



Washington Metropolitan Area Transit Authority

**STANDARD
NON – FEDERAL
IT
TERMS
And
CONDITIONS**

1. AGREEMENT FOR PRODUCTS AND SERVICES

- (a) These Standard IT Terms and Conditions ("Terms and Conditions") including any Appendices hereto apply to the supply by "Contractor" of Products and Services to the Washington Metropolitan Area Transit Authority (the "Authority," or "WMATA") during the term of this Contract. As used herein, "Products" means any and all software, programs, applications, middleware, firmware, peripherals, hardware, or other systems, documentation, technology, tools, data, deliverables, information, items, or materials in any form or format that the Contractor provides or makes available to the Authority, including any and all Improvements (as defined below) thereto. "Services" means any services provided by Contractor or its Personnel (as defined below) including without limitation, technical support, maintenance, hosting, transmission, connectivity, software, IT, consulting, development and/or other technology or professional services. Contractor is responsible for the acts and/or omissions of Contractor's employees, agents, representatives, and subcontractors ("Personnel"). As used herein, "Improvement(s)" means all fixes, error corrections, new versions, upgrades, enhancements, releases, patches, modifications, adaptations, evolutions, integrations, implementations, innovations and other updates to the Products and/or Services. The Authority shall look solely to Contractor for all maintenance, support, remediation, repairs, and other compliance with this Contract, and as the primary point of contact.
- (b) Additionally, the work to be performed under this Contract, or materials to be provided, are as described in the SOW, including any necessary or incidental work, labor materials, shipping and any authorized expenses. The Contractor agrees to perform in accordance with requirements and terms and conditions set forth in this Contract. In consideration for the Contractor's complete, satisfactory and proper performance of the Contract, WMATA agrees to pay to the Contractor, and the Contractor agrees to accept as full compensation, the sums of money set forth in the Price Schedule at the time and in the manner and upon the terms and conditions set forth in this Contract.

2. ARRANGEMENT OF CONTRACTUAL PROVISIONS

For ease of reference, this Contract is divided into Solicitation Instructions, IT Special Terms and Conditions, and IT Standard Terms and Conditions (also referred to separately as "clauses"), and paragraphs and subparagraphs. While the clauses are titled, it is understood that both the use of such titles and the manner and overall arrangement of the contractual provisions are intended solely for the convenience of the parties and are without independent contractual or legal significance, other than solely for the order of precedence.

INSTALLATION / IMPLEMENTATION

- (a) Contractor shall install, deliver, provide, support and transition the Products and/or Services, and any improvements thereto in accordance with the applicable terms of this Contract. Contractor shall work with the Authority to minimize any unnecessary disruption to the Authority's operations, and if disruptions are necessary, the Contractor shall mitigate such disruptions and notify the Authority

reasonably in advance of any disruption that could be expected to affect the Authority's normal business operations. Contractor shall use industry standard practices during its work and shall not access or modify an Authority site except as necessary in order to provide the Products and/or Services and when agreed by the Authority. If Contractor modifies an Authority site without permission (or damages a site or any property located there), Contractor promptly will repair or restore the affected portions of the site, and replace or restore all damaged property at its cost, except to the extent any such repairs or damage are attributable to a pre-existing condition at the site or negligence or misconduct of Authority.

- (b) Contractor shall implement the Products and/or Services: (i) in conformity with precautions designed to promote safety and prevent injury to persons or property; (ii) in a manner that does not unreasonably restrict or interfere with the operation or use of any Authority site; (iii) in compliance with all applicable security policies and obligations that are provided to Contractor in advance with respect to the applicable premises; (iv) in a manner that will not impose any material task, cost or obligation (other than those set forth in this Contract) on Authority; and (v) in a manner designed to minimize any financial, technical or operational burden on Authority, and any disruption of Authority's normal business operations.
- (c) If Contractor fails to install the Products and/or Services within thirty (30) days of the applicable date set forth in the "Notice to Proceed" or other ordering document executed by an authorized representative of Authority for the purchase of Products and/or Services hereunder, other than due to a Force Majeure Event (as defined below), Authority may terminate the applicable Product and/or Service without liability, and Contractor shall pay any applicable delay credits [as described in Attachment C (Service Level Agreement) ("**Service Levels**")]] up to the date of termination.

3. DELIVERY; ACCEPTANCE

- (a) For Products to be shipped pursuant to a Purchase Order, Contractor shall deliver the Products to the agreed-upon facility in the manner agreed in writing by the parties. Contractor shall ensure the Products are received by Authority by the date specified in the Purchase Order. Authority shall have ten (10) days from receipt of the Products to inspect the Products for any defect or non-conformance with the Specifications (as defined below) or quality requirements reasonably discoverable by visual or basic functional inspection ("**Requirements**"). If the Products fail to meet the Requirements, Authority will notify Contractor in writing and Contractor will modify, adjust, repair or replace the Products to conform with the Requirements within five (5) business days after such notice. If the new Products are still not compliant with the Requirements, the Contracting Officer may terminate the Purchase Order and WMATA will receive a refund of any pre-paid fees or, at the Contracting Officer's discretion, repeat the procedures in this paragraph as often as he or she determines is necessary.
- (b) For Products or Services that require any customization, installation, maintenance, repair, restoration or other Improvements by Contractor, Contractor shall, at its own expense, conduct appropriate tests in accordance with Contractor's standard practices and in no event below the standards described in the Attachment A (Acceptance Testing), to establish that they perform in accordance with the

specifications set forth in the Contract and the specifications in any related documentation provided by Contractor (collectively, the “**Specifications**”) and applicable service levels set forth in the Service Levels. Contractor shall provide the test results promptly to Authority in writing, in a form and manner to be agreed upon by the parties.

- (c) If Contractor’s tests establish that such Product and/or Service does not perform in accordance with the Specifications and Service Levels, or Authority reports to Contractor prior to acceptance or deemed acceptance thereof that it is not performing in accordance with the Specifications or Service Levels, Contractor shall promptly commence and diligently and continuously pursue efforts to bring it into compliance with the Specifications and Service Levels. Upon completion of these efforts, Contractor shall tender the Products and/or Services to Authority, which will again be subjected to the acceptance procedures set forth in this Section. Billing for any Products and/or Services shall not commence (or, in the case of a repaired or restored Product and/or Service, application of Service Credits shall not cease) until the Products and/or Services are accepted by Authority in accordance with the procedure described herein.
- (d) When Contractor notifies Authority in writing that the Products and/or Services are ready for use in a production environment, Authority shall have at least three (3) weeks from receipt of the notice to test the Products and/or Services to determine whether they comply with the Specifications and Service Levels. Upon completion of Authority’s testing, Authority shall notify Contractor of its acceptance or, if it has identified any noncompliance with the Specifications or Service Levels, its rejection of the Products and/or Services. If Authority rejects the Products and/or Services, Authority shall provide a written list of items that must be corrected. On receipt of Authority’s notice, Contractor shall promptly commence, at no additional cost or charge to Authority, all reasonable efforts to complete, as quickly as possible and in any event within five (5) business days from receipt of Authority’s notice (or such other period as may be agreed upon by the parties in writing), such necessary corrections, repairs, and modifications to the Products and/or Services to bring them into full compliance with the Specifications and Service Levels. If any corrective measures are required, upon its completion of all such measures, Contractor shall notify Authority in writing and the process set forth herein shall be repeated. If Authority determines that the Products and/or Services, as revised, still do not comply in all material respects with the Specifications and/or Service Levels, Authority, in addition to any other rights and remedies it has under this Contract, at law or in equity, shall have the right:
 - (1) To direct the Contractor, at no increase in Contract price, to correct or replace the defective or nonconforming Products and/or Services in accordance with a reasonable delivery schedule as may be agreed upon between the parties. The Contracting Officer may reduce the Contract price if the Contractor fails to meet such delivery schedule; or
 - (2) Within a reasonable time after the Contractor’s receipt of a Notice of Defects or Nonconformance, the Contracting Officer may reduce the Contract price, as is equitable under the circumstances, if he or she elects not to require correction or replacement, or terminate this Contract with no liability, obligation or penalty.

4. SUPPORT & MAINTENANCE

- (a) Contractor shall provide to Authority a toll-free telephone number or email address dedicated to Authority for the reporting of Product and/or Service maintenance and support issues. The toll-free number will supplement any online system Contractor may have. This maintenance/incident reporting telephone number must be staffed to receive trouble reports twenty-four (24) hours per day, seven (7) days per week, three hundred and sixty five (365) days per year, and must be adequately staffed at all times of the day. Contractor may also provide an internet-based, secure portal for Authority to report trouble and track maintenance in addition to other methods described in this Contract.
- (b) Contractor shall identify a Single Point of Contact (“SPOC”) for all maintenance issues regarding the Services, and shall serve as the single point of contact and coordinator of the maintenance. The SPOC will be identified in the technical proposal.
- (c) Contractor shall endeavor to provide at least thirty (30) days’, but shall provide no less than ten (10) days’, advance notice of any scheduled maintenance that could materially impact any Service. Authority may require reasonable rescheduling of maintenance if it reasonably believes that such maintenance may materially and adversely affect its operations. Contractor shall provide Authority with as much advance notice as practicable under the circumstances before performing any non-scheduled or unplanned emergency maintenance affecting the Services, but shall not delay such maintenance because of the notice requirement. Contractor shall conduct maintenance to minimize the impact on Authority and shall, at Authority’s request, reschedule Service-affecting maintenance or upgrades to avoid critical time periods that the Authority identifies in writing to the extent feasible in connection with time sensitive maintenance. Contractor shall be responsible for maintaining Contractor equipment, wherever located.
- (d) Contractor shall make available to Authority, at no additional charge, those Improvements that Contractor makes available to any of its customers without additional charge. Contractor shall notify Authority as far in advance as feasible of any proposed Improvement. Contractor shall not, without Authority’s written consent, knowingly implement any proposed Improvement that would require significant changes to Authority’s facility(ies), system(s), or equipment; materially and adversely affect Authority’s ability to fully utilize an affected Product or Service; or result in an increase in Authority’s total payments for an affected Product or Service. The Products and Services will continue to meet all applicable Specifications and Service Levels, except as otherwise explicitly agreed by Authority in writing, after the implementation of an Improvement.
- (e) Contractor will ensure that adequate daily and periodic data backup is performed in accordance with Contractor’s backup policy to prevent any loss of data. At the Authority’s request, Contractor shall retain all user data for a period of up to one (1) year following termination or expiration of this Contract in order for the Authority to retrieve it.
- (f) Contractor will provide Authority with no less than twelve (12) months’ prior written notice of any termination or discontinuation of the Products or Services (“**End of Life Notice**”). Within thirty (30) days after such End of Life Notice,

Contractor shall provide to Authority a transition plan describing the process and steps Contractor will take to transition Authority to the new or replacement Products or Services prior to the effective date of termination or discontinuation of the Products or Services. Contractor will continue to make available to Authority all maintenance and support Services for such Products or Services for a period of twelve (12) months after the actual date of termination or discontinuation of the Products or Services.

- (g) Contractor shall, if requested, propose service level guarantees and credits for delays and interruptions (e.g., outages and performance failures) pursuant to this Contract. Contractor shall provide the Services in accordance with the Service Levels.

5. ASSIGNMENT

- (a) Except as otherwise provided in this clause, the Contractor shall not transfer any of its rights and obligations under this Contract to third parties without the prior, written consent of the Authority. The Authority may recognize a third party as successor in interest to the Contract in the event of a transfer of all or substantially all of the assets of the Contractor, a division of the Contractor involved in the performance of the Contract, or a parent company providing a performance guarantee under this Contract, (i.e., sales of assets, transfer of assets pursuant to merger or consolidation, or incorporation of a proprietorship or partnership). Such recognition shall be within the discretion of the Contracting Officer after review of the facts and circumstances surrounding each request. At the Contracting Officer's discretion, he or she may conduct an evaluation of the successor party's capability to perform the Contract in the same manner and to the same extent that he or she was empowered to conduct a responsibility determination as part of the original solicitation for this Contract. Should the Contracting Officer, for any reason, not recognize a successor in interest, he or she may terminate this Contract.
- (b) Any attempt to transfer by assignment not authorized by the Contracting Officer shall constitute a material breach of this Contract and the Authority may terminate this Contract in accordance with the "Termination for Default" clause set forth in this Contract.
- (c) Nothing contained herein shall be deemed to preclude the Contractor's assignment of claims for monies due or to be become due to it under this Contract to a bank, trust company or other financing institution, including any Federal lending agency, upon written notice of such assignment to the Authority.

6. THE AUTHORITY'S DELAY

- (a) If the performance of all or any part of the Contract is delayed in a material manner or extent by an act or omission of the Authority that is not expressly or impliedly authorized by this Contract or by applicable provisions of law, the Contracting Officer shall make an adjustment (excluding profit) for any increase in the cost of performance of this Contract caused by such delay and shall modify the Contract in writing. The Contracting Officer shall make an adjustment to the delivery or performance dates and any other Contractual provision if such delay or interruption affected Contract compliance. The Contracting Officer shall make

no adjustment under this Contract for any delay or interruption if performance was or could have been delayed by any other cause, including, without limitation: (i) the fault or negligence of the Contractor or any subcontractor; (ii) an act constituting a Force Majeure Event pursuant to this Contract; or (iii) any other cause for which an adjustment is provided under any other clause of this Contract, at law or in equity.

