Washington Metropolitan Area Transit Authority

STANDARD TERMS And CONDITIONS

Ver: 10/21/2021

1. AGREEMENT

a. 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 and materials. 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

a. For ease of reference, this Contract is divided into Special Terms and Conditions and Standard Terms and Conditions. (also referred to as "clauses"), 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.

3. ORDER OF PRECEDENCE

a. Any inconsistency in the Contract shall be resolved by giving precedence to the following order: contract modifications; solicitation amendments; Special provisions; 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. Notwithstanding paragraph, if this Contract is funded, in whole or part, through the Federal Government, all contract terms mandated for inclusion by the Federal Government shall be deemed to supersede any other conflicting or inconsistent provisions of this Contract.

4. AVAILABILITY OF FUNDS FOR THE NEXT FISCAL YEAR

a. Funds are not guaranteed for performance under this Contract beyond the current fiscal year that ends on June 30th. WMATA'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. WMATA's legal liability for any payment cannot arise for performance under this Contract until funds are made available to the Contracting Officer for performance and until he or she notifies the Contractor of the availability in writing. Any option exercised by WMATA that will

be performed, in whole or in part, in a subsequent fiscal year is subject to availability of funds in that year and will be governed by the terms of this article.

5. CONTRACTING OFFICER'S TECHNICAL REPRESENTATIVE (COTR)

a. The work will be conducted under the Contracting Officer's general directions. Authority will be delegated 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 a copy of each item of incoming correspondence and a copy of any enclosures to the Contract Administrator;

ii. Approve in writing the Contractor's progress schedule and submittals when required;

iii. Inspect the work 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, Contractor invoices or payments to the Contracting Officer's attention. In those cases requiring release of final retained percentages of payment, the COTR will make his or her recommendations to the Contracting Officer in writing;

v. Coordinate correspondence with the Contract Administrator, if its importance significantly impacts the Contractual terms and conditions;

vi. Evaluate the Contractor's technical letters and proposals for the Contracting Officer;

vii. Advise the Contracting Officer of potential problems that may affect Contract performance;

viii. Advise DBE Office if DBE, SBE, or SBLPP issue(s) appear that may require investigation.

ix. Advise the Contracting Officer whenever the COTR has reason to believe that the Contractual not-to-exceed amount will be exceeded;

x. Prepare WMATA's estimate for proposed Contract modifications. 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 the DBE Office;

xiii. Receive from the Contractor certified payroll reports and prepare a log sheet indicating: name of the Contractor and subcontractor; the

Contract number; the certified payroll number (number for the payroll for the project starting with the number); the timeframe of the payroll period (i.e. //-//); the statement of compliance date (first page of the report); and the date the report was received by WMATA;

xiv. Maintain a comprehensive file/record of documents and correspondence concerning Contract activities and actions;

xv. Provide the Contract Administrator with a written notification after all supplies/services have been received with a statement that the COTR is not aware of any open issues that would preclude closeout of the Contract and that it is ready for closeout. The COTR will return the file, containing all records, correspondence, etc., to the Contract Administrator;

xvi. Execute Standard Form, which contains a detailed performance evaluation of the Contractor. If there are one or more categories in which the Contractor is deemed unsatisfactory, these evaluations must be provided to it for comment;

xvii. Provide the Contract Administrator with a written request (and requisition) to exercise option(s) (if any) a minimum of ninety days prior to the time established in this Contract for exercise of the option;

xviii. The presence or absence of the COTR or his or her inspectors shall not relieve the Contractor from any requirements of this Contract.

xix. The COTR may not re-delegate or sub-delegate his or her authority to act on the Contracting Officer's behalf. 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.

b. The COTR's name and address will be provided after award.

6. FORCE MAJEURE/EXCUSABLE DELAYS/TIME EXTENSIONS

a. Except for defaults of subcontractors at any tier, the Contractor shall not be in default because of any failure to perform this contract under its terms if the failure arises from causes beyond the control and without the fault or negligence of the Contractor. Examples of these causes are (1) acts of God or of the public enemy, (2) acts of the Government in either its sovereign or contractual capacity, (3) fires, (4) floods, (5) epidemics, (6) quarantine restrictions, (7) strikes, (8) freight embargoes, and (9) unusually severe weather. In each instance, the failure to perform must be beyond the control and without the fault or negligence of the Contractor. Default includes failure to make progress in the work so as to endanger performance.

b. If the failure to perform is caused by the failure of a subcontractor at any tier to perform or make progress, and if the cause of the failure was beyond the control

of both the Contractor and subcontractor, and without the fault or negligence of either, the Contractor shall not be deemed to be in default, unless--

i. The subcontracted supplies or services were obtainable from other sources; (2) The Contracting Officer ordered the Contractor in writing to purchase these supplies or services from the other source; and (3) The Contractor failed to comply reasonably with this order.

c. The subcontracted supplies or services were obtainable from other sources; (2) The Contracting Officer ordered the Contractor in writing to purchase these supplies or services from the other source; and (3) The Contractor failed to comply reasonably with this order.

d. Upon request of the Contractor, the Contracting Officer shall ascertain the facts and extent of the failure. If the Contracting Officer determines that any failure to perform results from one or more of the causes above, the completion time or delivery schedule shall be revised, subject to WMATA's rights under the termination clause(s) of this contract.

e. The Contractor's request for an extension of time 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 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 after the Contracting Officer's receipt of all such information, he or she shall advise the Contractor of WMATA's decision on the requested extension. Where it is not reasonably practicable for the Contracting Officer to render a decision in the thirty (30) day period, he or she shall, prior to the expiration of such period, advise the Contractor of the approximate date a decision will be rendered.

f. The Contracting Officer may rescind or shorten any extension previously granted, if he or she subsequently determines that information the Contractor provided in support of an extension request was erroneous, and if accurate information would have resulted in a denial of the request for an excusable delay.

7. WMATA'S DELAY

a. If the performance of all or any part of the work of this contract is delayed or interrupted (1) by an act of the Contracting Officer in the administration of this contract that is not expressly or impliedly authorized by this contract, or (2) by a failure of the Contracting Officer to act within the time specified in this contract, or within a reasonable time if not specified, an adjustment (excluding profit) shall be made for any increase in the cost of performance of this contract caused by the delay or interruption and the contract shall be modified in writing accordingly. Adjustment shall also be made in the delivery or performance dates and any other contractual term or condition affected by the delay or interruption. However, no adjustment shall be made under this clause for any delay or interruption to the extent that performance would have been delayed or interrupted by any other cause, including the fault or negligence of the Contractor, or for which an

adjustment is provided or excluded under any other term or condition of this contract.

b. A claim under this clause shall not be allowed (1) for any costs incurred more than 20 days before the Contractor notifies the Contracting Officer in writing of the act or failure to act involved, and (2) unless the claim, in an amount stated in sum certain, is asserted in writing as soon as practicable after the termination of the delay or interruption, but not later than the day of final payment under the contract.

c. 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.

8. NOTICE TO WMATA OF LABOR DISPUTES

a. Whenever the Contractor has knowledge that any actual or potential labor dispute is delaying or threatens to 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 obligation, including this paragraph (b), in any subcontract it issues in relation to the Contract.

9. NOTIFICATION OF BANKRUPTCY OR INSOLVENCY

a. In the event the Contractor enters into proceedings relating to bankruptcy, whether voluntary or involuntary, the Contractor agrees to furnish, by certified mail or electronic commerce method authorized by the Contract, written notification of the bankruptcy to the Contracting Officer responsible for administering the Contract. This notification shall be furnished within five days of the initiation of the proceedings relating to bankruptcy filing. 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, and a listing of Authority contract numbers and Authority contracting offices for all Authority contracts against which the Contractor asserts final payment has not been made. This obligation remains in effect until final payment under this Contract.

