Subscription Services Terms - Addendum

This Subscription Services Terms - Addendum applies whenever Contractor provides Products in the form of any cloud-based or any managed or hosted service offerings ("**Subscription Services**"). Capitalized terms used but not defined below in this Subscription Services Addendum will have the same meanings given to them in the Standard IT Terms and Conditions.

1.   **LICENSE; RESERVATIONS OF RIGHTS**

(a)   <u>Production Use</u>. Contractor hereby grants to WMATA a worldwide, non-exclusive, non-transferable right and license for WMATA and its Authorized Users to access and use the Subscription Services for its business purposes, including in operation with other software, hardware, systems, networks, and services, and to distribute (to Authorized Users), make a reasonable number of copies of, and modify or adapt the related documentation (collectively, the "**License**"). For purposes hereof, "**Authorized Users**" means all employees, agents and subcontractors authorized by WMATA to access and use the Subscription Services through WMATA's account.

(b)   <u>Non-Production Use</u>. The scope of the License granted in subsection 1(a) above, includes the right and license to access and use the Subscription Services for such non-production uses and applications as may be necessary for the effective use of the Subscription Services hereunder, including for purposes of configuration, integration, testing and training, which access and use will be without charge and not included for any purpose in any calculation of WMATA's or its Authorized Users' use of the Subscription Services, including for purposes of assessing any Fees or other compensation payable to Contractor or determining any excess use of the Subscription Services.

(c)   <u>License Scope</u>. The total number of Authorized Users will not exceed the number set forth in the applicable Purchase Order, except as expressly agreed to in writing by the parties and subject to any appropriate adjustment of the Fees payable hereunder. If Contractor discovers that WMATA exceeds the scope where a limited License is set forth under a Purchase Order, Contractor will provide written notice to WMATA and the parties will discuss in good faith their understanding of then-current use levels in relation to the License usage limitations set forth in the applicable Purchase Order. Contractor may not seek recovery for any excess usage where it believes WMATA exceeded the scope of a limited License related to any period greater than one (1) year prior to the date of such written notice. To the extent helpful to clarify usage calculations, Contractor will in good faith inform WMATA as to how License usage is calculated under its standard documentation for the appliable Subscription Service and provide all back-up data that is reasonable and necessary to substantiate its License usage calculations. Contractor will not rely upon a third party to perform any audit or forensics on WMATA's usage of the Subscription Service without WMATA's prior written consent. WMATA will have a reasonable period to reduce its use of the applicable Subscription Service and comply with the License usage limitations set forth under the applicable Purchase Order (which shall in no event be less than sixty (60) days) before it may be expected to pay for any expanded use (which will be pursuant to the rates set forth in the applicable Purchase Order unless a lower rate is mutually-agreed by the parties). Any discrepancy or dispute regarding calculation of License usage will, to the extent necessary, be resolved in accordance with the procedures outlined in Section 29(a) and Section 29(c) of the Standard IT Terms and Conditions.

(d)   <u>Use Restrictions</u>. WMATA shall not: (a) modify, decompile, reverse engineer or create derivative works from or based on the Subscription Services, (b) rent, lease, lend, sell, sublicense, assign, distribute, publish, transfer, or otherwise make the Subscription Services available to any third party, except as expressly permitted by this Contract or in any Purchase Order; or (c) use or authorize the use of the Subscription Services in any manner or for any purpose that is unlawful under applicable Law.

