



Washington Metropolitan Area Transit Authority

STANDARD INFORMATION TECHNOLOGY (“IT”) TERMS AND CONDITIONS

1. AGREEMENT FOR PRODUCTS AND SERVICES

- (a) This “**Contract**” is divided into the Solicitation Instructions, these Standard IT Terms and Conditions (including its Annexes and each applicable Addenda), and any Information Technology (“**IT**”) Special Terms and Conditions (as further defined below), and WMATA’s Federal Terms and Conditions (if applicable), together with each SOW or Purchase Order (as defined in subsection (d) below) and the applicable Specifications (as defined in Section 2(a) below), along with the Contractor’s technical proposal, if any, and other Contractor submissions generated as part of the Contract.
- (b) These Standard IT Terms and Conditions govern the Contractor’s supply of “Products” and “Services” (as each is defined below) to the Washington Metropolitan Area Transit Authority (“**WMATA**”). As such terms are used in this Contract:
 - (1) “**Product(s)**” means any and all (i) software, middleware, firmware, tools or other programs or applications (“**Computer Software**”), whether offered on an executable code, cloud-based, managed or hosted services basis, (ii) peripherals, hardware, equipment, or other physical items or materials (“**Equipment**”), and (iii) systems, technology, data, data compilations, content, customizations, integrations, or other deliverables or work product resulting from any Services in any form or format that the Contractor provides or makes available to WMATA (“**Deliverables**”), including with respect to each of the foregoing (i) – (iii) any associated documentation and any and all Improvements to any of them. (As used herein, “**Improvement(s)**” means all fixes, error corrections, new versions, updates, upgrades, enhancements, releases, patches, modifications, revisions, adaptations, and other improvements to any of the Products.)
 - (2) “**Service(s)**” means any services provided by Contractor or its Personnel (as defined in Section 10(a) below) including without limitation, installation, integration, implementation, customization, technical support, consulting, development and/or other information technology related professional services.
- (c) The following Annexes are applicable to all Products and Services that are offered by Contractor pursuant to the Solicitation Instructions, or otherwise supplied by Contractor pursuant to a SOW or Purchase Order under this Contract, and are incorporated by reference into this Contract (as may be updated from time to time):
 - (1) Compliance Terms – Annex: [IT-Compliance-Terms-Annex.pdf](#)
 - (2) Sensitive Information and Data Access Terms – Annex: [IT-Sensitive-Information-and-Data-Access-Terms.pdf](#)
 - (3) Artificial Intelligence (AI) Terms - Annex: [Artificial-Intelligence-Terms-Annex.pdf](#)

The following Addendum are applicable to any Products or Services that are specifically offered by Contractor pursuant to the Solicitation Instructions, or otherwise supplied by Contractor pursuant to a SOW or Purchase Order under this Contract. To the extent applicable to any Products or Services supplied by Contractor, such terms (as are in effect as of the time an applicable SOW or Purchase Order are entered into) are incorporated by reference into this Contract:

 - (1) IT Equipment Purchase Terms - Addendum: [IT-Equipment-Purchase-Terms-Addendum.pdf](#)
 - (2) Software License Terms - Addendum: [Software-License-Terms-Addendum.pdf](#)

- (3) Subscription Services Terms - Addendum: [Subscription-Services-Terms-Addendum.pdf](#)
- (4) Professional Services Terms - Addendum: [Professional-Services-Terms-Addendum.pdf](#)

CONTRACTOR REPRESENTS AND WARRANTS THAT IT HAS READ AND UNDERSTANDS EACH OF THE REFERENCED ANNEXES AND ADDENDA APPLICABLE TO THE PRODUCTS OR SERVICES SUPPLIED BY CONTRACTOR AND AGREES THEY ARE AN INTEGRAL AND MATERIAL PART OF THIS CONTRACT. **PLEASE NOTE THAT THE ANNEXES MAY BE UPDATED FROM TIME TO TIME, THUS THE CONTRACTOR IS ENCOURAGED TO CHECK THE REFERENCED ANNEXES PERIODICALLY FOR ANY UPDATES.**

- (d) The Services and/or Products to be provided under this Contract are as further set forth and described in the applicable purchase order, price schedule, scope of work or similar written instrument submitted by WMATA (each, a “**SOW**” or “**Purchase Order**”), and include any necessary or incidental work, labor, materials, shipping and any authorized expenses. Each SOW or Purchase Order is incorporated by reference into the Contract.

2. CHANGE ORDERS

- (a) The Contracting Officer (“**CO**”) may at any time, by a written order, direct and implement change orders within the general scope of this Contract, including but not limited to one or more of the following:
 - (1) Nature and/or extent of Services to be performed or Products to be furnished;
 - (2) Time or place of performance of any Services or delivery of any Products; or
 - (3) Technical specifications or service levels set forth or referenced in the Contract and the other quality requirements in any related documentation provided by Contractor (“**Specifications**”).