10. INSPECTION OF SERVICES

a. The Contractor shall provide and maintain an inspection system acceptable to WMATA covering the services under this Contract. The Contractor shall maintain complete records of all inspection work it performs and make them available to

WMATA during Contract performance in the manner and in accordance with the time periods set forth in the "Audit and Inspection of Records" article of this Contract.

b. WMATA has the right to inspect and test all services called for by this Contract, at all times and places reasonably practicable during the term of this Contract. WMATA shall perform inspection and tests in a manner that will not unduly delay the Contract.

c. If WMATA performs inspections or tests on the Contractor's or subcontractor's premises, the Contractor shall furnish, and shall require subcontractors to furnish, without cost, all reasonable facilities and assistance for the safe and convenient performance of such inspections or tests.

d. If any of the services performed do not conform to the Contract's requirements, WMATA may require the Contractor to perform them again in conformity with the Contract's requirements, without additional cost. When the defects in performance cannot reasonably be corrected by such further performance, WMATA may:

i. Direct the Contractor to take necessary action to ensure that future performance conforms to this Contract's requirements; and/or

ii. Reduce the Contract price to reflect the reduced value of the services performed.

e. If the Contractor fails to comply with the provisions of paragraph (d), WMATA may:

i. By contract or otherwise, perform the services and charge to the Contractor any cost thereby incurred by WMATA; and/ or

ii. In the event that the Contracting Officer deems such failure to comply a material breach, terminate the Contract for default.

f. Nothing contained herein shall be deemed to preclude the Contracting Officer from reducing the Contract price due to the reduced value of nonconforming services to WMATA.

11. INSPECTION OF SUPPLIES

a. The Contractor shall provide and maintain an inspection system acceptable to WMATA covering supplies under this Contract and shall tender to WMATA for acceptance only supplies that have been inspected in accordance with the inspection system and have been found by the Contractor to be in conformity with this Contract's requirements. As part of the system, the Contractor shall prepare records evidencing all inspections made under the system and the outcome. These records shall be kept complete and made available to WMATA during contract performance and thereafter in accordance with the ""Audit and Inspection of Records"" article of this Contract. WMATA may perform reviews and evaluations as reasonably necessary to ascertain compliance with this article. These reviews and evaluations shall be conducted in a manner that will not unduly delay the

Contract work. The right of review, whether exercised or not, does not relieve the Contractor of the obligations under this Contract.

b. WMATA has the right to inspect and test all supplies called for by this Contract, to the extent practicable, at all places and times, including the period of manufacture, and in any event before acceptance. WMATA shall perform inspections and tests in a manner that will not unduly delay the Contract work. WMATA assumes no contractual obligation to perform any inspection and test for the benefit of the Contractor unless specifically set forth elsewhere in this contract.

c. If WMATA performs inspections or tests on the premises of the Contractor or a subcontractor, the Contractor shall furnish, and shall require subcontractors to furnish, at no increase in contract price, all reasonable facilities and assistance for the safe and convenient performance of these duties. Except as otherwise provided in the Contract, WMATA shall bear the expense of Authority inspections or tests made at other than the Contractor's or subcontractor's premises; provided, that in case of rejection, WMATA shall not be liable for any reduction in the value of inspection or test samples.

d. When supplies are not ready at the time specified by the Contractor for inspection or test, the Contracting Officer may charge to the Contractor the additional cost of inspection or test.

i. The Contracting Officer may also charge the Contractor for any additional cost of inspection or test when prior rejection makes reinspection or retest necessary.

e. WMATA has the right either to reject or to require correction of nonconforming supplies. Supplies are nonconforming when they are defective in material or workmanship or are otherwise not in conformity with Contract requirements. WMATA may reject nonconforming supplies with or without disposition instructions.

f. The Contractor shall remove supplies rejected or required to be corrected. However, the Contracting Officer may require or permit correction in place, promptly after notice, by and at the expense of the Contractor. The Contractor shall not tender for acceptance corrected or rejected supplies without disclosing the former rejection or requirement for correction, and, when required, shall disclose the corrective action taken.

g. If the Contractor fails to promptly remove, replace, or correct rejected supplies that are required to be removed or to be replaced or corrected, WMATA may either (1) by contract or otherwise, remove, replace, or correct the supplies and charge the cost to the Contractor or (2) terminate the contract for default. Unless the Contractor corrects or replaces the supplies within the delivery schedule, the Contracting Officer may require their delivery and make an equitable price reduction. Failure to agree to a price reduction shall be a dispute.

h. If this contract provides for the performance of Authority quality assurance at source, and if requested by WMATA, the Contractor shall furnish advance notification of the time (i) when Contractor inspection or tests will be performed in

accordance with the terms and conditions of the contract and (ii) when the supplies will be ready for Authority inspection.

i. WMATA request shall specify the period and method of the advance notification and WMATA Representative to whom it shall be furnished. Requests shall not require more than 2 workdays of advance notification if WMATA Representative is in residence in the Contractor's plant, nor more than 7 workdays in other instances.

12. ACCEPTANCE OF SUPPLIES

a. Vendors are not permitted to ship materials or supplies without an authorized purchase order. Any materials or supplies received without an authorized purchase order will be refused without payment

b. The Authority shall accept or reject tendered supplies as promptly as practicable after delivery, unless otherwise provided in this Contract. The Authority's failure to inspect and/or accept or reject the supplies shall not relieve the Contractor from responsibility, nor impose liability upon the Authority, for nonconforming supplies.

c. If acceptance is not conclusive for any of the reasons in paragraph (b) hereof, WMATA, in addition to any other rights and remedies provided by law, or under other provisions of this Contract, shall have the right to require the Contractor

i. To direct the Contractor, at no increase in Contract price, to correct or replace the defective or nonconforming supplies at the original point of delivery or, if the Contracting Officer determines, at the Contractor's facility, 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

ii. 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. When supplies are returned to the Contractor, the Contractor shall bear the costs of transportation.

13. 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, and the Contractor represents that any supplies and components 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 the performance of this Contract, the Contractor believes that furnishing supplies or components 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 or components. The Contracting Officer's authorization to use such supplies or components shall be final and binding and not subject to further review pursuant to the "Disputes" article 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.

14. CORRECTION OF DEFICIENCIES

a. The Contractor must replace materials or correct workmanship not conforming to the 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 incurred by WMATA. 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. This action will be accomplished by formal modification to this Contract. The reduced price will be based upon the reasonable value of the item, considering the possible cost of correcting the item.

iii. Terminate this Contract for default. If the item or work must be re-procured, the Contractor is normally liable for excess costs incurred by WMATA in accordance with the "Termination for Default" clause in the Standard Provisions of this Contract.

15. FIRST ARTICLE INSPECTION

a. The Contractor shall deliver one or more units as specified in the Contract documents to WMATA for first article (pre-production) tests. The shipping documentation shall contain this Contract number and the lot/item identification number. The characteristics for the first article inspection and its testing requirements are stated in the Contract's Technical Specifications or Statement of Work.

b. Within ten (10) days after WMATA receives the first article, or such other time as specified in the Contract documents, the Contracting Officer shall notify the Contractor in writing of the conditional approval, approval, or disapproval of the first article. The notice of conditional approval or approval shall not relieve the Contractor from complying with all requirements of the specifications and all other terms and conditions of this Contract. A notice of conditional approval shall state

any further action required of the Contractor. A notice of disapproval shall cite the reasons for the disapproval.

c. If the first article is disapproved, the Contractor, upon WMATA's request, shall submit an additional first article for testing. After each request, the Contractor shall make any necessary modifications, or repairs to the first article or select another first article for testing. The Contractor shall pay for all costs related to these tests. The Contractor shall furnish any additional first article under this Contract within the time specified by WMATA. The Contracting Officer may make an equitable adjustment to the Contract for any schedule extension related to these tests, at no cost to WMATA.

d. Notwithstanding (c) above, if the Contractor fails to deliver any first article on time, or the Contracting Officer disapproves any first article, the Contractor may be deemed to have failed to make delivery within the meaning of the Default clause of this Contract.

e. Unless otherwise provided in the Contract, the Contractor:

i. May deliver the approved first article as a part of the Contract quantity, if it meets all of the Contract's requirements for acceptance and was not damaged or impaired in testing; and

ii. Shall remove and dispose of any first article from WMATA's test facility at the Contractor's expense.

f. The Contractor is responsible for providing operating and maintenance instructions, spare parts support, and repairs to the first article during any first article test.

g. WMATA will inspect the first article in accordance with the Contract's requirements. A written report will be forwarded to the Contractor in accordance with (b) above.