- (b) An adjustment pursuant to paragraph (a) shall not be allowed:
- (1) For any costs incurred more than twenty (20) days before the Contractor notifies the Contracting Officer, in writing, of the delay.
 - (2) Unless the claim, in a sum certain, is asserted in writing as soon as practicable after the termination of the delay. In no event shall a Contractor assert a delay claim later than thirty (30) days after its termination. The delay claim shall be accompanied by appropriate documentation specifically supporting the nature and extent of the claimed impact upon the cost and/or time required for performance. In any instance where it is not possible for the Contractor to fully project such impact within the thirty (30) day period, it shall support the claim with such documentation as is then reasonably available, along with a statement of the anticipated time frame when the Contractor expects to provide the additional materials. The Contracting Officer shall maintain the right throughout the process to request such additional materials as he or she shall reasonably require in consideration of the claim and shall be under no obligation to conclude his or her consideration of the claim prior to review of all relevant materials. Any adjustment to the Contract price pursuant this clause must be determined prior to final payment under this Contract.

7. AVAILABILITY OF FUNDS FOR THE NEXT FISCAL YEAR

Funds are not guaranteed for performance under this Contract beyond the current fiscal year that ends on June 30th. The Authority's obligation for performance of this Contract beyond that date is contingent upon the availability of funds from which payment for Contract purposes can be made. The Authority will not be liable for any payment under this Contract until funds are made available to the Contracting Officer and until the Contractor receives notice in writing. Any option that the Authority may exercise in whole or in part, in a subsequent fiscal year is subject to availability of funds in that fiscal year and will be governed by the terms of this clause.

8. BILLING AND PAYMENT

- (a) The Authority shall pay and the Contractor shall accept the amounts set forth in the Contract as full compensation for all costs and expenses for completing the work in accordance with the Contract, including, but not limited to, all labor and material required to be furnished under this Contract; all overhead, expenses, fees and profits including the cost of providing maintenance, support, Improvements or with respect to the storage or delivery of any Products; all risks and obligations set forth in the Contract; any applicable fees; and all expenses due to any unforeseen difficulty encountered in the prosecution of the work.

- (b) Within 30 days of Contract award, the Contractor shall submit a current IRS Form W-9, Request for Taxpayer Identification Number and Certification, through WMATA's Supplier Portal. WMATA will not process payments for Contractor invoices without a valid W-9 form on file.
- (c) Payments will be made following receipt of the Form W-9, acceptance of the Products or Services to be provided under this Contract and after receipt and acceptance of a properly completed invoice. Authority will accept the submittal of invoices and supporting documentation by Email at: apinvoice@wmata.com. Acceptable file formats for invoice and supporting documentation include Adobe PDF, Microsoft Word, and Microsoft Excel. All documents must include the invoice number and the file name. Please submit one invoice and supporting documentation per attachment. You may submit more than one attachment per email.
- (d) Invoices must contain all of the following information to be eligible for payment:
 - i. The word "Invoice"
 - ii. Contractor's name;
 - iii. Unique invoice number;
 - iv. Invoice date;
 - v. Payment terms;
 - vi. Remittance address;
 - vii. WMATA purchase order number;
 - viii. For services provided, a description of each service being invoiced;
 - ix. For all goods provided, a description of each item being invoiced, including item quantity, cost per item and total item cost;
 - x. Performance period specifying date(s) during which goods or services were rendered;
 - xi. Total amount invoiced, net of credits and discounts; and
 - xii. Contact information, including email address and phone number.
- (e) Revised invoices must have a new date; be clearly be marked as "Revised"; and refer to the invoice it is replacing. Credit invoices must clearly be marked as "Credit" and reference the original invoice number. Final invoices shall be marked as "Final."
- (f) At any time, WMATA may specify additional invoice requirements, including prescribed formats or WMATA templates that must accompany the Contractor's documentation.
- (g) The Authority shall remit payment, generally within thirty (30) days of its receipt of an invoice satisfying the requirements of paragraph (d) above, at the prices stated in the Contract for Products or Services accepted, less any applicable deductions.
- (h) The Contractor shall submit all requests to change payment methods or vendor bank account information through WMATA's Supplier Portal. WMATA will not process any banking changes submitted via email.

9. CHANGE ORDERS

- (a) The Contracting Officer may at any time, by a written order, and without notice to the sureties, if any, direct and implement change orders within the general scope of this Contract, including but not limited to one or more of the following:
 - (1) Nature and/or extent of Services to be performed or Products to be furnished;
 - (2) Time of performance (i.e., hours of the day, days of the week, etc.); or
 - (3) Place of performance of the Services or Specifications for Products.
- (b) If, in the Contracting Officer's judgment, any such change causes an increase or decrease in the cost of, or the time required for, the performance of this Contract, whether or not directly changed by the order, he or she shall make an equitable adjustment to the Contract price, the delivery schedule, or both, and shall modify the Contract in writing accordingly. Any adjustment to the Contract price pursuant to this clause must be agreed upon or otherwise determined prior to final payment.

In any instance where the Contractor asserts a right to an adjustment in the Contract price or time required for performance as the result of a change, it must submit a written claim advising WMATA within thirty (30) days from the date of receipt of the written order directing the change. The claim shall be accompanied by appropriate documentation supporting the nature and extent of the claimed impact upon the Contract price and/or time required for performance. In any instance where it is not reasonably practicable to fully project such impact within the thirty (30) day period, the Contractor shall accompany its claim with such supporting documentation that is reasonably available, along with a statement of the anticipated time when the Contractor expects to provide the additional materials. The Contracting Officer shall maintain the right throughout the process to request such additional materials as he or she shall reasonably requires in consideration of the claim and shall be under no obligation to conclude his or her consideration prior to review of all relevant materials. Any adjustment to this Contract's price pursuant to this clause must be agreed upon or determined prior to final payment.

- i. If the Contractor's proposed price adjustment includes the cost of property rendered obsolete or excess by the change, the Contracting Officer shall have the right to prescribe the manner of property disposition.
- ii. Disagreement regarding either party's right to any adjustment in price or time for performance as the result of a change implemented pursuant to this clause shall be subject to adjudication in accordance with the "Disputes" clause of this Contract. Notwithstanding the pendency of any such dispute, the Contractor expressly acknowledges that it shall remain fully obligated to perform the Contract as changed.
- iii. The Contractor shall promptly notify the Contracting Officer of matters, whether implemented as change orders or otherwise, that the Contractor believes may reasonably result in either an increase or decrease in the Contract price or the time required for performance of any part of this Contract and shall take action as the Contracting Officer directs. The

Contractor's failure to provide such notification shall constitute a waiver of its right to seek an adjustment to the Contract price or time required for such performance.

- (c) In no event shall the Contractor be entitled to payment for change orders, additional or extra supplies or services or other modifications to the Contract unless the Contracting Officer authorizes it in writing.

10. CHOICE OF LAW, CONSENT TO JURISDICTION AND VENUE

This Contract shall be deemed to be executed in the District of Columbia, regardless of the domicile of the Contractor, and shall be governed by and construed in accordance with the Federal government contracting law as adopted by WMATA in its Procurement Best Practices Manual (BPM). As to all other matters of substantive law, the laws of the District of Columbia shall apply except for its choice of law provisions, unless superseded by Federal law.

11. CONTRACTING OFFICER'S TECHNICAL REPRESENTATIVE (COTR)

- (a) The work will be conducted under the Contracting Officer's general direction. The Contracting Officer will delegate authority to the Contracting Officer's Technical Representative ("COTR") to take the following actions:
 - i. Act as the principal point of contact with the Contractor. The COTR will submit copy of each item of incoming correspondence and a copy of any enclosures to the Authority's Contract Administrator;
 - ii. Approve in writing the Contractor's progress schedule and submittals when required;
 - iii. Inspect the work and deliverables for compliance with this Contract;
 - iv. Review and approve invoices and payment estimates. The COTR will forward invoices and receipts to accounting. The COTR will bring any significant discrepancies in, or disputes concerning, the Contractor's invoices or payments to the Contracting Officer's attention. The COTR must ensure that the Contractor is not charging for any unauthorized expenses, such as travel or lodging in a firm fixed price contract. The COTR will make his or her recommendations regarding release of any retainage to the Contracting Officer in writing;
 - v. Coordinate correspondence with the Contract Administrator if its importance significantly impacts this Contract;
 - vi. Evaluate the Contractor's technical letters, proposals and submissions for the Contracting Officer;
 - vii. Advise the Contracting Officer of potential problems that may affect Contract performance;
 - viii. Advise Authority's Small Business Programs Office (SBP) if Disadvantaged Business Enterprise (DBE), Small Business Enterprise (SBE), or Minority Business Enterprise (MBE) issue(s) appear that may require investigation.

- ix. Advise the Contracting Officer a reasonable amount of time before the Contractual not-to-exceed amount will be exceeded, if the COTR has a good faith basis for determining that this is likely to occur;
 - x. Prepare the Authority's estimate for proposed Contract modifications, and participate in negotiations for modifications;
 - xi. Approve, in writing, the Contractor's progress schedule when required.
 - xii. Receive from the Contractor, monthly, if applicable, DBE status reports and forward them to Authority's SBP Office;
 - xiii. Receive from the Contractor certified payroll reports and prepare a log sheet indicating the following: (1) name of the Contractor and subcontractor; (2) the Contract number; (3) the certified payroll number (number for the payroll for the project starting with the number 1); (4) the time frame of the payroll period (e.g., 1/21/18-2/3/18); (5) the statement of compliance date (first page of the report); and (6) the date that Authority received the report.
 - xiv. Maintain a comprehensive file/record of documents and correspondence and other documentation concerning Contract activities and actions;
 - xv. If this Contract is ready for closeout, the COTR shall provide the Contract Administrator with written notification after all Products and Services have been received that the Contract is ready for closeout. The COTR will return the file, containing all records, correspondence, etc., to the Contract Administrator;
 - xvi. Perform a detailed performance evaluation of the Contractor. If there are one (1) or more categories in which the Contractor is deemed not satisfactory, these evaluations must be provided to the Contractor for comment;
 - xvii. Provide the Contract Administrator with a written request (and requisition) to exercise option(s) (if any) a minimum of ninety (90) days prior to the time established in this Contract for exercise of the option; and
 - xviii. The COTR may not further delegate his/her duties or responsibilities regardless of whether he or she will be absent. If, for whatever reason the COTR is unable or unwilling to fulfill his or her responsibilities under this Contract, only the Contracting Officer can designate a new COTR.
 - xix. The presence or absence of the COTR or his or her inspectors shall not relieve the Contractor from any requirements of this Contract.
- (b) The name, address and telephone number of the COTR will be provided to the Contractor at award.

12. CONTRACTOR PERSONNEL

- (a) Except as expressly set forth in this Contract, Contractor shall be responsible for providing the necessary labor, supplies, tools, materials and transportation to maintain and support all Products and Services provided in good working order so that they comply with the Service Levels and other requirements of this Contract. Contractor shall ensure that all Personnel providing Services are fully trained and are qualified to perform the Services. Contractor shall ensure that an adequate number of appropriately qualified and trained Personnel are utilized and available at all times to support Authority's use of the Products and/or Services in accordance with the terms of the Contract. Contractor shall augment the Personnel assigned to Authority as reasonably necessary to carry out

agreed-upon special projects, including the development and implementation of new technologies and services to support the network, technology and business requirements of Authority.

- (b) The Authority may direct the replacement of the Contractor's employees and agents that the Contracting Officer reasonably deems to be unsuitable or whose continued participation in the work is deemed contrary to the Authority's best interests.. Except in circumstances deemed exigent by the Contracting Officer, the reason for replacement will be discussed between the Contractor and the Authority before a replacement directive is issued. Upon receipt of a written replacement directive from the Authority specifying the date by which the replacement must occur, the Contractor shall proceed with the replacement and shall do so in a manner that minimizes, to the greatest extent practicable, any impact upon the Contract. If Personnel are reassigned during the term of this Contract, Contractor shall notify the Authority in advance and make all reasonable efforts to ensure a smooth transition, including the provision of knowledge transfer documentation and cooperation between the replaced and the newly-assigned Personnel.
- (c) Personnel required to work on the Authority's property must obtain an Authority vendors' badge and successfully complete the mandatory safety training that must be renewed yearly. The Contractor must advise its affected Personnel that, to obtain a vendor's badge, the Contractor will perform a background check

13. CONVICT LABOR

- a. Except as provided in paragraph b below, the Contractor shall not employ, in the performance of this Contract, any person undergoing a sentence of imprisonment imposed by any court of the Federal Government, a state, the District of Columbia, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam or the U.S. Virgin Islands.
- b. The Contractor is not prohibited from employing persons:
 - (1) On parole or probation to work at paid employment during the term of their sentence;
 - (2) Who have been pardoned or who have served their terms; or
 - (3) Confined for violation of the laws of the Federal Government, the states, the District of Columbia, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, or the U.S. Virgin Islands who are authorized to work at paid employment in the community under the laws of such jurisdiction, if:
 - (i) The worker is paid or is in an approved work or training program on a voluntary basis;
 - (ii) Representatives of the local union's central bodies or similar labor union organizations have been consulted;
 - (iii) Such paid employment will not result in the displacement of employed workers, or be applied in skills, crafts, or trades where there is a surplus of available gainful labor in the locality, or impair existing contracts or services;

- (iv) The rates of pay and other conditions of employment will not be less than those paid or provided for work of a similar nature in the locality where the work is being performed; and
- (v) The Attorney General of the United States has certified that the work- release laws or regulations of the jurisdiction involved are in conformity with the requirements of Executive Order 11755, as amended by Executive Orders 12608 and 12943.