(e)   Reservation of Rights. Contractor and its licensors retain all rights, title and interest in and to the Subscription Services. WMATA retains all rights, title and interest in and to any and all means all data, records, files, content or information, in any form or format: (a) collected, received, stored, processed or maintained by the Subscription Services; (b) provided by WMATA to Contractor; or (c) derived from (a) or (b) (the "**WMATA Data**"). For the avoidance of doubt, any output or other data generated by WMATA from using the Subscription Services will be considered WMATA Data and exclusively owned by WMATA. Except for the limited licenses expressly above, nothing contained in this Addendum shall be construed as granting WMATA or any third party any right, title, or interest in or to the Subscription Services; or with respect to Contractor or any third party, any right title or interest in or to any WMATA Data whether by implication, estoppel, or otherwise

2.   **BACKUPS; ACCCES TO WMATA DATA**

(a)   Periodic Backups. Contractor will ensure that adequate and appropriate periodic data backup is performed in accordance with Contractor's backup policy to help prevent loss of WMATA Data.

(b)   Access to WMATA Data by Third Parties. Contractor will allow Third-Party Materials (as defined in Section 7 below) providers and subcontractors to access WMATA Data solely as and to the extent (i) required for the performance of the Subscription Services subcontracted or delegated to them, (ii) required for interoperation of such Third-Party Materials with the Subscription Services, and (iii) as expressly set forth in the applicable Purchase Order. Contractor will be responsible for any disclosure, modification, corruption, loss or deletion of WMATA Data resulting from any such access by such third parties as if committed by Contractor.

(c)   Return of WMATA Data. WMATA Data will be readily available to WMATA throughout the term of the Subscription Service upon request. Upon request by WMATA, Contractor will send WMATA or otherwise allow WMATA to access WMATA Data in a suitable and readily usable format. At WMATA's request, Contractor shall retain all user data for a period of up to thirty (30) days following termination or expiration of this Contract in order for WMATA to retrieve it.

3.   **ACCEPTANCE TESTING**

(a)   When Contractor notifies WMATA in writing that the Subscription Service is ready to be provided to WMATA, WMATA shall have at least three (3) weeks from the time of such access to test the Subscription Services in a production representative environment to determine whether they comply with the specifications and service levels set forth or referenced in the Contract and the other quality requirements in any related documentation provided by Contractor (collectively, the "**Specifications**"). Upon completion of WMATA's testing, WMATA shall notify Contractor of its acceptance or, if it has identified any noncompliance with the Specifications, its rejection of the Subscription Services. If WMATA rejects the Subscription Services, WMATA shall provide a written list of items that must be corrected. On receipt of WMATA's notice, Contractor shall promptly commence, at no additional cost or charge to WMATA, all reasonable efforts to complete, as quickly as possible and in any event within five (5) business days from receipt of WMATA's notice (or such other period as may be agreed upon by the parties in writing), such necessary corrections, repairs, and modifications to the Subscription Services to bring them into full compliance with the Specifications. If any further corrective measures are required, upon its completion of all such measures, Contractor shall notify WMATA in writing and the process set forth herein shall be repeated.

(b)   If WMATA determines that the Subscription Services, as corrected, repaired or modified, still do not comply with the Specifications, WMATA, in addition to any other rights and remedies it has under this Contract, at law or in equity, shall have the right:

   i.   To direct the Contractor, at no increase in Contract price, to correct, repair or modify the defective or nonconforming Subscription Services in accordance with a reasonable delivery schedule as may be agreed upon between the parties. The Contracting Officer ("**CO**") 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 CO may in lieu of correction of the Subscription Services reduce the Contract price, as is equitable under the circumstances or terminate this Contract with no liability, obligation or penalty.

4.   CHANGES AND IMPROVEMENTS

(a)   Contractor may change or improve the Subscription Services from time to time, and will provide as much notice as is practicable to WMATA of any significant Improvements. Upon release, all such Improvements will become a part of the Subscription Services. Contractor shall make available to WMATA, at no additional charge, those Improvements that Contractor generally makes available to any of its customers without additional charge. Contractor shall notify WMATA as far in advance as feasible of any proposed Improvement. The Improvements or other changes will not, without WMATA's approval: (i) increase costs incurred by WMATA in connection the Subscription Services; (ii) require WMATA to change its systems, software or equipment; or (iii) adversely affect or degrade the functionality, features, performance, reliability or security of any of the Subscription Services or impose any additional obligations or requirements on WMATA.