16. 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 delivery, if transfer to truck is required to complete delivery to WMATA.

b. 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 carrier requirements;

iii. Prepare and distribute commercial bills of lading;

iv. Deliver the shipment in good order and condition to the delivery point specified in the Contract;

v. Be responsible for any loss of and/or damage to the goods occurring before receipt of the shipment by WMATA at the delivery point specified in the 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.

17. 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. 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.

18. 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:

i. Nature and/or extent of services to be performed or supplies to be furnished;

ii. Time of performance (i.e., hours of the day, days of the week, etc.); or

iii. Place of performance of the services or delivery of the supplies.

b. If, in the Contracting Officer's judgment, any change causes an increase or decrease in the cost of, or the time required for, the performance of any part 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.

c. 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 fully project such impact within the thirty (30) day period, the Contractor shall accompany its claim with such supporting documentation as is then reasonably available as 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 to this article must be agreed upon or otherwise determined prior to final payment.

d. 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.

e. 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 article shall be subject to adjudication in accordance with the "Disputes" article 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 so changed.

f. 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 the 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 in the Contract price or time required for such performance.

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

19. PRICING OF ADJUSTMENTS

a. The parties agree that, notwithstanding any interpretation of contract cost principles to the contrary, WMATA will not be liable for interest, however represented, on or as a part of any claim, request, proposal or adjustment, including equitable adjustments, whether it arises under the Contract or otherwise.

b. As part of its proposal for any Contract modification requiring a price adjustment in excess of $150,000, the Contractor shall submit to the Contracting Officer, cost or pricing data under the conditions described in this paragraph and certify that, to the best of its knowledge and belief, the cost or pricing data submitted is accurate, complete and current as of the date submitted. At the Contracting Officer's discretion, the Contractor, may be required to submit cost or pricing data for price adjustments less than $150,000.

c. The Contractor shall ensure that this article is included in all subcontracts at any tier, if the value of the subcontracted work exceeds $150,000.

20. ACCOUNTING AND RECORD KEEPING FOR ADJUSTMENTS

a. Applicability. This article shall apply to any adjustment in the Contract price initiated by the Contractor or WMATA.

b. Forward Price Adjustments. Unless waived in writing, the Contractor shall furnish to the Contracting Officer, a proposed price adjustment in advance of performance of any work for which the price adjustment is requested. The Contractor shall generate such records as are necessary to substantiate all elements of the proposed adjustment, which records shall be specifically segregated and identified in the Contractor's accounting system as being applicable to the pricing adjustment request.

c. Post Price Adjustments. This paragraph shall be applicable to price adjustments that either (i) are expected to exceed $50,000; or (ii) arise in connection with a Contract with a base sum in excess of $1,000,000. In addition to the records required pursuant to paragraph (b) above, if pricing of an adjustment under this Contract is not agreed upon between the parties prior to the commencement of work for which the pricing adjustment is requested, the Contractor and any subcontractor engaged in work for which the pricing adjustment is requested, shall maintain accounts and original cost records specifically segregated and identified by job order or other appropriate accounting categories that the Contracting Officer approves for all incurred, segregable costs related to the work for which the pricing adjustment is requested. The Contractor shall maintain accounts and records that segregate and account for the costs of all work associated with that part of the

Contract for which the pricing adjustment is requested. The Contractor shall allocate the costs so accumulated between: (1) work required under the base Contract; (2) work requested to be reimbursed under the pricing adjustment; and (3) work claimed or determined to be related to other actual or proposed adjustments, including but not limited to, changes orders, differing site conditions, and the like. The accounts and records so established shall accumulate such costs under logical costs groups, such as material, labor, equipment, subcontracts, field overhead and the like. The Contractor shall record these costs on a form approved by the Contracting Officer.

d. Access to Records. As a condition to WMATA's obligation to consider any claim for a potential price adjustment under any provision of this Contract, the Contractor shall grant WMATA access to review and ascertain the validity of the accounting records being maintained for segregation of costs, including base cost records, and to audit any such costs as the Contracting Officer deems appropriate.

e. Limitation on Price Adjustments. If the Contractor or any subcontractor fails to generate, maintain, or make available any records required under this Contract, in addition to any rights to which WMATA may be entitled, the Contracting Officer shall determine whether such failure is willful, deliberate or otherwise precipitated by the Contractor's bad faith, in which case the Contractor shall not be entitled to any price adjustment for the work in question. Where the Contracting Officer determines that the failure was not the result of the Contractor's bad faith, he or she shall determine the reasonable direct costs of the work for which records are not available, and add a single mark-up for indirect expenses not to exceed ten percent (10%) of the direct costs based on:

i. An audit of the Contractor's or subcontractor's records made available to WMATA; and/or

ii. WMATA's estimate as the Contracting Officer adopts or modifies

f. In no event shall the Contractor and/or subcontractor be allowed any profit on claimed work for which records are not made available in accordance with its obligations under this Contract.

g. Flow-down clause. The Contractor shall ensure the inclusion of this article in all subcontracts issued under this Contract, modified as necessary, for proper identification of the contracting parties and the Contracting Officer.

21. BILLING AND PAYMENT

a. WMATA shall pay and the Contractor shall accept the amounts set forth in the Price Schedule as full compensation for all costs and expenses of completing the this 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 storage yards or facilities; all risks and obligations set forth in

this Contract; any applicable fees or taxes; and all expenses due to any unforeseen difficulties encountered in the prosecution of the work.

b. Payments will be made following acceptance of the services or supplies to be provided under this Contract and after receipt and acceptance of a properly completed invoice. WMATA will accept the submittal of invoices in one of the following methods:

i. Email: Invoices may be submitted through email at: apinvoice@wmata.com. Please submit one (1) invoice and supporting documentation per PDF attachment. You may submit more than one PDF attachment per email.

ii. Fax: Invoices may be submitted via the following number: 1-866-534-9063. Please submit one (1) invoice and all supporting documentation for this invoice per fax.

iii. Regular Mail: Invoices may be submitted via U.S. Postal Service to the following address:

WMATA-Accounts Payable
PO Box 1910
Beltsville, MD 20704-1910

Note: This address is only for vendor invoices. Correspondence should not be sent to this address.

c. Invoices shall contain the vendor's name, a unique invoice number for each shipment or service, invoice date, payment terms, total invoice amount, "remit to" address, purchase order number, freight terms, description of each item being invoiced, quantity, unit item cost, extended cost by item, total freight/handling costs, and contact name and email address. Final invoices must clearly be marked "Final" and cite the amount of this Contract, amount previously paid, and the balance due.

d. WMATA shall remit payment, generally within thirty (30) days of its receipt and acceptance of an invoice satisfying the requirements of paragraphs (b) and (c), at the prices stipulated in the Contract for supplies delivered and accepted or services rendered and accepted, less any applicable deductions.

