

## MTA PURCHASE ORDER TERMS AND CONDITIONS

1. **Applicability; Definitions and Interpretations.** These terms and conditions (the "Terms and Conditions") apply to Solicitations that the Metropolitan Transportation Authority ("MTA") issues in connection with its procurement of Work. The following capitalized terms and interpretative rules have the meanings set forth below. Additional terms are defined in context.

1.1. **"Bid"** means the materials submitted by a Bidder in response to the Solicitation. The term "Proposal" and other similar terms have the same meaning as Bid.

1.2. **"Bidder"** means an individual or entity that submits a Bid in response to a Solicitation. The term "Proposer" and other similar terms have the same meaning as Bidder.

1.3. **"Contract"** means the agreement entered into between the MTA and Vendor based on the Solicitation. The Contract consists of all Contract Documents including the Solicitation, Purchase Order and the Bid.

1.4. **"Contract Documents"** means all documents that the MTA issues in connection with the Solicitation, including these Terms and Conditions.

1.5. **"Manager"** (or **"Contract Manager"** or **"Designated Point of Contact"**) means the MTA representative (and her or his designees and representatives) with responsibility for overseeing the Contract. Specific Manager responsibilities are set out in the Contract.

1.6. **"Contribution"** means a suggestion, recommendation, or idea made by the MTA to Vendor relating to the Work.

1.7. **"Default Event"** means: Vendor's breach of the Contract, including where (i) performance of the Work is delayed; (ii) Vendor willfully violates any Contract obligation or has abandoned the Work; (iii) Vendor has become insolvent or has assigned the proceeds of the Contract for the benefit of creditors; (iv) Vendor has breached any representation, warranty, or covenant in the Contract; (v) Vendor has otherwise breached a Contract obligation; or (vi) a Default Event that is otherwise defined in the Contract.

1.8. **"Documentation"** means all written, printed, or electronic material that provides information, including specifications, designs, sketches, blueprints, patterns, models, manuals, handbooks, informational diagrams, system architecture, database schemas, drawings, engineering changes, and any other similar materials.

1.9. **"Effective Date"** means the date on which the MTA issues the PO, and on which Vendor promptly begins performing the Work, unless otherwise set out in the Contract.

1.10. **"Goods"** means all tangible items that Vendor is required to provide under the Contract.

1.11. **"Intellectual Property Rights"** means any rights under patent law, copyright law, trademark law, moral rights law, trade secret law, and other similar law concerning proprietary rights (whether such rights are registered or unregistered).

1.12. **Include and Including.** The words **"include"** and **"including"** and similar words used in the Contract shall mean "including, but not limited to" and shall not be interpreted to indicate a finite set, unless otherwise explicitly stated.

1.13. **"Metropolitan Transportation Authority"** or **"MTA"** means the Metropolitan Transportation Authority, a New York public authority and public benefit corporation established pursuant to Title 11 of Article 5 of the Public Authorities Law of the State of New York, its affiliates and subsidiaries, and the MTA's successors.

1.14. **"MTA Data"** means, collectively: (i) any information that the MTA provides to Vendor, or information belonging to the MTA to which Vendor otherwise has access to, in connection with the Contract; (ii) any information, data, reports, studies, recommendations, or other information that Vendor makes or develops in connection with, or resulting from, the Work; and (iii) derivatives of (i) and (ii) above. The term "MTA Data" expressly includes Contributions.

1.15. **"MTA Indemnitees"** means, collectively: (i) the MTA and its affiliates and subsidiaries, including Long Island Rail Road Company, Metro-North Commuter Railroad Company, Staten Island Rapid Transit Operating Authority, MTA Bus Company, MTA Construction & Development Company, First Mutual Transportation Assurance Company, and all future subsidiaries of the MTA; (ii) New York City Transit Authority and its subsidiary, Manhattan and Bronx Surface Transit Operating Authority, and all future subsidiaries of New York City Transit Authority; (iii) Triborough Bridge and Tunnel Authority; (iv) all other entities that are or may in the future be affiliates or subsidiaries of any entity identified in (i), (ii), or (iii) of this sentence, including the City of New York and State of New York; and (v) any officers, directors, employees, and agents of any entity identified in (i) – (iv) of this sentence. The term "MTA Indemnitees" also includes those additional third parties identified in an applicable MTA certificate of insurance as being covered by Vendor's indemnification obligations herein.

1.16. **"MTA Property"** means the real or tangible property of the MTA Indemnitees.

1.17. **"Personal Information"** means information that could be used to: (i) identify a unique natural person; (ii) authenticate such natural person; or (iii) commit identity theft or impersonation. By way of example, and not limitation, Personal Information includes a natural person's: (a) Social Security number; (b) passport number; (c) financial information (including cardholder data); (d) driver's license or state-issued identification card number; and (e) other identifying or identifiable information as defined by law, such as a user name and password.

1.18. **"Price Schedule"** means those forms included in the Contract Documents to be completed and submitted by Vendor with its Bid, and that sets out Vendor's proposed compensation for the Work.

1.19. **"Project Manager"** or **"PM"** means the MTA representative (and her or his designees and representatives) responsible for managing the Contract.

1.20. **"Purchase Order"** or **"PO"** means an MTA-issued document (i) notifying Vendor that it has been awarded the Contract, or (ii) constituting the MTA's order of Work and that includes the Delivery Requirements as further set out in Section 3.4.1 (Delivery Requirements; Delivery Remedies). An MTA-issued notice of award letter or blanket order release form may be used

in lieu of a PO notifying Vendor that it has been awarded the Contract.

1.21. Or. The term "or" when used in the Contract means "and/or".

1.22. **"Security-Sensitive Information"** means Confidential Information that the MTA designates as security sensitive either orally or by marking the Confidential Information as "security-sensitive information" or with a similar legend denoting its status.

1.23. **"Services"** means all labor and services that Vendor is required to perform pursuant to the Contract.

1.24. **"Solicitation"** means those MTA-issued documents and other MTA activities relating to the MTA's procurement of Work prior to the Effective Date. The term "Solicitation" includes requests for proposals, invitation for bids, inquiries and other similar documents that the MTA issues in connection with its procurement of Work.

1.25. **"Term"** means the period of time identified in the Contract for the performance of the Work, starting on the Effective Date through the end date, and as such period may be extended pursuant to the terms therein.

1.26. **"Vendor"** means the Bidder to which the Contract was awarded. The terms "Contractor", "Seller", "Offeror" and other similar terms have the same meaning as Vendor.

1.27. **"Work"** means, collectively: (i) the furnishing of all services, labor, goods, materials, equipment, Documentation, and deliverables themselves; and (ii) all other incidentals including any other required construction, furnishing, installation, and performance required by the Contract. The term "Work" expressly includes all Goods and Services.

2. **Scope of Work.** Vendor shall complete all Work in accordance with the Contract, including Vendor's provision, as applicable, of all Goods, Services, material, labor, plants, tools, transportation, and all other means and items necessary to complete the Work. The Contract indicates the amount of Work, its nature, and the method of its performance. If specific requirements are not provided, then the Work shall conform to industry best practices and the latest applicable standards of nationally recognized associations, and otherwise consist of best class materials. Vendor shall perform the Work with the highest regard to the safety of life and property, in accordance with the Project Manager's directions, and to the MTA's reasonable satisfaction. Vendor shall not modify the Work unless such modification is memorialized in a Change Order signed by both parties. Vendor shall perform the Work continuously and diligently.

3. **Ordering and Delivery of Goods.** The following provisions apply to the extent that the Work involves Vendor's provision of Goods.

3.1. **Placing Orders.** The MTA shall place orders for Goods purchased pursuant to the Contract using MTA-established ordering procedures, including the MTA's issuance of a PO.

3.2. **Shipment Consolidation; Over Shipment.** Unless otherwise specified in the Contract or a PO, Goods ordered shall be consolidated into a single shipment to the MTA that is plainly marked with the PO number. If Vendor delivers to the MTA a quantity of Goods that exceeds the quantity ordered (each, an **"Over Shipment"**), then the MTA shall have the right to accept or reject the Over Shipment, either in part or in whole. If the MTA rejects any portion of the Over Shipment, then such rejected portion shall be treated as if the Goods were delivered in advance of the Delivery Requirements as set out in Section 3.4.1 (Delivery Requirements; Delivery Remedies).

3.3. **Shipment Notice.** Vendor shall notify the Project Manager of each shipment of Goods made pursuant to the Contract. Such notice must: (i) specify the PO number, and the kind and quantity of Goods being shipped; (ii) include Vendor's acknowledgment of its compliance with Section 7.9 (Most Favored Customer); (iii) be clearly marked "Shipment Notice"; and (iv) be sent via email on the shipping date.

3.4. **Delivery.**

3.4.1. **Delivery Requirements; Delivery Remedies.** The MTA shall include in each order for Goods: (a) the quantity of Goods to be provided, and (b) the time and location that such Goods are to be delivered (collectively, the **"Delivery Requirements"**). Vendor acknowledges that time is of the essence and shall fully comply with the Delivery Requirements. If Vendor violates the Delivery Requirements, then the MTA shall have the right to: (i) inspect and accept or reject such Goods pursuant to Section 5 (Review of Work; Acceptance and Rejection); (ii) return such Goods to Vendor for delivery in compliance with the Delivery Requirements or deliver the Goods to the designated location, all at Vendor's sole cost and expense; (iii) retain the Goods, and withhold payment for such Goods until the delivery date included in the Delivery Requirements; (iv) place the Goods in storage, at Vendor's sole cost and expense, until the delivery date included in the Delivery Requirements; or (v) require Vendor to remove such Goods within five (5) days of the MTA's request and, if Vendor fails to do so, then such Goods shall be deemed abandoned and the MTA shall have the right to dispose of such Goods and to apply any proceeds of such disposal to Vendor's account, after deducting expenses for such disposal, and all without further liability or responsibility of the MTA. Notwithstanding anything to the contrary, Vendor shall be solely responsible for all: (a) risk of loss of the Goods until such risk of loss transfers to the MTA pursuant to Section 16 (Risk of Loss); and (b) insurance charges relating to the Goods until the risk of loss transfers to the MTA pursuant to Section 16 (Risk of Loss).

3.4.2. **Delivery Delays.** If Vendor is unable to meet the Delivery Requirements for any reason, then it shall immediately notify the MTA of the delay via telephone and in writing. Such notice shall include: (i) the specific Goods delayed; (ii) the reason for the delay; and (iii) the proposed schedule to correct the delay. Subject to Section 29.16 (Force Majeure), the MTA shall have the right to (a) accept or reject the delayed performance, and (b) direct Vendor to provide expedited shipping, and Vendor shall be solely responsible for any excess costs incurred for such expedited shipping. Vendor's failure to notify the MTA of its inability to meet the Delivery Requirements or Vendor's failure to comply with the Delivery Requirements for more than thirty

(30) days following an MTA-approved delay shall each constitute a Default Event. The MTA shall not be liable for Vendor's commitments or production arrangements necessary to meet the Delivery Requirements.

#### 4. Performance of Services.

**4.1. Time of Performance; Delays.** Vendor acknowledges that time is of the essence and agrees to meet all scheduled dates established in the Contract with respect to its performance of Services. The MTA has the sole discretion to grant extensions of time to perform Services if Vendor has been delayed in its performance to the extent that: (i) the delay is beyond Vendor's reasonable control; (ii) the delay is due to a cause arising after the Effective Date, and neither was, nor could have been, reasonably anticipated before the Effective Date; (iii) performance is actually delayed; and (iv) the delay could not have been anticipated, avoided, and mitigated by the exercise of all reasonable precautions, efforts, and measures, including planning, scheduling, and rescheduling, whether before or after the delay occurred. If the delay is attributable to the MTA, then Vendor's sole and exclusive remedy shall be to receive an equitable extension of the time to perform the Services. The MTA reserves the right to rescind any extension of time due to delay if the MTA later determines that the delay could have been mitigated by Vendor's reasonable exercise of precautions, efforts, or measures.

**4.2. Holiday Hour Limitations. "Holiday Hours"** means 1:00 PM (ET) on the day preceding an MTA-observed holiday through 11:59 PM (ET) on the day of an MTA-observed holiday. Unless otherwise set out in the Contract or the Project Manager agrees in writing, Vendor shall not schedule or perform any Services during Holiday Hours that require MTA oversight, inspection, support, or that otherwise interferes with MTA operations or impacts passengers.