In the event a change order is issued by the CO, Contractor shall within a reasonable time thereafter (not to exceed ten (10) business days), provide a written estimate to the CO of the likely time required to implement the change and any reasonable variations to the cost of performance arising directly as a result of the proposed change. Upon mutual written agreement, such requested changes and variations to the cost of performance shall take effect. Notwithstanding the foregoing, Contractor shall accept any changes requested by the CO that (a) reduce the cost of performance, provided that an equitable adjustment in compensation is made for the out-of-pocket costs of any performance or preparation already undertaken by Contractor, and (b) increase the cost or magnitude of performance, provided that the changes do not significantly increase the scope of work and a commensurate increase in compensation is agreed by the parties.

- (b) Disagreement regarding either party’s right to any adjustment in price or time for performance as the result of a change implemented pursuant to this clause shall be subject to adjudication in accordance with the “Disputes” clause of this Contract. Notwithstanding the pendency of any such dispute, the Contractor expressly acknowledges that it shall remain fully obligated to perform the Contract as changed.
- (c) In no event shall the Contractor be entitled to payment for change orders, additional or extra Products or Services or other modifications to the Contract, unless the CO authorizes it in writing.

3. STOP WORK ORDERS

- (a) The CO 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) calendar days after the order is delivered to the Contractor, and for any further period to which the parties may agree (a **"STOP WORK ORDER"** or **"SWO"**). Upon receipt of a SWO, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the SWO, during the period of work stoppage. Within a period of ninety (90) calendar days after a SWO is delivered to the Contractor, or within any extension thereof to which the parties agree, the CO shall either:
 - (a) Cancel the SWO; or
 - (2) Cancel or terminate any of the Products or Services (in whole or in part) covered by the SWO under this Contract, as appropriate.
- (b) If a SWO is cancelled or expires, and the Contractor is requested by the CO to resume work, Contractor will comply with such request, provided that the CO shall make an equitable adjustment to the delivery schedule or Contract price, or both, and modify the Contract in writing if:
 - (a) The SWO results in a significant increase in the time required for, or in the Contractor's cost properly allocable to, the performance of any part of this Contract; and
 - (2) A change order is agreed upon in writing based on the procedure outlined in Section 2 above.
- (c) If an SWO is not cancelled and the work covered by the Contract is terminated for the convenience of WMATA, the CO shall allow reasonable costs, if any, resulting from the SWO in arriving at the termination settlement pursuant to this Contract which shall be determined in accordance with the methodology described in Section 18(c) below.

4. BILLING AND PAYMENT

- (a) WMATA shall pay and the Contractor shall accept the amounts set forth in the Contract as full compensation for completing all work and supplying each Product and Service in accordance with the Contract.
- (b) Within thirty (30) calendar days of Contract award, the Contractor shall submit a current IRS Form W9, Request for Taxpayer Identification Number and Certification, through WMATA's Supplier Portal. WMATA will not process payments for Contractor invoices without a valid W-9 form on file.
- (c) Payments will be made following receipt of the Form W-9, acceptance of the applicable Products or Services to be provided under this Contract and after receipt and acceptance of a properly completed invoice. WMATA will accept the submittal of invoices and supporting documentation by Email at: apinvoice@wmata.com. Acceptable file formats for invoice and supporting documentation include Adobe PDF, Microsoft Word, and Microsoft Excel. All documents must include the invoice number and the file name.

Contractor will submit one invoice and supporting documentation per attachment. You may submit more than one attachment per email.
- (d) Invoices must contain all of the following information to be eligible for payment:

- (a) The word "Invoice";
 - (2) Contractor's name;
 - (3) Unique invoice number;
 - (4) Invoice date;
 - (5) Payment terms;
 - (6) Remittance address;
 - (7) WMATA purchase order number or statement of work identifier;
 - (8) For Services provided, a description of each Service being invoiced;
 - (9) For all Products provided, a description of each item being invoiced, including item quantity, cost per item and total item cost;
 - (10) Performance period specifying date(s) during which Products or Services were supplied;
 - (11) Total amount invoiced, net of credits and discounts; and
 - (12) Contact information, including email address and phone number.
- (e) Revised invoices must have a new date; be clearly marked as "Revised"; and refer to the invoice it is replacing. Credit invoices must clearly be marked as "Credit" and reference the original invoice number. Final invoices shall be marked as "Final."
 - (f) At any time, WMATA may specify additional invoice requirements, including prescribed formats or WMATA templates that must accompany the Contractor's documentation.
 - (g) WMATA shall remit payment, generally within thirty (30) calendar days of its receipt of an invoice satisfying the requirements of subsection (d) above, at the prices stated in the Contract for Products or Services accepted, less any applicable set-offs and deductions.
 - (h) The Contractor shall submit all requests to change payment methods or vendor bank account information through WMATA's Supplier Portal. WMATA will not process any banking changes submitted via email.