(b)   There will be no charge for Improvements (other than Optional Improvements). Fees for Optional Improvements will be set forth in the Purchase Order or provided at Contractor's prevailing license fees (less applicable WMATA discounts) (whichever fees are lowest). The term "**Optional Improvement**" means an Improvement that: (a) is not required for the Subscription Services to meet Specifications; (b) Contractor licenses separately from each component of the Subscription Services for all of its customers; (c) Contractor does not provide to any other customer without additional charge under any commercial arrangement; and (d) provides substantially enhanced business (not merely technical) functionality.

(c)   Contractor will implement all Improvements (including any Optional Improvements) to the Subscription Services so as not to disrupt or adversely impact the business or operations of WMATA. The Subscription Services will continue to meet all the Specifications, except as otherwise explicitly agreed by WMATA in writing, after the implementation of an Improvement.

5.   SUPPORT AND MAINTENANCE

(a)   Support Requests. WMATA may request support and maintenance ("**SaaS Support Requests**") through e-mail or Contractor's telephone support line or as otherwise mutually agreed. Contractor will provide a fully staffed call center on business days, during the hours of 7:00 a.m. to 7:00 p.m., in the time zone where WMATA is using the SaaS Services ("**SaaS Support Standard Hours**").

(b)   Scheduled Maintenance. Contractor shall use commercially reasonable efforts to notify WMATA at least one (1) week, but in any event will provide such notice at least twenty-four (24) hours, in advance of all scheduled outages in whole or in part of the Subscription

Services ("**Scheduled Downtime**"). WMATA may request that Contractor reasonably reschedule maintenance if WMATA reasonably believes that such maintenance may materially and adversely affect WMATA operations, and Contractor shall take such request into consideration and endeavor to accommodate such reasonable requests to the extent practicable under the circumstances.

(c) <u>Unscheduled Maintenance</u>. Contractor shall provide WMATA with as much advance notice as practicable under the circumstances before performing any non-scheduled or unplanned emergency maintenance affecting the Subscription Services, but shall not be obligated to delay such maintenance because of the notice requirement. Contractor shall conduct maintenance and endeavor to minimize the impact on WMATA, and shall take into consideration in good faith any WMATA request to reschedule service-impacting maintenance or upgrades to avoid critical time periods that WMATA identifies in writing to the extent practicable under the circumstances.

(d) <u>Service Level Agreement</u>. Unless other service level agreements and error response intervals are set out in the IT Special Terms and Conditions or a relevant Purchase Order ("**Custom SLA**"), Contractor shall use commercially reasonable efforts to meet or exceed the targets and requirements set out in <u>Attachment 1</u> of this Addendum ("**Standard SLA**"). Unless the WMATA has agreed to and accepted any Custom SLAs, Contractor's performance against the Standard SLA shall be subject to the remedies set forth therein.

6. PERFORMANCE WARRANTIES

(a) In addition to any representations and warranties set out in the Standard IT Terms and Conditions (including, to the extent relevant to any Subscription Services provided to WMATA, under the Artificial Intelligence (AI) Terms – Annex), Contractor represents, warrants and covenants to WMATA that:

    i. The Subscription Services, including any Improvements and associated documentation, will be free from material programming and other errors and defects.

    ii. the Subscription Services will conform to the applicable performance capabilities, characteristics, hardware and software compatibility and other descriptions and standards set forth in the Specifications and all requirements of the Contract, including the Service Levels.

    iii. no portion of any Subscription Service provided or made available to WMATA, contains any "back door," "time bomb," "worm," "drop dead device," "Trojan Horse", "virus" or other computer software routines or harmful code designed to permit access to or use of such software or WMATA's computer systems by unauthorized parties, disable, damage or erase any software or data processed therewith, or otherwise interfere with WMATA's rights hereunder.

    iv. All Subscription Services delivered by Contractor remain compatible and interoperable with all Equipment or other Products provided, recommended, or otherwise approved by Contractor hereunder, and Contractor shall ensure that the Subscription Services remain compatible at all times with WMATA's cybersecurity and network data security standards.

    v. All Specifications are, and will be continually updated and maintained so that they continue to be, current, complete, and accurate so that they do and will continue to fully describe the Subscription Services in all material respects.