14. COVENANT AGAINST CONTINGENT FEES

The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure this Contract upon an agreement for a commission, percentage, brokerage or contingent fee, excepting bona fide employees or bona fide, established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For breach or violation of this warranty, the Authority shall have the right to terminate this Contract without liability or, in its discretion, to deduct from the Contract price, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee, if no fraud is suspected

If there is evidence of fraud, the Authority's remedy prior to final adjudication by a court of competent jurisdiction is to report the matter to Authority's Office of Inspector General (OIG), the U.S. Department of Transportation's Office of Inspector General (DOT-OIG), the Offices of Inspectors General of any agency providing funding under this Contract and/or appropriate Federal, state and/or local law enforcement authorities.

15. DISPUTES

- (a) Any dispute or claim arising out of or relating to this Contract shall be decided by the Contracting Officer, who shall reduce his/her decision to writing and furnish a copy to the Contractor. A final decision by the Contracting Officer shall be conclusive and binding on the Authority.
- (b) The filing of a claim, lawsuit, arbitration or other legal proceeding, does not relieve the parties of their continuing obligations to proceed diligently with the performance of the Contract and in accordance with the Contracting Officer's Final Decision.
- (c) After exhausting all administrative remedies, each party agrees that any suit, action or other legal proceeding arising out of or relating to this Contract shall be brought only in the United States District Court for the District of Columbia, the United States District Court for the Eastern District of Virginia, Alexandria Division, or in the United States District Court for the District of Maryland, Greenbelt Division.
- (d) The parties may mutually agree and consent to final and binding Alternate Dispute Resolution (ADR), including in the Armed Service Board of Contract Appeals, in lieu of judicial review in the United States District Courts as set forth in subsection (c) above.

16. EMPLOYMENT RESTRICTION WARRANTY

- (a) The Contractor warrants that it will not offer employment to, solicit or discuss the interest of prospective employment of, or otherwise engage in substantive employment related discussions or communications with, any present or former Board member of the

Authority who has been involved, directly or indirectly, in any matter of financial interest to the Contractor until at least two (2) years after the Board member has ceased involvement in the matter. The post-employment restriction for employees is one (1) year from the date of their last employment with the Authority. The Contractor shall not knowingly engage in communications of the nature described above with any immediate family member or member of the household of any Authority employee or Board member during the period when such employee or Board member is involved in any matter of financial interest to the Contractor.

- (b) If a former Board member or employee of the Authority is eventually hired, the Contractor shall ensure that the former Board member or employee is not involved in negotiating or otherwise dealing with the Authority on any particular matter over which he or she had responsibility during his or her tenure.
- (c) Should the Contractor fail to comply with this clause and there is no evidence of fraud, the Contracting Officer shall have the right to withhold payment under this Contract in an amount not to exceed two percent (2%) of the total Contract amount as liquidated damages to the Authority, such withholding to be in addition to any other withholding or retainage under this Contract. Any dispute shall be settled in accordance with the "Disputes" clause of this Contract.
- (d) If there is evidence of fraud, the Authority's remedy prior to a final decision by a court of competent jurisdiction is to report the matter to Authority's OIG, the DOT- OIG, the Offices of Inspectors General of any state or Federal agency providing funding under this Contract and/or appropriate Federal, state and/or local law enforcement authorities.

17. EXTENSIONS OF TIME/FORCE MAJEURE

- (a) For purposes of this clause, the term "**Force Majeure Event**" shall mean an unforeseen event or circumstance beyond the control of, and not occasioned by, the fault or negligence of the Contractor or the Authority that gives rise to a delay in the progress of the Contract, including, without limitation, acts of God, acts of war or insurrection, unusually severe weather, fires, floods, strikes, freight embargoes or other events or circumstances of like nature, but excluding failure of any underlying vendors or suppliers except to the extent they are themselves impacted by a Force Majeure Event.
- (b) If the Contractor is delayed at any time during the performance of the Contract by a Force Majeure Event, the Contracting Officer shall extend the time for completion and/or affected delivery date(s) in the following circumstances:
 - i. The cause of the delay arises after the award of the Contract and neither was nor could have been anticipated by the Contractor by reasonable investigation before such award;
 - ii. The Contractor demonstrates to the Contracting Officer that the completion of the Services or other work and/or affected Products or other deliverables will be actually and necessarily delayed;
 - iii. The delay cannot be avoided or mitigated by the exercise of all reasonable precautions, efforts and measures available to the Contractor, whether before or after the cause of delay; and
 - iv. The Contractor makes a written request and provides other information to the Contracting Officer as described below.
- (c) If the Contractor will be delayed at any time or for any period by two (2) or more of the above-mentioned causes, the Contractor shall not be entitled to a separate extension for

each cause, but shall be entitled to only one (1) extension for the cumulative effects of the delay.

- (d) The Contracting Officer may rescind or shorten any extension previously granted if he or she subsequently determines that any information that the Contractor provided in support of a request for an extension of time was erroneous, or if accurate information would have resulted in a denial of the request for an excusable delay. The Contracting Officer will not rescind or shorten any extension previously granted if the Contractor acted in reliance upon it and if, in his or her judgment, such extension was based on information that the Contractor submitted in good faith, even if it is later determined to be erroneous.
- (e) The request for an extension of time pursuant to paragraph (b) shall be made within ten (10) days after the Contractor knows or should know of any cause for which it may claim an excusable delay. The Contractor's request shall contain any actual or potential basis for an extension of time, describing, as fully as possible, the nature and projected duration of the delay and its effect on the completion of the work identified in the request. Within thirty (30) days of his or her receipt of all such information, the Contracting Officer shall advise the Contractor of his or her decision on such requested extension. Where it is not reasonably practicable for the Contracting Officer to render his or her decision in the thirty (30) day period, he or she shall, prior to the expiration of such period, advise the Contractor that he or she will require additional time and state the approximate date upon which he or she expects to render a decision.
- (f) If a Force Majeure Event materially affects Contractor's ability to satisfy its obligations under this Contract with respect to particular Services for thirty (30) days or longer, Authority, in its sole discretion, may terminate the impacted Services in whole or in part, without liability. In such event, Authority shall not incur any further obligation or pay any further amounts pursuant to this Contract beyond the termination date. In no event shall a subcontractor at any tier be deemed a party outside the control of the Contractor.

18. FALSE STATEMENTS, CLAIMS OR SUBMISSIONS

- (a) The Contractor acknowledges its responsibility to undertake its obligations under this publicly funded contract with full integrity and to take all reasonable steps to ensure that statements, claims and submissions made pursuant to the Contract are provided in good faith and with a reasonable belief as to their truthfulness, accuracy and completeness.
- (b) In the event that it is finally determined by a court of competent jurisdiction that any statement, claim, submission, or certification made by or on behalf of the Contractor pursuant to a material element of the Contract was knowingly false, fictitious or fraudulent, the Authority shall be entitled to recover from the Contractor an amount equal to not more than three (3) times the monetary value of the benefit derived or sought to be derived by the Contractor through its false statement, claim or submission. An element of the Contract shall be deemed material if it impacted or could reasonably have been intended to impact the disposition of any claim, dispute, proposed or implemented change order, proposed pricing or schedule adjustment of any nature, or other substantive issue directly affecting the rights of the parties under the Contract.
- (c) The Authority's remedy prior to a final determination by a court of competent jurisdiction is to report the matter to Authority's OIG, the DOT-OIG, the Offices of Inspectors General of any state or Federal agency providing funding under this Contract and/or appropriate Federal, state and/or local law enforcement authorities.
- (d) The rights of the Authority set forth in this clause are in addition to any Contractual, legal or equitable rights that may arise upon the Contractor's submission of a false claim or statement, including without limitation, the Authority's right to terminate the Contract for

default once fraud is finally determined by a court of competent jurisdiction. The provisions of this clause shall not serve in any respect to limit, waive or modify any civil or criminal liability, of the Contractor or any of its officers, agents or employees that such conduct may precipitate.

19. FEDERAL, STATE, AND LOCAL TAXES

- (a) Except as may be otherwise provided in this Contract, the Contract price shall be deemed to include all applicable Federal, state and local fees and duties.
- (b) Notwithstanding paragraph (a), with respect to any Federal excise tax or duty on the Products, Services, transactions or property covered by this Contract, if a statute, court decision, written ruling or regulation takes effect after the Contract date, and:
 - i. Results in the Contractor being required to pay or bear the burden of any such Federal excise tax or duty or increase in the rate thereof that would not otherwise have been payable on such transactions or property, the Contract price shall be increased by the amount of such tax or duty or rate increase, provided that the Contractor warrants in writing that no amount for such newly-imposed Federal excise tax or duty or rate increase was included in the Contract price as a contingency reserve or otherwise; or
 - ii. Results in the Contractor not being required to pay or bear the burden of, or in its obtaining a refund or drawback of, any Federal excise tax or duty that would otherwise have been payable on such transactions or property or that was the basis of an increase in the Contract price, the Contract price shall be decreased by the amount of the relief, refund, or drawback, or that amount shall be paid to the Authority, as directed by the Contracting Officer. The Contract price shall be similarly decreased if the Contractor, through its fault or negligence or his failure to follow the Contracting Officer's instructions, is required to pay or bear the burden of, or does not obtain a refund or drawback of, any such Federal excise tax or duty.
- (c) Paragraph (b) above shall not be applicable to social security taxes or to any other employment tax.
- (d) No adjustment of less than \$250 shall be made in the Contract price pursuant to paragraph (b).
- (e) As used in paragraph (b) the term "Contract Date" means the date the Contract was executed by the Authority. As to additional services, supplies or construction procured by modification to this Contract, the term "Contract Date" means the effective date of such modification.
- (f) The Contractor shall promptly notify the Contracting Officer of matters that may result in either an increase or decrease in the Contract price under this clause and shall take action as the Contracting Officer directs. The Authority shall be entitled to a reduction in the Contract price reflecting such amount and a refund of monies paid related to such taxes, plus applicable interest.

20. LIVING WAGE

- (a) The Authority's Living Wage Policy and implementing regulations apply with respect to all contracts for services (including construction) awarded in an amount that exceeds \$250,000 in a twelve (12) month period. If this Contract meets those criteria, the following requirements are applicable:
- (b) The Authority's living wage rate is \$15.58 per hour, and may be reduced by the Contractor's per-employee cost for health insurance.
- (c) The Contractor shall:
 - i. Pay the Authority's living wage rate, effective during the time the work is performed, to all employees who perform work under this Contract;
 - ii. Include this "Living Wage" article in all subcontracts that exceed \$250,000 in a twelve (12) month period awarded under this Contract;
 - iii. Maintain payroll records, in accordance with the requirements of this Contract, and include a similar provision in affected subcontracts that requires the subcontractor to maintain its payroll records for the same length of time; and
 - iv. Certify with each monthly invoice that the Authority's living wage rate was paid to affected employees, or if applicable, certify prior to Contract award or Contract extension, if any, that one or more of the exemptions in paragraph (d) below applies.
 - v. The Contractor shall not split or subdivide this Contract, pay an employee through a third party, or treat an employee as a subcontractor or independent contractor to avoid compliance with this "Living Wage" article
- (d) Exemptions to this "Living Wage" article include:
 - i. Contracts and agreements subject to higher wage rates required by Federal law or collective bargaining agreements;
 - ii. Contracts or agreements for regulated utilities;
 - iii. Emergency services to prevent or respond to a disaster or imminent threat to public health and safety;
 - iv. Contractor employees who work less than full time; and
 - v. Contractors who employ fewer than ten (10) employees.
- (e) The Authority may adjust the living wage rate effective in January of each year. The adjustment will reflect the average living wage rate among Metro's Compact jurisdictions with living wage rates. If after Contract award the living wage rate increases, the Contractor is entitled to an equitable adjustment to the Contract price in the amount of the increase for employees who are affected by the escalated wage.
- (f) Failure to comply with the Authority's Living Wage Policy shall result in the Authority's right to exercise available contract remedies, including contract termination, where no fraud is suspected.
- (g) If fraud is suspected, the Authority's remedy prior to adjudication by a court of competent jurisdiction is to report the matter to WMATA's Office of Inspector

General (OIG), the U.S. Department of Transportation's Office of Inspector General (DOT-OIG), the Offices of Inspectors General of any state or Federal agency providing funding under this Contract and/or appropriate Federal, state and/or local law enforcement authorities.

21. GARNISHMENT OF PAYMENTS

Payment under the Contract shall be subject to any garnishment, attachment orders, and or levies issued pursuant to the laws of the United States, Maryland, Virginia, and the District of Columbia.

22. GRATUITIES

- (a) In connection with performance of this Contract, or any changes or modifications relative thereto, the giving of or offering to give gratuities (in the form of entertainment, gifts or otherwise) by the Contractor, or any agent, representative or other person deemed to be acting on behalf of the Contractor, or any supplier or subcontractor furnishing material to or performing work under this Contractor, to any Board member, employee or agent of the Authority; with a view toward securing this Contract or securing favorable treatment regarding this Contract is expressly forbidden. The terms of this "Gratuities" clause shall be strictly construed and enforced in the event of violations hereof.
- (b) Reported instances of the giving or offering to give gratuities within the context of this "Gratuities" clause will be investigated by the Authority's Board of Directors or its duly authorized representative. A preliminary investigation will be made to determine whether there is probable cause to suspect that a violation of this clause exists. If such probable cause exists, the Board of Directors, or its duly authorized representative, shall formally notify Authority's OIG, the DOT-OIG, the Offices of Inspectors General of any state or Federal agency providing funding under this Contract and/or appropriate Federal, state and/or local law enforcement authorities.
- (c) The rights and remedies of the Authority provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided under this Contract, at law or in equity.