#### 5. Review of Work; Acceptance and Rejection.

**5.1. MTA Review of Work.** All Work is subject to the MTA's inspection and acceptance. Unless otherwise set out in the Contract, and in addition to any inspection performed pursuant to Section 6 (Inspection), the following process applies to the MTA's inspection of Work:

**5.1.1. Inspection and Acceptance Testing; Acceptance and Rejection.** Vendor shall notify the MTA in writing when an applicable portion of the Work has been provided to the MTA in compliance with the Contract and is otherwise in a form ready for inspection and acceptance testing. Upon the MTA's receipt of such notice, or the MTA's determination that such Work is ready for inspection and acceptance testing, the MTA shall use good faith efforts to inspect such Work within thirty (30) calendar days (the "**Inspection Period**") to determine whether the Work: (i) complies with the Contract requirements; (ii) is free of defects in material or workmanship; and (iii) otherwise meets the MTA's reasonable expectations (collectively, the "**Acceptance Criteria**"). If the MTA determines that the Work meets the Acceptance Criteria, then the MTA shall pay for such Work in accordance with the Contract, and such Work shall be deemed inspected and accepted by the MTA upon its issuance of payment for such Work. Vendor agrees that no other MTA action shall constitute the MTA's acceptance of Work. If the MTA determines that the Work fails to meet the Acceptance Criteria, then it will reject the Work and notify Vendor of the same in writing (each, a "**Deficiency Notice**"). Each Deficiency Notice shall describe (a) the deficiencies preventing acceptance, and (b) MTA-required corrective actions. Vendor acknowledges that: (1) the MTA's execution of a bill of lading shall not constitute its acceptance of Work, and (2) the MTA's failure to reject Work shall not be deemed to be, or otherwise imply, its acceptance of such Work for any purpose.

**5.1.2. Vendor Deficiency Notice Obligations.** Vendor shall have ten (10) business days from its receipt of a Deficiency Notice, or such other period of time mutually agreed upon by the MTA and Vendor, to fully correct, re-perform, or replace the rejected Work. Upon completion of such corrective actions, Vendor shall resubmit the Work for further inspection pursuant to this Section 5 (Review of Work; Acceptance and Rejection), and the Inspection Period shall be deemed to have commenced upon such resubmission. Work that has been rejected shall be removed or, if the MTA permits, corrected in its current location, both at Vendor's sole cost and expense. If Vendor fails to promptly remove the Work or otherwise correct the same as required, then the MTA shall have the right to: (i) correct the Work itself or engage a third party to do so, all at Vendor's sole cost and expense; (ii) accept the Work, and pay Vendor a reduced amount for the Work, with the MTA determining an equitable reduction in price based on the Work defects; (iii) return rejected portions of the Work to Vendor at Vendor's sole cost and expense, in which case the MTA shall have no further obligation with respect to such Work; or (iv) treat such failure as a Default Event. Notwithstanding anything to the contrary, if Vendor fails to remove rejected Work in compliance with the MTA's direction within fifteen (15) days of such notice, then such Work shall be deemed abandoned and the MTA shall have the right to dispose of such Work and to apply any proceeds of such disposal to Vendor's account, after deducting expenses for such disposal, and all without further liability or responsibility of the MTA with respect to the Work. In no event shall the MTA have any liability for rejected Work.

**5.1.3. Effects of Acceptance.** Vendor agrees that the sole effects of the MTA's acceptance of Work are (i) to transfer the risk of loss and title for the applicable portion of the Work from Vendor to the MTA pursuant to Section 16 (Risk of Loss), and (ii) to determine the conclusion of the Inspection Period when calculating the timing of the MTA's payment obligation pursuant to Section 7.6 (Prompt Payment; Tolling). The MTA's acceptance of Work, granting an extension of time, taking possession of Work, or other similar actions, shall not operate as a waiver of any Contract obligation or the MTA's right to damages. By way of clarification, and not limitation, the MTA's inspection and acceptance of Work shall not prohibit the MTA from subsequently rejecting the Work, revoking such acceptance, or recovering damages for Work that is not free from patent or latent defects.

**6. Inspection.** In addition to the MTA's rights set out in Section 5 (Review of Work; Acceptance and Rejection), all Work is subject to the MTA's inspection and testing, to the extent practicable, at all time and places, including the time and place of manufacture (the "**Inspection**

**Right**"). The Inspection Right includes the right (i) to make the most thorough and detailed inspection of the Work, including materials and their manufacture or preparation, and (ii) to draw Vendor's attention to deficiencies in the Work or other variations from the Contract requirements. The Inspection Right is intended solely for the MTA's benefit. The Inspection Right does not, and the MTA's failure to draw Vendor's attention to a defect does not, give Vendor any right or claim against the MTA, and does not relieve Vendor from its obligations under the Contract. Vendor shall at all times provide the Project Manager access to all facilities necessary, convenient, or desirable for inspecting the Work. The Project Manager shall be admitted at any time without delay to where the Work is being performed and shall be permitted to inspect materials at any place or stage of their manufacture, preparation, shipment, or delivery. If the Work or any part thereof is found defective, Vendor shall, without cost to the MTA, promptly remedy such defect in order to achieve compliance with the Contract requirements. Any inspection hereunder shall not unreasonably disrupt Vendor's performance of the Work.

#### 7. Consideration; Invoices and Payment.

**7.1. Consideration.** The MTA shall pay the amount set out in the Price Schedule for all Work and all costs and expenses that Vendor incurs in connection with the Contract (the "**Total Contract Price**"). The Total Contract Price does not represent the MTA's commitment or guarantee to pay the Total Contract Price unless the MTA determines that Vendor has fully met the Contract requirements for receiving such payment. The Total Contract Price shall also be adjusted to reflect those amounts established in a Change Order or other Contract amendment. Under no circumstances shall the MTA pay for Goods or Services that are not set out in the Contract, a Change Order, or other Contract amendment and, as a result, are not included in the Total Contract Price.

**7.2. Prices to Include.** The MTA shall pay, and Vendor shall accept as full payment, the Total Contract Price as full compensation for all costs and expenses for completing all Work in accordance with the Contract, including: (i) all labor, services, hardware, equipment, and material required to be provided under the Contract; (ii) all overhead, expenses, fees, and profits; (iii) all risks and obligations set forth in the Contract; (iv) all applicable fees and taxes; and (v) all expenses attributable to any unforeseen difficulty encountered in the provision of the Work. The MTA shall not be responsible for Vendor costs attributable to: (a) Vendor or subcontractor mistakes, inefficiencies, or deliveries of defective or non-conforming Work; (b) Vendor or subcontractor failures to timely identify and resolve problems; or (c) training or other time required to bring a replacement person up to the level of proficiency and knowledge of a person being replaced.

**7.3. Travel Expenses.** If performance of Work requires travel (including meals and lodging), then such travel shall be done in accordance with the MTA's Travel and Business Expense Policy, Prepaid Meal Deduction Table, and Per Diem Table (or the New York Office of the State Comptroller's Travel Manual if said Manual is identified in the Contract as controlling), as the MTA may update the same from time-to-time, and which are available to Vendor upon request. In no event shall Vendor's travel expenses exceed the amount set out in its Bid, absent the express written consent of the MTA prior to incurring such expenses.

**7.4. ACH Payment.** The MTA Business Service Center ("**MTA BSC**") shall make authorized payments to Vendor. All MTA BSC payments shall be made via Automated Clearing House ("**ACH**"). Vendor hereby authorizes MTA BSC to make payments to Vendor using an MTA BSC-designated ACH. If Vendor has not previously provided MTA BSC with ACH instructions, or if such instructions have changed since they were last provided, then Vendor shall submit current ACH instructions to MTA BSC via the Vendor Master Setup Maintenance form (available at: <https://new.mta.info/doing-business-with-us/business-service-center/invoice-processing>) immediately upon the Effective Date. Vendor acknowledges that providing such ACH instructions is necessary before MTA BSC issues any payment pursuant to the Contract.

#### 7.5. Invoices.

**7.5.1. Invoice Content.** In addition to any other Contract requirements, Vendor invoices shall include: (i) a PO number; (ii) a detailed description of the Goods (including quantity) delivered, Services performed, or other events triggering Vendor's entitlement to payment, as applicable; (iii) the amount to which Vendor believes that it is entitled, less any deductions to which the MTA BSC is entitled or is required by the Contract, such as retainage, if any; (iv) copies of any required acceptance certificates (if applicable); and (v) any other information that the MTA BSC reasonably requests. The MTA BSC reserves the right to reject any incomplete or inaccurate invoice. If an invoice is not calculated correctly, then the MTA BSC may reject it in whole, or only accept that portion of the invoice that has been calculated correctly.

**7.5.2. Invoice Submission; Acceptance.** Vendor shall submit an invoice for the applicable Work upon Vendor's provision of Work to the MTA in compliance with the Contract. In no event shall Vendor submit invoices more than once per month. Vendor shall submit all invoices by regular United States Postal Service (USPS) mail or email as follows:

Email: [invoice@mtabsc.org](mailto:invoice@mtabsc.org)  
Address: MTA Business Service Center  
Accounts Payable  
333 W. 34<sup>th</sup> Street, 9<sup>th</sup> Floor  
New York, NY 10001-2402

Email submission is preferred, as your invoice will be processed more quickly.

**7.6. Prompt Payment; Tolling.** The MTA shall make payments to Vendor in compliance with Public Authorities Law Section 2880, and the MTA's implementing rules, called the Statement of Rules and Regulations With Respect To Prompt Payment (the "**Prompt Payment Statement**"), which is codified in 21 NYCRR Part 1002. Payments, including progress payments and those for substantial completion, if applicable, are generally made within the "**Payment Period**", which is defined herein as thirty (30) calendar days (excluding legal

holidays) of the later of (i) MTA's receipt of Vendor's proper invoice, and (ii) the conclusion of the Inspection Period. The MTA reserves the right to audit an invoice to verify that the amount to be paid is in accordance with the Contract (each, an "Invoice Audit"). The MTA shall use good faith efforts to complete any Invoice Audit within ten (10) business days. The Payment Period shall be tolled pursuant to the Prompt Payment Statement if an Invoice Audit or an MTA inspection reveals a defect in Work or suspected improprieties of any kind (including Vendor Contract breaches), or the MTA otherwise rejects the Work pursuant to Section 5 (Review of Work; Acceptance and Rejection). Interest for late payments shall be paid in accordance with the Prompt Payment Statement.

**7.7. Final Payment; Release.** Upon the MTA's determination that all Work required under the Contract has been inspected and accepted, the MTA shall notify Vendor of the same and Vendor shall immediately submit to the MTA an invoice for final payment of any amount that Vendor believes to be due and owing (the "Proposed Final Payment"). The MTA shall then issue the amount it believes to be due and owing as final payment (the "Final Payment"). The Proposed Final Payment shall otherwise be processed in accordance with this Section 7 (Consideration; Invoices and Payment). Vendor's acceptance of the Final Payment shall constitute Vendor's release of the MTA from any claim, liability, or obligation arising out of or relating to the Contract and for any prior act, neglect, fault, or default of the MTA, its officers, agents, or employees. No MTA payment, Final Payment or otherwise, shall constitute the MTA's release of Vendor or its sureties from any claim, liability, or obligation arising out of or relating to the Contract. Notwithstanding anything to the contrary, Vendor shall not be barred from commencing an action for breach of Contract if a detailed and verified statement of the claim is delivered to the MTA no later than forty (40) days after the MTA's issuance of the Final Payment; provided, however, that such statement specifies the items upon which the action will be based and any such action shall be limited to such items and addressed in accordance with Section 24 (Disputes). In the event the MTA retains five (5) percent of the Total Contract Amount, upon satisfactory completion of the Work and, if the MTA so elects, the completion by the MTA of its audit of the Vendor's records and accounts as provided in Article 15 (Recordkeeping; Audit), which audit shall be completed as expeditiously as possible, any amounts so retained by the MTA, less any amounts found due the MTA as a result of such audit, shall be paid the Vendor.

**7.8. Early Payment Program or "EPP".** When applicable, the MTA offers EPP, or the opportunity to receive early payment(s) on approved invoices in exchange for a discount. There is no cost or obligation on Vendor to join the EPP. Vendor must utilize ACH payments in order to enroll in EPP. Additional information on EPP may be found at: [www.c2fo.com/MTA](http://www.c2fo.com/MTA). Rates of discount are set at the MTA's sole and absolute discretion.

**7.9. Most Favored Customer.** If, during the Term, both (i) Vendor sells or offers for sale goods to a third party at a lower price than the price that the MTA is paying for the same or similar Goods, and (ii) the quantity of goods sold or offered for sale to such third party is the same or less than the quantity of Goods that the MTA has or may purchase pursuant to the Contract, then the MTA's purchase price shall be reduced to such lower price for all unshipped orders of Goods and all subsequent orders of Goods made pursuant to the Contract.

#### **8. Intellectual Property.**

**8.1. Grant of Rights to MTA in Work.** Vendor hereby grants to the MTA a worldwide, non-exclusive, sublicensable, fully paid-up, royalty-free license in and to those Intellectual Property Rights necessary to permit the MTA: (i) to copy, distribute, modify, and otherwise use and exploit the Work, and (ii) to make, use, and transfer items that embody the Work; provided, however, that the MTA shall exercise such rights solely for the purposes specified in or contemplated by the Contract and the MTA's operations. The MTA shall retain such rights for the useful life of the Work, as determined by the MTA.