22. PRICE REDUCTION FOR DEFECTIVE COST OR PRICING DATA -- MODIFICATIONS

If the Contracting Officer determines that any price, including profit or fee, previously negotiated in connection with any modification to this Contract involving changes in cost plus applicable profit in excess of $150,000 was based upon the Contractor's or subcontractor's cost or pricing data that was not complete, accurate or current, such that the amount WMATA paid to the Contractor for such price adjustment was greater than the Contractor would have been entitled based upon accurate and complete data, WMATA shall be entitled to an adjustment in an amount equal to such overpayment. WMATA's rights hereunder shall be in addition to any other rights it may have under this Contract, at law or in equity.

23. 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 article, 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 article 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.

24. GARNISHMENT OF PAYMENTS

Payments under this 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

25. 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 article. Upon receipt of the 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 an

SWO is delivered to the Contractor, or within any extension of that period to which the parties agree, the Contracting Officer shall either:

i. Cancel the SWO; or

ii. Terminate the work covered by the SWO as provided in 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 shall 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 period of work stoppage. At the Contracting Officer's discretion, WMATA may act upon any claim submitted at any time 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 WMATA, the Contracting Officer shall allow reasonable costs, if any, resulting from the SWO in arriving at the termination settlement pursuant this Contract.

26. TERMINATION FOR DEFAULT

a. The Contractor shall be in default if it commits a breach 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 the contractual requirements;

ii. It fails to deliver the supplies or perform the services within the time specified in this Contract or any extension that the Contracting Officer approves;

iii. It fails to make progress in a manner that the Contracting Officer deems unreasonable so as to endanger performance of this 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 the Contractor's material breach pursuant to paragraph (a), the Contracting Officer is authorized to direct a written notice (a "Notice to Cure") to the Contractor, specifying the nature of the breach and stating that the Contractor has ten (10) days to cure the breach or such additional time as the Contracting

Officer authorizes. If the Contractor fails to cure the breach in the time specified in the Notice to Cure, the Contracting Officer may terminate this Contract, in whole or designated part, for default after providing written notice to the Contractor.

c. Upon receipt of a "Notice of Termination for Default," the Contractor shall immediately cease performance of the work so terminated. WMATA 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 WMATA 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, plant costs, tooling expenses, and equipment and property costs. WMATA may deduct the costs and expenses so charged and pay them out of 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 this Contract that was not terminated.

d. The Contracting Officer may, at his or her 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 Contracting Officer may require the Contractor to transfer title and deliver to WMATA, any completed or partially completed supplies, components (including data and intellectual property) and Contract rights that the Contractor has specifically produced or acquired for the terminated portion of this Contract. At the Contracting Officer's direction, the Contractor shall also protect and preserve property in its possession in which WMATA may have an interest.

f. Upon any termination for default, WMATA shall pay for supplies delivered and accepted and/or services rendered and accepted in accordance with the terms of this Contract. WMATA may also compensate the Contractor for actions that it reasonably takes at the Contracting Officer's direction for the protection and preservation of property. WMATA may withhold from these payments any sum that the Contracting Officer determines to be necessary to protect WMATA against loss because of outstanding or claimed liens, or pending or anticipated claims under the Contract.

g. If, at any time following WMATA's issuance of a termination for default hereunder, it is determined that the Contractor was not in default or that the default was excusable, the termination shall be converted to a termination for convenience and the rights and obligations of the parties shall be determined in accordance with the "Termination for Convenience" article of this Contract.

h. Any dispute or disagreement regarding any issue arising under this article shall be subject to adjudication in accordance with t the "Disputes" article of this Contract. In no event shall WMATA's issuance of a "Notice to Cure" pursuant to paragraph (b) be the basis of a dispute pursuant to the "Disputes" article or otherwise be subject to further review under this Contract or otherwise. The pendency of any dispute shall not constitute a basis for the delay or suspension of, or otherwise affect WMATA's right to proceed in accordance with this article, including without

limitation, its right to complete the work or its right to insist that the Contractor complete any portion of the Contract that was not terminated.

i. WMATA's rights and remedies in this article are in addition to any other rights and remedies provided under this Contract, at law or in equity.

27. TERMINATION FOR CONVENIENCE

a. The Contracting Officer may terminate this Contract in whole, or in part, if he or she determines that a termination is in WMATA's interest. The Contracting Officer shall terminate by delivering a "Notice of Termination" to the Contractor specifying the extent of termination and its effective date.

b. Upon receipt of a Notice of Termination, except as the Contracting Officer otherwise directs, the Contractor shall immediately:

i. Stop work as specified in the Notice of Termination;

ii. Complete performance of the work not terminated;

iii. Place no further subcontracts or orders for materials, services, or facilities, except as necessary to complete the remaining portion of the Contract;

iv. Terminate all subcontracts to the extent that they relate to the work terminated;

v. Assign to WMATA, as directed by the Contracting Officer, all of the Contractor's right(s), title, and interest(s) under the subcontracts terminated. WMATA shall have the right to settle or pay any termination costs arising out of the subcontracts and have no further liability to the Contractor for the work that was the subject of such subcontracts;

vi. With the Contracting Officer's approval, settle all outstanding liabilities and settlement costs arising from the termination of subcontracts;

vii. As the Contracting Officer directs, transfer title and deliver to WMATA:

1) Parts, work in process, completed work, supplies, and other material produced or acquired for the work terminated; and

2) The completed or partially completed plans, drawings, information and other property that would have been required to be furnished to WMATA, 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 WMATA has or may acquire an interest;

ix. Use its best efforts to sell, as the Contracting Officer authorizes, any property of the types referred to in paragraph (b)(7). The Contractor is not required to extend credit to any purchaser and may acquire the property under the conditions that the Contracting Officer prescribes. The proceeds of any transfer or disposition will be applied to reduce payments to be made by WMATA under this Contract, credited to the price or cost of the work, or paid in any other manner that the Contracting Officer directs.

c. The Contractor shall submit complete termination inventory schedules not later than one hundred twenty (120) days from the effective date of termination, unless the Contracting Officer extends the time in writing.

d. As soon as reasonably practicable, and not later than twenty (20) business days following WMATA's issuance of a "Notice of Termination" pursuant to paragraph (a), the Contractor shall submit a termination settlement proposal (TSP) to the Contracting Officer in the form that he or she prescribes, detailing the costs to which it asserts entitlement pursuant to this article. If the Contractor fails to submit the TSP within the time prescribed, the Contracting Officer may determine, on the basis of information available, the amount, if any, due to the Contractor as a result of the termination and shall pay the amount so determined.

e. Following submission of the Contractor's TSP pursuant to paragraph (d), the parties shall agree upon the whole, or any part, of the amount to be paid or remaining to be paid as a result of the termination. The amount may include a reasonable allowance for profit on work completed. In no event shall the total amount to be paid to the Contractor pursuant to this article exceed the total Contract price as reduced by (1) payments previously made and (2) the Contract price of the remaining work, not terminated.

f. If the parties disagree on the whole amount to be paid because of the termination, the Contracting Officer shall pay the Contractor the amounts that he or she determines as follows, but without duplication of any amounts agreed upon under paragraph (e):

i. The Contract price for completed supplies or services that WMATA accepted [or sold or acquired under paragraph (b)(9)] not previously paid for, adjusted for any saving of freight and other charges.

ii. The total of:

1) The costs incurred prior to termination in the performance of the work terminated, including initial costs and preparatory expenses allocable thereto, but excluding any

costs attributable to items compensated or to be paid for under subparagraph (f)(1);

2) Termination costs under terminated subcontracts that are properly chargeable to the terminated portion of this Contract, if not excluded in subparagraph (f)(2)(i); and

3) A sum, representing profit on the items described in subparagraph (f)(2)(i) that the Contracting Officer determines to be fair and reasonable pursuant to Section 49.202 of the Federal Acquisition Regulation (FAR), in effect on the date of this Contract. If it appears that the Contractor would have sustained a loss on the entire Contract had it been completed, the Contracting Officer shall allow no profit under this subparagraph and shall reduce the settlement to reflect the projected rate of loss.