23. INDEMNIFICATION

- (a) Contractor shall indemnify, defend and hold harmless the Authority, its Board members, employees and agents, from all liabilities, obligations, damages, penalties, claims, costs, charges and expenses (including reasonable attorney's fees), of whatsoever kind and nature for injury, including personal injury or death of any person or persons, and for loss or damage to any property, including the property of the Contractor and the Authority, occurring in connection with, or in any way arising out of any alleged (i) act or omission of Contractor, or any Personnel, outside the scope of the authority granted to Contractor under this Contract; (ii) violation of any applicable law on the part of Contractor or any Personnel; (iii) breach of any representation, warranty, covenant, or obligation; (iv) negligent act or omission or intentional misconduct of Contractor or any Personnel; or (v) claim that any aspect of the Products and/or Services (including any deliverable) is in violation of an applicable law or infringes upon or misappropriates any intellectual property right of a third party, except to the extent the infringing component is content supplied by Authority or is unlawfully modified by the Authority without Contractor's

knowledge or consent. Nothing in the preceding sentence shall be deemed to relieve Contractor from ultimate liability for any obligation of Contractor under this Contract.

- (b) If any of the Products and/or Services (including any deliverables) become, or are likely to become, the subject of an infringement or misappropriation claim, Contractor shall promptly, at Contractor's expense, (i) obtain the right for Authority to continue using the infringing item; (ii) replace an infringing item with a non-infringing item that meets or exceeds the performance and functionality of the replaced item; or (iii) modify the infringing item to be non-infringing, provided that any such modification, replacement, or work-around solution will not adversely affect the functionality, performance, use or quality of the affected item. Contractor's failure or inability to accomplish any of the foregoing shall be deemed a material breach of this Contract, and Authority may pursue any rights and remedies available to it under this Contract, including termination. The Contractor shall report to the Contracting Officer, promptly and in reasonable written detail, each notice or claim of infringement based on this Contract once the Contractor is notified thereof.
- (c) If any action or proceeding relating to the indemnification required is brought against the Authority, then upon written notice from the Authority to the Contractor, the Contractor shall, at the Contractor's expense, resist or defend such action or proceeding by counsel approved by the Authority in writing, such approval not to be unreasonably withheld, but no approval of counsel shall be required where the cause of action is resisted or defended by counsel of any insurance carrier obligated to resist or defend the same. The Authority reserves the right to use its own counsel under this indemnity at Contractor's sole cost and expense.
- (d) Contractor understands and agrees that it is Contractor's responsibility to provide indemnification to the Authority pursuant to this Section. The provision of insurance, while anticipated to provide a funding source for this indemnification, is in addition to any indemnification requirements and the failure of Contractor's insurance to fully fund any indemnification shall not relieve the Contractor of any obligation assumed under this indemnification.

24. AUDIT AND INSPECTION OF RECORDS

The Contractor shall provide and maintain accurate and complete records of all contracts, papers, correspondence, accounts, invoices, and other information relating to this Contract ("Records"). Contractor shall maintain the Records that are financial in nature in accordance with recognized commercial accounting practices. Contractor shall permit Authority or Authority's representatives to examine and audit the Records, at the cost of Authority, upon prior written notification to Contractor of at least seventy-two (72) hours and during its normal business hours. Contractor shall retain the Records for at least three (3) years after termination or expiration of this Contract.

25. LAWS AND REGULATIONS

The Contractor shall be responsible to comply with any applicable State of Maryland, Commonwealth of Virginia, District of Columbia, Federal and local laws and regulations governing the Products or Services to be provided under this Contract. Further, the Contractor shall be responsible to obtain, at its own cost and expense, any and all licenses/permits required to transact business in any political jurisdiction(s) where work will be performed or where any deliverables will be produced or delivered.

26. MANDATORY DISCLOSURE

The Contractor shall timely disclose, in writing, to Authority's OIG, with a copy to the Contracting Officer, whenever, in connection with the award, performance, or closeout of this Contract or any subcontract hereunder, the Contractor has credible evidence that a principal, employee, agent, or subcontractor of the Contractor has committed—

- (a) A violation of Federal criminal law involving fraud, conflict of interest, bribery, or gratuity violations found in Title 18 of the United States Code; or
- (b) A violation of the civil False Claims Act (31 U.S.C. §§ 3729-3733).
 - i. Authority, to the extent permitted by law and regulation, will safeguard and treat information obtained pursuant to the Contractor's disclosure as confidential where the information has been marked "confidential" or "proprietary" by Contractor. To the extent permitted by the law and regulation, such information will not be released by Authority to the public pursuant to a Public Access to Records request, without prior notification to the Contractor. Authority may transfer documents provided by the Contractor to any department or agency within the state, Federal or local government, if the information relates to matters within the organization's jurisdiction.
 - ii. If the violation relates to an order against a government-wide acquisition contract, a multi-agency contract, a multiple-award schedule contract such as the Federal Supply Schedule, or any other procurement instrument intended for use by multiple agencies, the Contractor shall notify the OIG of the ordering agency and the OIG of the agency responsible for the basic contract.

27. NOTICE TO THE AUTHORITY OF LABOR DISPUTES

- (a) Whenever the Contractor has knowledge that any actual or potential labor dispute may delay the timely performance of this Contract, the Contractor shall immediately give notice thereof, including all relevant information with respect thereto, to the Contracting Officer.
- (b) The Contractor agrees to insert this clause, including this paragraph (b), in any subcontract hereunder if a labor dispute may delay the timely performance of this Contract.

28. NOTICE OF BANKRUPTCY OR INSOLVENCY

In the event the Contractor becomes insolvent or files or has filed against it a petition in bankruptcy, whether voluntary or involuntary, the Contractor agrees to furnish, by certified mail or electronic commerce method authorized by the Contract, written notification of such to the Contracting Officer. This notification shall be furnished as soon as possible, but in no event more than ten (10) days of the initiation of the proceedings relating to bankruptcy filing or when the insolvency is discovered. This notification shall include the date on which the bankruptcy petition was filed, the identity of the court in which the bankruptcy petition was filed, contact information for the Bankruptcy Trustee and a listing of all Authority Contract numbers for all Authority contracts against which final payment has not been made. This obligation remains in effect until final payment under this Contract.

29. OFFICIALS NOT TO BENEFIT

- (a) No member of or delegate to Congress, resident commissioner or member of a state or local public body shall be admitted to any share or part of this Contract, or to any benefit that may arise therefrom during his or her tenure or for two (2) years thereafter, unless his or her interest in the business entity that is awarded this Contract is placed in a blind trust in accordance with the rules and regulations of the U.S. Office of Government Ethics (OGE).
- (b) Enforcement of this clause shall be consistent with 18 U.S.C. §431.

30. ORGANIZATIONAL CONFLICTS OF INTEREST

- (a) An organizational conflict of interest (“OCI”) exists when the nature of the work to be performed under a proposed contract or a subcontract may, without some restriction on future activities, result in an unfair competitive advantage to the Contractor or subcontractor because of: (1) unequal access to information, (2) biased ground rules or (3) impaired objectivity. An unequal access to information OCI may exist if in performing a contract, a contractor obtains access to non-public information that provides a competitive advantage to it in a later competition. A biased ground rules OCI may exist if the contractor has a role in setting rules for a source selection in which the contractor will compete. An impaired objectivity OCI may exist if, in performing a contract, a contractor is called upon to evaluate an offer from or performance by itself or an affiliated entity.
- (b) In the event that the Contractor believes that it or any of its potential subcontractors may have an OCI it shall notify the Contracting Officer, in writing, within five (5) work days after it becomes aware of the potential or actual OCI. The written notification shall identify the nature and circumstances of the perceived conflict and propose appropriate measures to eliminate or mitigate the OCI. The Contracting Officer will review the circumstances and the proposed mitigation plan and notify the Contractor stating whether: (1) no mitigation is required; (2) the conflict cannot be mitigated; (3) the conflict can be mitigated and he or she accepts the proposed measures, or (4) recommends other and/or additional measures.
- (c) The failure of the Contractor to identify such perceived conflicts may result in the contract award being rescinded or the Contract being terminated.
- (d) Should the Contractor identify or become aware of a conflict during the term of this Contract, including any extension thereof that it could not reasonably anticipate prior to award, it shall notify the Contracting Officer in accordance with paragraph (b) above, or request an exception to the restriction with supporting rationale. The Contracting Officer shall consider the Contractor’s proposed measures to mitigate or eliminate the conflict, or the request for an exception.
- (e) If the proposed measures are not determined to be feasible or are otherwise not acceptable to the Contracting Officer, the Contracting Officer may terminate the Contract. If the Contracting Officer does not grant a request for an exception, and the Contract is not terminated for convenience, the Contractor shall be notified in writing and be given ten (10) days from the date of the written notification to take all necessary actions to comply with this clause.
- (f) If the proposed measures are determined to be acceptable to the Contracting Officer, he or she may grant a specific exception to this restriction, when in the Contracting Officer’s judgment, the exception will not create a conflict between the Contractor’s duties and obligations under this Contract and the duties and obligations imposed on the Contractor under another contractual or other relationship.

- (g) If the Contractor fails to comply with the terms of this clause, and no fraud is suspected, the Contracting Officer, may withhold payments due under this Contract until such time as the Contractor is in compliance or, should the non-compliance remain uncorrected at the expiration of ten (10) days from written notice from the Contracting Officer may terminate the contract for default pursuant to this Contract.
- (h) If there is evidence of fraud the Authority's remedy prior to a final determination by a court of competent jurisdiction is to report the matter to Authority's Office of Inspector General (OIG), the U.S. Department of Transportation's Office of Inspector General (DOT-OIG), the Offices of Inspectors General of any state or Federal agency providing funding under this Contract and/or appropriate Federal, state and/or local law enforcement authorities.
- (i) The Contractor, in performing this Contract, shall avoid any conduct that might result in or give the appearance of creating for Board members or employees of the Authority in their relationship with the Contractor, any conflicts of interest or favoritism and/or the appearance thereof and shall avoid any conduct that might result in a Board member, or employee failing to adhere to the Standards of Conduct adopted by the Authority's Board of Directors.
- (j) Any determination by the Contracting Officer under this clause shall be final and shall be considered a question of fact within the meaning of the "Disputes" clause of this Contract.

31. PERSONAL CONFLICTS OF INTEREST

- (a) In accordance with 2 C.F.R. §200.318 (c)(1), neither the Contractor nor any person or business entity affiliated with it shall have, during the term of this Contract, (including any extensions) any prohibited financial relationship with the Authority, any of its Board Members, officers, directors, employees or agents. Such a prohibited relationship would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of these parties, has a financial or other interest in or a tangible personal benefit from a firm being considered for award. A "financial interest" is the potential for gain or loss to the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of these parties as a result of the particular procurement. The prohibited financial interest may arise from ownership of certain financial instruments or investments such as stock, bonds, or real estate, or from a salary, indebtedness, job offer(s) or similar interests that might be affected by the particular procurement.
- (b) An "apparent" conflict of interest may exist where an actual conflict does not exist, but where a reasonable person with knowledge of the relevant facts would question the impartiality of the employee, officer, or agent participating in the procurement.
- (c) Gifts. The officers, employees, and agents of WMATA must neither solicit nor accept gratuities, favors, or anything of monetary value from Contractors or subcontractors. WMATA has standards for situations in which the financial interest is not substantial, or the gift is an unsolicited item of nominal value in accordance with 2 C.F.R. § 200.318(c)(1). A WMATA employee may accept a gift that is less than \$25.00 in value for a particular occasion or \$75.00 in value for a year provided that it is reported to WMATA's Ethics Officer. Personnel involved in the procurement process, however, may not accept anything of value from a Contractor or subcontractor, unless it consists of modest food and refreshments during a working meeting.

- (d) Upon the Contractor's request and full disclosure, and for good cause shown, the Contracting Officer with the advice and consent of the Authority's Ethics Officer may, in his or her discretion grant an exception to paragraph (a) above, when the exception will not create a conflict between the Contractor's duties and obligations under this Contract and the duties and obligations imposed on the Contractor under the contractual or other relationship for which the exception is requested.
- (e) If during the performance of this Contract, the Contractor becomes aware of any relationship, financial interest or other activity in which it or an affiliated person or business entity is involved that is not in compliance with paragraph (a) above, it shall promptly notify the Contracting Officer, in writing and fully disclose all of the surrounding circumstances. The Contracting Officer with the advice and consent of the Authority's Ethics Officer shall decide whether to grant an exception. If the Contracting Officer does not grant an exception, then the Contractor has ten days after written notice to comply with paragraph (a) above.
- (f) If the Contractor fails to comply with the terms of this clause, the Contracting Officer, may withhold payments due under the contract until such time as the Contractor is in compliance or, should the non-compliance remain uncorrected at the expiration of ten (10) days from written notice from the Contracting Officer as provided in paragraph (c) above, terminate the contract for default pursuant to the Default clause of this contract. WMATA's written standards of conduct provide for disciplinary actions to be applied for violations of such standards by its officers and employees, pursuant to 2 C.F.R. § 200.318(c)(1). For example, the penalty for a WMATA employee may be dismissal.
- (g) The Contractor in performing this Contract shall avoid any conduct which might result in or give the appearance of creating for Board members, officers, directors or employees of the Authority in their relationship with the Contractor any conflicts of interest or favoritism and/or the appearance thereof and shall avoid any conduct which might result in a Board member, officer, director or employee failing to adhere to the Code(s) of Ethics adopted by the Authority's Board of Directors.
- (h) The Contracting Officer's determination under this clause shall be final and if properly asserted, shall be constitute a dispute under the Disputes clause of this Contract.

