, delay or hindrance on the part of the Port Authority shall form the basis for any Claim for costs or damages by Contractor against the Port Authority.



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**XVIII. OWNERSHIP OF PRODUCT**

- 18.1 Provided NTO has paid all undisputed Compensation owing to Contractor hereunder, Contractor shall and does hereby assign, and shall cause each Subcontractor to assign, to NTO all of the respective right, title and interest (including all intellectual property rights) of Contractor, and its Subcontractors, if any, in, to and under any all work product, including the results of, any tests, surveys or inspections, as well as all photographs, drawings, specifications, studies, audits, reports, models, renderings and other items of like kind prepared by Contractor, its Subcontractors, or their agents in connection with the Services (“Project Documents”), including, without limitation, the copyrights and any copyright registrations issued therefore. With respect to the Project Documents, NTO shall own any and all copyrights, trademarks, intellectual property rights, publicity rights, and trade secrets that arise therefrom.
- 18.2 Contractor shall deliver the Project Documents to NTO, from time to time, as required under the Agreement, upon termination of this Agreement, or as otherwise required by NTO, or if not delivered prior to final completion of the Services, then upon such final completion and as a condition to final payment.
- 18.3 Contractor shall also execute, and cause all Subcontractors to execute, any and all documents and releases, and take all actions necessary, or otherwise required by NTO, to establish, document and protect the right, title and interest of NTO in the Project Documents, including, if requested by NTO, an assignment of all copyrights and copyright privileges. Contractor may retain copies of the Project Documents for its files.

**XIX. PREFERRED CUSTOMER PRICING**

- 19.1 No other customer of Contractor shall receive better commercial terms, rates, or prices for similar Services purchased under similar conditions than NTO, including discounts, credits, or other terms which would result in a lower overall cost to Contractor's customer, without also offering those terms to NTO. If Contractor grants terms more favorable than those contained in this Agreement, NTO may adopt those terms and incorporate them into this Agreement. Any new terms shall supersede any existing, contrary terms, but all other terms shall remain in full force and effect. If Contractor offers or grants to another customer (with the exception of U.S. Government contracted pricing) better commercial terms, rates or prices for comparable Services, then Contractor shall immediately notify and offer such commercial terms, rates, or prices to NTO. Contractor's obligations under this Section shall apply only when the material commercial terms and conditions of the sale of Services to NTO and the sale of Services to Contractor's other customer are substantially comparable and similar.

**XX. UNAUTHORIZED PAYMENTS**

- 22.1 In connection with any performance under this Agreement, neither Contractor, nor any officer, employee, or agent of Contractor, shall make any payment, or offer, promise, give or authorize any payment, of any money or other article of value, to any official, employee, or representative of NTO or any government official or representative, or to any Person or entity doing business with NTO, in order either to obtain or to retain NTO's business, or to direct NTO's business to a third party, or to influence any act or decision of any employee or representative of NTO or any government official or representative to perform or to fail to perform his or her duties, or to enlist the aid of any third party to do any of the foregoing.

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- 22.2 In connection with any performance under this Agreement, neither Contractor, nor any officer, employee, or agent of Contractor, shall solicit or receive any amount of cash or negotiable paper, or any item, service or favor of value from any present or prospective supplier, vendor or customer of NTO, or from anyone else with whom NTO does business, including any governmental official or representative, for or in connection with the obtaining or retaining any business of or with NTO. Contractor shall refuse to accept all such gifts and, if received, shall return such gifts to the donor. In all such cases Contractor shall notify NTO promptly of such gift or offer thereof. If NTO deems it necessary, Contractor shall turn over such gifts to NTO for further handling.
- 22.3 Contractor hereby certifies and represents no official, employee or agent of NTO has any significant financial or other pecuniary interest in the Contractor’s business enterprise or in the performance of this Agreement, and no inducements of monetary or other value were offered or given to any NTO officer, employee or agent, except as is stated in writing to the NTO official designated to sign this Agreement, prior to execution. Contractor further certifies and represents no official, employee or agent of Contractor shall receive or has received any inducement of monetary or other value from any vendor or supplier of NTO or has a significant ownership or other interest in a vendor or supplier of NTO which is or could be perceived by a reasonable Person as a conflict of interest, except as is stated in writing to the NTO official designated to sign this Agreement, prior to execution. The Parties agree incidental expenses incurred for business meetings, meals, and other minor business-related expenses shall not violate this paragraph.
- 22.4 All representations and warranties made by the Contractor in this Article shall be referred to herein as the “Unauthorized Payments Representations”.