iii. The reasonable indirect costs of settlement of the work terminated, including:

g. Except for normal spoilage, and except to the extent that WMATA expressly assumed the risk of loss, the Contracting Officer shall exclude from the amounts payable to the Contractor under paragraph (f), the fair value, as he or she determines of property that is unavailable or damaged and undeliverable to WMATA or to a third party.

h. 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 article, except that WMATA shall not be obligated to pay interest, however represented, on any claimed costs.

i. The Contractor shall have the right to appeal, under the "Disputes" article, from the Contracting Officer's determination under paragraphs (d) or (f). The Contractor's failure to submit the TSP within the time provided in paragraph (d), or to timely request an extension thereof, shall constitute a waiver of its right to appeal the Contracting Officer's determination pursuant to the "Disputes" article or any otherwise applicable Contractual, legal or equitable remedy.

i. In determining any sum due to the Contractor under this article, there shall be deducted:

i. All unliquidated advances or other payments to the Contractor under the terminated portion of this Contract;

ii. The value, as the Contracting Officer, reasonably determines, of any claim that WMATA has against the Contractor under this Contract,

including any third-party claim, if the Contracting Officer is not satisfied that sufficient insurance coverage is in place; and

iii. The agreed price for, or the proceeds of sale of, materials, supplies, or other items that the Contractor procured or sold under this article, not recovered by or credited to WMATA.

j. If the Contractor asserts that any partial termination has rendered enforcement of the remainder of this Contract at the remaining Contract price inequitable, the Contractor may file a proposal with the Contracting Officer for an adjustment to the price(s) for the continued portion of this Contract. Such proposal shall be submitted within ninety (90) days from the effective date of termination, unless the Contracting Officer extends it in writing, and shall be accompanied by appropriate supporting documentation.

k. The Contractor's responsibilities and obligations under this article shall remain in full force and effect notwithstanding the pendency of any dispute or other delay relating to determination of the appropriate price adjustment or any other issue arising from the termination for convenience.

l. Unless otherwise provided in this Contract or by statute, the Contractor and all subcontractors whose work is encompassed in the termination settlement shall maintain all records and documents relating to the terminated portion of this Contract for three (3) years after final settlement. This includes all books and other evidence bearing on the Contractor's costs and expenses under this Contract. The Contractor shall make these records and documents available to WMATA, its governing jurisdictions and any other Federal, state, or local entities providing funding for this Contract, and to the U.S. Comptroller General or the agents or representatives of any of them, at the Contractor's office, at all reasonable times, without any direct charge.

28. ASSIGNMENT

a. Except as otherwise provided in this article, the Contractor shall not transfer any of its rights and obligations under this Contract to third parties without the Contracting Officer's prior, written consent. The Contracting Officer may recognize a third party as successor in interest to this Contract in the event of a transfer of all or substantially all of the Contractor's assets, a change in a division of the Contractor involved in the performance of this Contract, or if a parent company provides performance guarantee(s) under this Contract, (i.e., sales of assets, transfer of assets pursuant to merger or consolation, or incorporation of a proprietorship or partnership). Such recognition shall be at the Contracting Officer's discretion after review of the facts and circumstances surrounding each request. The Contracting Officer, at his or her discretion, may conduct an evaluation of the successor party's capability to perform this Contract in the same manner and to the same extent that he or she conducted a responsibility determination as part of the original solicitation for this Contract. Should the

Contracting Officer, for any reason, not recognize such a successor in interest, he or she may terminate this Contract.

b. Any attempt to transfer by assignment that the Contracting Officer does not authorize shall constitute a material breach of this Contract and the Contracting Officer may terminate this Contract in accordance with the "Termination for Default" article 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 Contracting Officer.

29. 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 for WMATA.

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 the Armed Service Board of Contract Appeals, in lieu of judicial review in the United States District Courts as set forth in subsection (3) above.

30. EQUAL EMPLOYMENT OPPORTUNITY REQUIREMENTS FOR CONSTRUCTION ACTIVITIES

a. When undertaking "construction" as recognized by the U.S. Department of Labor (U.S. DOL), the Contractor agrees to comply with U.S. DOL regulations "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Part 60, and Executive Order 11246 "Equal Employment Opportunity," as amended by Executive Order 11375, "Amending Executive Order 11246, Relating to Equal Employment Opportunity," 42 U.S.C. § 2000 (e) note.

31. TITLE AND RISK OF LOSS

This clause is only applicable where WMATA acquires title to property through contract performance.

a. Unless this Contract specifically provides for earlier passage of title to deliverables (including documents, reports, and data) or other items resulting from this Contract, title shall pass to WMATA upon acceptance, regardless of when or where WMATA takes physical 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 WMATA takes physical possession, whichever is later.

b. In the event of loss or damage to any deliverable or other item of work, prior to the time when WMATA takes physical 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 WMATA. Nothing contained herein shall be deemed to require the Contractor's repair or replacement of any loss or damage caused solely by WMATA's acts or omissions.

c. The following clause applies, if and when the Contractor performs work on its own property.

i. WMATA retains title to all WMATA-furnished property. WMATA furnished property shall not become a fixture or lose its identity as personal property by being attached to any real property. The Contractor shall use WMATA's property, furnished under this Contract, only for performing this Contract, unless the Contracting Officer approves otherwise. Modifications or alterations of WMATA property are prohibited, unless they are (i) Reasonable and necessary due to the technical specifications for this Contract; (ii) Required for normal maintenance; or (iii) Otherwise authorized by the Contracting Officer. Risk of loss is on the Contractor for WMATA-furnished property, i.e. the Contractor is liable for loss, theft, damage or destruction to WMATA property while it is in the Contractor's possession or control. The Contractor shall take all reasonable actions necessary to protect WMATA's property from loss, theft, damage or destruction. The Contractor shall do nothing to prejudice WMATA's rights to recover against third parties for any loss, theft, damage or destruction to WMATA's property.

32. 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 End Use License Agreement (EULA), Terms of Service (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 is void and without effect.

33. PATENT INDEMNITY

a. The Contractor shall indemnify WMATA and its Board members, 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 (OEM) for a manufactured product purchased under this Contract, it will ensure that the patent holder provides indemnity to WMATA under this article. 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 delivery or performance by the Contractor; 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."

34. SET-OFF

a. WMATA has common law, equitable and statutory rights to set-off. These rights shall include, but are not limited to, WMATA's right to set-off any monies due to the Contractor under this Contract, by any amounts due and owing to WMATA with regard to, any Contract with WMATA, plus any amounts due and owing to WMATA for any other reason including, without limitation, tax delinquencies, fee delinquencies or monetary penalties relative thereto. WMATA shall exercise its

set-off rights in accordance with applicable laws and practices including, in cases of set-off pursuant to an audit, the finalization of such audit by WMATA, its representatives, or the Federal Government.