32. PRE-EMPLOYMENT CRIMINAL BACKGROUND CHECK REQUIREMENT

- (a) As a prerequisite to eligibility for a WMATA-issued identification and access badge ("One Badge"), access to WMATA's customers, property, or confidential information, and in consideration for this Contract, the Contractor shall have the sole responsibility for, and shall assure, adequate criminal background screenings on a routine basis of all of its personnel who are or will be working on WMATA's premises (whether they receive a One Badge or not) or otherwise have access to WMATA's customers, property, or confidential information.
- (b) Contractor shall implement, not later than receipt of the Notice to Proceed, a criminal background screening of the Contractor's personnel that shall take into consideration:
 - (1) the nature of the services or work being performed under the contract with particular regard for the individual's access to, and interaction with, WMATA's customers, property, and confidential information;
 - (2) the nature or gravity of the offense or conduct resulting in a criminal conviction; and
 - (3) the time that has lapsed since the conviction and/or completion of the sentence.

- (c) The Contractor shall contract with, or otherwise engage, a reputable third-party vendor to conduct the required criminal background screenings and shall provide the vendor with a copy of its criminal background check screening policies and procedures.
- (d) The Contractor shall not place any person on or engage any person under this Contract, unless that person passes the Contractor's criminal background screening. At the end of each calendar quarter, the Contractor shall certify to the Contracting Officer's Technical Representative on a form provided, its compliance with this criminal background screening requirement and confirm that all persons required to be screened have passed the contractor's criminal background screening before working on this Contract. For the sole purpose of monitoring the Contractor's compliance, WMATA reserves the right to request additional documents or perform its own criminal background screening of Contractor's personnel. The Contracting Officer will inform the Contractor, in writing, of any proposed action within a reasonable time before such action is taken.
- (e) The Contractor shall indemnify and hold WMATA harmless from any and all claims, demands, damages, costs and expenses, including attorneys' fees and other costs and expenses associated with any claims, demands, requests for relief, and/or other liabilities arising out of or resulting from the Contractor's criminal background screening obligations and processes.

The Contractor will include this requirement in all subcontracts under this Contract and receive certifications from their subcontractors to ensure that its subcontractors' personnel who are or will be working on WMATA's premises (whether they receive a One Badge or not) or otherwise have access to WMATA's customers, property, or confidential information undergo the required criminal background checks.

33. PUBLIC COMMUNICATIONS

The Contractor shall not issue communications to the media, place advertisements, nor publicize through any means, the services or goods it is providing the Authority under this Contract without prior written consent of the Contracting Officer. The Contractor shall not publish, in print or online, any communications products such as newsletters, press releases, blogs or other communications without the prior written consent of the Contracting Officer. Approval of any such requests shall be at the sole discretion of the Authority.

34. RIGHTS IN TECHNICAL DATA – UNLIMITED

- (a) The term “technical data” as used in this clause means technical writings, computer software, sound recordings, pictorial reproductions, drawings, or other graphic representations and works of a technical nature, whether or not copyrighted, that are required pursuant to this Contract. The term does not include financial reports, cost analyses, and other information incidental to Contract administration. “Computer software” as used in this clause means commercial off-the-shelf (COTS) software, specially developed computer software, computer programs, computer data bases, data and documentation thereof.

- (b) The Authority or its designated representative, shall have the unlimited right to use, duplicate or disclose technical data, including computer software, in whole or in part, in any manner and for any purpose whatsoever, and to permit others to do so:
- i. Any manuals, instructional materials prepared for installation, operation, maintenance or training purposes;
 - ii. Technical data pertaining to end items, components or processes that were prepared for the purpose of identifying sources, sizes, configurations, mating and attachment characteristics, functional characteristics and performance requirements ("form, fit and function" data; e.g., specification control drawings, catalog sheets, outline drawings. Except for the computer software, it means data identifying sources, functional characteristics, and performance requirements, but specifically excludes the source code, algorithms, processes, formulae, and flow charts of the software);
 - iii. Other technical data that was or is normally furnished without restriction by the Contractor or subcontractor;
 - iv. Other specifically described technical data that the parties have agreed will be furnished without restriction;
 - v. All computer software regardless of whether it is technical data as defined in this clause including the source code, algorithms, processes, formulae, and flow charts, that the Contractor develops or materially modifies for the Authority or for which the Authority is required by Federal law to provide a royalty-free, irrevocable and nonexclusive license to the Federal Government.
- (c) The Authority shall have the right to use, duplicate, or disclose technical data other than as defined in paragraph (a), in whole or in part. Such technical data shall not, without the written permission of the party furnishing it be:
- i. Released or disclosed, in whole or in part, outside the Authority;
 - ii. Used, in whole or in part, by the Authority for manufacturing, or
 - iii. Used by a party other than the Authority except for: (i) emergency repair or overhaul, (ii) where the item or process concerned is not otherwise reasonably available to the Authority to enable timely performance of this Contract, or (iii) administration of this Contract or the inspection of any products produced under this Contract where the third party has a written contract with the Authority to perform these efforts. In all cases described in this clause, the release or disclosure outside of the Authority shall be subject to a nondisclosure agreement.
- (d) Technical data provided in accordance with this clause shall be identified by a legend that suitably recites the any limitations. This clause shall not impair the Authority's right to use similar or identical data acquired from other sources.
- (e) Where any item is purchased as a separate line item in this Contract, that purchase includes all integral parts of that item, including any computer software, source codes, algorithms, processes, formulae, and flow charts. The Authority has full rights to use, duplicate or disclose any or all parts of the item, including computer software, in any manner and for any purpose whatsoever, and to permit others to do so. Should disclosure of the computer software be required only under this paragraph, then the Contracting Officer may waive the provisions of this paragraph, if he or she certifies, in writing, that the item is commercially available from multiple sources and will be fully compatible with existing Authority property.

- (f) Material covered by copyright:
 - i. The Contractor hereby grants to the Authority, and to its Board members employees and agents acting within the scope of their official duties, a royalty- free, nonexclusive and irrevocable license for the Authority's purposes to publish, translate, reproduce, deliver, perform, dispose of, all (i) technical data and (ii) computer software covered by subsection (b) (5) now or hereafter covered by copyright.
 - ii. No such copyrighted matter shall be included in (i) technical data or (ii) computer software covered by subsection (b)(5), without the written permission of the copyright owner.
 - iii. The Contractor shall report to the Authority, promptly and in reasonable written detail, each notice or claim of copyright infringement it receives regarding any technical data or computer software covered by subsection (b)(5) provided to the Authority.
 - iv.
- (g) Relation to patents: Nothing contained in this clause shall imply a license to the Authority under any patent, or be construed as affecting the scope of any license or other right otherwise granted to the Authority under any patent.
- (h) Any dispute under this clause shall be subject to the "Disputes" clause of this Contract.
- (i) The Contracting Officer may retain from payment up to ten percent (10%) of the Contract price until final acceptance of the technical data defined in this clause and as required to be furnished in the Price Schedule or the Contract Specification.

35. SENSITIVE SECURITY INFORMATION / DATA SECURITY

- (a) The Contractor must protect, and take measures to assure that its subcontractors at each tier protect, "sensitive information" made available during the course of an Authority contract or subcontract in accordance with 49 U.S.C. § 40119 (b) and implementing DOT regulations, "Protection of Sensitive Security Information," 49 C.F.R. Part 15, and with 49 U.S.C. § 114(s) and implementing Department of Homeland Security regulations, "Protection of Sensitive Security Information," 49 C.F.R. Part 1520.
- (b) Each party, to the extent permitted by law and regulation, will safeguard and treat information obtained pursuant to the other party's disclosure as confidential where the information has been marked "confidential" or "proprietary" by the disclosing party. Subject to the foregoing and to the extent permitted by law and regulation, Authority will not release to the public, any such confidential information of Contractor, pursuant to a Public Access to Records request, without prior notification to Contractor.
- (c) Any and all personally identifiable information regarding Authority's customers and including, without limitation, existing, past and potential customers, shall be considered "Authority's Customer Information." Contractor will refrain from using, disclosing, reproducing, summarizing and/or distributing Authority's Customer Information except for purposes expressly authorized by this Contract. Without limiting Contractor's obligations herein, any collection, maintenance, and/or use of Authority's Customer Information by Contractor shall be undertaken (i) subject to the then current documented privacy policies of Authority and, in all cases (ii) in compliance with any applicable laws governing Authority's collection, maintenance, transmission, dissemination, use and

destruction thereof. Upon reasonable request from Authority, Contractor shall provide access to Authority and/or its designates, and the right to inspect, all Records relating to the collection, processing or transfers of data relating to Authority's Customer Information at each location at which any of such information may be stored, accessed or processed. Contractor agrees to cooperate in any regulatory investigation or in any internal investigation by Authority, and in responding to any inquiry by any customer of Authority relating to such customer's personal information.

- (d) Contractor shall and shall ensure its Personnel, to the extent applicable, provide the Products and Services in compliance will all Authority policies and procedures relating to local and remote network access and connectivity that have been provided to Contractor in advance.
- (e) Promptly after the effective date of this Contract, Contractor shall, to the extent applicable, create security requirements that are consistent with Attachment D (Data Security Requirements). Contractor shall, to the extent applicable, adhere to the security policies and standards set forth in this Contract, its attachments and the security policies and procedures provided to Contractor in advance, which security may be updated from time to time.
- (f) Contractor shall conduct annual assessments of the risks to the security of Authority's Customer Information acquired or maintained by Contractor or its Personnel in connection with the Products and Services. Contractor's obligations will include the following:
 - i. identification of internal and external threats that could result in unauthorized, alteration, or destruction of Authority's Customer Information and systems used by Authority; and
 - ii. qualitative assessment of the likelihood and potential damage of such threats, taking into account the sensitivity of Authority's Customer Information. Contractor shall test key controls, systems, and procedures relating to information security on a regular basis. Contractor shall determine the appropriate frequency and nature of such tests based on good industry practice regarding network and system security and the procedures it takes to safeguard its own proprietary and commercially sensitive information. Contractor shall maintain appropriate documentation describing its information security program, and will provide such documentation to the Authority upon request.

36. DISASTER RECOVERY

During the term of this Contract, Contractor shall implement and maintain a business continuity plan and disaster recovery plan that meets the requirements of Authority, that are provided to Contractor in advance. At no additional cost to Authority, Contractor shall reasonably cooperate with Authority in the development, testing and execution of the business continuity and disaster recovery plans in the testing of Products, Services and facilities to be used in the event of a disaster affecting the Products or Services.

37. OWNERSHIP

Notwithstanding anything to the contrary in this Contract, Authority shall be the sole owner of all Authority data, information, and Authority Customer Information provided by Authority to Contractor under this Contract and, except to the extent consisting of Contractor IP (as defined below) all intellectual property developed by Contractor in the

performance of the Services, or in any deliverables provided to Authority including without limitation any technical data or Computer Software (the “**Deliverables**”) shall be owned by Authority. Contractor hereby assigns to Authority, to the extent it has the right to do so, all of its right, title, and interest in and to the Deliverables. As used herein, “**Contractor IP**” means Contractor’s intellectual property in the Products and/or Services that are pre-existing as of the effective date of this Contract, including any Contractor Computer Software (as defined herein,).

38. LICENSE GRANT TO AUTHORITY

Without limiting any of Authority’s Rights in Technical Data, Contractor hereby grants to Authority a royalty-free, perpetual, irrevocable, worldwide, non-exclusive, sub-licensable right and license to (a) access and use Contractor IP; and (b) access, install, use, perform, execute and display Contractor Computer Software, in each case for Authority’s business purposes. As used herein, “**Contractor Computer Software**” means any pre-existing Computer Software that the Contractor owned, validly licensed or otherwise developed prior to the effective date of this Contract and any Improvements thereto.

39. SOURCE CODE ESCROW

- (a) In the event that, and at such time as, either: (i) the source code for any or all material part of the Computer Software and/or Contractor Computer Software is generally made publicly available by Contractor without additional cost to other users of comparable software; (ii) Contractor ceases, for any reason, to do business; (iii) Contractor discontinues offering maintenance and support Services for the Computer Software and/or Contractor Computer Software; Contractor merges with or into another entity, or Contractor sells all or substantially all of its assets, and the successor entity in either case does not assume all of Contractor’s obligations under the Contract; or (iv) Contractor institutes or has instituted against it, any insolvency, receivership or bankruptcy proceedings, or makes an assignment for the benefit of creditors, and the same has not been discharged or terminated without any prejudice to Contractor’s rights or interests under the Contract within sixty (60) days (each on its own a “**Release Event**,” and collectively, the “**Release Events**”) Authority shall be entitled to a copy of the current Source Materials for the Computer Software and/or Contractor Computer Software as necessary to maintain and use such Software for its intended purpose(s). As used herein, “**Source Materials**” shall mean the source code for the Computer Software and Contractor Computer Software in the internally documented form actually used for the development and maintenance of the Computer Software and Contractor Computer Software together with all programmer notes, roadmaps, specifications, software tools, development aids, technical documentation and other relevant information or documentation sufficient to enable a reasonably qualified programmer to make use of the source code and allow Authority to exercise all of its rights under the Contract (including post-termination rights) and to perform all support and maintenance of the Computer Software and Contractor Computer Software.
- (b) Within thirty (30) days following the Effective Date, Contractor shall deposit into escrow with Iron Mountain Intellectual Property Management, Inc., or such other mutually agreeable party (“**Escrowee**”) one (1) copy of the Source Materials to

be held in accordance with Escrowee's standard escrow agreement ("**Escrow Agreement**") and promptly updated upon delivery to Authority of any Improvements to the Computer Software and/or Contractor Computer Software. The Escrow Agreement shall be entered into by and among Contractor, Authority, and Escrowee and released upon the occurrence of one or more of the Release Events. If any of the Release Events are satisfied, Authority shall have and is hereby granted the right, directly or through one or more service providers, to use, reproduce, or prepare derivative works or any Improvements based on the Source Materials as necessary to maintain and use the Computer Software and/or Contractor Computer Software for its intended purpose(s). Contractor shall be responsible for all the fees and costs associated with maintaining the escrow, including the fees associated with deposit of the Source Materials into escrow. The parties acknowledge and agree that the Escrow Agreement is an agreement supplementary to this Contract for purposes of Section 365(n) of the United States Bankruptcy Code. Contractor will offer reasonable assistance if the Computer Software and/or Contractor Computer Software is transferred to a third party to enable that party to continue the provision of maintenance and support.