5. FEDERAL, STATE, AND LOCAL TAXES

- (a) Except as may be otherwise provided in this Contract, the Contract price shall be deemed to include all applicable Federal, state and local fees and duties.
- (b) Notwithstanding subsection (a), with respect to any Federal excise tax or duty on the Products, Services, transactions or property covered by this Contract, if a statute, court decision, written ruling or regulation takes effect after the Contract date, and:
 - (1) Results in the Contractor being required to pay or bear the burden of any such Federal excise tax or duty or increase in the rate thereof that would not otherwise have been payable on such transactions or property, the Contract price shall be increased by the amount of such tax or duty or rate increase, provided that the Contractor warrants in writing that no amount for such newly-imposed Federal

excise tax or duty or rate increase was included in the Contract price as a contingency reserve or otherwise; or

- (2) 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 directed by the CO. The Contract price shall be similarly decreased if the Contractor, through its fault or negligence or his failure to follow the CO's instructions, is required to pay or bear the burden of, or does not obtain a refund or drawback of, any such Federal excise tax or duty.
- (c) Subsection (b) above shall not be applicable to social security taxes or to any other employment tax.
- (d) No adjustment of less than \$250 shall be made in the Contract price pursuant to subsection (b).
- (e) As used in subsection (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.
- (f) The Contractor shall promptly notify the CO of matters that may result in either an increase or decrease in the Contract price under this clause and shall take action as the CO 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.

6. SET-OFF

WMATA has common law, equitable and statutory set-off rights which 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 other 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 normal practices including, in cases of set-off pursuant to an audit, the finalization of such audit by WMATA, its representatives, or the Federal Government.

7. GARNISHMENT OF PAYMENTS

Payment 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.

8. AVAILABILITY OF FUNDS FOR THE NEXT FISCAL YEAR

Funds are not guaranteed for performance under this Contract beyond the current fiscal year that ends on June 30th. 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 will not be liable for any payment under this Contract until funds are made available to the CO and until the Contractor receives notice in writing. Any option that WMATA may exercise in whole or in part, in a subsequent fiscal year is subject to availability of funds in that fiscal year and will be governed by the terms of this clause.

9. CONTRACTING OFFICER'S TECHNICAL REPRESENTATIVE (COTR)

- (a) The work will be conducted under the CO's general direction. The CO may delegate authority to undertake certain actions on its behalf to the CO's Technical Representative ("**COTR**") pursuant to a designation letter, a copy of which will be shared with Contractor upon request. The COTR designation letter will set out the scope, duration and other relevant details of such appointment.
- (b) The name, address and telephone number of the COTR will be provided to the Contractor at award. The presence or absence of the COTR or his or her inspectors shall not relieve the Contractor from any requirements of this Contract.

10. CONTRACTOR PERSONNEL

- (a) Contractor is responsible for the acts and/or omissions of Contractor's employees, agents, representatives, and subcontractors ("**Personnel**"), including for their compliance with all of the terms and conditions set out in this Contract (including each Annex and any applicable Addendum), as though such acts and omissions were by Contractor itself. WMATA shall look solely to Contractor as the primary point of contact, even if any work is performed by its Personnel.
- (b) Except as expressly set forth in this Contract, Contractor shall be responsible for providing the necessary labor, supplies, tools, materials and transportation to maintain and support all Products and Services in good working order so that they comply with the Specifications and other requirements of this Contract.
- (c) WMATA may direct the replacement of any Personnel that the CO reasonably deems to be unsuitable or whose continued participation in the work is deemed contrary to WMATA's best interests. Except in circumstances deemed exigent by the CO, the reason for replacement will be discussed between the Contractor and WMATA before a replacement request is issued. Upon receipt of a written replacement request 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. If Personnel are reassigned during the term of this Contract, Contractor shall notify WMATA in advance and make all reasonable efforts to ensure a smooth transition, including the provision of knowledge transfer, documentation, and cooperation between the replaced and the newly-assigned Personnel.
- (d) Whenever the Contractor has knowledge that any actual or potential labor dispute or other disruption affecting Personnel may delay the timely performance of this Contract, the Contractor shall immediately give notice thereof, including all relevant information with respect thereto, to the CO.
- (e) 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 a background check. Any Personnel that may have access to the network or any information technology asset of WMATA must also successfully complete the mandatory cyber training.