35. RIGHTS IN TECHNICAL DATA

WMATA does not waive any rights to technical data originating from or developed in the course of performance of this contract.

a. Technical Data" as the term is used in this Contract includes but is not limited to all technical writings, computer software, sound recordings, pictorial reproductions, drawings or other graphical representations and works of a technical nature, whether or not subject to a competing claim of copyright, when such works are delivered pursuant this Contract.

b. WMATA and its agents shall have the right to use, duplicate, disclose or license technical data in whole or in part in any manner and for any purpose whatsoever, including but not limited to:

i. Any manuals, documents, or instructional materials prepared for installation, operation, maintenance or for training;

ii. Information related to end items, components or processes including those identifying sources, sizes, configurations, mating and attachment characteristics whether functional or performance based, including "form, fit or function" data such as specification control drawings, catalog sheets, and outline drawings;

iii. All other technical data that the Contractor or any Subcontractor has furnished without reservation;

iv. Any other specifically described information that the parties have separately agreed will be furnished without reservation;

v. All software, whether deemed technical data pursuant to this clause or not, including source code, algorithms, processes, formula and flow

charts that the Contractor either developed or materially modified for WMATA;

vi. Any subject matter for which WMATA is required by law or regulation to acquire a royalty-free irrevocable and nonexclusive license on behalf of and for the benefit of a government agency.

c. WMATA 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 such technical data, be:

i. Released or disclosed, in whole or in part, outside of WMATA,

ii. Used, in whole or in part, by WMATA for manufacturing, or

iii. Used by a party other than WMATA except for: (1) emergency repair or overhaul, (2) where the item or process concerned is not otherwise reasonably available to WMATA to enable timely performance of this work, or (3) administration of this Contract or the inspection of any products produced under it, where the third party has a written contract with WMATA to perform these efforts. In all cases described in this subsection, the release or disclosure outside of WMATA shall be subject to a nondisclosure agreement.

d. Technical data provided in accordance with this Contract shall be identified with a legend that suitably recites any limitation. This article shall not impair WMATA'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 code, algorithms, processes, formulae, and flow charts. WMATA has full rights to use, duplicate or disclose any or all parts of the item, including computer software, in whole or in part, 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 grants to WMATA, and to its Board members, agents and employees acting within the scope of their official duties, a royalty-free, nonexclusive and irrevocable license throughout the world for WMATA's purposes to publish, translate, reproduce, deliver, perform, dispose of, and to authorize others so to do, all technical data and computer software whether now or hereafter covered by copyright.

ii. No such copyrighted matter shall be included in (1) technical data or (2) computer software furnished hereunder without the written permission

of the copyright owner for WMATA to use such copyrighted matter in the manner above described.

iii. The Contractor shall report to WMATA 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 WMATA.

g. Relation to patents: All material furnished under this Contract shall imply a nonexclusive license to use the patented material.

h. Any dispute under this article shall be subject to the "Disputes" article of this Contract.

i. The Contracting Officer may retain from payment up to ten percent (10%) of the Contract price until final delivery and acceptance of the technical data defined in this Article and as required to be furnished by the Price Schedule or the Contract's specifications.

j. Any limitation upon WMATA's rights in technical data acquired or developed under this Contract must be expressed in writing and delivered to the Contracting Officer prior to award of this Contract.

36. NOTICE AND ASSISTANCE REGARDING PATENT AND COPYRIGHT INFRINGEMENT [SUPPLIES]

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.

b. 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 be furnished at the

Contractor's expense since the Contractor has agreed to indemnify WMATA for such infringement claims.

c. This article shall be included in all subcontracts that are expected to exceed the simplified acquisition threshold.

37. ROYALTY INFORMATION

a. When a bid contains costs or charges for royalties totaling more than $250, the following information shall be furnished with the bid on each separate item of royalty or license fee:

i. Name and address of licensor;

ii. Date of license agreement;

iii. Patent numbers, patent application serial numbers or other basis on which the royalty is payable;

iv. Brief description, including any part or model numbers of each Contract item or component on which the royalty is payable;

v. Percentage or dollar rate of royalty per unit;

vi. Unit price or Contract item;

vii. Number of units; and

viii. Total dollar amount of royalties.

ix. In addition, at the Contracting Officer's request, prior to execution of the Contract, the successful offeror will provide copies of any current license agreements and identify applicable claims of specific patents.

38. NONDISCRIMINATION ASSURANCE- FTA

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, gender identity and/or disability. 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 construction 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. 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 WMATA deems appropriate.

39. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT- OVERTIME COMPENSATION

This Contract, to the extent that it is of a character specified in the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-333), is subject to the following provisions and to all other applicable provisions and exceptions of such Act and the regulations of the U.S. Secretary of Labor thereunder.

a. Overtime requirements. No Contractor or subcontractor contracting for any part of the Contract work that may involve the employment of laborers, mechanics, apprentices, trainees, watchmen, and guards shall require or permit any such employee in any workweek in which he or she is employed to work in excess of forty (40) hours in such work week on work subject to the provisions of the Contract Work Hours and Safety Standards Act unless such employee receives compensation at a rate not less than one and one-half (1 1/2) times his or her basic rate of pay for all hours worked in excess of forty (40) hours in such work week.

b. Violation. Liability for Unpaid Wages - Liquidated damages. In the event of any violation of paragraph (a) the Contractor and any subcontractor responsible therefore shall be liable to any affected employee for his or her unpaid wages. In addition, such Contractor and subcontractor shall be liable to WMATA for liquidated damages. Liquidated damages shall be computed with respect to each individual laborer, mechanic, apprentice, trainee, watchman or guard employed in violation of paragraph (a) in the sum of $10 for each calendar day on which such employee was required or permitted to be employed on such work in excess of his or her standard work week of forty (40) hours without payment of the overtime wages required by paragraph (a).

c. Withholding for unpaid wages and liquidated damages. The Contracting Officer may withhold from the Contractor, such sums as he or she determines to be necessary to satisfy any liabilities of such Contractor or subcontractor for unpaid wages and liquidated damages as provided in paragraph (b).

d. Subcontracts. The Contractor shall insert this article in all subcontracts at any tier. Contractor shall also require subcontractors to include this clause in any lower tier subcontracts. The Contractor shall be responsible for compliance by any and all subcontractors at every tier.

e. Records. The Contractor shall maintain payroll records containing the information specified in 29 C.F.R. § 516.2(a). Such records shall be preserved for three (3) years from the completion of this Contract.

40. WALSH-HEALEY PUBLIC CONTRACTS ACT

If this Contract is for materials, supplies, or equipment in an amount that may exceed $10,000 and is subject to the Walsh-Healey Public Contracts Act, as amended (41 U.S.C. §§ 35-45) the following terms and conditions apply:

a. All stipulations required by the Act and regulations issued by the U.S. Secretary of Labor (41 C.F.R. Part 50) are incorporated by reference. These stipulations are subject to all applicable rulings and interpretations of the U.S. Secretary of Labor that are now, or may hereafter, be in effect.

b. All employees whose work relates to this Contract shall be paid not less than the minimum wage prescribed by the U.S. Secretary of Labor (41 C.F.R. § 50-202.2). Learners, student learners, apprentices, and certain handicapped workers may be employed at less than the prescribed minimum wage (41 C.F.R. § 50-202.3) to the

same extent that such employment is permitted under Section 14 of the Fair Labor Standards Act (41 U.S.C. § 40).

41. DAVIS-BACON ACT- FTA

a. Under 49 U.S.C. § 533(a), Davis-Bacon Act prevailing wage protections apply to laborers and mechanics employed on FTA assisted construction, alteration or repair projects in excess of $2,000.00, The Davis-Bacon Act requires that the Contractor pay wages to laborers and mechanics at a rate of not less than the minimum wages specified in the wage determinations made by the U.S. Secretary of Labor, at least one (1) time per week, without subsequent deductions or rebate on any account, except such payroll deductions as permitted by the U.S. Secretary of Labor. The Contractor understands that Contract award is conditioned upon its acceptance of U.S.DOL's prevailing wage determinations that are attached to the solicitation. The Contractor agrees to comply with the Davis-Bacon Act, 40 U.S.C. § 3141, et. seq. and implementing DOL regulations "Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction. 29 C.F.R. Part 5.

b. WMATA may upon its own action or upon written request of an authorized representative of the U.S. Department of Labor, withhold or cause to be withheld from the Contractor under this Contract, or any other Federal contract that the Contractor has with WMATA, or any other Federally-assisted contract subject to Davis-Bacon prevailing wage requirements, so much of the accrued payments or advances as may be necessary to pay laborers and mechanics, including apprentices, trainees, and helpers employed by the Contractor or any subcontractor, the full amount of the wages required by this Contract. In the event that the Contractor fails to pay any laborer or mechanic, including any apprentice, trainee or helper employed or working on the jobsite, all or part of the wages required by this Contract, WMATA may, after written notice to the Contractor, suspend further payments or advances or guarantees until such violations have ceased.