**8.2. Grant of Rights to Vendor in MTA Data.** Subject to the terms and conditions of the Contract, including those set out in Section 23 (Confidentiality and Privacy), the MTA, under its Intellectual Property Rights, hereby grants to Vendor during the Term, a limited, non-exclusive, non-transferrable, non-sublicensable license to copy and modify MTA Data, but solely for the purpose of Vendor fulfilling its obligations to the MTA under the Contract, and for no other purpose. Vendor acknowledges that the rights granted to it pursuant to this Section 8.2 (Grant of Rights to Vendor in MTA Data) shall immediately terminate upon any Contract termination or expiration.

**8.3. Ownership of MTA Data.** Vendor acknowledges that (i) MTA Data is licensed, not sold, to Vendor, and (ii) as between Vendor and the MTA, and subject to Section 8.2 (Grant of Rights to Vendor in MTA Data), the MTA is the sole and exclusive owner of all of the right, title, and interest in and to MTA Data, and in and to all associated Intellectual Property Rights.

**8.4. Ownership of Custom Work; Assignment.** The term "Custom Work" means Work that Vendor specifically develops or designs, or causes to be developed or designed, for the MTA pursuant to the Contract. Custom Work includes, but is not limited to, designs, sketches, drawings, blueprints, patterns, dies, molds, masks, software, models, tools, gauges, equipment, Custom Training Materials, and special appliances. Vendor hereby assigns and transfers to the MTA all right, title, and interest in and to all Intellectual Property Rights associated with the Custom Work, and Vendor shall provide all requested supporting documentation to the MTA to perfect such assignment.

**8.5. No Implied Rights.** Nothing in the Contract shall be construed to grant Vendor any rights other than those expressly provided herein. Any rights granted to Vendor under the Contract must be expressly provided herein, and there shall be no implied rights pursuant to the Contract, based on any course of conduct or other construction or interpretation thereof. All rights and licenses not expressly granted herein by the MTA are reserved.

**8.6. Bankruptcy Code Section 365(n).** The licenses granted to the MTA in the Contract are rights to "intellectual property" for purposes of Section 365(n) of the U.S. Bankruptcy Code, and

the MTA shall be entitled to exercise all rights provided by Section 365(n). Vendor agrees that it shall not interfere with the MTA's exercise of such rights, and further agrees that the MTA shall maintain the licenses under the terms of Contract, even if Vendor ceases operations or is purchased or merges into another entity.

#### **9. UCC; Modifications.**

**9.1. Vendor Warranty Obligations.** In addition to any other representations, warranties, and requirements set out in the Contract, the warranties, express or implied, created or recognized by the Uniform Commercial Code of the State of New York (the "UCC") shall apply to all Work, and may not be excluded or modified. The warranties set out in the preceding sentence include Work that does not otherwise constitute "goods" within the meaning of the UCC. Vendor agrees to take back, replace, and otherwise correct to the MTA's satisfaction, all Work violating such warranties and to assume all risk and costs associated with such remedy. Any Work held by the MTA pending Vendor's remedy, shall be so held at Vendor's sole risk and expense. In addition, Work, as delivered, shall include and be covered by all applicable warranties of the manufacturer and any other intermediary, and Vendor shall be responsible for enforcing such warranties on the MTA's behalf. The delivery and existence of any such manufacturers' warranties shall not relieve Vendor of any of its obligations under the Contract. Except as otherwise provided in the Contract, Vendor warrants its workmanship for a period of one (1) year from completion of the Work.

**9.2. Modification to Work.** The MTA shall have the right to modify any portion of the Work (each, an "MTA Work Modification"). Vendor agrees that MTA Work Modifications are the MTA's property, and shall not relieve Vendor of any of its Contract warranty obligations in the Contract, unless the MTA Work Modification is the sole cause of the Work's nonconformance with the warranty.

#### **10. Vendor Compliance.**

**10.1. Compliance with Laws and Regulations; Permits and Licenses.** A non-exhaustive list of applicable laws, regulations, and requirements is incorporated into, and attached to, these Terms and Conditions as Schedule 1 (Applicable Laws and Regulations). Vendor shall, and ensure that any subcontractors shall, at their sole cost and expense, comply with all applicable federal, state, and local laws, rules, and regulations, whether or not referenced in the Contract or otherwise included in Schedule 1 (Applicable Laws and Regulations). Vendor shall be solely responsible for obtaining and paying all charges, permits, and licenses required for the performance of the Work. If a permit or license is not required due to the MTA's statutory exemption, then Vendor shall nevertheless secure such permit or license except to the extent that the MTA waives such obligation in writing.

**10.2. All Legal Provisions Included.** As a public entity, the MTA is required by law, rule, or regulation to include certain provisions in agreements that it enters into with third parties (collectively, the "Required Legal Provisions"). Notwithstanding anything to the contrary, if any Required Legal Provision is not included in the Contract, or included incorrectly, then the Contract shall be deemed amended so as to include the Required Legal Provision in the required form, and such Required Legal Provision shall be binding on the MTA and Vendor.

**10.3. Compliance with MTA Policies and Procedures.** Vendor shall comply with all MTA policies, procedures, and standards (and MTA updates to the same) relating to Vendor's performance of the Work. Vendor shall also comply with the Guidelines for Contractors, a copy of which was either included with the Contract Documents or available upon request.

#### **11. Indemnification.**

**11.1. Vendor Indemnification.** Vendor shall defend, indemnify, and hold the MTA and the MTA Indemnitees, harmless from and against any third party claim, action, suit, or proceeding resulting from: (i) Vendor's breach of the Contract; (ii) any effluent or other hazardous waste, residue, contaminated soil, or other similar material discharged from, removed from, or introduced on, about or under MTA Property; (iii) Vendor's failure to comply with law; (iv) any Work's actual or alleged infringement of a third party's Intellectual Property Rights; (v) injury to persons, deaths, or property damage caused by Vendor; and (vi) any acts or omissions of Vendor or its agents, subcontractors, or employees. Subject to Section 11.2 (Procedure for Indemnification), Vendor shall indemnify the MTA Indemnitees for all losses, damages, liabilities, fines, penalties, assessments, and all reasonable costs and expenses (including attorneys' fees) incurred by the MTA Indemnitees in any such claim, action, suit, or proceeding. Vendor acknowledges that its indemnification obligations are absolute and not dependent upon any question of negligence on Vendor's or the MTA Indemnitees' part, or on the part of any of their agents, officers, employees, or subcontractors.

**11.2. Procedure for Indemnification.** The MTA shall use its good faith efforts to notify Vendor within a reasonable time of the assertion of any claim for which the MTA is seeking indemnification (each, an "Indemnified Claim"). If the MTA decides to conduct the defense of an Indemnified Claim, then Vendor shall reimburse the MTA for all reasonable costs and expenses (including attorneys' fees) that the MTA Indemnitees incur in connection with their defense of the Indemnified Claim, and Vendor shall cooperate fully with the MTA in such defense, at Vendor's sole cost and expense. If the MTA decides to have Vendor defend the Indemnified Claim, then the MTA shall notify Vendor of such in writing and: (i) Vendor shall hire MTA-approved counsel; (ii) Vendor shall bear all costs and expenses associated with the Indemnified Claim; (iii) Vendor shall have sole control of the defense and settlement of the Indemnified Claim, provided that the MTA Indemnitees are fully indemnified and that any settlement does not include the admission of guilt, wrongdoing, negligence, or comparable plea, the imposition of civil or criminal penalties or indictments, or the entering of consent decrees or orders of any kind, by the MTA Indemnitees or Vendor on behalf of the MTA Indemnitees without the MTA's express written consent; (iv) the MTA shall cooperate fully with Vendor in the defense of the Indemnified Claim, at Vendor's sole cost and expense; and (v) the

MTA shall be entitled, but not obligated to participate in any defense at its own expense and with counsel of its own choosing.

## 12. Limit of Liability.

**12.1. Excluded Categories.** The term "Excluded Categories" means any of the following: (i) Vendor's obligations set out in Section 11 (Indemnification) and Section 17 (Safety); (ii) a breach of Section 23 (Confidentiality and Privacy); (iii) Vendor's bad faith refusal to perform the Work or any other obligation under the Contract; (iv) bodily injury or death; (v) property damage; (vi) violations of applicable law; (vii) gross negligence or reckless misconduct. Vendor and the MTA acknowledge that no limits of liability apply to the Excluded Categories.

**12.2. Limit of Liability; Small Threshold.** EXCEPT WITH RESPECT TO THE EXCLUDED CATEGORIES, IF THE TOTAL CONTRACT PRICE IS EQUAL TO OR LESS THAN FIFTY THOUSAND DOLLARS (\$50,000), IN NO EVENT SHALL THE LIABILITY OF EITHER PARTY TO THE OTHER PARTY, IN THE AGGREGATE, IN LAW OR IN EQUITY, EXCEED THE GREATER OF (I) THREE TIMES THE TOTAL CONTRACT PRICE AND (II) ONE HUNDRED AND FIFTY THOUSAND DOLLARS (\$150,000).

**12.3. Limit of Liability; Medium Threshold.** EXCEPT WITH RESPECT TO THE EXCLUDED CATEGORIES, IF THE TOTAL CONTRACT PRICE IS MORE THAN FIFTY THOUSAND DOLLARS (\$50,000) AND LESS THAN OR EQUAL TO TWO HUNDRED THOUSAND DOLLARS (\$200,000), IN NO EVENT SHALL THE LIABILITY OF EITHER PARTY TO THE OTHER PARTY, IN THE AGGREGATE, IN LAW OR IN EQUITY, EXCEED THE GREATER OF (I) THREE TIMES THE TOTAL CONTRACT PRICE OR (II) THREE HUNDRED THOUSAND DOLLARS (\$300,000).

**12.4. Limit of Liability; Large Threshold.** EXCEPT WITH RESPECT TO THE EXCLUDED CATEGORIES, IF THE TOTAL CONTRACT PRICE IS GREATER THAN TWO HUNDRED THOUSAND DOLLARS (\$200,000), IN NO EVENT SHALL THE LIABILITY OF EITHER PARTY TO THE OTHER PARTY, IN THE AGGREGATE, IN LAW OR IN EQUITY, EXCEED THE GREATER OF (I) THREE TIMES THE TOTAL CONTRACT PRICE OR (II) ONE MILLION DOLLARS (\$1,000,000).

12.5. THE LIMITS OF LIABILITY IN SECTIONS 12.2, 12.3, AND 12.4 ABOVE ARE INDEPENDENT OF EACH OTHER AND ANY OTHER LIMIT OF LIABILITY SET FORTH IN THE CONTRACT DOCUMENTS AND REFLECTS A SEPARATE ALLOCATION OF RISK FROM PROVISIONS SPECIFYING OR LIMITING A PARTY'S REMEDIES.

**13. Vendor Representations and Warranties.** In addition to any other representations, warranties, and covenants set out in the Contract, Vendor represents, warrants, and covenants (as applicable) to the MTA, as of the Effective Date and throughout the Term, as follows:

**13.1. Existence.** Vendor: (i) is duly incorporated, organized, validly existing, and in good standing as a corporation under the laws of the jurisdiction of its incorporation; (ii) is duly qualified and in good standing under the laws of each jurisdiction where its ownership, lease, or operation of property or conduct of business requires; and (iii) has the power, authority, and legal right to conduct the business in which it is currently engaged.

**13.2. Authority.** Vendor has all necessary power, authority, and legal right to execute, deliver, and perform the Contract. Vendor has taken all necessary action to authorize the execution, delivery, and performance of the Contract.

**13.3. No Legal Bar.** Vendor's execution, delivery, and performance of the Contract does not and shall not violate any provision of any existing law, regulation, any court or government order, judgment, award, or decree, the charter or by-laws of Vendor, any mortgage, indenture, lease, contract, or other agreement or undertaking to which Vendor is a party or by which Vendor or any of its properties or assets may be bound, and will not result in the creation or imposition of any lien on any of its respective properties or assets pursuant to the provisions of any such mortgage, indenture, lease, contract, or other agreement or undertaking.

**13.4. No Commission.** No person has been employed or retained to solicit or secure the Contract for a commission, percentage, brokerage, contingent fee, or other consideration, except for bona fide employees or bona fide established commercial or selling agencies that Vendor maintains for the purpose of securing business.

**13.5. No Litigation.** Except as specifically disclosed to the MTA in writing prior to the Effective Date, Vendor is neither involved in any claim, litigation, investigation, or proceeding of, or before, any court, arbitrator, or governmental authority, nor is there currently pending or, to Vendor's knowledge, any claim, litigation, or proceeding threatened against Vendor or its properties or revenues (i) that involves a claim of defective design or workmanship in connection with any contract entered into by Vendor, or (ii) that, if adversely determined, would have an adverse effect on Vendor's business, operations, property, or financial condition. For purposes of this Section 13.5 (No Litigation), a claim, litigation, investigation, or proceeding may be deemed disclosed to the MTA if the MTA has received, prior to the Effective Date, detailed information concerning the nature of the matter involved, the relief requested, and a description of Vendor's intended response to such matter.