(b)   If Contractor fails to correct Subscription Services experiencing any material error, defect, problem or deficiency within a commercially reasonable time after notice thereof by WMATA, then WMATA may elect to terminate the Subscription Services without further liability and receive a *pro rata* refund of all prepaid amounts paid with respect to the affected Subscription Services. Such refund shall be paid by Contractor within thirty (30) days of WMATA's written demand for the same pursuant to this clause.

(c)   EXCEPT AS OTHERWISE STATED IN THIS CONTRACT, CONTRACTOR MAKES NO WARRANTIES (EXPRESS OR IMPLIED) WITH RESPECT TO THE PERFORMANCE OF THE SUBSCRIPTION SERVICES, INCLUDING IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

7.   THIRD-PARTY MATERIALS

Contractor agrees to obtain (or assist WMATA to obtain in its own name), prior to the delivery date for any Subscription Services all licenses, consents, approvals, and authorizations necessary for WMATA to use all such Third-Party Materials incorporated into the Subscription Services by Contractor. All such licenses for Third-Party Materials incorporated into the Subscription Services shall provide WMATA with the same rights as WMATA enjoys with respect to the Subscription Services, unless otherwise approved by WMATA prior to entering into such license. Copies of any license agreements for, and a list of, such Third-Party Materials shall be provided to WMATA upon request, provided that where confidentiality restrictions would preclude such direct sharing, Contractor will provide a true and accurate abstract of the license provisions. "**Third-Party Materials**" means any products, tools, materials, computer programs, software (including, without limitation, any software, tool, utility or template), warranty, support or similar services or other tangible or intangible item belonging to any third party that Contractor may use in connection with the Services, or incorporate into the Subscription Services.

8.   DISASTER RECOVERY

(a)   Contractor will at all times maintain a disaster recovery and business continuity plan (a "**DRBCP**") for all technology, operational, or other resources required to provide the Subscription Services. Contractor will notify WMATA in the event Contractor makes material changes to its DRBCP.

(b)   Contractor will perform disaster recovery and business continuity tests with respect to the Subscription Services at least annually. Upon request, Contractor will provide: (i) an executive summary of Contractor's then-current version of the DRBCP; and (ii) a written description of all DRBCP test results in sufficient detail to allow WMATA to assess the success of each test.

(c)   Upon the occurrence of any disaster or other event requiring execution of the DRBCP, Contractor will, as soon as practicable following the event: (i) notify WMATA of the disaster or other event should it impact the provisioning of Subscription Services to WMATA; and (ii) provide WMATA access to the Subscription Services in a manner that is at least equal to the access provided to Contractor's other customers.

9.   DECOMMISSIONING OF SUBSCRIPTION SERVICES

In the event Contractor decommissions or sunsets any Subscription Services, Contractor will provide WMATA with written notice at least one hundred eighty (180) days prior to the effective date of such decommissioning or sunsetting. Within thirty (30) days after such notice, Contractor shall provide to WMATA a transition plan describing the process and steps Contractor will take to transition WMATA to the new or replacement Products prior to the effective date of termination or discontinuation of the affected Subscription Services. Contractor will promptly provide WMATA a

pro-rata refund of fees paid in advance for Subscription Services not provided by Contractor as of the effective date of the decommissioning or sunsetting.