c. The Contractor shall maintain payrolls and basic records relating thereto during this Contract and for three (3) years thereafter. The Contractor shall submit weekly for each week in which any Contract work is performed, a copy of all payrolls to the COTR, for transmission to FTA. The payrolls shall contain all information required by 29 C.F.R. Part 5. Each payroll submitted shall by accompanied by a "Statement of Compliance" signed by the Contractor or subcontractor. Falsification of any required certification may subject the Contractor or subcontractor to criminal prosecution or a civil suit pursuant to 18 U.S.C. § 1001 and/or 31 U.S.C. § 23, respectively. The Contractor or subcontractor shall make the records required under this article available to authorized representatives of FTA or U.S. DOL and shall permit such representatives to interview employees during working hours on the jobsite. If the Contractor or subcontractor fails to submit the required records or make them available, the Federal agency may take further action to cause the suspension of payments, advances or guarantee of funds. Failure to submit the required records may be grounds for suspension or debarment.

d. The Contractor or subcontractor shall insert the clauses contained in 29 C.F.R. § 5.5(a) and such other clauses that FTA may require in all subcontracts issued

hereunder. The Contractor shall require subcontractors to include these clauses in lower tier subcontracts. The Contractor will be responsible for the compliance by any subcontractor with all of the clauses contained in 29 C.F.R. § 5.5.

e. Disputes arising out of the labor standards provisions of this Contract shall not be subject to the general "Disputes" article of this Contract. Such disputes shall be resolved in accordance with U.S. Department of Labor procedures set forth in 29 C.F.R. parts 5, 6 and 7. Disputes within the meaning of this article include disputes between the Contractor (or any of its subcontractors) and WMATA, the U.S. Department of Labor or any of its employees or representatives.

f. By entering into this Contract, the Contractor certifies that neither it nor any person or firm who has an interest in the Contractor's firm is a person or firm that is ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis- Bacon Act of 29 C.F.R. § 512.

42. CONVICT LABOR

a. Except as provided in paragraph (b), 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:

i. On parole or probation to work at paid employment during the term of their sentence;

ii. Who have been pardoned or who have served their terms; or

iii. 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--

1) The worker is paid or is in an approved work or training program on a voluntary basis;

2) Representatives of the local union's central bodies or similar labor union organizations have been consulted;

3) 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;

4) 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

5) 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.

43. COVENANT AGAINST CONTINGENT FEES

a. 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 of this warranty, WMATA 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.

b. If fraud is suspected, WMATA's remedy prior to final 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 agency providing funding under this Contract and/or appropriate Federal, state and/or local law enforcement authorities.

44. SEAT BELT USE POLICY

The Contractor agrees to comply with terms of Executive Order No. 13043 "Increasing Seat Belt Use in the United States" and is encouraged to include these requirements in each subcontract awarded for work relating to this Contract.

45. SENSITIVE SECURITY INFORMATION

The Contractor must protect, and take measures to assure that its subcontractors at each tier protect "sensitive information" made available during the course of administering an Authority contract or subcontract in accordance with 49 U.S.C. § 40119(b) and implementing U.S.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.

46. 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 services and/or supplies 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 jurisdictions where work will be performed.

47. HAZARDOUS MATERIAL IDENTIFICATION AND MATERIAL SAFETY DATA SHEETS

a. The Contractor agrees to submit a Material Safety Data Sheet (U.S. Department of Labor Form OSHA-3514), as prescribed in Federal Standard No. 313F for all hazardous materials five (5) days before delivery of the material, whether or not listed in the Standard. This obligation applies to all materials delivered under this Contract that involve exposure to hazardous materials or items containing these materials.

b. "Hazardous material," as used in this clause, is defined in Federal Standard No. 313F in effect on the date of this Contract.

c. Neither the requirements of this clause nor WMATA's acts or omissions shall relieve the Contractor of any responsibility or liability for the safety of Authority's, personnel or property.

d. Nothing contained in this article shall relieve the Contractor from complying with applicable Federal, state, and local laws, codes, ordinances, and regulations (including the requirement to obtain licenses and permits) in connection with hazardous materials.

e. WMATA's rights in data furnished under this Contract regarding hazardous materials are as follows:

i. To use, duplicate and disclose any data to which this clause is applicable. The purposes of this right are to (a) apprise personnel of the hazards that they may be exposed to in using, handling, packaging, transporting, or disposing of hazardous materials (b) obtain medical treatment for those affected by the materials; and (c) have others use, duplicate, and disclose the data for WMATA for these purposes.

ii. To use, duplicate, and disclose data furnished under this article in precedence over any other provision of this Contract providing for rights in data.

iii. WMATA is not precluded from using similar or identical data acquired from other sources.

iv. The data shall not be duplicated, disclosed, or released outside of WMATA, in whole or in part, for any acquisition or manufacturing purpose, if the following legend is marked on each piece of data to which this clause applies - This data furnished under this Contract shall not be used, duplicated, or disclosed for any acquisition or manufacturing purpose without the Contracting Officer's permission. This legend shall be marked on any reproduction of this data."

v. The Contractor shall not place any restrictive legend on any data that (i) the Contractor or any subcontractor previously delivered to WMATA

without limitations; or (ii) should be delivered without limitations under the "Rights in Technical Data" clause.

vi. The Contractor shall insert this article including this paragraph, with appropriate changes in the designation of the parties, in subcontracts at any tier (including purchase designations or purchase orders) under this Contract involving hazardous materials.

48. METRIC SYSTEM

To the extent the Federal Government directs, the Contractor agrees to use the metric system of measurement in its Contract activities, in accordance with the Metric Conversion Act, as amended by the Omnibus Trade and Competitiveness Act, 15 U.S.C. § 205 (a) et. seq.; Executive Order No. 12770, "Metric Usage in Federal Government Programs," 15 U.S.C. § 205(a) note; and applicable U.S. DOT or FTA regulations in accordance with applicable Federal directives. As practicable and feasible, the Contractor agrees to supply products and services with dimensions expressed in the metric system of measurement. Metric usage shall not be required to the extent that such use is impractical or is likely to cause significant inefficiencies or loss of markets to United States firms.

49. MANDATORY DISCLOSURE

The Contractor shall timely disclose, in writing, to WMATA's Office of the Inspector General (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

i. A violation of the civil False Claims Act (31 U.S.C. §§ 3729-3733).

1) WMATA, 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 the company. To the extent permitted by the law and regulation, such information will not be released by WMATA to the public pursuant to a Public Access to Records (PARP) request. WMATA 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.

2) 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.

ii. WMATA, 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 the company. To the extent permitted by the law and regulation, such information will not be released by WMATA to the public pursuant to a Public Access to Records (PARP) request. WMATA 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.

b. A violation of the civil False Claims Act (31 U.S.C. §§ 3729-3733).

i. WMATA, 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 the company. To the extent permitted by the law and regulation, such information will not be released by WMATA to the public pursuant to a Public Access to Records (PARP) request. WMATA 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.

50. EMPLOYMENT RESTRICTION WARRANTY

a. The Contractor warrants that it will not offer employment to, solicit or discuss prospective employment with, or otherwise engage in substantive employment related discussions or communications with, any present or former Board member of WMATA 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 on former Authority employees is one (1) year from the date of their last employment with WMATA. 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 WMATA is eventually hired, the Contractor shall ensure that the former Board member or employee is not involved

in negotiating or otherwise dealing with WMATA on any particular matter over which he or she had responsibility during his or her tenure.

c. Should the Contractor fail to comply with the provisions hereof, and no fraud is suspected, 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 WMATA, 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 fraud is suspected, WMATA's only remedy prior to a final decision 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.