**13.6. No Default.** Vendor is not in default in the payment or performance of any obligations under any mortgage, indenture, lease, contract, or other agreement or undertaking to which it is a party or by which it or any of its properties or assets may be bound, and no such default or other default event (as defined in any such mortgage, indenture, lease, contract, or other agreement or undertaking) has occurred, is occurring, or would occur as a result of the execution and performance of the Contract. Vendor is not in default under any order, award, or decree of any court, arbitrator, or government binding upon or affecting it or by which any of its properties or assets may be bound or affected, and no such order, award, or decree would affect Vendor's ability to (i) carry on its business as presently conducted, or (ii) perform its obligations under the Contract or any of the other financing to which it is a party.

**13.7. No Conviction or Indictment.** Neither Vendor, nor any of its personnel or shareholders,

have been (i) the subject of any investigation or (ii) convicted or indicted for the commission of any crime involving misconduct, corruption, bribery, or fraud in connection with any public contract in the State of New York or any other jurisdiction, except as has been specifically disclosed in writing to the MTA. If Vendor becomes aware of, or any such conviction or indictment is obtained or any such investigation commences during the Term, regardless of the date of the occurrence giving rise to the subject matter of such conviction, indictment or investigation, then Vendor shall immediately disclose the same in writing to the Manager.

**13.8. Compliance with Terms and Conditions and Applicable Law.** Vendor shall comply with all (i) terms and conditions of the Contract, and (ii) applicable law, including those identified in Schedule 1 (Applicable Laws and Regulations).

**13.9. Quality of Work; Performance Standard.** Vendor shall (i) perform and provide all Work in the best and most professional and workmanlike manner, by qualified individuals of appropriate skill, training, and experience, employing requisite resources and materials, and (ii) comply with all MTA policies, procedures, and rules. The Work shall be fit and suitable for its particular purpose(s) and its use as contemplated under the Contract, and shall perform to the MTA's reasonable satisfaction, and otherwise be in compliance with best industry practices and professional standards. Vendor shall, throughout the Term, employ, maintain, and assign a sufficient number of competent and qualified professionals and other personnel to meet the schedule in the Contract.

**13.10. Noninfringement.** Vendor shall not, nor shall the Work, violate any Intellectual Property Rights of any third party.

**14. Remedies for Breach of Representations and Warranties.** In addition to any other rights and remedies available to the MTA, for any breach of Vendor's representations, warranties, and covenants set out in the Contract, the MTA shall have the right to terminate the Contract due to a Default Event or, at its discretion, deduct from the Total Contract Price or otherwise recover the full amount of any harm or other damages that the MTA sustains as a result of Vendor's breach, and to include the occurrence of such a breach in assessments of Vendor's responsibility in future Solicitations.

**15. Recordkeeping; Audit.**

**15.1. Scope of Records; Audit Right.** Throughout the Term, Vendor shall prepare and maintain in accordance with best industry practices, those books, records, accounts, reports, and other data pertaining to the Work, its performance under the Contract, those records and reports otherwise required to be prepared or provided pursuant to the Contract, and its business generally (collectively, the "Records"). To the extent applicable, all Records shall be kept in compliance with generally accepted accounting principles and show the actual cost of the Work, with details for labor, materials, supplies, and other components of the Work. Not more than once per year (unless the MTA has good cause for more frequent audits) and upon fourteen (14) days' prior written notice (each, an "Audit Notice"), the MTA and its designees shall have the right for any purpose and on any business day during normal business hours to examine, copy (and take full possession of said copies), and audit all Records, including Records of actual performance, Vendor personnel information (consistent with any restrictions imposed on Vendor by applicable law), all of the information within Vendor's possession or control relating to the Contract (including the Work), and Vendor's business operations (including information that Vendor considers confidential).

**15.2. Audit Location.** In the MTA's sole discretion, Vendor shall, within fourteen (14) days of the Audit Notice, either (i) deliver to an MTA-designated location all Records that the MTA requests, or (ii) make such Records available at any Vendor office located within New York City and, if Vendor does not maintain an office within New York City, then at Vendor's geographically closest office to New York City or other Vendor office that the MTA designates.

**15.3. Production of Copies; Audit Costs.** Promptly upon notice, Vendor shall deliver to an MTA-designated location copies of all requested Records in a form and format that the MTA reasonably requested. Vendor shall correct any Record inaccuracy within thirty (30) calendar days of the MTA's completion of an audit and immediately thereafter provide the corrected information to the MTA. Vendor shall be solely responsible for all costs associated with copying Records requested by the MTA and for all other costs Vendor incurs in connection with this Section 15 (Recordkeeping; Audit). The MTA shall be responsible for paying its auditor's fees.

**15.4. Record Preservation Obligations.** Vendor shall maintain all Records required under the Contract or otherwise kept by Vendor for a period of not less than seven (7) years after Contract termination or expiration, or such longer period as may be required by the MTA's record retention policy or as, mandated by applicable law. Notwithstanding the preceding sentence, Vendor shall continue to maintain all Records for as long as the MTA directs in the event of a litigation action or settlement of claims relating to the Contract occurs or, in the MTA's opinion, is likely to occur, and such period shall, at least, continue until the final disposition of all such litigation or claim.

**16. Risk of Loss.**

**16.1. Risk of Loss; Transfer.** Vendor assumes the risk of loss or damage to all Work to the fullest extent permitted by applicable law, irrespective of whether such loss or damage arises from acts or omissions (whether negligent or not) of the MTA, Vendor, or a third party, or from any other cause. The MTA and Vendor agree that the risk of loss or damage to the applicable portion of the Work shall transfer from Vendor to the MTA upon the MTA's acceptance of such Work pursuant to Section 5 (Review of Work; Acceptance and Rejection). Notwithstanding anything to the contrary, in no event shall the MTA's acceptance of Work constitute a waiver or otherwise relieve Vendor from fulfilling all of its obligations under the Contract, including completing all Work. If the MTA revokes its acceptance of Work pursuant to Section 5.1.3 (Effects of Acceptance), then Vendor shall bear the risk of loss or damage commencing on the date that such acceptance is revoked and thereafter Vendor shall retain such risk of loss or

damage unless and until of the MTA subsequently accepts the revoked Work.

**16.2. Risk of Loss Obligations.** Vendor's obligation with respect to Work for which Vendor holds the risk of loss or damage is to promptly repair, replace, and make good such loss or damage so as to restore the Work to the same character and condition as before the loss or damage occurred, all without cost to the MTA.

**16.3. Effect of MTA Holding Risk.** When risk of loss to the Work (or a portion thereof) is transferred to the MTA, the MTA shall thereafter assume responsibility for the care, protection, and ordinary upkeep for such Work, except to the extent that Vendor remains responsible for the Work or is otherwise responsible for loss or damage as provided in the Contract.

**16.4. Transfer of Title.** The MTA and Vendor agree that title for applicable portions of the Work shall transfer from Vendor to the MTA upon the earlier of (i) the transfer of the risk of loss pursuant to this Section 16 (Risk of Loss), and (ii) the MTA's request, including in connection with a Default Event. Vendor shall, at its sole cost and expense, execute and deliver or cause to be executed and delivered to the MTA all documents that the MTA requests to perfect, better perfect, or memorialize the transfer of title to the MTA free and clear of any liens and encumbrances. Vendor covenants and agrees that, upon any such transfer of title, the applicable portions of the Work shall not be subject to any lien or encumbrance except MTA-created liens and encumbrances.

**16.5. Risk of Loss and Transfer of Title for Custom Work.** Notwithstanding anything to the contrary, with respect to Custom Work, Vendor agrees that: (i) title to Custom Work shall pass immediately to the MTA upon the creation of such Custom Work; (ii) the risk of loss or damage shall not pass from Vendor to the MTA until the MTA both obtains physical possession of the Custom Work and accepts the same pursuant to Section 5 (Review of Work; Acceptance and Rejection); (iii) all Custom Work shall be identified as MTA Property; (iv) Vendor shall hold all Custom Work on consignment at Vendor's risk until such risk is transferred to the MTA as set out in this Section 16.5 (Risk of Loss and Transfer of Title for Custom Work); (v) Vendor shall use Custom Work solely for the performance of its obligations under the Contract; (vi) Custom Work is subject to the MTA's disposition at all times; and (vii) Custom Work (regardless of the state of completion) shall be immediately delivered to the MTA at an MTA-designated location upon request, all at Vendor's sole cost. While Custom Work is in Vendor's possession, Vendor shall (a) adequately store, maintain, inventory, and otherwise protect Custom Work, and (b) regularly provide to the MTA inventory reports of the Custom Work.

## 17. Safety.

**17.1. Safety Measures.** If Vendor enters onto MTA Property in order to perform Work, then Vendor agrees to use all proper, necessary, and sufficient precautions, safeguards, personal protective equipment, and other protections to prevent accidents, injuries, or damage to any person or property (including the MTA, Vendor, and their respective employees). Vendor shall also be responsible for the payment of all sums of money resulting from such accidents, injuries, or damages and for the payment of all fines, penalties, and loss incurred by reason of the violation of any federal, state or local law or regulations.

**17.2. Material Safety Data Sheets.** Material Safety Data Sheets (each, an "MSDS") are required for any chemical or material transferred onto MTA Property that contains a toxic substance or hazardous chemical, or that may emit a toxic substance or hazardous chemical as defined in the New York State Right to Know Law (12 NYCRR Part 820) and Occupational Safety and Health Administration Hazard Communication Standard (29 CFR 1910.1200). Vendor represents and warrants that (i) it has submitted an initial MSDS with its Bid, and (ii) at any time during the Term, it shall immediately submit a new MSDS when Vendor determines that it will be transferring a toxic substance or hazardous chemical onto MTA Property. Each MSDS shall contain the information included in New York State Labor Law Section 876 for each substance, and shall otherwise be in compliance with 29 CFR 1910.1200(g) (including Appendix D of 2012).

**17.3. Safety Training.** If set out in the Contract Documents, or otherwise required by the MTA (including based on the MTA's policies and procedures), Vendor shall participate, at its sole cost and expense, in all safety training classes required in connection with the performance of the Work, and obtain and maintain all required safety permits and certifications.

### 17.4. Additional Safety Obligations.

**17.4.1. Provision of Safety Devices.** In addition to any other applicable obligations, Vendor shall provide, at its sole cost and expense, all safety devices that are necessary, or that the MTA otherwise requires, for the protection of Vendor employees, MTA employees, the public, and any other persons, including personal protective equipment or "PPE" (collectively, the "Safety Devices"). Vendor's failure to provide Safety Devices shall constitute a Default Event. Vendor agrees to fully comply with all applicable regulations of the Occupational Safety and Health Act.

**17.4.2. Photo Identification; Compliance with MTA Rules and Regulations.** All Vendor personnel shall carry photo identification (each, a "Photo ID") at all times while performing Work or otherwise on MTA Property, and shall identify themselves and present such Photo IDs at any time when asked by MTA personnel, the MTA Police Department, the New York City Police Department, other police or peace officers, or other authorized government personnel. Such Photo IDs shall contain: (i) the personnel's name, picture, and name of employer; and (ii) such other information that the MTA requires. The Photo ID shall be clearly visible at all times while such personnel is performing Work or otherwise on MTA Property, and the Photo ID shall not be similar in appearance to MTA employee passes or ID cards. While on MTA Property, Vendor personnel shall otherwise observe all rules and regulations applicable to MTA employees.

**17.4.3. Removal of Vendor Personnel.** Vendor shall immediately prohibit from performing any Work those Vendor personnel found to be intoxicated, partaking of, or appearing to be under

the influence of, intoxicating or alcoholic beverages or controlled substances while providing the Work or during their break period. If, in the MTA's opinion, any Vendor personnel lacks the expertise to provide the Work or such individual is incompetent or disorderly, then the MTA shall notify Vendor of the same and Vendor shall immediately prevent such individual from providing any Work to the extent that doing so is not inconsistent with applicable law or collective bargaining agreements.

**17.4.4. Removal of Waste.** If the disposal or destruction of trash, waste, or other materials, is a required, necessary, or inherent part of the Work, then Vendor shall dispose of the same pursuant to all applicable safety and health regulations, codes, requirements, MTA policies and procedures, or as the MTA otherwise directs. Vendor shall follow all MTA-provided safety instructions.

**18. Insurance.** Throughout the Term, Vendor shall secure and maintain, at its sole cost and expense, all insurance coverage, in such forms and such amounts, as the MTA may require pursuant to the Contract and, at a minimum, General Liability and Auto Liability, each providing limits of not less than \$1 million and each policy naming the MTA and MTA Indemitees as additional insureds; and Workers' Compensation and Disability insurance coverage for the benefit of employees who are required by law to be covered by such insurance. Vendor's failure to comply with such insurance requirements constitutes a Default Event. Prior to commencing any Work, Vendor must provide proof of insurance satisfactory to the MTA, in the MTA's sole and absolute discretion.