**XXI. LIENS**

Contractor shall keep the premises, facilities, improvements, machinery, and equipment of, or managed by, NTO or and Port Authority and their Affiliates free and clear from any and all liens arising out of the Services performed by the Contractor under this Agreement (“Liens”). Contractor shall obtain properly executed waivers and releases from all Subcontractors or other persons entitled to Liens for Services or materials furnished in accordance with this Agreement. As a condition to payment hereunder, Contractor shall from time to time, upon request by NTO, furnish waivers or releases of such Liens or receipts in full for all claims for such Services or materials and an affidavit that all such claims have been fully satisfied. In the event that any such Liens arise as a result of Contractor’s action or inaction, Contractor shall obtain a bond to fully satisfy such Liens or otherwise remove such Liens at its sole cost and expense within fourteen (14) days. If Contractor fails to do so, NTO may, in its sole discretion, pay the amount of such Lien, and deduct or offset such amounts from payments due to the Contractor hereunder.

**XXII. MISCELLANEOUS**

- 24.1 **Assignment.** The Contractor may not assign or otherwise transfer this Agreement in whole or in part, except with the advance written consent of NTO’s General Counsel, in such party’s discretion, and any such attempted assignment shall be void *ab initio*. Subject to the foregoing, the provisions herein shall inure to the benefit of, and be binding upon, any permitted assignees of the Contractor. Any violation of this provision shall be cause for immediate termination of this Agreement, or at the option of NTO, NTO may declare the assignment of any of the rights or obligations under this Agreement null and void as of the date of the purported assignment. Consent by NTO to an assignment in one instance shall not constitute consent by NTO to any

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other assignment.

**24.2 Severability.** In the event any provision of this Agreement is for any reason held invalid, ineffective, unenforceable, or contrary to public policy, the remainder of this Agreement shall remain in full force and effect. The Parties agree that if such provision is essential to the Agreement, they shall immediately begin negotiations for a suitable replacement provision so as to give force to the intent of the Parties.

**24.3 Governing Law, Jurisdiction, and Venue.** This Agreement, and any dispute arising under or in connection with this Agreement, or a breach thereof, including any actions in tort, contract or otherwise, shall be governed and construed in accordance with the laws of the State of New York without giving effect to any conflict of laws principles which might direct the application of the laws of a different state or jurisdiction. Any action to enforce or determine the rights of the Parties under this Agreement or to resolve any dispute between the Parties shall be brought in a court of competent jurisdiction located in New York County, New York, and the Parties hereby consent to such jurisdiction and venue. Contractor waives any right it may have to personal service of summons, complaint, or other process in connection therewith, and agrees to and consents that service may be made by registered or certified mail addressed to Contractor at its last known principal place of business.

**24.4 Amendments; Waivers.** No supplement, modification, or amendment of this Agreement shall be binding, unless executed in writing by a duly authorized representative of each Party to this Agreement. The failure of NTO or the Port Authority to insist upon the strict performance of any provisions of this Agreement, or the failure of NTO or the Port Authority to exercise any right, option or remedy hereunder shall not be construed as a waiver for the future of any such provision, right option or remedy or as a waiver of any breach thereof. The consent or approval by the Port Authority or NTO of any act by Contractor requiring NTO or the Port Authority's consent or approval shall not be construed to waive or render unnecessary the requirement for NTO or the Port Authority's consent or approval of any subsequent similar act by Contractor. The payment by NTO of any amount due hereunder with knowledge of a breach of any provision of this Agreement shall not be deemed a waiver of such breach. No provision of this Agreement shall be deemed to have been waived unless such waiver shall be in writing signed by the Party to be charged.

**24.5 Entire Agreement.** This Agreement (including, for the avoidance of doubt, all Schedules, Addenda, and Exhibits appurtenant hereto) is the complete and exclusive understanding between the Parties with respect to the subject matter hereof and supersedes and cancels all previous written and oral agreements and communications in respect thereof.