10. **SOURCE CODE ESCROW**

(a) In the event that and at such time as: (i) the source code for any or all material part of the Subscription Service is generally made publicly available by Contractor without additional cost to other users of comparable software; (ii) Contractor ceases, for any reason, to do business in the ordinary course; (iii) Contractor is not willing or able to offer the Subscription Service and/or any related maintenance; (iv) Contractor merges with or into another entity, or Contractor sells all or substantially all of its assets, and the successor entity does not assume all of Contractor's obligations under the Contract; or (v) Contractor institutes or has instituted against it, any insolvency, receivership or bankruptcy proceedings, or makes an assignment for the benefit of creditors, and the same has not been discharged or terminated without any prejudice to Contractor's rights or interests under the Contract within sixty (60) days (each on its own a "**Release Event**," and collectively, the "**Release Events**"), WMATA shall be entitled to obtain, and Contractor shall deliver to WMATA, a copy of the current Source Materials for the Subscription Services as necessary to maintain and use such Subscription Services for its intended purpose(s). As used herein, "**Source Materials**" shall mean the source code for the Subscription Services in the internally documented form actually used for the development and maintenance of the Subscription Services together with all programmer notes, roadmaps, specifications, software tools, development aids, technical documentation and other relevant information or documentation sufficient to enable a reasonably qualified programmer to make use of the source code and allow WMATA to exercise all of its rights under the Contract with respect to the Subscription Services (including post-termination rights) and to perform all support and maintenance of the Subscription Services.

(b) Within thirty (30) days following the Effective Date, Contractor shall deposit into escrow with a mutually agreeable escrow agent ("**Escrowee**") one (1) copy of the Source Materials to be held in accordance with Escrowee's standard escrow agreement which will reflect the Release Events and terms set out in this Section 14 ("**Escrow Agreement**") and promptly deliver updates into escrow upon delivery to WMATA of any Improvements to the Subscription Services. The Escrow Agreement shall be entered into by and among Contractor, WMATA, and Escrowee, and the Source Materials shall be released upon the occurrence of one or more of the Release Events.

(c) If any of the Release Events are satisfied, WMATA shall have and is hereby granted the non-exclusive, perpetual, irrevocable and sublicensable right, directly or through one or more service providers, to use, maintain, support, reproduce, or prepare derivative works or any improvements based on the Source Materials as necessary to maintain and use the Subscription Services for its intended purpose(s), including to host the Subscription Services on WMATA's own infrastructure or any hosting services provided by a third party. WMATA agrees not to exercise the foregoing right and license until the occurrence of a Release Event at which time it will be entitled to do so without restriction or compensation to Contractor. WMATA may permit its agents and subcontractors to exercise those rights and licenses, provided that it requires them to agree to maintain the confidentiality of the Source Materials.

(d) Contractor shall be responsible for all the fees and costs associated with maintaining the escrow, including the fees associated with deposit of the Source Materials into escrow. The parties acknowledge and agree that the Escrow Agreement is an agreement supplementary to this Contract for purposes of Section 365(n) of the United States Bankruptcy Code.

(e)   In the event a Release Event occurs, upon WMATA's request, Contractor will provide WMATA with knowledge transfer training of the Source Materials to enable WMATA or its third-party nominee to rebuild, maintain, support and enhance the Subscription Services.

(f)   All rights and licenses granted under this Contract are and shall be deemed to be rights and licenses to "intellectual property" as such term is used in and interpreted under Section 365(n) of the United States Bankruptcy Code.

11.   SURVIVAL

Each party's obligations under this Addendum which are not, by the express terms of this Addendum, fully to be performed during the term of the Contract (including, without limitation, Performance Warranties; Third-Party Materials; Source Code Escrow), shall survive the expiration or termination of the Contract for any reason.

Attachment 1
Service Level Agreement

Capitalized terms used but not defined below in this Attachment 1 will have the same meanings given to them in the Standard IT Terms and Conditions.