40. SET-OFF

The Authority has common law, equitable and statutory rights to set-off. These rights shall include, but are not limited to, the Authority's right to set off any monies due to the Contractor under this Contract, by any amounts due and owing to the Authority with regard to any Contract with the Authority, plus any amounts due and owing to the Authority for any other reason including, without limitation, tax delinquencies, fee delinquencies or monetary penalties relative thereto. The Authority shall exercise its set-off rights in accordance with normal practices including, in cases of set-off pursuant to an audit, the finalization of such audit by the Authority, its representatives, or the Federal Government.

41. STEP IN RIGHTS

At Authority's option, Authority may procure the Products and/or Services from an alternate provider in the event that: (a) a Force Majeure Event results in failure to provide the Products and/or Services for more than thirty (30) days; or (b) Contractor is deemed in default of this Contract pursuant to the Termination for Default clause for so long as Authority is impacted by the failure or default. In the event that Authority invokes its rights under this clause, Contractor will be liable to pay the charges for such alternative products and/or services in excess of the charges Authority would have paid had such products been provided and/or services been performed by Contractor for up to one hundred eighty (180) days.

42. ORDER OF PRECEDENCE

- (a) Any inconsistency in the Contract shall be resolved by giving precedence to the following order: contract modifications; WMATA's Federal Terms and Conditions (if any), WMATA's IT Special Terms and Conditions; WMATA's IT Standard Terms and Conditions; the specifications or Statement of Work; drawings, if any; other documents, exhibits, and attachments generated by WMATA as part of the Contract; the technical proposal, if any; and other Contractor submissions generated as part of the Contract. In the event of a

conflict within or between provisions entitled to equal precedence, the more stringent requirement shall apply.

- (b) In the event of a conflict between these Standard IT Terms and Conditions and any attachments, including “shrinkwrap” or other vendor licensing agreements, the terms of these Standard IT Terms and Conditions shall prevail.

43. SEVERABILITY

If the Contract contains any unlawful provisions, the same shall be deemed of no effect, and shall upon the application of either party be stricken without affecting the binding force of the Contract as it shall remain after omitting such provision.

44. STOP WORK ORDERS

- (a) The Contracting Officer may, at any time, by written order to the Contractor, require the Contractor to stop all or any part of the work for a period of up to ninety (90) days after the order is delivered to the Contractor, and for any further period to which the parties may agree. The order shall be specifically identified as a STOP WORK ORDER (“**SWO**”) issued under this clause. Upon receipt of a SWO, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the SWO, during the period of work stoppage. Within a period of ninety (90) days after a SWO is delivered to the Contractor, or within any extension thereof to which the parties agree, the Contracting Officer shall either:
 - i. Cancel the SWO; or
 - ii. Cancel or terminate any of the Products or Services (in whole or in part) covered by the SWO under this Contract, as appropriate.
- (b) If a SWO is cancelled or expires, the Contractor shall resume work. The Contracting Officer shall make an equitable adjustment to the delivery schedule or Contract price, or both, and modify the Contract in writing if, in his or her judgment:
 - i. The SWO results in an increase in the time required for, or in the Contractor's cost properly allocable to, the performance of any part of this Contract; and
 - ii. The Contractor submits a written claim for such adjustment within thirty (30) days after the end of the work stoppage. At the Contracting Officer's discretion, the Authority may act upon any claim submitted before final payment under this Contract.
- (c) If an SWO is not cancelled and the work covered by the Contract is terminated for the convenience of the Authority, the Contracting Officer shall allow reasonable costs, if any, resulting from the SWO in arriving at the termination settlement pursuant to this Contract.

45. SURVIVAL

Each party's obligations under this Contract which are not, by the express terms of this Contract, fully to be performed during the term of this Contract (including without limitation, Choice of Law, Consent to Jurisdiction and Venue); Disputes; Employment Restriction Warranty; Extensions of Time / Force Majeure); False Statements, Claims or Submissions; Garnishment of Payments; Indemnification; Audit and Inspection of Records; Laws and Regulations; Mandatory Disclosure Rights in Technical Data – Unlimited; Sensitive Security Information/ Data Security; Disaster Recovery; Ownership;

License Grant to Authority); Source Code Escrow; Set-Off; Order of Precedence; Severability; Survival; Termination for Convenience; Termination for Default; Transitional Support; Representations and Warranties, shall survive the expiration or termination of this Contract for any reason.

46. TERMINATION FOR CONVENIENCE

- (a) The Authority may terminate this Contract in whole, or, in part, if the Contracting Officer determines that a termination is in the Authority's interest. The Contracting Officer shall terminate by delivering a "Notice of Termination" to the Contractor, specifying the extent of termination and the effective date.
- (b) Upon receipt of a Notice of Termination, except as otherwise directed by the Contracting Officer, the Contractor shall immediately:
 - i. Stop work as specified in the Notice of Termination;
 - ii. Complete performance of the work and delivery of any deliverables not terminated;
 - iii. Place no further subcontracts or orders for materials, services, facilities or otherwise, except as necessary to complete the remaining portion of the Contract;
 - iv. Terminate all subcontracts to the extent that they relate to the work or deliverables terminated;
 - v. Assign to the Authority, as directed by the Contracting Officer, all of its right(s), title, and interest under the subcontracts terminated. The Authority shall have the right to settle or pay any termination costs arising out of the subcontracts and shall have no further liability to the Contractor for the work or deliverables that was the subject of such subcontracts;
 - vi. With approval of the Contracting Officer, settle all outstanding liabilities and settlement costs arising from the termination of subcontracts;
 - vii. As directed by the Contracting Officer, transfer title and deliver to the Authority:
 - (vii.i) Technical data, work in process, completed work, items, and other material produced or acquired for the work terminated; and
 - (vii.ii) The completed or partially completed plans, drawings, information and other property that would have been required to be furnished to the Authority, if the Contract had been completed.
 - viii. Take any action that may be necessary, or as the Contracting Officer may direct, for the protection and preservation of the property related to this Contract that is in the Contractor's possession and in which the Authority has or may acquire an interest;
 - ix. Use its best efforts to sell, as directed or authorized by the Contracting Officer, any items of the types referred to in paragraph (b)(7). The Contractor is not required to extend credit to any purchaser and may acquire the items under the conditions prescribed by, and at prices approved by, the Contracting Officer. The proceeds of any transfer or disposition will be applied to reduce payments to be made by the Authority under this Contract, credited to the price or cost of the Products and Services, or paid in any other manner that the Contracting Officer directs.
- (c) The cost principles and procedures of FAR Part 31 in effect on the date of this Contract, shall govern all costs claimed, agreed to, or determined under this

clause, except that the Authority shall not be obligated to pay interest, however represented, on any claimed costs.

47. TERMINATION FOR DEFAULT

- (a) The Contractor shall be in default if it breaches of any of its obligations under this Contract deemed material by the Contracting Officer. In addition to those instances specifically referred to in this Contract, the Contractor shall be in default in the following circumstances:
 - i. It fails to begin, or abandons, the work of the Contract in accordance with Contractual requirements;
 - ii. It fails to deliver the Products or perform the Services within the time specified in the Contract or any extension approved by the Contracting Officer;
 - iii. It fails to make progress in a manner deemed unreasonable by the Contracting Officer so as to endanger performance of the Contract; or
 - iv. In the view of the Contracting Officer, the Contractor is willfully violating this Contract or is not executing it reasonably and in good faith.
- (b) In the event of the Contractor's material breach pursuant to paragraph (a), the Contracting Officer is authorized to direct a written notice to the Contractor, specifying the nature of the breach and stating that, the Contractor has ten (10) days (or such additional time as the Contracting Officer authorizes, to cure the breach ("Notice to Cure"). If the Contractor fails to cure the breach in the time specified in the Notice to Cure, the Authority shall terminate the Contract, in whole or designated part, for default in accordance with the provisions of this Contract, by a written "Notice of Default" to the Contractor.
- (c) Upon receipt of a "Notice of Default," the Contractor shall immediately cease performance of the work so terminated. The Authority shall have the right to take any action necessary to complete the work, including performing the work itself, or contracting with another party to do so. In the event the work is completed directly by the Authority or by a third party, the Contractor shall be liable for the additional costs and expenses necessary to complete the work, including, without limitation, labor, material costs, development costs, tooling expenses, equipment costs, and property costs. The Authority may deduct the costs and expenses so charged from any monies otherwise payable to the Contractor. Nothing contained herein shall be deemed to relieve the Contractor of its continuing obligation to perform any portion of the Contract that was not terminated.
- (d) The Authority may, in its sole discretion, waive a default by the Contractor, but such waiver shall not be deemed a waiver of any subsequent default.
- (e) Upon any termination for default, the Authority may require the Contractor to transfer title and deliver to the Authority, as directed by the Contracting Officer
 - i. any completed or partially completed Services, Products or other work or deliverables, and

- ii. components (including data and intellectual property) and contract rights that the Contractor has specifically produced or acquired for the terminated portion of this Contract. Upon direction of the Contracting Officer, the Contractor shall also protect and preserve property in its possession in which the Authority may have an interest.
- (f) Upon any termination for default, the Authority shall only pay for Products or Services accepted in accordance with this Contract. The Authority may also compensate the Contractor for any actions it reasonably takes at the Contracting Officer's direction, for the protection and preservation of property. The Authority may withhold from these amounts, any sum that the Contracting Officer determines to be necessary to protect the Authority against loss because of outstanding or claimed liens, or pending or anticipated claims under the Contract.
- (g) Any dispute with respect to any issue arising under this clause shall be subject to adjudication in accordance with the "Disputes" clause of this Contract. In no event shall the Authority's issuance of a "Notice to Cure" pursuant to paragraph (b) be the basis of a dispute pursuant this Contract or otherwise. The pendency of any dispute shall not constitute a basis for the delay of, or otherwise affect, the Authority's right to proceed in accordance with this clause, including without limitation, its right to complete the work, or the Contractor's obligation to complete any portion of the work that was not terminated.
- (h) The rights and remedies of the Authority in this clause are in addition to any other rights and remedies provided under this Contract, at law or in equity.

48. TRANSITIONAL SUPPORT

Contractor recognizes that the Products and Services are vital to Authority and shall be continued without interruption. Upon the termination or expiration of this Contract, a successor vendor may be retained to provide replacement products and/or services. At the time the Contract expires or is terminated, Contractor shall maintain the level and quality of Services still being provided by Contractor after termination or expiration of the Contract and cooperate fully in an orderly and efficient transition to a successor provider. At Authority's sole election, Contractor agrees to furnish Services for an extension period of up to one (1) year after the expiration of the term of this Contract, or any earlier termination of this Contract (the "**Transition Period**"). During the Transition Period, Contractor shall provide Services on the terms and conditions of this Contract in effect on the date of termination or expiration. Upon termination or expiration of this Contract, Contractor shall, at Authority's request, at its own expense, and within a reasonable time remove any property owned or leased by Contractor or Contract Personnel that Contractor or its Personnel has installed on Authority's premises. Contractor shall use reasonable care in removing the property and shall repair any damage (normal wear and tear excepted) caused to Authority's premises by the removal of equipment by Contractor.

49. TITLE AND RISK OF LOSS

- (a) Unless this Contract specifically provides for earlier passage of title to Products or other items or deliverables (including documents, reports, and data) resulting from this Contract, title shall pass to the Authority upon acceptance, regardless of when or where the Authority takes possession. Risk of loss, theft, destruction of, or damage to, such

deliverables or other items remains with the Contractor, until the transfer of title or at the time when the Authority takes possession, whichever is later.

- (b) In the event of loss or damage to any Product or other deliverable, prior to the time when the Authority takes possession, the Contractor agrees to repair or replace it as soon as reasonably possible to restore the item to the same condition that pre-existed the loss or damage, in accordance with all requirements of this Contract, without cost to the Authority. Nothing contained herein shall be deemed to require the Contractor's repair or replacement of any loss or damage occasioned solely by the Authority's acts or omissions.

50. REPRESENTATIONS AND WARRANTIES

- (a) Contractor represents and warrants that it is not, and during the term of the Contract, will not be, a party to any oral or written contract or understanding with any third party that:
 - i. is inconsistent with this Contract and/or Contractor's performance hereunder; or
 - ii. will in any way limit or conflict with Contractor's ability to fulfill the terms of this Contract. Contractor further represents that it will not enter into any such agreement during the term of this Contract. Contractor represents and warrants that it has the right, power and authority to enter into, and perform all its obligations, and has taken all the requisite corporate action to approve the execution, delivery and performance of, this Contract.
- (b) Contractor represents and warrants that that the Products and/or Services and Contractor's performance of its obligations under this Contract shall comply with all applicable laws, rules, and regulations.
- (c) Contractor represents and warrants that all work performed by Contractor for or on behalf of Authority, and all deliverables, will not infringe upon or violate any patent, copyright, trade secret, or other property right of any third party.
- (d) Contractor represents and warrants that it is highly skilled and experienced in providing the Products and Services. Contractor acknowledges that Authority is relying on Contractor's skill and expertise in the foregoing areas for the performance of this Contract. Contractor further represents and warrants that all Services shall be performed in a good and workmanlike manner, consistent with the standards of the top-tier providers of similar products or services.
- (e) Contractor represents and warrants that no portion of any technical data or other Computer Software deliverable, or any Computer Software otherwise provided or made available to Authority, contains any "back door," "time bomb," "worm," "drop dead device," "virus" or other computer software routines designed to permit access to or use of such software or Authority's computer systems by unauthorized parties, or to disable, damage or erase any software or data processed therewith. Contractor warrants and represents that the software provided or made available to Authority will not include
 - i. any open source or shared source software that restricts Authority's use of Authority's data, or
 - ii. in any software that could adversely affect Authority or its licensor's rights in any intellectual property owned or licensed by Authority.
- (f) All Product, Services, deliverables and other items or materials furnished for this Contract shall be unconditionally warranted against failures or defects for a period of no less than one (1) year after the item supplied is accepted, or placed in service, by the Authority, whichever is earlier.