11. EXTENSIONS OF TIME/FORCE MAJEURE

- (a) For purposes of this clause, the term "**Force Majeure Event**" shall mean an unforeseen event or circumstance beyond the control of, and not occasioned by, the fault or negligence of the Contractor or WMATA that gives rise to a delay in the progress of the Contract,

including, without limitation, acts of God, acts of war or insurrection, unusually severe weather, fires, floods, strikes, freight embargoes or other unforeseeable events or circumstances of like nature, but excluding failure of any underlying vendors or suppliers except to the extent they are themselves impacted by a Force Majeure Event.

- (b) If the Contractor is delayed at any time during the performance of the Contract by a Force Majeure Event, the CO shall extend the time for completion and/or affected delivery date(s) in the following circumstances:
 - (a) The cause of the delay arises after the award of the Contract and neither was nor could have been anticipated by the Contractor by reasonable investigation before such award;
 - (2) The delay cannot be avoided or mitigated by the exercise of all reasonable precautions, efforts and measures available to the Contractor, whether before or after the cause of delay; and
 - (3) The Contractor makes a written request and provides other information to the CO as described below.
- (c) If the Contractor will be delayed at any time or for any period by two (2) or more of the above-mentioned causes, the Contractor shall not be entitled to a separate extension for each cause, but shall be entitled to only one (1) extension for the cumulative effects of the delay.
- (d) The CO may rescind or shorten any extension previously granted if he or she subsequently determines that any information that the Contractor provided in support of a request for an extension of time was erroneous, or if accurate information would have resulted in a denial of the request for an excusable delay.
- (e) The request for an extension of time pursuant to subsection (b) shall be made within ten (10) business 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 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) calendar days of receipt of all such information, the CO shall advise the Contractor of its decision on such requested extension. Prior to the expiration of such period, the CO may advise the Contractor in writing that it will require additional time to render a decision.
- (f) Notwithstanding subsection (e) above, if a Force Majeure Event materially affects Contractor's ability to satisfy its obligations under this Contract with respect to particular Products and/or Services for thirty (30) calendar days or longer, WMATA, in its sole discretion, may terminate the impacted Services and/or reject the impacted Products, in whole or in part, without liability. In such event, WMATA shall not incur any further obligation or pay any further amounts pursuant to this Contract beyond the termination date. In no event shall a subcontractor at any tier be deemed a party outside the control of the Contractor.

12. WMATA'S DELAY

- (a) If the performance of all or any part of the Contract is delayed in a material manner or extent by an act or omission of WMATA that is not expressly or impliedly authorized by this Contract or by applicable provisions of law, the CO shall make an adjustment (excluding profit) for any increase in the cost of performance of this Contract caused by such delay and shall modify the Contract in writing. The CO shall make an adjustment to the delivery

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

- (b) An adjustment pursuant to subsection (a) shall not be allowed:
 - (1) For any costs incurred more than twenty (20) calendar days before the Contractor notifies the CO, in writing, of the delay.
 - (2) Unless the claim, in a sum certain, is asserted in writing as soon as practicable after the termination of the delay.
- (c) In no event shall a Contractor assert a delay claim later than thirty (30) calendar days after its termination. The delay claim shall be accompanied by appropriate documentation specifically supporting the nature and extent of the claimed impact upon the cost and/or time required for performance. The CO shall maintain the right throughout the process to request such additional materials as they shall reasonably require in consideration of the claim and shall be under no obligation to conclude their 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.

13. AUDIT AND INSPECTION OF RECORDS

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

14. DISASTER RECOVERY

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

15. OWNERSHIP OF INTELLECTUAL PROPERTY

- (a) Notwithstanding anything to the contrary in this Contract, WMATA shall be the sole owner of all WMATA tools, equipment, software, data, information, and other items or materials provided by WMATA to Contractor under this Contract.
- (b) Contractor shall be the sole owner of all of its intellectual property in the Products and/or Services other than any Newly Developed IP (as defined below) and/or that are pre-existing as of the effective date of this Contract.
- (c) WMATA will own and retain all rights to all technology, information, data and other work product generated, created, made, or otherwise resulting from WMATA's use of any AI

Technology (as that term is defined in the Artificial Intelligence (AI) Terms - Annex) or any Deliverables by WMATA or on its behalf, together with any and all intellectual property rights therein (collectively, "**Output**").

- (d) Ownership of any intellectual property first made, conceived, developed, reduced to practice, or otherwise created under any applicable SOW by or on behalf of Contractor ("**Newly Developed IP**") will be as set forth in an applicable Addendum or SOW to this Contract. Newly Developed IP refers only to new intellectual property developed for the first time pursuant to the applicable SOW, which may include Deliverables. Notwithstanding the foregoing, in the event any custom Software is developed by Contractor, WMATA will own all resulting intellectual property rights, unless otherwise set forth in the applicable SOW.

16. STEP IN RIGHTS

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

17. TERM

This Contract with respect to any Products or Services to be supplied hereunder shall take effect upon WMATA's issuance of the initial Purchase Order or SOW therefor, and shall continue with respect to each such Product or Service for so long as a Purchase Order or SOW for such Product or Service remains continuously in effect.