## 19. Termination.

**19.1. Termination for Convenience.** The MTA shall have the right to terminate all, or any portion, of the Contract for any reason by providing written notice to Vendor, and any such termination shall be effective as of the date designated in the notice. In addition to any other applicable obligations set out herein, upon Vendor's receipt of such notice, Vendor shall: (i) immediately comply with the obligations set out in Section 20.1 (General Effect of Termination), and (ii) submit to the MTA within twenty (20) days of the Termination Date an invoice of Recoverable Termination Costs, with all supporting documentation that the MTA requests (the "Termination Invoice"). The term "Recoverable Termination Costs" means, collectively: (a) those fair and reasonable costs that Vendor has incurred prior to the Termination Date in connection with its performance under the Contract, and (b) outstanding amounts invoiced by Vendor pursuant to the Contract prior to the Termination Date. Vendor agrees that in no event shall Recoverable Termination Costs (1) exceed the difference between the Total Contract Price and the aggregate of all payments made by the MTA to Vendor pursuant to the Contract prior to the Termination Date, and (2) include indirect, incidental, special, or consequential damages of any kind or nature. Upon the MTA's receipt of a Termination Invoice, the parties shall meet and mutually agree to the amount of the Recoverable Termination Costs (the "Settlement Amount"). Vendor shall accept the Settlement Amount as full satisfaction of all claims against the MTA arising out of the termination of the Contract pursuant to this Section 19.1 (Termination for Convenience). Notwithstanding anything to the contrary, Vendor is to continue to perform all Work that is not subject to termination.

### 19.2. Termination for Default.

**19.2.1. Notice of Default; Opportunity to Cure.** The MTA shall notify Vendor in writing if a Default Event occurs. If Vendor fails to cure the Default Event to the MTA's satisfaction within ten (10) days of such notice, then the MTA shall have the right to immediately terminate the Contract, in whole or in part, by providing Vendor with written notice of its intent to do so. The MTA's termination notice shall specify the date upon which Vendor is to discontinue all Work, and Vendor shall discontinue the Work on such date. Vendor shall continue to perform all Work that is not the subject of the MTA's termination notice.

**19.2.2. Default Event Remedies; Vendor Liability for Default Event.** If a Default Event occurs, then the MTA shall have the right to procure the same or similar Work under such terms and in such manner as the MTA deems appropriate, and Vendor shall be liable to the MTA for any excess costs of such Work, including the difference between the Total Contract Price and the amount that the MTA expends to complete the Work. Vendor shall also remain liable for all other liabilities and claims arising from the Contract, and the MTA has the right to deduct from monies due to Vendor all damages and other costs that the MTA incurs.

**19.2.3. Improper Termination.** If the MTA terminates the Contract pursuant to this Section 19.2 (Termination for Default), and the MTA subsequently determines that such termination was improper, unwarranted, or wrongful, then any such termination shall be deemed to have been a termination for convenience pursuant to Section 19.1 (Termination for Convenience). Vendor agrees that it shall not be entitled to any damages, allowance, or expenses of any kind other than as provided for in Section 19.1 (Termination for Convenience) in connection with any such termination.

## 20. Effect of Contract Termination or Expiration.

**20.1. General Effect of Termination.** In addition to any other Vendor obligation set out in the Contract, upon receipt of a termination notice pursuant to Section 19 (Termination), and unless the MTA otherwise directs, Vendor shall immediately: (i) stop performing the applicable Work on the date specified in the notice (the "Termination Date"); (ii) take such action as may be necessary for the protection and preservation of the MTA's materials and property; (iii) cancel all cancelable orders for material and equipment; (iv) assign to the MTA, and deliver to the site or any other MTA-designated location, any non-cancelable orders for material and equipment that are not capable of use except in the performance of the Work and that have been specifically fabricated for the sole purpose of the Work but not incorporated in the Work; (v) take no action that increases the amounts payable by the MTA under the Contract; (vi) take all actions necessary to mitigate the MTA's liability; (vii) cease using all MTA assets, including Confidential Information; (viii) comply with the obligations set out in Section 23.7 (Treatment of

Confidential Information Upon Termination); (ix) provide to the MTA all documentation and other information that the MTA requests; and (x) otherwise comply with all MTA instructions regarding the disposition of completed and partially completed Work.

**20.2. Survival.** In addition to any other right or obligation that by its nature is intended to survive any Contract termination or expiration, the following Sections shall survive any such termination or expiration: (i) Section 9.1 (Vendor Warranty Obligations) (ii) Section 11 (Indemnification); (iii) Section 12 (Limit of Liability); (iv) Section 20 (Effect of Contract Termination or Expiration); (v) Section 23 (Confidentiality and Privacy); (vi) Section 24 (Disputes); and (vii) Section 29 (General).

**20.3. Transition Services.** In connection with any Contract termination or expiration, Vendor shall provide all transition assistance that the MTA requests in connection with transitioning the Work from Vendor to an MTA-designee (the "Transition Services"). Transition Services include those services that the MTA requests including, for example, the continued provision of the Work, personnel support, materials, information, and services necessary or desirable to facilitate transitioning from Vendor to an MTA-designee. Vendor shall be obligated to provide the Transition Services for no more than six (6) months following any Contract termination or expiration, and costs for such Transition Services shall be determined pursuant to Section 28 (Change Orders; Contract Modifications).

**21. Suspension of Work.** The MTA shall have the right to direct Vendor to suspend all or any part of the Work for a period of up to sixty (60) calendar days, and such direction shall be provided in writing (each, a "Work Stop Order"). Upon Vendor's receipt of a Work Stop Order, Vendor shall cease performing the applicable portion of the Work and take all steps necessary to minimize the incurrence of costs allocable to the applicable Work being suspended. Within sixty (60) days of the MTA's provision of a Work Stop Order, the MTA shall either cancel the Work Stop Order, terminate the Contract, or issue a Change Order that removes such Work from the Contract. The MTA shall, in its reasonable discretion, make an equitable adjustment to the delivery schedule or Total Contract Price (excluding profit) due to the Work Stop Order. Vendor shall immediately resume its performance of the Work upon cancellation of a Work Stop Order regardless of whether the MTA has made such an equitable adjustment. Vendor shall be prohibited from submitting any claims for compensation relating to a Work Stop Order unless such claims are submitted in writing within twenty (20) days after the MTA's issuance of a Work Stop Order. Notwithstanding anything to the contrary, if the MTA determines that the suspension of Work was necessary due to Vendor's defective or incorrect Work, unsafe work conditions caused by Vendor, or any other reason caused by Vendor's acts or omissions, then Vendor shall not be entitled to an equitable adjustment.

**22. No Waiver; Remedies.** The MTA's failure to require Vendor's performance of any obligation under the Contract shall not affect the MTA's full right to require such performance at any time thereafter, nor shall the MTA's waiver of a breach of any obligation under the Contract be taken, held, or interpreted as a waiver of the obligation itself or any past or subsequent breaches of the same obligation. The MTA shall have the right to avail itself of each and every remedy relating to, or arising from, the Contract available to the MTA now or hereafter, existing at law or in equity or by statute, and each and every such remedy shall be in addition to every other remedy so specifically given or otherwise so existing and may be exercised from time to time and as often and in such order as may be deemed expedient by the MTA. The MTA's exercise, or the beginning to exercise, one remedy shall not be deemed a waiver of the right to exercise, at the same time or thereafter, any other remedy.

**23. Confidentiality and Privacy.**

**23.1. Confidential Information; Non-Disclosure and Standard.** Vendor shall treat as confidential all information that is disclosed or provided to Vendor (or to which Vendor otherwise has access), whether oral or in writing, in connection with the Contract (collectively, the "Confidential Information"). The term "Confidential Information" expressly includes MTA Data. Vendor shall not use Confidential Information for any purpose not expressly permitted in the Contract (and in all cases such Confidential Information shall only be used for the MTA's benefit), and Vendor shall disclose such Confidential Information only to those employees, contractors, subcontractors, suppliers, and agents who have a need-to-know basis for access to such Confidential Information for the purpose of performing under the Contract; provided, however, that such recipients are under a duty of confidentiality no less restrictive than Vendor's duty hereunder and by applicable law. Vendor shall protect the Confidential Information from unauthorized use, access, or disclosure in the same manner as Vendor protects its own confidential or proprietary information, but shall in no event use less than a reasonable standard of care and diligence. Upon the MTA's request, Vendor shall promptly provide copies of any requested Confidential Information in electronic form, all at Vendor's sole cost and expense.

**23.2. Exceptions.** Except for Security-Sensitive Information and Personal Information, for which there shall be no exception, Vendor's obligations with respect to Confidential Information shall not apply to Confidential Information that Vendor can demonstrate in writing (to the MTA's satisfaction): (i) was already known to Vendor at the time of disclosure by the MTA; (ii) was or becomes available to Vendor on a non-confidential basis from a third party, provided that such third party is not bound by a confidentiality obligation to the MTA with respect to such Confidential Information; (iii) is or has become generally available to the public through no fault of Vendor; (iv) is independently developed by Vendor without access to, or use of, the Confidential Information, as evidenced through proper documentation; or (v) is required by law to be disclosed, provided that Vendor notifies the MTA of such required disclosure promptly and in writing, and cooperates with the MTA, at the MTA's reasonable request and expense, in any lawful action to contest or limit the scope of such disclosure.

**23.3. Public Records.** Notwithstanding anything to the contrary, Vendor acknowledges that (i) the MTA may be subject to the New York State Freedom of Information Law (N.Y. Pub. Off.

Law sec. 84 *et seq.*) and other laws relating to the disclosure or production of information in the MTA's possession (collectively, the "Public Records Law"), and (ii) any documents in the MTA's possession may be subject to the Public Records Law.

**23.4. No Transmission of Confidential Information Outside of the United States.** In no event shall Vendor transmit, transfer, or otherwise store Confidential Information (including Security-Sensitive Information and Personal Information) outside of the United States without the MTA's prior written approval, which can be withheld or withdrawn for any reason.

**23.5. Privacy Notice.** The relevant provisions of the New York Personal Privacy Protection Law (Article 6-A of the Public Officers Law) shall apply to the Contract as if Vendor were an agency of the State of New York as defined therein. If, in connection with Vendor's performance under the Contract, Vendor receives or otherwise has possession, control of, or access to, Personal Information, then Vendor shall receive, maintain, and use such Personal Information solely for the purpose of performing its obligations under the Contract and for no other purpose. If Vendor receives a request for the disclosure of Personal Information to any person or entity not expressly authorized under the Contract to receive the same, then Vendor shall not comply with the request and shall instead promptly notify the Project Manager. If Vendor is required by law to comply with the request, to the extent lawful, then Vendor shall delay complying with the request until Vendor notifies the MTA's General Counsel in the most expeditious manner possible and affords the MTA with an opportunity to lawfully oppose such request.

**23.6. Information Security.**

**23.6.1. Information Security Program.** Vendor represents and warrants that it has established, and shall maintain and comply with throughout the Term, an information security program that meets all applicable federal, state and local laws, and regulations. Vendor agrees that its information security program includes administrative, technical, and physical safeguards that sufficiently: (i) protect the security, confidentiality, and integrity of Confidential Information; (ii) protect against anticipated threats or hazards to the security, confidentiality, and integrity of Confidential Information; (iii) protect against unauthorized access to or use of Confidential Information; (iv) ensure compliance with an active incident response program; and (v) ensure the proper disposal of Confidential Information. Notwithstanding anything to the contrary, Vendor further agrees to comply with all applicable federal, state, local, and foreign data protection laws, and all other applicable regulations and directives in connection with its collection, access, use, storage, disposal, and disclosure of Confidential Information (including Security-Sensitive Information and Personal Information).

**23.6.2. Security Incident Response.** The term "Security Incident" means the actual or potential breach of the security, confidentiality, or integrity of Confidential Information, regardless of whether such breach requires disclosure under applicable law. In the event of a Security Incident, Vendor shall notify the MTA in the most expedient time possible and, in no event, more than five (5) hours after the suspicion, discovery, or notification of a Security Incident. Such notification shall be sent via email to the Project Manager and the receipt of such email shall be immediately confirmed via telephone. The Security Incident notification shall be written and include to the extent known: (i) a detailed description of the Security Incident; (ii) the specific Confidential Information impacted; (iii) measures taken by Vendor to identify, prevent, and mitigate the effects of the Security Incident; and (v) any other relevant information and documentation that the MTA requests. Vendor shall update the notice with additional information upon the MTA's request.

**23.6.3. Security Incident Remedial Steps.** Unless otherwise required or prohibited by law, Vendor shall not disclose to any third party the occurrence of, or any information relating to, a Security Incident without the MTA's prior written approval. Subject to the preceding sentence, upon discovery or notification of a Security Incident, Vendor shall take immediate action, at its own expense and in compliance with applicable law, to: (i) investigate the Security Incident; (ii) identify, prevent, and mitigate the effects of the Security Incident; (iii) perform all other actions reasonably necessary to remedy the Security Incident, prevent future incidents of the same or similar nature, and otherwise restore the confidentiality, security, and integrity of Confidential Information in Vendor's possession or control; and (iv) perform those actions and provide the support reasonably requested by the MTA. Vendor shall, at the MTA's direction, pay for or reimburse the MTA for all damages, costs, losses, fines, penalties, and expenses related to a Security Incident, including those incurred by the MTA in connection with preparing and providing notice to impacted data subjects, as well as other related support services such as credit monitoring services and call center services.