51. 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 WMATA; 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" article will be investigated by WMATA'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 article exists. If such probable cause exists, the Board of Directors, or its duly authorized representative, shall formally notify 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.

c. The rights and remedies of WMATA 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.

52. OFFICIALS NOT TO BENEFIT

a. No member of or delegate to the U.S. 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.

53. 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 it with a competitive advantage 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 it 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) working 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; or (3) the conflict can be mitigated and he or she accepts the proposed measures or recommends additional measures.

c. The Contractor's failure to identify such perceived conflicts may result in the Contract being rescinded or 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), 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, he or she may terminate this Contract. If the Contracting Officer does not grant a request for an exception, and this Contract is not terminated, 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 article, 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 noncompliance remain uncorrected at the expiration of ten (10) days from the Contracting Officer's written notice as provided in paragraph (b), terminate the contract for default pursuant to this Contract.

h. If fraud is suspected, WMATA's remedy prior to a final determination 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.

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 WMATA 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 any Code of Ethics or standards of conduct adopted by WMATA's Board of Directors.

j. The Contracting Officer's determination under this article shall be final and shall be considered a question of fact within the meaning of the "Disputes" article of this Contract.

54. CONTRACTOR PERSONNEL

a. WMATA may direct the replacement of the Contractor's employees reasonably deemed to be unsuitable by the Contracting Officer, or whose continued participation in the work is deemed contrary to the best interests of WMATA. Except in circumstances deemed exigent by the Contracting Officer, the reason for replacement will be discussed between the Contractor and WMATA before a replacement directive is issued. Upon receipt of a written replacement directive from WMATA 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.

b. Contractor personnel required to work on WMATA's property must obtain a WMATA 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 the background check

55. 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 this 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, WMATA 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. For purposes hereof, 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. WMATA's remedy prior to a final determination 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.

d. WMATA's rights set forth in this article 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, WMATA'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.

56. PUBLIC COMMUNICATION

The Contractor shall not issue communications to the media, place advertisements, nor publicize through any means the services, goods or construction that it is providing to WMATA 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 Contracting Officer's prior, written consent. Approval of any such requests shall be at the Contracting Officer's sole discretion.

57. 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 taxes and duties.

b. If a statute, court decision, written ruling or regulation regarding any Federal excise tax or duty on the transactions or property covered by this Contract takes effect after the Contract date, and:

c. Results in the Contractor being required to pay or bear the burden of any such Federal excise tax or duty or rate increase 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, if the Contractor warrants in writing that no amount for such newly imposed Federal obligation was included in the Contract price as a contingency reserve or otherwise; or

d. 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 WMATA, as the Contracting Officer directs. If the Contractor fails to follow the Contracting Officer's instructions, it will be required to pay or bear the burden of, any such Federal excise tax or duty through a decrease in the Contract price.

e. Paragraph (b) above shall not be applicable to social security taxes or to any other employment tax.

f. No adjustment of less than $250 shall be made in the Contract price pursuant to paragraph (b).

g. As used in paragraph (b), the term "Contract date" means the date the Contract was executed by WMATA. As to additional services, supplies or construction procured by modification to this Contract, the term "Contract date" means the effective date of such modification.

h. 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. WMATA 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.

58. CHOICE OF LAW, CONSENT TO JURISDICTION AND VENUE

a. 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 laws of the District of Columbia except to the extent, if any, superseded by Federal law.

b. The parties agree that any and all claims asserted by or against WMATA arising hereunder or related hereto shall be heard and determined either in the courts of the United States located in the District of Columbia, the State of Maryland or the Commonwealth of Virginia or in the courts of the District of Columbia, State of Maryland or Commonwealth of Virginia that maintain jurisdiction over such claims and where venue properly resides.

c. Notwithstanding subsection (b), judicial review of any claim asserted against the Authority must be expressly permitted under the WMATA Compact and fall within the WMATA Compact's limited waiver of the Authority's sovereign immunity. Nothing, including but not limited to this clause, in the Contract, the Authority's procurement policies and guidance, or any communication or correspondence

from Authority personnel, shall be construed as a waiver of any Authority immunity from suit or to define the Authority as a federal agency.

59. 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 from the Contract without affecting the binding force of the Contract as it shall remain after omitting such provision.

60. SURVIVAL

Any provision expressly set forth as surviving the expiration or termination of this Contract, shall be deemed to survive any such expiration or termination.

61. GOVERNMENT-WIDE DEBARMENT OR SUSPENSION- FTA

a. The Contractor is bound by its certification contained in its offer to WMATA that neither the Contractor its principals, or affiliates, are excluded or disqualified, from Federal contracting. The certification is a material representation of fact, relied upon by WMATA in entering into this Contract. If it is later determined that the Contractor knowingly rendered an erroneous certification, in addition to remedies available to WMATA, 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 article 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.

62. PROGRESS PAYMENTS

When satisfactory progress has not been achieved by a Contractor during any period for which a progress payment is to be made, a percentage of the progress payment may be retained. Retainage should not be used as a substitute for good contract management, and the Contracting Officer should not withhold funds without cause. Determinations to retain and the specific amount to be withheld shall be made by the Contracting Officer on a case-by-case basis. Such decisions will be based on the Contracting Officer's assessment of past performance and the likelihood that such performance will continue. The amount of retainage withheld shall not exceed ten percent (10%) of the approved, estimated amount in accordance with the terms of this Contract and may be adjusted as the Contract approaches completion to recognize better than expected performance, the ability to rely on alternative safeguards, and other factors. Upon completion of all Contract requirements, retained amounts shall be paid promptly.

63. SAFETY REQUIREMENTS

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 METRO Construction Safety and Environmental Manual (1984, as amended) issued by WMATA, and the U.S. Department of Labor OSHA standards pertaining to the safe performance of the work. In the absence of a specific construction 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, the WMATA Construction Safety and Environmental Manual, or the Metrorail Safety Rules and Procedures Handbook. For contracts where work will be performed on, or will interface with the Metrorail System, the Contractor shall also comply with the publication entitled "Metrorail Safety Rules and Procedures Handbook." 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.

b. The Contractor shall employ and assign a full-time Safety Superintendent for Contracts involving "safety sensitive" functions. (See Combined Glossary attached hereto for a definition). The Safety Superintendent shall have a minimum of three (3) years of construction safety experience and hold an OSHA thirty (30) hour course card. He or she shall have the ability to develop and conduct safety training courses. He or she shall be familiar with industrial hygiene equipment and testing as required for the protection of all employees. The Safety Superintendent shall be employed exclusively for the purpose of supervising the safety of persons on or about the worksite and the property affected thereby. The Safety Superintendent shall also be responsible for providing first aid at the worksite and must have a current Red Cross First Aid Certificate. The Contractor shall notify the Contracting Officer a reasonable amount of time beforehand, any time that the Safety Superintendent will not be on site during work hours. If, at any time, the worksite is without the services of an approved Safety Superintendent for a period of three (3) calendar days or more, the work may be closed down at the Contracting Officer's discretion. The Safety Superintendent must be acceptable to the Contracting Officer and his or her performance will be reviewed on a continuing basis. If the Safety Superintendent's effectiveness is below standard, the Contractor shall provide immediate replacement at the Contracting Officer's direction. Once employed, the Safety Superintendent shall not be changed without

the Contracting Officer's permission. The Safety Superintendent can be terminated at any time, at the Contracting Officer's discretion.

c. The Contractor shall provide, at the site of the work, a first aid kit which shall be fully equipped to meet the needs of the anticipated work force.

d. The Contractor shall follow all appropriate RAIL Operational Rules, Operational Administrative Procedures (OAPs), Standard Operational Procedures (SOPs) and General and Special Orders while on the operational railroad and all Start-Up Rules and Manager's Notices when in declared start-up areas.

64. 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 notice to proceed, a criminal background check 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 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.

f. 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.