18. TERMINATION FOR CONVENIENCE

- (a) WMATA may terminate this Contract, in whole or in part, if the CO determines that a termination is in WMATA's interest. The CO shall terminate by delivering a "Notice of Termination" to the Contractor, specifying the extent of termination and the effective date.
- (b) Upon receipt of a Notice of Termination, except as otherwise directed by the CO, the Contractor shall immediately:
 - (a) Stop work as specified in the Notice of Termination;
 - (2) Complete performance of the Services and delivery of any Products not terminated;
 - (3) Place no further subcontracts or orders for materials, services, facilities or otherwise, except as necessary to complete the remaining portion of the Contract;
 - (4) Terminate all subcontracts to the extent that they relate to the Services or Products terminated;
 - (5) Transfer and assign to WMATA, as directed by the CO, any works in progress including all right(s), title, and interest in and to any work in progress Deliverables resulting from any subcontracts terminated, to the extent permissible under those agreements;

- (6) With approval of the CO, settle all outstanding liabilities including any settlement costs arising from the termination of any subcontracts specifically entered into in connection with any Products or Services to be delivered under this Contract; and
 - (7) As directed by the CO, transfer title and deliver to WMATA any components (including data and intellectual property) and contract rights that the Contractor has specifically produced or acquired for the terminated portion of this Contract.
- (c) WMATA's sole and exclusive liability resulting from a termination for convenience shall be a liquidated damage calculated in a manner consistent with the cost principles and procedures described under Federal Acquisition Regulation ("**FAR**") Part 31 in effect on the date of this Contract (even in the case where neither WMATA nor this Contract is subject to the FAR as a matter of law), except that WMATA shall not be obligated to pay interest, however represented, on any claimed costs.

19. TERMINATION FOR DEFAULT

- (a) The Contractor shall be in default if it breaches any of its obligations under this Contract deemed material by the CO. In addition to the foregoing, and any other instances specifically referred to in this Contract, the Contractor shall be in default in the following circumstances:
- (1) It fails to begin, or abandons, the work of the Contract in accordance with contractual requirements;
 - (2) It fails to deliver the Products or perform the Services within the time specified in the Contract or any extension approved by the CO;
 - (3) It fails to make progress in a manner deemed unreasonable by the CO so as to endanger timely or proper performance of the Contract; or
 - (4) In the view of the CO, the Contractor is willfully violating this Contract or is not executing it reasonably and in good faith.
- (b) In the event of the Contractor's material breach pursuant to subsection (a), the CO is authorized to direct a written notice to the Contractor, specifying the nature of the breach and stating that, the Contractor has ten (10) business days or such additional time as the CO authorizes, to cure the breach ("**Notice to Cure**"). If the Contractor fails to cure the breach in the time specified in the Notice to Cure, WMATA shall terminate the Contract, in whole or designated part, for default in accordance with the provisions of this Contract, by a written "**Notice of Default**" to the Contractor.
- (c) Upon receipt of a "Notice of Default," the Contractor shall immediately cease performance of the work so terminated, unless otherwise specifically directed by WMATA. 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, development costs, tooling expenses, equipment costs, and property costs. WMATA may deduct the costs and expenses so charged from any monies otherwise payable to the Contractor. Nothing contained herein shall be deemed to relieve the Contractor of its continuing obligation to perform any portion of the Contract that was not terminated.
- (d) Upon any termination for default, WMATA may require the Contractor to undertake any or all of the measures set forth in Section 18(b) above.

- (e) Upon any termination for default, WMATA shall only pay for Products or Services accepted in accordance with this Contract. WMATA may withhold from these amounts, any sum that the CO determines to be necessary to protect WMATA against loss because of outstanding or claimed liens, or pending or anticipated claims under the Contract.
- (f) Any dispute with respect to any issue arising under this clause shall be subject to adjudication in accordance with the "Disputes" clause of this Contract. In no event shall WMATA's issuance of a "Notice to Cure" pursuant to subsection (b) be the basis of a dispute pursuant this Contract or otherwise. The pendency of any dispute shall not constitute a basis for the delay of, or otherwise affect, WMATA's right to proceed in accordance with this clause, including without limitation, its right to complete the work, or the Contractor's obligation to complete any portion of the work that was not terminated.

20. TRANSITIONAL SUPPORT

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

21. SURVIVAL

Each party's obligations under this Contract which are not, by the express terms of this Contract, fully to be performed during the term of this Contract shall survive the expiration or termination of this Contract for any reason, including without limitation, Set-Off; Garnishment of Payments; Audit and Inspection of Records; Ownership of Intellectual Property; Termination for Convenience; Termination for Default; Transitional Support; Survival; Representations and Warranties; Correction of Deficiencies; Indemnification; Choice of Law, Consent to Jurisdiction and Venue; Disputes, Severability; No Waiver, Cumulative Remedies; No Third Party Beneficiaries; Order of Precedence; and Public Communications.