**24.6 Interpretation.**

**24.6.1** The headings appearing in this Agreement are for convenience of reference only and in no way define, limit, or enlarge the scope or meaning of any provision. All references to any party, whether a Party to this Agreement or not, shall be read with such changes in number and gender as the context or reference reasonably requires.

**24.6.2** If the Contractor is comprised of more than one Person, then in any instance where Contractor is used in the Agreement, it shall mean any one Contractor, more than one Contractor, or all Contractors; and all liabilities and obligations shall be joint and several.

**24.6.3** Whenever singular or masculine or neuter is used in the Agreement, the same shall be construed



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to mean the plural or feminine or corporate body where the context of this Agreement or the Parties hereto may require.

- 24.6.4 The words “include” or “including” as used herein shall not be construed as words of limitation.
- 24.6.5 If a term is defined more than once: (i) the definition contained within any such specific Schedule, Addendum, or Exhibit shall apply only with respect to such Schedule, Addendum, or Exhibit, and, in any case (ii) in the event of any inconsistency or conflict between any such definitions, the definition imposing the greater obligation or stricter limitation on Contractor shall govern.
- 24.7 **Third Party Beneficiaries.** Nothing contained in this Agreement shall, or is intended to, create or shall be construed to create any right in, or any duty or obligation to, any third party, except with respect to the Port Authority as expressly delineated herein. Pursuant to ordinance, statute, regulatory authority, and/or jurisdictional competence, the Port Authority may have the right, duty, or obligation to consent, veto, approve, sanction, or authorize (the “Port Authority Consent Requirement”) any action, requirement, or constraint to be undertaken by the Contractor in connection with the Services, and such Services shall, at all times, be subject to such Port Authority Consent Requirement.
- 24.8 **Conflict.** In the event of any inconsistency or conflict between the body of this Agreement and any Exhibit, Addendum, or Schedule annexed hereto, the term imposing the greater obligation or stricter limitation on Contractor shall govern. In the event of any conflict between the terms of this Agreement and the Port Authority’s Consent Requirement, the latter shall control and supersede.
- 24.9 **Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same agreement. A signed copy of this Agreement delivered by facsimile, email, or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement.
- 24.10 **Survival.** All terms and conditions of this Agreement that by their sense and context are intended to survive the performance, termination or expiration of this Agreement, shall so survive and continue in effect.
- 24.11 **Adverse Construction.** Nothing in this Agreement is to be interpreted against a Party solely on the ground that a Party or its attorneys drafted it. NTO and Contractor represent that each of them were given an equal opportunity to negotiate the terms and conditions contained in this Agreement and were represented by counsel.
- 24.12 **WAIVER OF JURY TRIAL.** EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE SERVICES CONTEMPLATED HEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF THE OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTY HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE

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**MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.**

- 24.13 **Time is of the Essence.** Time is of the essence for each and every provision of this Agreement.
- 24.14 **Export Laws.** Contractor shall comply with U.S. export control and U.S. economic sanctions laws with respect to the export or re-export of U.S. origin goods, software, services and/or technical data. Contractor shall notify NTO of any Services subject to such laws or regulations.
- 24.15 **Publicity.** Except as necessary in the ordinary course of business, Contractor shall not refer to this Agreement or use the name of NTO or its Affiliates in any form of publicity or advertising, either directly or indirectly, without the prior written consent of NTO.
- 24.16 **Attorney’s Fees.** In the event of any litigation or dispute between the Parties arising out of, or in any way connected with, this Agreement, then the prevailing Party in such litigation shall be entitled to recover its costs of prosecuting and/or defending same, including, without limitation, reasonable attorneys' fees at trial and all appellate levels. If a Party commencing any litigation hereunder or bringing any counterclaim in respect of litigation commenced against it seeks recovery of monetary damages, such Party must set forth in the lawsuit (in the petition, complaint or counterclaim, as applicable) its monetary estimate of the damages to be recovered in connection therewith from the other Party hereto and a Party shall not be considered the prevailing Party hereunder if such Party recovers less than the lesser of (a) seventy-five percent (75%) of the monetary damages asserted by it, or (b) the amount, if any, offered by the other Party in settlement of such litigation (and in such instance, the other Party shall be considered the prevailing Party). The rights and privileges granted in this Section shall apply *mutatis mutandis* to the Port Authority with respect to the enforcement of its rights under the Agreement.

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