**23.6.4. Security Review.** Upon reasonable notice, the MTA shall be entitled to engage a qualified, independent third party (a "Security Reviewer") to audit Vendor's compliance with its information security obligations set out in the Contract (each, a "Security Compliance Audit"). A Security Compliance Audit shall not take place more than once in any calendar year, unless good cause is found by the MTA to warrant more frequent audits. The MTA shall be responsible for the fees and expenses of the Security Reviewer (the "Reviewer Fees"), unless the results of the Security Compliance Audit demonstrate Vendor's material non-compliance with its obligations, in which case Vendor shall reimburse the MTA its reasonable Reviewer Fees upon submission of supporting documentation. The assessments, work papers, and other materials generated or used by the Security Reviewer during the course of the Security Compliance Audit shall be treated as Confidential Information.

**23.7. Treatment of Confidential Information Upon Termination.** Upon termination or expiration of the Contract for any reason, or promptly upon the MTA's request, Vendor shall at its sole cost and expense and at the MTA's direction either: (i) return to the MTA all Confidential Information (including copies and other derivatives of the same) in Vendor's possession, custody, or control, or (ii) irrevocably destroy such Confidential Information (including copies and other derivatives of the same) and certify in writing to such destruction.

**24. Disputes.** This Section 24 (Disputes) sets out Vendor's sole means for challenging any question of fact arising out of, or in any way relating to, the Contract post-award (each, a "Dispute"). The MTA and Vendor agree that exhausting the dispute resolution procedure set out in this Section 24 (Disputes), including the judicial relief available herein, shall be Vendor's sole remedy in connection with a Dispute. If Vendor initiates a Dispute, then the MTA and Vendor shall proceed as follows:

**24.1. Dispute Resolution; Escalation.** Vendor shall have the right to initiate a Dispute by notifying the Project Manager in writing within ten (10) days of when Vendor knows, or should have known, about the subject of the Dispute (each, a "Dispute Notice"). The Dispute Notice shall include a detailed description of the Dispute and Vendor's proposed resolution to the same. Upon receipt of a Dispute Notice, the Key Person and the Project Manager shall meet informally and use good faith efforts to resolve the Dispute without further escalation, and the Project Manager shall notify Vendor of the decision. The Project Manager's decision shall be final and binding on the parties unless, within ten (10) days from the date of Vendor's receipt of such decision, Vendor submits a written appeal to the Project Manager. Upon receipt of said appeal the Dispute shall be escalated to the MTA Chief Procurement Officer and a Vendor "c-level" executive for resolution, and the MTA Chief Procurement Officer shall appoint a dispute resolution officer to review and recommend a written decision to the MTA Chief Procurement Officer, who reserves the right to accept, modify or reject and issue the written decision and provide a copy of the same to Vendor. The MTA Chief Procurement Officer's decision regarding the appeal shall be final and binding on the parties.

**24.2. Disputes; Judicial Relief.** If the parties are unable to resolve a Vendor-initiated Dispute after exhausting the Dispute resolution process set out in Section 24.1 (Dispute Resolution; Escalation), then subject to Section 29.2 (Governing Law; Venue), Vendor's sole remedy shall be to seek review in the form of a challenge of the decision in a court of competent jurisdiction under Article 78 of the New York Civil Practice Law and Rules.

**24.3. Vendor Performance During the Pendency of Disputes.** Vendor agrees that: (i) the pendency of a Dispute (including those subject to Section 24.2 (Disputes; Judicial Relief)) shall not constitute a basis for any modification, limitation, or suspension of Vendor's obligations under the Contract, and Vendor shall diligently perform its obligations in compliance with the Contract and the MTA's orders; (ii) Vendor shall remain fully obligated to perform the Work notwithstanding the existence of a Dispute; and (iii) pending final settlement of the applicable Dispute, Vendor shall perform all obligations under the Contract, including those that are the subject of a Dispute, in the manner that the MTA directs.

**25. Training Services.** Vendor shall provide the MTA all training required by the Contract (the "Training Services") in accordance with the following:

**25.1. Training Materials; Training.** The MTA shall have the right to review and approve all materials that Vendor will provide with the Training Services (the "Training Materials"). Except for Custom Training Materials, Vendor shall provide all Training Materials to the MTA thirty (30) days prior to commencing any training portions of Training Services (the "Training Date"). If the Training Materials contain MTA Data (the "Custom Training Materials"), then Vendor shall provide the MTA with the Custom Training Materials at least sixty (60) days prior to the Training Date, unless the parties mutually agree to a different timeframe. The MTA shall provide Vendor with any revisions, comments, or suggestions to the Custom Training Materials (collectively, the "MTA Revisions") within thirty (30) days of its receipt of the Custom Training Materials, or such shorter period as agreed between the parties. Vendor shall complete all MTA Revisions at no additional cost to the MTA and provide the MTA with the revised Custom Training Materials at least one (1) week prior to the Training Date, unless otherwise agreed in writing by the MTA. All Training Material shall be: (i) sufficiently detailed; (ii) easily understandable so that a person of ordinary intelligence can understand its contents; and (iii) in English and any other MTA-identified language. Vendor shall provide the Training Materials in both print and a nonproprietary industry standard electronic format. All training shall take place at MTA-designated locations. Vendor shall comply with all building security, MTA IT security, or other requirements provided to Vendor within a reasonable time in advance of the Training Date when conducting Training Services on MTA Property. Unless otherwise stated in the Contract, the Training Services shall include "train the trainer" services, which is a technique that teaches students to be teachers themselves.

**25.2. Changes to Training Services.** The parties may mutually agree in writing as to training content, delivery medium, class size, trainer requirements, and cancellation terms. Notwithstanding the foregoing, in no event shall the MTA be responsible for cancellation fee(s) if the MTA provides at least three (3) days' written notice of a postponement or cancellation.

**26. Project Management.** Vendor shall at all times employ, maintain, and assign to the Contract a sufficient number of competent and qualified personnel to meet the requirements for the Work, including at least one (1) "Key Person". A Key Person shall: (i) be dedicated full time to the Contract or, if not dedicated full time to the Contract, have the Contract as her or his highest priority; (ii) keep the MTA fully informed as to Vendor's performance of the Work; (iii) participate in person, or remotely with the MTA's consent, in regularly scheduled and any unscheduled meetings; (iv) issue reports as reasonably requested by the MTA or as otherwise required by the Contract; (v) not be removed by Vendor without the MTA's consent in writing in advance, unless such removal is outside of Vendor's control (e.g., death); (vi) be removed at the MTA's request; and (vii) be replaced only by a person approved in advance in writing by the MTA. A Key Person shall also serve as a Vendor project manager and, if the Contract requires installation or other building services, then a Key Person shall remain onsite while any Work is being performed, unless otherwise required by the Contract or authorized in writing by the MTA. The MTA reserves the right to review resumes, curriculum vitae, and other Key Person certification documents. Vendor shall identify any Key Person(s) in writing to the MTA on or before the Effective Date.

**27. Subcontracting.**

**27.1. Vendor Subcontract Request; Conditions.** Vendor shall perform the Work itself, and Vendor shall not permit any third parties to perform any portion of the Work without the MTA's prior written approval, which may be withheld or conditioned in the MTA's sole discretion. If Vendor desires to subcontract any portion of the Work, then Vendor shall submit a request to the Project Manager at least twenty (20) days prior to the proposed commencement date of the subcontractor's performance. Such request shall include: (i) the Contract number; (ii) a description of the Work to be subcontracted; (iii) the commencement and completion dates for the Work; (iv) the amount to be paid to the subcontractor; (v) the subcontractor's name, resume of similar work performed by the subcontractor, and relevant client contacts and telephone numbers; (vi) the proposed agreement between Vendor and the subcontractor for the Work; and (vii) any other information that the MTA requests, including any and all affirmations, certifications and other forms typically required of a Vendor. If the MTA approves of the request to subcontract Work, then the terms and conditions of the Contract shall apply to such approved subcontractor. The MTA's approval of a subcontractor shall not operate as a waiver of any right against Vendor or other third parties, nor shall it relieve Vendor of any of its obligations to perform the Work as set forth in the Contract, including those portions of the Work that were subcontracted. The MTA shall have no liability for any subcontractor-performed Work unless the MTA has provided prior written approval for the specific subcontractors and the specific Work performed by such subcontractor pursuant to this Section 27 (Subcontracting).

**27.2. Vendor Subcontractor Liability.** If Vendor engages subcontractors in connection with the Contract, then Vendor agrees that it shall remain fully and directly liable for all obligations under the Contract as though no such subcontracting had occurred. Vendor shall be solely responsible for ensuring that any subcontractors it engages fully comply with Vendor's obligations under the Contract as if such subcontractor were Vendor.

**28. Change Orders; Contract Modifications.**

**28.1. MTA Notice of Change Orders; Determination of Price and Time.** The MTA shall have the right, in its sole discretion, to order changes to the Work that result in additions or subtractions to the amount, type, or value of the Work, provided that such changes are within the general scope of the Work. Adjustments to the Total Contract Price (either increases or reductions) due to such order shall be based on the rates included in the Price Schedule for equivalent Work, as determined by the MTA. If the MTA-ordered change involves Work for which there are no equivalent rates included in the Price Schedule, or otherwise impacts Vendor's time for performance, then the MTA and Vendor shall negotiate adjustments to the Total Contract Price, performance schedule, and any other necessary contract terms to address such Work. Such negotiated changes shall be memorialized in a written document that is executed by the MTA and Vendor and that references the Contract (each, a "Change Order" or "Supplemental Agreement"). If the MTA and Vendor are unable to reach agreement on a Change Order, then the Manager shall have the right to direct Vendor in writing to proceed with the Work that is subject to the negotiations, and Vendor shall fully comply with such direction; provided, however, that Vendor shall have the right to initiate a Dispute within five (5) days of such direction to proceed pursuant to Section 24 (Disputes).

**28.2. Vendor Notice of Changes.** Vendor shall promptly notify the MTA in writing if Vendor believes that there has been a change to the amount, type, or value of the Work required pursuant to the Contract, unless such change is the subject of a Change Order. The MTA shall promptly review such notice and shall make a final and binding decision as to whether such alleged change is in fact a change to the amount, type, or value of the Work. If the MTA agrees that such alleged change is in fact a change to the amount, type, or value of the Work, then the MTA and Vendor shall proceed pursuant to Section 28.1 (MTA Notice of Change Orders; Determination of Price and Time).

**28.3. Contract Modifications; Authority.** The only MTA representative authorized to execute a Change Order or other modification to the Contract is the MTA's Chief Procurement Officer (or her or his designee), and any such Change Order or other modification must be in writing. No other person is authorized to execute a Change Order or otherwise modify the Contract, either in writing or orally. No change in, modification to, termination, or discharge of the Contract in any form whatsoever, shall be valid or enforceable unless it is in writing and signed by the party to be charged therewith or her duly authorized representative; provided, however, that any change in or modification, termination, or discharge of the Contract expressly provided for in the Contract shall be effective as so provided.

**28.4. Limitations on Change Order Compensation.** Notwithstanding anything to the contrary, in no event shall (i) Vendor's compensation for Change Order Work that Vendor performs directly exceed Vendor's actual cost for the Change Order Work, plus a combined profit and home office overhead rate that is a negotiated percentage of the direct labor and material costs, and (ii) Vendor's compensation for Change Order Work performed by subcontractors shall not exceed Vendor's actual cost for the Change Order Work, plus an additional amount not to exceed five percent (5%) of such actual costs in order to cover Vendor's profit, superintendence, administration, insurance, G&A and other overhead expenses, and all other Vendor costs and expenses. Vendor agrees that any compensation that it proposes for Change Order Work must be allowable under the cost principles of Federal Acquisition Regulation (FAR), Part 31.2.

**29. General.**

**29.1. MTA Vendor Code of Ethics.** Vendor agrees throughout the Term (i) to comply with the MTA Vendor Code of Ethics, (available at: [https://new.mta.info/sites/default/files/2018-05/MTA\\_Vendor\\_Code\\_of\\_Ethics.pdf](https://new.mta.info/sites/default/files/2018-05/MTA_Vendor_Code_of_Ethics.pdf)), and (ii) to report to the MTA any change in circumstance, including conflicts of interest, that materially impacts the previously-submitted "Bidder's Certification of Compliance with the Vendor Code of Ethics" or subsequent update(s) submitted

to the MTA. Vendor further agrees throughout the Term to comply with the MTA's Zero Tolerance Policy, which generally prohibits Vendor from giving a gift of any value, including entertainment and meals, to MTA officers, directors, and employees.