22. NOTICE OF BANKRUPTCY OR INSOLVENCY

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

23. REPRESENTATIONS AND WARRANTIES

In addition to the representations and warranties set forth in the Artificial Intelligence (AI) Terms – Annex and any applicable Addendum:

- (a) Contractor represents and warrants that it is not, and during the term of the Contract, will not be, a party to any oral or written contract or understanding with any third party that is inconsistent with, or will in any way limit or conflict with Contractor's ability to fulfill the terms of this Contract.
- (b) Contractor represents and warrants that it has the right, power and authority to enter into, and perform all its obligations, and has taken all the requisite corporate action to approve the execution, delivery and performance of, this Contract.
- (c) Contractor represents and warrants that the Products and/or Services and Contractor's performance of its obligations under this Contract shall at all times comply with all applicable laws, rules, and regulations.
- (d) Contractor represents and warrants that all Services performed by Contractor for or on behalf of WMATA, and all Products supplied, will not infringe upon or violate any intellectual property or proprietary right of any third party.
- (e) Contractor represents and warrants that it is highly skilled and experienced in providing the Products and Services. Contractor further represents and warrants that all Services shall be performed in a good and workmanlike manner, consistent with the standards of the top-tier providers of similar products or services, and shall at all times during the term of this Contract ensure that an adequate number of appropriately qualified and trained Personnel are utilized to perform its obligations in accordance with the terms of this Contract.
- (f) Contractor represents and warrants that no portion of any Computer Software, Deliverable or other Product or Service provided or made available to WMATA, contains any "back door," "time bomb," "worm," "drop dead device," "virus" or other computer software routines designed to permit access to or use of such software or 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.
- (g) Contractor represents and warrants that Computer Software provided or made available to WMATA will not include any item of software that requires or that conditions any rights granted in such license upon: (a) the disclosure, distribution or licensing of any other software (other than such item of software as provided by a third party in its unmodified form); (b) a requirement that any disclosure, distribution or licensing of any other software (other than such item of software in its unmodified form) be at no charge; (c) a requirement that any other licensee of the software be permitted to access the source code of, modify, make derivative works of, or reverse-engineer any such other software; (d) a requirement that such other software be redistributable by other licensees; or (e) the grant of any patent rights (other than patent rights in such item of software), including non-assertion or patent license obligations (other than patent obligations relating to the use of such item of software).
- (h) All Products and Software and other Products delivered by Contractor shall be compatible and interoperable with all Equipment provided, recommended, or otherwise approved by Contractor hereunder, and Contractor shall ensure that the Products supplied to WMATA remain compatible at all times with WMATA's cybersecurity and network data security standards.

- (i) Each piece of Computer Software, Equipment, component or part thereof that the Contractor replaces, repairs, adjusts or services under the terms of this warranty during the warranty period shall be reported to the CO on WMATA's forms. Each report shall indicate, in detail, all repairs, adjustments and servicing to each and every component, unit or part thereof.

Without prejudice to clause 25 below, in the event of any breach or deficiency with respect to any of the representations and warranties set forth above, Contractor shall take immediate action and repair or replace the affected Product or Service and/or otherwise remediate the breach or deficiency. Should the Contractor fail to repair or replace any part or do any work in accordance with the terms of this warranty, or if immediate replacement or work is necessary to maintain operations, WMATA may cause such replacement to be made, utilizing its own forces and/or those of third parties as WMATA deems appropriate, at the Contractor's expense. WMATA's rights set forth in this clause shall be in addition to those set forth elsewhere in this Contract or otherwise at law or in equity.

24. MATERIAL & WORKMANSHIP

- (a) Unless this Contract specifies otherwise, all supplies, equipment, material, and articles incorporated into any Equipment (for example, servers or laptops) or Deliverables to be supplied under this Contract shall be new and of the most suitable grade for the purpose intended. The Contractor represents that any supplies to be provided under this Contract are new (not used or reconditioned, and not of such age or so deteriorated as to impair their usefulness or safety).
- (b) If at any time during this Contract's performance, the Contractor believes that furnishing supplies that are not new is in WMATA's best interests, the Contractor shall notify the CO 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 CO agrees to authorize such supplies. The CO's authorization to use such supplies shall be final and binding and not subject to further review pursuant to the "Disputes" clause of this Contract or otherwise.
- (c) References in the Specifications to equipment, material, articles, or patented processes by trade name, make, or catalog number shall be regarded as establishing a standard of quality and shall not be construed as limiting competition. The Contractor may, at its option, propose using equipment, material, articles, or processes that, in the sole judgment of the CO, is equal to that identified in the Specifications, unless otherwise expressed in this Contract.
- (d) If the Contractor must dispose of any property procured in connection with any Products or Services to be delivered under this Contract (for example, if rendered obsolete or excess during this Contract's performance), the CO shall have the right to prescribe the manner of property disposition.