1. **Service Levels**. Contractor will ensure that the Subscription Services (which shall be referred to in this Attachment 1 as the "**Services**") meet or exceed the service levels described in this Attachment 1 (the "**SLAs**" or the "**Service Levels**"). Except as otherwise expressly provided in this Attachment 1, all Service Levels will be measured on a 24/7 basis.

    1.1 **Availability.** Contractor will ensure that the Services are fully accessible, operational and available to WMATA and all users who are authorized by WMATA to use the Services ("**Users**"), in each case, no less than 99.9% of the total number of minutes in each calendar month during the applicable Services term (the "**Availability SLA**"). The "**Availability**" for each calendar month will be calculated as a percentage by subtracting the total number of minutes of Downtime (as defined below) in the applicable month from the total number of minutes in such month, dividing that number by the total number of minutes in such month, and multiplying the result by one hundred (100).

    - Except to the extent any of the following is Excused Downtime (as defined below), any or each of the following events will qualify as "**Downtime**":
        - any one or more of the components of the Services is not available for Use (as used herein, "**Use**" means that substantially all of the functions of the components of the Services are accessible to and fully usable by WMATA and all Users);
        - any data of WMATA that is uploaded, submitted, posted, transmitted, transferred or otherwise provided or made available by or on behalf of WMATA or any User for processing by or through the Services or otherwise received by Contractor as part of the provision of the Services, including without limitation, associated metadata ("**Data**") and any data, results or other output that is generated by or resulting from WMATA or its Users' use of the Services ("**Results**") are not able to be, as applicable, received by or distributed via any one or more of the components of the Services, or any component of the Services is unavailable with respect to one or more items of Data or Results;
        - WMATA or its designee is unable to obtain Results or transmit Data to Contractor or a third party acting on Contractor's behalf; and/or
        - any slowdown in the performance of any one or more of the components of the Services, or the receipt or delivery of Data or Results by or on behalf of Contractor via the Services, of ten percent (10%) or more in comparison to Contractor's standard delivery rates.
    - Each of the following events will qualify as "**Excused Downtime**":
        - Downtime directly and proximately caused by the inappropriate or unauthorized acts or omissions of WMATA;
        - Scheduled Maintenance up to twelve (12) hours in any calendar month, subject to the notification requirements and limits set out in Section 5 of the Subscription Services Addendum; and
        - Unavailability to the extent caused by a Force Majeure Event; provided that Contractor (i) promptly informs WMATA of the circumstances, degree of failure or nonperformance, and the steps being taken to mitigate the impacts and resume full performance; (ii) takes commercially reasonable efforts to mitigate the impacts and resume full performance as soon as possible; and (iii) keeps WMATA reasonably informed on an ongoing basis of status and progress until full performance is resumed. For clarity, Contractor will not be excused for its affiliates', subcontractors' at any level or any of their suppliers' or service providers' failure to perform that is not itself caused by such circumstances.

For any partial calendar month during which WMATA is entitled to Services, Availability will be calculated pursuant to the above with respect to the portion of the month that Services are rendered.

1.2 **Error Classification.**
"**Error**" means a defect, or combination of defects, in the Services that result in a failure of the Services (including any Downtime event) to function in accordance with the Specifications and documentation therefor. Errors are classified as follows:
- **Priority 1:** The Error renders the Services inoperative or causes a complete failure of the Services.
- **Priority 2:** The Error affects the performance of the Services, or restricts the use of the Services (for example, important Service features are unavailable with no acceptable workaround).
- **Priority 3:** The Error causes only a minor impact on use of the Services but no acceptable workaround is available.
- **Priority 4:** Although an Error exists, the Error causes minor inconveniences (such as cosmetic problems) and it does not impact the operation of the Services because an acceptable workaround is available. Priority 4 Errors include all Errors that are not classified as Priority 1, Priority 2, or Priority 3.