The Contractor shall accept the Authority's records with respect to the date that the item was placed in service.

- (g) In the event that any work covered by this warranty clause fails during the warranty period, the Contractor shall repair or replace it within three (3) days, without cost or expense to the Authority.
- (h) Should the Contractor fail to repair or replace any part or do any work in accordance with the terms of this warranty, or if immediate replacement or work is necessary to maintain operations, the Authority may cause such replacement to be made, utilizing its own forces and/or those of third parties as the Authority deems appropriate, at the Contractor's expense.
- (i) Each piece of Computer Software, equipment, component or part thereof that the Contractor replaces, repairs, adjusts or services under the terms of this warranty during the warranty period shall be reported to the Contracting Officer on the Authority's forms. Each report shall indicate, in detail, all repairs, adjustments and servicing to each and every component, unit or part thereof.
- (j) Any warranty work shall be accomplished with minimum disruption to the Authority's operations and its maintenance and service facilities. The Authority shall at its sole discretion determine the availability of facilities for warranty work.
- (k) The Authority's rights set forth in this clause shall be in addition to those set forth elsewhere in this Contract or otherwise at law or in equity.

51. GOVERNMENT-WIDE DEBARMENT OR SUSPENSION

- (a) The Contractor is bound by its certification contained in its offer to the Authority that neither the Contractor, its principals, or affiliates, are suspended, debarred, proposed for debarment or otherwise excluded or disqualified. The certification is a material representation of fact, relied upon by the Authority in entering into this Contract. If it is later determined that the Contractor knowingly rendered an erroneous certification, in addition to remedies available to the Authority, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The Contractor agrees to comply with the requirements of 2 C.F.R, part 180, subpart C as adopted and supplemented by U.S. DOT regulations at 2 C.F.R, part 1200 "Nonprocurement Suspension and Debarment," including any amendments thereto, Executive Orders Nos. 12549 and 12689 "Debarment and Suspension" 31 U.S.C. § 6101 note, and other applicable Federal laws, regulations or guidance regarding participation with debarred or suspended contractors throughout the term of this Contract.
- (b) Flow-down requirement. The Contractor agrees to include this clause in all subcontracts at all tiers under this Contract requiring lower tier contractors to comply with Federal suspension and debarment requirements, and review the System for Award Management (SAM) at www.sam.gov in order to comply with U.S. DOT regulations at 2 C.F.R, part 1200 prior to awarding any subcontract under this Contract.

52. NONDISCRIMINATION ASSURANCE

- (a) Nondiscrimination Assurance: In accordance with Title VI of the Civil Rights Act, as amended, 42. U.S.C. §2000 (d), section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. §6102, section 202 of the American with Disabilities Act of 1990, 42 U.S.C. §12132, D.C. law and Federal transit law at 49 U.S.C. §5332, the Contractor, sub-recipient, or subcontractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, religion, national origin, sex, age, sexual preference, disability and/or gender identity. In addition, the Contractor, sub- recipient, or subcontractor agrees to comply with applicable Federal implementing regulations and other regulations that FTA may issue.
- (b) Equal Employment Opportunity. The following equal employment opportunity requirements apply to this Contract.
 - i. Race, Color, Creed, National Origin, Sex. In accordance with Title VII of the Civil Rights Act, as amended, 42. U.S.C. §2000(e), and Federal transit laws at 49 U.S.C. §5332, the Contractor agrees to comply with all applicable equal opportunity requirements of the U. S. Department of Labor (U.S. DOL) including, but not limited to "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor, " 41 C.F.R. Part 60 et. seq., [implementing Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000(e) note], and with any

applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect activities undertaken in the course of this Contract. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, creed, national origin, sex or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements that FTA may issue.

- ii. Age. In accordance with Section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § 623 and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements that FTA may issue.
 - iii. Disabilities. In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. §12112, the Contractor agrees that it will comply with the requirements of U. S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements that FTA may issue.
- (c) The Contractor also agrees to include all of these requirements in each subcontract financed, in whole or in part, with Federal assistance provided by FTA, modified only, if necessary, to identify the affected parties.
- (d) d. Failure by the contractor, sub-recipient, or subcontractor to carry out these requirements is a material breach of this Contract, that may result in the termination or such other remedy as the Authority deems appropriate.

53. WHISTLEBLOWER PROTECTION- (NON-FEDERAL)

- (a) The Contractor and its subcontractors shall encourage their employees and independent contractors to report information, without fear of actual or threatened discrimination, retaliation or reprisal that they in good faith reasonably believe is evidence of gross mismanagement; gross misuse or waste of public resources or funds; fraud; violation of law; abuse of authority in connection with the conduct of Authority's operations or contracts; or a substantial and specific danger to health, security or safety. The Contractor and its subcontractors shall notify their employees that they may make reports under this paragraph to:
- i. Authority's Office of Inspector General (OIG), in person, in writing, through the OIG Hotline (888-234-2374), via email at wmata-oig-hotline@verizon.net or by any other reasonable means;

- ii. Authority's Metro Transit Police Department (MTPD), in person, by telephone (202-962-2121) or by any other reasonable means, or to the OIG, if the information constitutes a potential violation of criminal law;
 - iii. Authority's Chief Safety Officer, in person, in writing, through the SAFE Hotline (202-249-7233) or email safety@wmata.com, or by any other reasonable means; or
 - iv. Any other official, office or agency within Authority or outside Authority that the employee or independent contractor reasonably believes has the authority to act on the matter.
- (b) The Contractor, its employees, independent contractors and subcontractors shall cooperate with any inquiry or review by an authorized official of Authority, or by the Federal government or any other governmental entity with jurisdiction over Authority, regarding a matter that would constitute a report under paragraph (a) or a violation of this or any whistleblower provision of this Contract, and with any enforcement or judicial proceeding arising from such inquiry or review.
- (c) The Contractor and its subcontractors shall not interfere with or deny the right of any employee or independent contractor of either the Contractor or any of its subcontractors to make a report under paragraph (a). The Contractor and its subcontractors shall not recommend, take or threaten to take any action having a negative or adverse impact on any employee or independent contractor of either the Contractor or any of its subcontractors because he or she:
- i. Made or is perceived to have made a report under paragraph (a);
 - ii. Sought a remedy under applicable law after making a report under paragraph (a);
 - iii. Participated in or cooperated with an inquiry or review by an authorized official of Authority, or by the Federal government or any other governmental entity with jurisdiction over Authority, regarding a matter that would constitute a report under paragraph (a) or a violation of this or any whistleblower provision of this Contract, or with an enforcement or judicial proceeding arising from such inquiry or review;
 - iv. Refused to obey an order that would violate law; or
 - v. Refused to work or authorize work when a hazardous safety or security condition presents an imminent danger of death or serious injury, there was no reasonable alternative to refusal, there was not sufficient time to eliminate the danger in absence of refusal and the individual, where possible, notified the Contractor or subcontractor of the condition and of his or her intent not to perform or authorize work.
- (d) The Contractor shall include, or shall cause to be included, the substance of this clause, including this paragraph (d), in its subcontracts at all tiers.

54. INAPPLICABILITY OF CLAUSES REQUIRING UNAUTHORIZED OBLIGATIONS

- (a) Except where the Chief Procurement Officer specifically agrees in writing, when any supply or service acquired under this Contract is subject to any End User License Agreement (EULA), Terms of Service (TOS), Master Agreement, Terms and Conditions or similar legal instrument or agreement that includes any clause requiring WMATA to indemnify the Contractor or any person or entity for damages, costs, fees, or any other loss or liability or that would create an unauthorized obligation, the following shall govern:
 - i. Any such clause is unenforceable against WMATA.
 - ii. Neither WMATA nor any authorized end user shall be deemed to have agreed to such clause by virtue of it appearing in the EULA, TOS, or similar legal instrument or agreement. If the EULA, TOS, or similar legal instrument or agreement is invoked through an "I agree" click box or other comparable mechanism (e.g., "click-wrap" or "browse-wrap" agreements), execution does not bind WMATA or any WMATA authorized end user to such clause.
 - iii. Any such clause is deemed to be stricken from the EULA, TOS, or similar legal instrument or agreement.
- (b) When any supply or service acquired under this Contract is subject to any EULA, TOS, or similar legal instrument or agreement, any clause requiring WMATA to pay pre-judgment interest, taxes to which it is exempt, or automatic fines or penalties is void and without effect.

55. NON-DISCLOSURE AND DATA ACCESS

This Non-disclosure and Data Access clause sets forth the Contractor's obligations regarding Contractor's access to and use of WMATA's proprietary, confidential, or personally identifiable information (PII) in order to carry out the requirements of the Contract. WMATA will provide such information in accordance with this clause. Unless otherwise identified, all terms defined within this clause apply only to those terms as they appear herein. If similar terms appear within this Contract, such terms shall have the meaning assigned to them in that context.

A. Definitions.

1. **"Confidential Information"** shall mean any non-public, proprietary, or otherwise protected data, information, documents or other material, whether in tangible or intangible form, in whatever medium, provided by WMATA to Contractor that is designated as confidential or similarly marked and may include, without limitation: (i) any marketing strategies, plans, financial information, or projections, costs, operations, sales estimates, business plans or business process information, and business performance results relating to the past, present or future business activities of such party, its affiliates, subsidiaries and affiliated companies; (ii) plans for development, engineering, or manufacturing of products or services, and customers or suppliers; (iii) any scientific or technical information, invention, design, process, procedure, formula, improvement, technology or method; (iv) any concepts, reports, data, research, know-how, works-in-progress, designs, development tools, specifications, computer software, source code, object code, flow charts, databases, inventions, information and trade secrets; (v) any screening, applicant, or pre-employment assessments, surveys, or other testing; (vi) any WMATA customer data; (vii) any other information that may reasonably be recognized as confidential information whether or not designated as such; and (viii) any copies or portions of documents prepared by or for Contractor, or information generated by Contractor or by its representatives that contains, reflects, or is derived from any of the foregoing. Any information received orally shall be treated as Confidential Information if WMATA identified the information as confidential or proprietary prior to its disclosure or if the information orally disclosed would be understood by a reasonable person to be confidential. The existence of these This clause and the discussions between the parties with respect to the purposes hereof and the status of such discussions shall also be considered confidential and shall be subject to the nondisclosure obligations set forth in this clause.
2. **"Personal Information"** means public or non-public information provided or transmitted to Contractor by WMATA, or to which access was provided to Contractor by WMATA, or that Contractor receives on WMATA's behalf, that identifies or can be used to identify an individual, either alone or in combination with other information or is otherwise designated as Personal Information by applicable law.
3. **"Protected Information"** means Confidential Information and Personal Information.
4. **"Contractor's Affiliates"** shall mean any legal entity directly or indirectly controlling, controlled by or under common control with Contractor. For purposes of this clause, Contractor's Affiliates shall also include any subcontractors to Contractor performing work on the Contract.

5. **“Security Incident”** means any act or omission that actually or potentially compromises either the security, confidentiality, integrity or availability of Protected Information or the Security Standards put in place by Contractor that relate to the protection of the security, confidentiality, integrity or availability of Protected Information. A Security Incident includes any inadvertent or unauthorized use, loss, alteration, access, copying or disclosure of any of the Protected Information.]
6. **“Security Standards”** means industry standard security features in all physical, technical, administrative and organizational safeguards that Contractor uses to access, store, process and/or transmit the Protected Information, in alignment with ISO/IEC 27001, as that standard or its successor standards may be amended. It also includes any requirements mandated by WMATA’s Office of Cybersecurity.

B. Confidentiality and Non-Use.

Contractor shall have the right to refuse to accept any Protected Information under these Supplemental Terms prior to disclosure. Protected Information disclosed despite such a refusal shall nonetheless be covered by the confidentiality obligations under these this clause. As a condition of WMATA’s disclosure of Protected Information, Contractor shall, and, if applicable, cause its Contractor’s Affiliates to access, store, process and/or transmit Protected Information solely within the United States, at all times. In addition, Contractor shall require that any of its employees or Contractor’s Affiliates’ employees accessing, storing, processing and/or transmitting Protected Information reside and work within the continental United States at all times. Contractor shall restrict the storage of Protected Information to servers, workstations, networks or any other device of any kind physically located within the continental United States. Upon receipt of Protected Information, Contractor shall and, if applicable, cause its Contractor’s Affiliates to:

- i. Use the highest degree of care to keep Protected Information strictly confidential and not disclose to persons or entities other than Contractor or Contractor’s Affiliates who have a reasonable need to know such Protected Information in connection with the permitted purposes hereunder and who have executed a non-disclosure agreement with terms no less stringent than these this clause. Contractor will be liable for its Contractor’s Affiliates’ unauthorized use and/or disclosure whether caused by negligence or otherwise;
- ii. Use such Protected Information solely and exclusively for the limited purposes described herein and for no other purposes whatsoever, except with the prior written consent of the Contracting Officer; and
- iii. Use the highest degree of care to protect Personal Information at all times in strict compliance with all applicable laws and current Security Standards in order to prevent any unauthorized use, including disclosure, loss or alteration. Within thirty (30) days of a written request from WMATA or termination, Contractor shall, at its option, either: (i) return the Protected Information to WMATA,; or (ii) destroy the Protected Information pursuant to the media sanitization guidelines set forth in National Institute of Standards and Technology (NIST) special publications (SP) to include SP 800-88 Rev. 1 as these guidelines or successor guidelines may be amended and provide WMATA with a certificate signed by an officer of Contractor stating that such destruction has occurred.