25. CORRECTION OF DEFICIENCIES

The Contractor must promptly replace Products or materials or correct workmanship not conforming to this Contract's requirements at no additional cost to WMATA. In addition to the Contractor's responsibility for any liquidated damages specified in this Contract or actual damages that WMATA incurs, if the Contractor fails to timely correct any deficiencies, the CO may take specific action as follows:

- (a) 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.

- (b) Accept the items with a reduction in price by formal modification to this Contract. The reduced price will be based upon the item's reasonable value considering the possible cost of correcting it.
- (c) Terminate this Contract for default. If the item or work must be re-procured, the Contractor is normally liable for excess costs that WMATA incurs in accordance with the "Termination for Default" clause.

26. INDEMNIFICATION

- (a) Contractor shall indemnify, defend and hold harmless WMATA, its Board members, employees, subcontractors and agents, from all liabilities, obligations, damages, penalties, claims, demands, costs, charges and expenses (including reasonable attorney's fees), of whatsoever kind and nature for injury, including personal injury or death of any person or persons, and for loss or damage to any property, including the property of the Contractor and WMATA, occurring in connection with, or in any way arising out of any alleged (i) act or omission of Contractor, or any Personnel, outside the scope of authority granted to Contractor under this Contract; (ii) violation of any applicable law on the part of Contractor or any Personnel; (iii) breach of any representation, warranty, covenant, or obligation; (iv) negligent act or omission or intentional misconduct of Contractor or any Personnel; or (v) claim that any aspect of the Products and/or Services (including any Deliverable) is in violation of an applicable law or infringes upon or misappropriates any intellectual property right of a third party, except to the extent the infringing component (i) is an item or content supplied by WMATA; or (ii) is modified by WMATA without Contractor's knowledge or consent (but only if the component is not infringing in the absence of the modification).
- (b) If any of the Products and/or Services (including any Deliverables, or any AI Input or AI Output (as those terms are defined in the Artificial Intelligence Terms - Annex) become, or are likely to become, the subject of an infringement or misappropriation claim, Contractor shall promptly, at Contractor's expense, (i) obtain the right for WMATA to continue using the infringing item; (ii) replace an infringing item with a non-infringing item that meets or exceeds the performance and functionality of the replaced item; or (iii) modify the infringing item to be non-infringing, provided that any such modification, replacement, or work-around solution will not adversely affect the functionality, performance, use or quality of the affected item. Contractor's failure or inability to accomplish any of the foregoing shall be deemed a material breach of this Contract, and WMATA may pursue any rights and remedies available to it under this Contract, including termination, damages and injunctive relief. The Contractor shall report to the CO, promptly and in reasonable written detail, each notice or claim of infringement based on this Contract once the Contractor is notified thereof.
- (c) If any action or proceeding relating to the indemnification required is brought against WMATA, then upon written notice from WMATA to the Contractor, the Contractor shall, at the Contractor's expense, resist or defend such action or proceeding by counsel approved by WMATA in writing, such approval not to be unreasonably withheld, but no approval of counsel shall be required where the cause of action is resisted or defended by counsel of any insurance carrier obligated to resist or defend the same. WMATA reserves the right to use its own counsel under this indemnity at Contractor's sole cost and expense.
- (d) Contractor understands and agrees that it is Contractor's responsibility to provide indemnification to WMATA pursuant to this clause. The provision of insurance, while anticipated to provide a funding source for this indemnification, is in addition to any indemnification requirements and the failure of Contractor's insurance to fully fund any indemnification shall not relieve the Contractor of any obligation assumed under this indemnification.

27. ASSIGNMENT

- (a) Except as otherwise provided in this clause, the Contractor shall not transfer any of its rights and obligations under this Contract to third parties without the prior, written consent of WMATA. WMATA may recognize a third party as successor in interest to the Contract in the event of a transfer of all or substantially all of the assets of the Contractor, a division of the Contractor involved in the performance of the Contract, or a parent company providing a performance guarantee under this Contract, (i.e., sales of assets, transfer of assets pursuant to merger or consolidation, or incorporation of a proprietorship or partnership). Such recognition shall be within the discretion of the CO after review of the facts and circumstances surrounding each request. At their discretion, the CO may conduct an evaluation of the successor party's capability to perform this Contract. Should the CO, for any reason, not recognize a successor in interest, the CO may terminate this Contract without reference to Section 18 above.
- (b) Any attempt to transfer by assignment not authorized by the CO shall constitute a material breach of this Contract.