**29.2. Governing Law; Venue.** The Contract shall be governed and construed in all respects in accordance with the laws of the State of New York without regard to any conflicts of laws principles. The exclusive venue and jurisdiction for any action or proceeding arising out of the Contract shall be the state and federal courts located in New York County, New York. Vendor accepts the personal jurisdiction of such courts.

**29.3. Full Cooperation; Coordination.** Vendor agrees to cooperate at all times with the MTA and other third parties (including other MTA vendors) and to coordinate its Work with the MTA's requirements. If the MTA determines that it is necessary for the MTA or third parties to perform work on the site where the Work is being performed, then the MTA shall have the right to access said site and to permit such other third parties to access such site at such times and under such conditions that do not unreasonably interfere with Vendor's performance of the Work. Vendor shall continue to perform its Work diligently and in a manner that minimizes interference with such other work.

**29.4. Notices.** Any notices required or permitted under the Contract shall be given to the appropriate party at the address designated by the MTA or Vendor in writing. All notices hereunder must be in writing, in accordance with the Contract, unless expressly indicated otherwise. Such notices shall be deemed given: (i) upon personal delivery; (ii) if sent by facsimile, upon confirmation of receipt; or (iii) if sent by certified or registered mail, postage prepaid, five (5) calendar days after the date of mailing.

**29.5. Vendor Employees; Relationship.** The MTA and Vendor are independent contractors, and no agency, partnership, joint venture, or employer-employee relationship is intended or created by the Contract. Vendor shall not hold itself out as or claim to be an MTA officer or employee, or otherwise make a claim, demand, or application to or for any right or privilege applicable to an officer or employee of the MTA, including claims for Workers' Compensation coverage, Unemployment Insurance benefits, health insurance, life insurance, Social Security coverage, or retirement membership or credit. Vendor shall exercise full control over and supervision of the employment, direction, compensation (including deducting any required withholding taxes and other expenses associated with the employees' employment), discharge, and benefits of its officers and employees, including employees of subcontractors, and of all other persons assisting it in the performance of the Work.

**29.6. Loss or Damage to MTA Property.** Vendor shall care for and protect all tangible and intangible MTA Property with which Vendor comes into possession, custody, or to which Vendor otherwise has access, and Vendor shall, at its sole cost and expense, repair or restore any such property that is lost or damaged attributable to Vendor to the condition that such MTA Property was in prior to such loss or damage.

**29.7. Communications.** Communications shall be in writing and shall be delivered to each party's designee. Telephone calls may be used to expedite communications but shall not be official communications unless confirmed in writing with the designees. Communications shall be considered received at the time actually received by the designee.

**29.8. Headings; Severability.** Headings used herein are for reference purposes only and in no way define, limit, or construe the scope or extent of such section or in any way otherwise affect the Contract. If any Contract provision is determined to be unenforceable or invalid by applicable law or court decision, such enforceability or invalidity shall not render the Contract unenforceable or invalid as a whole and, in such event, such provision shall be changed and interpreted so as to best accomplish the objectives of such provision within the limits of applicable law or court decision.

**29.9. Assignment; Succession.** Vendor shall not assign, transfer, convey, sublet, or otherwise dispose of the Contract or its right, title, or interest therein, or its power to execute the Contract to any other person, firm, or entity without the MTA's prior written consent, which may be withheld, conditioned, or delayed in the MTA's sole discretion (provided that Vendor may assign monies due or to become due to Vendor under the Contract upon prior written notice to the MTA and the MTA's written acknowledgment of the same). Vendor's breach of the preceding sentence shall constitute a Default Event and the MTA shall have all rights and remedies available to it under law and in equity, including terminating the Contract. If there is an assignment of monies due or to become due under the Contract, or a change in control of Vendor, then Vendor shall immediately provide the MTA with all information, documentation, and authorizations that the MTA determines to be appropriate. The Contract, including the rights, duties, and obligations, shall bind and inure to the benefit of the successors and assigns of the MTA and Vendor. Nothing herein shall either restrict Vendor's right to assign monies due or to become due pursuant to NYS Uniform Commercial Code Section 9-318 or, subject to Section 8.6 (Bankruptcy Code Section 365(n)) be construed to hinder, prevent, or affect Vendor's assignment for the benefit of creditors that is made pursuant to applicable law.

**29.10. Freedom of Action.** The MTA is free and without restriction to procure any goods and services as it sees fit, and to engage other third parties to assist in the same or otherwise provide goods and services, including those that compete directly with Vendor.

**29.11. No Publicity.** To the fullest extent permitted by law, Vendor shall not publicize, issue, or disclose any release, statement, or other information relating to the Work or the MTA in any manner, including in advertisements, publications, press releases, articles, websites, social media, or speeches, without the MTA's prior written approval, which may be withheld or withdrawn for any reason.

**29.12. Access to MTA Data.** The MTA shall have full access at all times to all MTA Data (including drafts of MTA Data and documentation related to Work contemplated in the Contract) that are within Vendor's possession or control. Vendor shall immediately provide the MTA with

copies of all such MTA Data upon the MTA's request. As with all other Vendor obligations under the Contract, Vendor's obligation set out in this Section 29.12 (Access to MTA Data) shall apply regardless of whether Vendor disputes what constitutes MTA Data or is otherwise asserting a right to withhold such MTA Data from the MTA.

**29.13. Format of Deliverables; Instructions.**

**29.13.1. Deliverable Format.** For all Work and MTA Data that is documentable or otherwise written, Vendor shall provide such Work and MTA Data to the MTA in an MTA-requested form, format, and medium (e.g., via email, hard copy, MS Word, .PDF, etc.).

**29.13.2. Clarifying Instructions.** If required by the Contract or best industry practices, Vendor shall deliver as part of the Work, written materials in sufficient detail and clarity, and with sufficient explanation and information, to enable the MTA to understand, apply, modify, and maintain such Work without further assistance from Vendor or other third parties.

**29.14. Entire Agreement.**

**29.14.1. No Vendor Modifications to Contract Documents.** Subject to Section 28 (Change Orders; Contract Modifications), the Contract Documents include only those terms and conditions with which the MTA shall agree in connection with the Solicitation. The term "Modifying Bid Terms" means any terms and conditions included with, attached to, or referenced in the submitted Bid or otherwise discussed during the procurement process, that modify or conflict with the Contract Documents, or otherwise constitute an exception to the terms and conditions included in the Contract Documents. Vendor agrees that all Modifying Bid Terms shall not be binding on the MTA, deemed excluded from its Bid, and provided by Vendor solely for informational and promotional purposes. The MTA shall have the sole and absolute discretion to determine whether a particular term or condition constitutes an excluded Modifying Bid Term or part of the accepted Bid.

**29.14.2. Entire Agreement.** Subject to Section 29.14.1 (No Vendor Modifications to Contract Documents), the Contract constitutes the entire agreement between the MTA and Vendor concerning the subject matter herein. No terms or conditions (whether written or based on performance or course of conduct) that modify the Contract (the "Additional Terms") shall be binding on the MTA, unless agreed to pursuant to Section 28 (Change Orders; Contract Modifications). Vendor expressly agrees that the Contract shall not include (i) any Additional Terms that Vendor affixes to, incorporates into, or otherwise provides with the Work (including standard pre-printed or custom order forms, product literature, "shrink wrap" terms accompanying software delivery, "click-through" agreements, order forms, invoices, or other documents Vendor provides to the MTA for payment), regardless of whether the MTA accepts such Additional Terms via an approval, payment, or other action signifying its acceptance to such Additional Terms, or (ii) any Additional Terms that are otherwise presented to the MTA and not accepted pursuant to Section 28 (Change Orders; Contract Modifications). By way of clarification, and not limitation, in no event shall any term or condition included in the Bid that the MTA determines to modify the Contract Documents so modify the Contract Documents or otherwise be incorporated into the Contract. The MTA shall not be liable or obligated for any goods, services, or other costs that are not expressly set out in the Contract.

**29.15. Multi-Agency Use.** Vendor agrees that any MTA affiliate or subsidiary can utilize the same pricing, terms, and conditions set out in the Contract.

**29.16. Force Majeure.** Neither party shall be liable to the other party for delays or any failure to perform an obligation under the Contract due to causes beyond its reasonable control and that are not caused or attributable to the fault or negligence of the party delayed (the "Delayed Party") (each, a "Force Majeure Event"). Such Force Majeure Events include, but are not limited to, fire, explosion, flood or other natural catastrophe, terrorism, legislation, governmental orders, regulation, or labor strikes. However, the Delayed Party shall use its best efforts to minimize the delays caused by any such Force Majeure Event. In addition, if Vendor seeks relief for a Force Majeure Event, then it must notify the MTA promptly, and in no case more than two (2) days after, the occurrence of a Force Majeure Event, and provide the MTA with a reasonable plan to resume performance. Upon such notice, Vendor shall take all commercially reasonable steps to mitigate the effect of the Force Majeure Event. If Vendor fails to: (i) promptly notify the MTA of the Force Majeure Event; (ii) provide to the MTA a reasonable plan to resume performance; or (iii) mitigate the effects of the Force Majeure Event, then Vendor's performance shall not be considered excused pursuant to this Section 29.16 (Force Majeure).

**29.17. Determination of Ambiguities; Order of Precedence.** The MTA shall have the sole right to resolve any errors, inconsistencies, ambiguities, or discrepancies, including typographical errors in the Contract, and Vendor agrees to be bound by such resolutions. Unless the Project Manager determines otherwise, in the event of a conflict or inconsistency between or among portions of the Contract, the more stringent provision or requirement shall control, except for situations in which no provision is clearly more stringent, in which case the Project Manager shall generally apply the following order of precedence in the following descending order: (i) these Terms and Conditions; (ii) the Contract Documents other than these Terms and Conditions, including all forms, certifications, and attachments; and (iii) the Bid. In no event shall the order of precedence supersede applicable law unless the Project Manager determines that the requirements set out herein are more stringent than those established by applicable law.

**30. Certain Information Technology Requirements.** Additional terms applicable to Work involving information technology are incorporated into, and attached to, these Terms and Conditions as Schedule 2 (Certain IT Requirements). Vendor shall comply with all of the requirements included in Schedule 2 (Certain IT Requirements) for all portions of the Work unless the Manager notified Bidders in writing during the procurement process that certain portions of the Work are not subject to Schedule 2 (Certain IT Requirements).

## **SCHEDULE 1: APPLICABLE LAWS AND REGULATIONS**

### **1. Schedule 1 Interpretative Rules.**

**1.1. Defined Terms.** Subject to Section 1.2 (Applicability to Bidders), capitalized terms used in this Schedule 1 (Applicable Laws and Regulations) that are not defined herein have the meanings ascribed to them in the Terms and Conditions.

**1.2. Applicability to Bidders.** The obligations in this Schedule 1 (Applicable Laws and Regulations) include those that apply to both (i) any individual or entity submitting a Bid in response to a Solicitation, and (ii) the Vendor to which the Contract is awarded. Accordingly, and for purposes of this Schedule 1 (Applicable Laws and Regulations), all references to the terms "Vendor", "Bidder", "proposer", and other similar terms shall be interpreted to mean and include Vendor and any individual or entity submitting a Bid in response to the Solicitation. All individuals and entities submitting Bids in response to the Solicitation must comply with those obligations herein that pertain during the procurement process, and the selected Vendor must comply with all applicable obligations herein throughout the Term.

**1.3. Other Agencies.** The MTA is the entity issuing the Solicitation and entering into the Contract with Vendor. In many instances, however, the Solicitation is intended to procure Work for an MTA subsidiary or affiliate (e.g., Metro-North Railroad, Long Island Rail Road, and New York City Transit). To this end, and unless the Contract Manager directs otherwise in writing, Vendor agrees that its obligations set out in this Schedule 1 (Applicable Laws and Regulations) shall apply to both the MTA and the MTA subsidiary or affiliate for which the Work is being procured, regardless of whether this Schedule 1 (Applicable Laws and Regulations) specifically identifies the MTA subsidiary or affiliate.

**1.4. Interpretative Decisions.** The MTA shall have the sole right to resolve any errors, inconsistencies, ambiguities, discrepancies, or questions regarding the interpretative rules (set out in this Section 1 (Schedule 1 Interpretative Rules)) and their application, and Vendor agrees to be bound by such resolutions.

### **2. New York State Labor Law.**

**2.1. Compliance with New York State Labor Law.** Vendor shall comply with applicable requirements of the New York State Labor Law, as amended and supplemented (the "**NY Labor Law**"). Specifically, if any Work falls within the purview of the NY Labor Law, Vendor (and its subcontractors) shall comply with said NY Labor Law with respect to any such portion of the Work, including NY Labor Law Sections 220, 220-f, 222-a, and 230. Vendor shall ensure that no laborer, workman, or mechanic that Vendor (or its subcontractors or other persons) employs to do Work shall be permitted or required to work more than eight (8) hours in any one calendar day or more than five (5) days in any one calendar (1) week, except in cases of extraordinary emergency as defined in NY Labor Law Section 220. If additional time beyond that which is permitted is necessary to complete the Work within the Contract time limits, then the MTA shall work with Vendor to apply for and obtain the requisite exemptions. Vendor shall, and shall ensure that its subcontractors (or other persons doing or contracting to do the Work), pay all wages for a legal day's work (as defined by law) to all classes of such laborers, workmen, or mechanics for the Work and related materials in an amount that is not less than the prevailing rate of a day's work in the same trade or occupation at the time the Work is performed and in the same locality (as defined in NY Labor Law Sections 220 and 230) where the completed Work is to be situated, erected, or used, and such amounts shall be paid in cash except as otherwise permitted in NY Labor Law Sections 220 or 230. Failure to comply with the NY Labor Law shall constitute a Default Event and render the Contract void.