1.3 **Error Corrections; Response Times.**
"**Error Correction**" means a bug fix, error correction, patch, or other modification or addition that, when made or added to the Services, corrects an Error. Contractor will comply with the following response times and resolution deadlines for any Error:
- **Priority 1 Error**. In the event of a Priority 1 Error, Contractor will, within one (1) hour of notification, acknowledge and commence work on resolving the Error with an Error Correction. Contractor will work continuously around-the-clock to provide a workaround for the Error within two (2) hours after such notification and an Error Correction within twenty-four (24) hours after such notification. Contractor will provide WMATA with periodic reports (no less frequently than once every two (2) hours) on the status of the Error Correction.
- **Priority 2 Error**. In the event of a Priority 2 Error, Contractor will, within two (2) hours of notification, acknowledge and commence work on resolving the Error with an Error Correction. Contractor will provide a workaround for the Error within twenty-four (24) hours after such notification and an Error Correction within forty-eight (48) hours after such notification. Contractor will provide WMATA with periodic reports (no less frequently than every four (4) hours) on the status of the Error Correction.
- **Priority 3 Error**. In the event of a Priority 3 Error, Contractor will, within twenty-four (24) hours of notification, acknowledge and commence work on resolving the Error with an Error Correction. Contractor will provide a workaround for the Error within forty-eight (48) hours after such notification and an Error Correction within two (2) weeks after such notification. Contractor will provide WMATA with periodic reports on the status of the Error Correction.
- **Priority 4 Error**. In the event of a Priority 4 Error, Contractor will acknowledge and commence work on resolving the Error with an Error Correction within one (1) week of notification. Contractor will use best efforts to provide an Error Correction with the next maintenance release of the applicable software.

1.4 **Escalation.** WMATA may escalate any unresolved Errors or Error Correction issues as follows and Contractor shall provide the applicable contact information for the Personnel identified below: (a) Contractor's network operations center; (b) Contractor's manager level representative assigned to the management of WMATA's account; (c) Contractor's VP or equivalent; and (d) Contractor's EVP/COO or equivalent.

1.5 **Cooperation.** Contractor shall cooperate with WMATA and any other third party vendor of WMATA to the extent reasonably required for the identification and efficient resolution of any Errors or other problems or defects with respect to the Services.

2. **Service Level Credits.** If Contractor fails to meet any Service Level in any measurement period for such Service Level, such failure will be deemed to be a "**Service Level Failure**" hereunder with respect to such measurement period. For each Service Level Failure, WMATA will receive a service level credit equal to 1/30th of the total fees due for such month for the affected Services for each full or partial hour of Downtime below the percentage specified in Section 1 above. If two (2) or more Service Level Failures occur in two (2) consecutive calendar months for the same Service, WMATA may, in addition to receiving the service level credit owed for the second (2nd) month, terminate the Contract for cause with respect to the affected Service (without a right for Contractor to cure) pursuant to Section 19 (Termination for Default) of the Standard IT Terms and Conditions. If WMATA does so, in addition to the service level credit owed for the Service Level Failure for the last month, Contractor will also refund to WMATA any prepaid fees for the remainder of such term following the effective date of termination. Contractor acknowledges and agrees that these service level credits are intended as genuine pre-estimates of loss that may be suffered as a result of Contractor's failure to meet the SLAs and other obligations under this Contract and will not be deemed to be penalties, and that such credits are not intended to be exclusive remedies and will not limit any other remedy to which WMATA may be entitled hereunder or otherwise, whether at law, in equity, or otherwise. WMATA will retain all rights and remedies available to it for Contractor's breach of any SLA, whether or not service level credits are owed or paid.

3. **Reporting and Payment.** Contractor will provide WMATA monthly SLA reports for each month by the fifth (5th) business day of the following month. Any service level credits owed to WMATA for any SLA breaches will be calculated and stated on the applicable report and will automatically be applied (without any action required on WMATA's part) to the next invoice rendered in respect of the applicable Service or, if there is no invoice to be rendered within thirty (30) days after such report, paid to WMATA within such time.