28. CHOICE OF LAW, CONSENT TO JURISDICTION AND VENUE

This Agreement shall be governed and construed in accordance with the laws of the Commonwealth of Virginia without regard to its choice of law provisions, except that in the case of any conflict between Commonwealth of Virginia law and the WMATA Compact, the WMATA Compact shall prevail.

29. DISPUTES

- (a) Any dispute or claim arising out of or relating to this Contract shall be decided by the CO, who shall reduce their decision to writing and furnish a copy to the Contractor. A final decision by the CO shall be conclusive and binding on the parties as well as deemed to exhaust all administrative remedies under this Contract.
- (b) 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 no later than sixty (60) calendar days after the date of the CO's final decision and only in the United States District Court for the Eastern District of Virginia, Alexandria Division.
- (c) The parties may mutually agree and consent to final and binding Alternate Dispute Resolution (ADR), including in the Armed Service Board of Contract Appeals, in lieu of judicial review in the United States District Courts as set forth in subsection (c) above.
- (d) 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 CO's Final Decision.

30. SEVERABILITY

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

31. NO WAIVER; CUMULATIVE REMEDIES

- (a) No failure by either party to enforce any rights hereunder will constitute a waiver of such rights. Nor shall a waiver by either party of any particular breach or default constitute a waiver of any other breach or default or any similar future breach or default.
- (b) Except where otherwise specifically stated in this Contract, the rights and remedies of a party are cumulative and in addition to any other rights and remedies that may be provided for under this Contract, at law or in equity.

32. NO THIRD-PARTY BENEFICIARIES

Nothing contained in this Contract shall create a contractual relationship between WMATA and any third party, nor make anyone other than Contractor an intended beneficiary of this Contract.

33. ORDER OF PRECEDENCE

- (a) Any inconsistency in the Contract shall be resolved by giving precedence to the following order: Contract modifications; WMATA's Federal Terms and Conditions (if any), IT Special Terms and Conditions; Annexes and Addenda to the Standard IT Terms and Conditions; the remainder of the Standard IT Terms and Conditions; the Specifications, any SOW or Purchase Order; the Contractor's 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) Unless the duly authorized CO has specifically agreed otherwise in writing, no Products or Services provided under this Contract shall be subject to any additional terms, regardless of form, including, but not limited to, end user license agreements (EULAs), terms of service (TOS), click or shrink wrap terms or similar ("**Unauthorized Terms**"). Any such Unauthorized Terms are unenforceable against WMATA.
- (c) Notwithstanding Section 33(a) above, in no event shall any additional terms presented by the Contractor require WMATA to (i) indemnify the Contractor or any person or entity for damages, costs, fees, or any other loss or liability; (ii) pay prejudgment interest, automatic fines or penalties, or taxes to which WMATA is exempt; or (iii) that would result in any additional responsibility or burden, such additional terms will be deemed an unfunded liability and, therefore null and void.

34. PUBLIC COMMUNICATIONS

The Contractor shall not issue communications to the media, place advertisements, nor publicize through any means, the Products and/or Services it is providing and/or its relationship with WMATA under this Contract without prior written consent of the CO. Approval of any such requests shall be at the sole discretion of WMATA.

35. OPTION FOR INCREASED OR DECREASED QUANTITIES OF SUPPLIES

- (a) WMATA may increase or decrease the quantities of supplies called for in the Price Schedule at the unit price specified. WMATA may also require the delivery of a numbered line item, identified in the Price Schedule as an option item, in the quantity and at the price stated in the Price Schedule. The Contracting Officer may exercise the option by written notice to the Contractor within a reasonable amount of time before exercising the option. Delivery of the added items shall continue at the same rate as the like items called for under the Contract, unless the parties agree otherwise.

- (b) License Reconciliation. For software licenses or subscription-based supplies (e.g., seats, users, cores), the Contracting Officer, as a result of a usage audit, may adjust quantities and the contract price based on actual usage as set forth in the Price Schedule. Any such reconciliation adjustment shall not exceed ten percent (10%) of the total contract ceiling value, shall result in additional payment for usage exceeding ordered quantities, and shall occur prior to contract closeout, with such adjustments effected through a contract modification.
- (c) Usage Audits. The Contractor shall conduct no more than two (2) license usage audits during the Period of Performance. The audits shall be conducted no later than one hundred eighty (180) days and ninety (90) days, respectively, prior to the end of the Period of Performance. The Contractor shall deliver the results of each license usage audit to the Contracting Officer and the Contracting Officer's Technical Representative.

36. HEADERS

The captions and headers in these Standard IT Terms and Conditions, and overall arrangement of the contractual provisions, are intended solely for the convenience of reference only and shall not affect, define, describe, extend or limit scope or intention of this Contract.