C. Exceptions to the Confidentiality and Non-Use Obligations (Applicable Only to Confidential Information).

The obligations imposed by Section B shall not apply, or shall cease to apply, to Confidential Information if or when, and to the extent that, such Confidential Information:

- i. is or becomes lawfully available to the public or within the public domain other than as a result of Contractor's disclosure in violation of these this clause or due to some other unlawful disclosure by an unrelated third party; or
- ii. was lawfully in Contractor's possession prior to receipt from WMATA whether before or after the date of these this clause; or
- iii. is received by Contractor independently from a third party free to lawfully disclose such information to Contractor; or
- iv. is subsequently developed independently by Contractor; or is approved in writing by WMATA for disclosure or use.

It shall not be a breach of these this clause for Contractor to disclose Confidential Information whenand to the extent that such disclosure is required by law or applicable legal process, provided that Contractor in making such disclosure shall: (i) give WMATA as much prior notice thereof as is reasonably practicable so that WMATA may seek such protective orders or other confidentiality protection as it, in its sole discretion and at itssole expense, it may elect and; (ii) reasonably cooperate with WMATA to protect the confidential or proprietary nature of the Confidential Information that must be disclosed. For the sake of clarity, none of the above exceptions shall apply to Personal Information that must be protected from inadvertent or unauthorized disclosure at all times.

D. Inadvertent or Unauthorized Disclosure; Security Incidents.

Contractor shall comply with all applicable laws that require the notification of individuals in the event of a Security Incident, or other incident requiring notification. In the event of a Security Incident, or other incident requiring notification under applicable law, Contractor agrees to:

- i. Notify WMATA by telephone and e-mail of such an event within 48 hours of discovery.
- ii. Assume responsibility for informing all such individuals in accordance with applicable law, and
- iii. In addition to its general indemnification obligations in Section G, indemnify, hold harmless and defend WMATA and its stakeholders, officers, and employees from and against any claims, damages, or other harm related to Security Incidents.

If Contractor becomes aware that Protected Information may have been accessed, disclosed, acquired or lost without proper authorization and contrary to the terms of these This clause or the Contract, then the Contractor shall immediately take such actions as may be necessary to preserve forensic evidence and eliminate the cause of the Security Incident. Contractor shall give highest priority to immediately correcting any Security Incident and shall devote such resources as may be required to accomplish that goal. Contractor shall provide WMATA information necessary to enable WMATA to fully understand the nature and scope of the Security Incident.

E. No Creation or Transfer of Rights in Protected Information or Intellectual Property.

Nothing in this clause shall obligate WMATA to make any particular disclosure nor to give Contractor any rights, title, license or interest whatsoever in or to the Protected Information or in or to any existing or future patents, know-how, inventions, trademarks, copyrights or other intellectual property of WMATA.

F. No Representations or Warranties.

UNLESS MADE BY WMATA IN WRITING, ALL REPRESENTATIONS OR WARRANTIES OF ANY KIND WITH RESPECT TO PROTECTED INFORMATION, WHETHER EXPRESS OR IMPLIED, ARE DISCLAIMED.

G. Indemnification

Contractor shall indemnify, defend and hold WMATA its stakeholders, officers, and employees harmless from all claims, liabilities, damages, or judgments involving a third party, including WMATA's costs and attorney fees, arising out of or in connection with Contractor's failure to meet any of its obligations under these this clause, including but not limited to Contractor's obligations to safeguard Protected Information from Security Incidents.

H. Duration of Obligations.

The Contractor's obligations under these this clause shall continue in full force and effect and be coterminous with the Contract. However, the obligations not to use or disclose, and to return on request or destroy Protected Information already disclosed to the Contractor at the time of termination shall continue for as long as Contractor holds the Protected Information.

I. Scope

This clause represent the entire understanding of the parties and supersede all prior communications, agreements and understandings between the parties relating to Non-Disclosure and Data Access.

56. PROHIBITION ON CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT

Pursuant to 2 C.F.R. § 200.216. (a), WMATA is prohibited from obligating or expending federal grant funds to: (1) procure or obtain; (2) Extend or renew a contract to procure or obtain; or (3) Enter into a contract or extend or renew an existing contract to procure or obtain equipment, services or systems that use covered telecommunications equipment or services as a substantial or essential component of any system or as critical technology as part of any system. As described in Public Law 115-232, section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities.) As a result of this requirement, WMATA has also adopted the same policy for non-federal contracts.

57. MATERIAL & WORKMANSHIP

- (a) Unless this Contract specifies otherwise, all supplies, equipment, material, and articles incorporated into the work covered by this Contract shall be new and of the most suitable grade for the purpose intended. The Contractor represents that any supplies to be provided under this Contract are new (not used or reconditioned, and not of such age or so deteriorated as to impair their usefulness or safety).
- (b) If at any time during this Contract's performance, the Contractor believes that furnishing supplies that are not new is in WMATA's best interests, the Contractor shall notify the Contracting Officer immediately, in writing. The Contractor's notice shall include the reasons for the request, along with any proposed price reduction, that WMATA may take, if the Contracting Officer agrees to authorize such supplies. The Contracting Officer's authorization to use such supplies shall be final and binding and not subject to further review pursuant to the "Disputes" clause of this Contract or otherwise.
- (c) References in the specifications to equipment, material, articles, or patented processes by trade name, make, or catalog number, shall be regarded as establishing a standard of quality and shall not be construed as limiting competition. The Contractor may, at its option, propose use equipment, material, articles, or processes that, in the sole judgment of the Contracting Officer, is equal to that identified in the specifications, unless otherwise expressed in this Contract.

58. CORRECTION OF DEFICIENCIES

The Contractor must replace materials or correct workmanship not conforming to this Contract's requirements at no additional cost to WMATA. In addition, the Contractor is subject to any liquidated damages specified in this Contract or actual damages that WMATA incurs. If the Contractor fails to correct deficiencies, the Contracting Officer, may take specific action as follows:

- i. Replace or correct the item or work at the Contractor's expense. This may be accomplished by award of a new contract or by use of WMATA's own resources.
- ii. Accept the items with a reduction in price by formal modification to this Contract. The reduced price will be based upon the item's reasonable value considering the possible cost of correcting it.
- iii. Terminate this Contract for default. If the item or work must be re-procured, the Contractor is normally liable for excess costs that WMATA incurs in accordance with the "Termination for Default" clause.

59. F.O.B. DESTINATION

- (a) Unless otherwise specified, the Contractor shall furnish all supplies to be delivered under this Contract "F.O.B. Destination." As used herein, "F.O.B. Destination" means:
 - i. Free of expense to WMATA on board the carrier's conveyance, at a specified delivery point where WMATA's facility (plant, warehouse, store, lot, or other location to which shipment can be made) is located; and
 - ii. Supplies shall be delivered to WMATA's warehouse unloading platform, or receiving dock, at the Contractor's expense. WMATA shall not be liable for any delivery, storage, demurrage, accessorial, or other charges involved before the actual delivery of the supplies to the destination, unless such charges are caused by WMATA's acts or omissions, acting in its Contractual

capacity. If the Contractor uses a rail carrier or freight forwarder for less than full carload shipments, the Contractor shall assure that the carrier will furnish tailgate

The Contractor shall:

- i. Pack and mark the shipment to comply with this Contract's specifications.
- ii. In the absence of specifications, prepare the shipment in conformance with the carrier's requirements.
- iii. Prepare and distribute commercial bills of lading.
- iv. Deliver the shipment in good order and condition to the delivery point specified in this Contract.
- v. Be responsible for any loss of and/or damage to the goods occurring before WMATA's receipt of the shipment at the delivery point specified in this Contract.
- vi. Furnish a delivery schedule and designate the mode of delivering carrier; and
- vii. Pay and bear all charges to the specified point of delivery.

60. QUALITY ASSURANCE/QUALITY CONTROL

The Contractor shall be responsible for quality assurance and for assuring that the work conforms to the requirements of this Contract and any policies of WMATA's Office of Quality Assurance, Internal Compliance and Oversight. The Contractor shall maintain an effective and economical quality control program planned and developed in conjunction with other Contractor functions necessary to satisfy this Contract's requirements. The quality control program shall establish and implement procedures to ensure that only acceptable supplies or services are tendered to WMATA for acceptance and shall demonstrate both recognition of the Contract's quality requirements and an organized approach to satisfying them. The program shall ensure that quality requirements are satisfied throughout all phases of Contract performance, including, as applicable, design development, purchasing, fabrication, processing, assembly, inspection, testing, packaging, delivery, and storage and shall provide for the early detection of actual or potential deficiencies, trends, or conditions that could result in unsatisfactory quality.

61. SUBCONTRACTOR PAYMENTS

- (a) The Contractor shall, under this Contract, establish procedures to ensure timely payment of amounts due pursuant to the terms of its subcontracts. The Contractor shall pay each subcontractor for satisfactory performance of its contract, or any billable portion thereof, no later than ten (10) days from the date of the Contractor's receipt of payment from WMATA for work by that subcontractor. The Contractor shall also release, any retention withheld from the subcontractor within ten (10) days of satisfactory completion of all work required by that subcontractor.
- (b) The Contractor shall certify on each payment request to WMATA that payment has been or will be made to all subcontractors in accordance with paragraph (a) above. The Contractor shall notify the Contracting Officer with each payment request, of any situation where scheduled subcontractor payments have not been made.
- (c) In the event of a claim by any subcontractor that the Contractor has failed to comply with the terms of this clause, the Contractor agrees to fully cooperate in any Authority

investigation, and, if deemed appropriate by WMATA, to implement appropriate remedial measures to ensure future compliance.

- (d) The Contractor agrees that the Contracting Officer may provide information that he or she deems appropriate in response to inquiries from subcontractors seeking to determine the status of WMATA's payments to the Contractor.
- (e) Nothing contained in this clause or elsewhere in this Contract shall create a Contractual relationship between WMATA and any subcontractor, shall make the subcontractor an intended beneficiary of this Contract or shall alter or affect traditional concepts of privity of contract.

62. PATENT INDEMNITY

- (a) The Contractor shall indemnify WMATA and its Board members, officers, directors, agents and employees against liability, including costs, for infringement of any United States patent (except a patent issued upon an application that is now or may hereafter be withheld from issue pursuant to a Secrecy Order under 35 U.S.C. § 181) arising out of the manufacture or delivery of supplies, the performance of services, or the construction, alteration, modification, or repair of real property under this Contract. If the Contractor is not the original equipment manufacturer for a manufactured product purchased under this Contract, it will ensure that the patent holder provides indemnity to WMATA under this clause. This indemnity shall not apply unless the Contractor is informed as soon as practicable by WMATA of the suit or action alleging such infringement and is given such opportunity as is afforded by applicable laws, rules, or regulations to participate in the defense thereof. Such indemnity shall not apply to:
 - i. An infringement resulting from compliance with the Contracting Officer's specific written instructions directing a change in the supplies to be delivered or in the materials or equipment to be used, or directing a manner or performance of the Contract not normally used by the Contractor;
 - ii. An infringement resulting from addition to, or change in, such supplies or components furnished, or construction work performed that was made subsequent to the Contractor's delivery or performance. or
 - iii. A claimed infringement that is unreasonably settled without the Contractor's consent, unless required by final decree of a court of competent jurisdiction.

63. NOTICE AND ASSISTANCE REGARDING PATENT AND COPYRIGHT INFRINGEMENT

- (a) The Contractor shall report to the Contracting Officer, promptly and in reasonable written detail, each notice or claim of patent or copyright infringement based on this Contract once the Contractor is notified thereof.

In the event of any claim or suit against WMATA based on any alleged patent or copyright infringement arising out of this Contract or out of the use of any supplies furnished or services performed hereunder, the Contractor shall furnish to the Contracting Officer, all evidence and information in its possession pertaining to such suit or claim. Such evidence and information shall

64. SAFETY REQUIREMENTS (IF PERFORMING WORK ON WMATA PROPERTY)

- (a) The Contractor shall be responsible for ensuring compliance with the most stringent provisions of the applicable statutes and regulations of the District of Columbia, State of Maryland, Commonwealth of Virginia or political subdivision where the work is being performed, as well as the U.S. Department of Labor OSHA standards pertaining to the safe performance of the work. In the absence of a specific industry standard, the Contractor is required to comply with either an established OSHA General Industry Standard, National Institute for Occupational Safety and Health (NIOSH) guidelines, American Conference of Governmental Industrial Hygienists (ACGIH) guidelines, American National Standards Institute (ANSI) guidelines, the WMATA System Safety Program Plan or policies of WMATA's Office of Safety(SAFE) In the event of a conflict between these guidelines and applicable Federal, State or local health and safety laws, regulations or standards, the more stringent standard shall apply. Further, the Contractor shall ensure that all methods of performing the work do not involve danger to the personnel working at the site, and the public and private property, whether or not these methods are cited or indicated in the Contract. The Contractor shall immediately provide to the Contracting Officer, a copy of all citations and/or warnings of safety violations received from any Federal, State or local jurisdiction or agency thereof, and/or all notifications of safety violations from insurance companies. The Contractor shall also provide to the Contracting Officer, copies of any and all subpoenas, complaints or other documents relating to any law suit alleging safety violations.