**2.2. Wage Rates; Certified Payrolls.** Pursuant to NY Labor Law Section 220, the New York State Commission of Labor has determined the schedule of supplements to be provided and wages to be paid to workmen, laborers, and mechanics engaged in the Work. To the extent that NY Labor Law Section 220 applies, Vendor agrees that: (i) it and all subcontractors shall comply with such schedule of supplements and wages, (ii) it shall submit to the MTA certified payrolls (attested to by a duly authorized Vendor representative) for Vendor and all subcontractors, enumerating all payments to, or on behalf of, persons employed in connection with the Work, with such submissions at intervals agreed upon between Vendor and the Project Manager, but not less frequently than once per month.

**3. MTA Capital Program Review Board.** The Contract constitutes a special obligation of the MTA, payable solely from any one or combination of the following funding sources: (i) proceeds of grants or other monies paid or made available by any combination of the Federal government, the State, or the City to or on behalf of the MTA for the Contract or for the project encompassing the Work; (ii) proceeds of the MTA Transit Facilities Service Contract Bonds; (iii) monies that the Triborough Bridge and Tunnel Authority made available to the MTA for the Contract; (iv) net proceeds that the MTA realized from the sale-leaseback or "safe-harbor" leasing of assets constituting transit projects; or (v) monies made available to the MTA for the Contract other than monies paid or payable under the note issued pursuant to the Financing Contract dated July 1, 1982. The MTA represents that, to the extent applicable, the Contract or the project encompassing the Work is included within the Capital Program Plan for transit facilities approved by the MTA Capital Program Review Board (established pursuant to New York State Public Authorities Law (the "**NY Public Authorities Law**") Section 1269-a), and that estimated receipts from the funding sources identified above are enumerated in such Plan in amounts adequate to fund the Contract, in accordance with NY Public Authorities Law Section 1269-b.

**4. Net Neutrality.** In accordance with the requirements of Executive Order No. 175 ("**EO 175**"), Vendor shall adhere to net neutrality principles in the provision of internet services under this Contract, regardless of delivery method unless the MTA Managing Director, or their designee, determines that adherence to net neutrality principles for a particular purpose is not in the best interests of the State. Nothing in this provision supersedes any obligation or authorization a provider of broadband Internet access service may have to address the needs of emergency communications or law enforcement, public safety, or national security authorities, consistent

with or as permitted by applicable law, or limits the provider's ability to do so. As used herein, "net neutrality" means that Vendor will not block, throttle, or prioritize internet content or applications or require that end users pay different or higher rates to access specific types of content or application. For the purposes of this Contract, the prohibition against blocking or throttling of internet content or applications does not apply to reasonable network management practices. Any Vendor awarded a new Contract or Contract renewal shall certify compliance with EO 175 as a condition precedent to award or renewal.

**5. Compliance with Consultant Disclosure Law.** For purposes of this Section 5 (Compliance with Consultant Disclosure Law), the term "**Consulting Services**" means services consisting of analysis, evaluation, research, training, data processing, computer programming, engineering, environmental, health, and mental health services, accounting, auditing, paralegal, legal, or other similar services. Pursuant to NY Finance Law Section 163(4-g) (as amended by Chapter 10 of the Laws of 2006), if the Contract involves Consulting Services, then Vendor shall timely, accurately, and properly submit an annual employment report for the Contract to the MTA, the Department of Civil Service, and the State Comptroller.

**6. Failure to Comply with State Investigation as Grounds for Cancellation of Contract.** The term "**Compliance Action**" means to: (i) testify in an investigation concerning any transaction or contract with the state, any political subdivision thereof, a public authority, or with any public department, agency, or official of the state or of any political subdivision thereof or of a public authority; (ii) sign a waiver of immunity against subsequent criminal prosecution; or (iii) answer any relevant question concerning such transaction or contract. If a person refuses to perform a Compliance Action when called to do so before a grand jury, any state department head, temporary state commission, or other state agency, law department organized crime task force, any city department head, or other city agency, which is empowered to compel the attendance of witnesses and examine them under oath, then such person (and any firm, partnership, or corporation of which she or he is a member, partner, director, or officer) shall be disqualified for a period of five (5) years after such refusal from selling to, submitting bids to, receiving awards from, or entering into any contracts with any public authority or official thereof (including the MTA and its subsidiaries and affiliates) for goods, work, or services. The Contract, and any and all contracts made with any public authority or official thereof by such person (and any firm, partnership, or corporation of which she or he is a member, partner, director, or officer) may be cancelled or terminated by the MTA without incurring any penalty or damages on account of such cancellation or termination; provided, however, that the MTA shall pay amounts due under the Contract for Work done prior to such cancellation or termination.

### **7. Diesel Emissions Reduction Act of 2006.**

**7.1. Compliance with DERA.** Vendor represents that, in connection with activities relating to the Contract, it shall comply with the 2006 Diesel Emissions Reduction Act ("**DERA**"), as codified at NY Environmental Conservation Law Section 19-0323, and its implementing regulations. In accordance with DERA, Vendor:

**7.1.1. Ultra-Low Fuel.** Shall use ultra-low sulfur diesel fuel (< 15ppm) in all heavy-duty diesel vehicles (>8500 lbs. gross vehicle weight rating ("**GVWR**")) ("**HDVs**") used at or on any MTA Property or worksite in performing Work or providing materials or equipment unless such HDVs are otherwise exempt.

**7.1.2. Vendor DERA Representation.** Represents that all of its affected vehicles will meet the DERA-required Particulate Matter ("**Particulate Matter**") and Oxides of Nitrogen (NOx) emission standards by: (i) utilizing devices that the U.S. Environmental Protection Agency ("**EPA**") or the California Air Resources Board certify as achieving reductions in Particulate Matter and NOx at the highest classification level for emission control strategies applicable to the particular engine and application; (ii) utilizing engines certified to meet the 2007 EPA standard for Particulate Matter (0.01g/bhp/hr) as set forth in 40 CFR Section 86.007-11 or any subsequent EPA standard that is at least as stringent; or (iii) employing alternative fuel vehicles that do not operate on diesel fuel ("alternative fuel" means natural gas, propane, ethanol, methanol, gasoline (when used in hybrid electric vehicles only), hydrogen, electricity, fuel cells, or advanced technologies that do not rely solely on diesel fuel or a diesel/non-diesel mixture). If Vendor has secured a waiver (including waivers based on the useful life of the vehicle) from the Best Available Retrofit Technology ("**BART**") or ultra-low sulfur diesel fuel requirements from the New York State Department of Environmental Conservation, then Vendor shall submit the waiver to the MTA with its Bid.

**7.2. DERA Annual Report.** Acknowledges that the MTA is required to submit an annual report detailing MTA and Vendor compliance with DERA. Vendor shall provide, no later than September first (1<sup>st</sup>) of each calendar year, the following information for covered vehicles performing Work on any MTA Property or worksite: (i) the total number of diesel-fuel powered motor vehicles owned or operated, and how many of those were powered by ultra-low sulfur diesel fuel; (ii) the total number of on road diesel fuel-powered motor vehicles owned or operated with a GVWR of more than 8500 lbs.; (iii) the total number of off road vehicles owned or operated; (iv) the number of such on road and off road vehicles that utilized BART, including a breakdown by BART installation date, vehicle model, VIN (if applicable), engine year, and the type and classification level of technology used for each vehicle including the CARB designated diesel emission control strategy family name, if applicable; (v) the number of such vehicles that have been replaced/repowered with an engine certified to the applicable 2007 EPA standard for Particulate Matter as set forth in 40 CFR Section 86.007-11 or to any subsequent EPA standard for Particulate Matter that is at least as stringent; (vi) the number of such vehicles that have been replaced with alternative fuel vehicles; (vii) the number of inventoried HDVs retired; (viii) identification of all ultra-low sulfur diesel waivers, findings, and renewals of such findings and, along with each such waiver, the quantity of diesel fuel needed to power diesel fuel-powered motor vehicles owned or operated, and specific information concerning the availability of ultra-low sulfur diesel fuel; (ix) identification of BART waivers

issued to Vendor; (x) the quantity of ultra-low sulfur diesel fuel used; (xi) a certification that all reported information is correct and a statement of compliance indicating the percent of inventoried HDVs meeting the applicable DERA requirements; and (xii) any other information that the New York State Department of Environmental Conservation requires.

**8. Bidder Responsibility Determinations.** The MTA may take into account information regarding Vendor's compliance with the MBE/WBE program requirements included in the Contract, including: (i) Vendor's failure to meet goals or demonstrate good faith efforts to meet same, and (ii) Vendor's willful or intentional failures, fraud, or intentional misrepresentations, as described in applicable state MBE/WBE law and regulations, in rendering determinations as to whether Vendor is found to be a responsible Bidder in any Solicitation, as required pursuant to NY Public Authorities Law Section 1209 or 1265-a, as applicable.

**9. Tax Exemption.** The MTA is a government instrumentality of New York State and, pursuant to NY Public Authorities Law Sections 1266 and 1275, as amended, is exempt from New York State and local taxes.

**10. No Confidentiality.** Vendor agrees that all information heretofore or hereafter furnished or disclosed to the MTA by Vendor in connection with the placing or filing of the Contract is furnished or disclosed as a part of the consideration for the Contract, that such information is not, unless otherwise agreed to by the MTA in writing, to be treated as confidential or proprietary as required by the Contract, and that Vendor shall assert no claims by reason of the use or disclosure of such information by the MTA or its assigns.

**11. Termination for Violations of Law.** The following constitute Default Events under the Contract: (1) the MTA determines that: (a) the certificate that Vendor files pursuant to NY Finance Law Section 139-k is intentionally false or intentionally incomplete; (b) the certificate that Vendor files pursuant to New York Tax Law Section 5-a was not timely filed, or is intentionally false or incomplete; or (c) Vendor's responses to the Vendor Responsibility Questionnaire were intentionally false or intentionally incomplete, and (2) a Vendor member, partner, director, or officer is convicted of: (a) bribery involving public servants and related offenses as defined in New York State Penal Law ("Penal Law") Article 200; (b) corrupting the government as defined in Penal Law Article 496; or (c) defrauding the government as defined in Penal Law Section 195.20.

**12. Non-Collusion.** By submitting a Bid, Bidder and each person signing on behalf of Vendor certifies, under penalty of perjury, that to the best of her or his knowledge and belief: (i) the prices quoted were arrived at independently without collusion, consultation, communication, or agreement with any other Bidder or competitor; (ii) unless otherwise required by law, Vendor did not and shall not knowingly disclose (directly or indirectly) to other Bidders or competitors prior to Bid opening the quoted prices; and (iii) Vendor has not and shall not induce any other person or firm to submit or not submit a Bid for purposes of restricting competition (collectively, the "Non-Collusion Requirements"). If Bidder cannot certify to the Non-Collusion Requirements, then it shall submit with its Bid a signed statement explaining why such certification cannot be made. A Bid shall not be considered for award, and an award shall not be made, if any of the Non-Collusion Requirements are not met. A Bidder failing to comply with the Non-Collusion Requirements shall not be considered for award unless the MTA determines that any disclosure made in violation of the Non-Collusion Requirements was not made for the purpose of restricting competition. The fact that Vendor: (a) published price lists, rates, or tariffs covering items being procured; (b) informed prospective customers of proposed or pending publication of new or revised price lists for such items; or (c) sold the same items to other customers at the same prices being quoted, does not constitute, without more, a disclosure in violation of the Non-Collusion Requirements.

**13. Recycled Materials.**

**13.1. Manufacturing and Packaging.** Subject to applicable law and Contract requirements, Vendor is encouraged (i) to use recycled, recyclable, or recovered materials in the manufacture of Goods and packaging, and (ii) to offer remanufactured Goods, both to the maximum extent practicable without jeopardizing the performance or intended end use of the Goods or packaging, unless such use is precluded due to health, welfare, or safety requirements. Where such use is not practical, suitable, or permitted by the Contract, Vendor shall deliver new Goods and packaging in accordance with the Contract requirements. Unless Bidder identifies in its Bid those Goods and packaging with recycled, recyclable, recovered, refurbished, or remanufactured content, Vendor shall be deemed to be offering new Goods and packaging.

**13.2. Reasonably Competitive.** NY Public Authorities Law Section 2878-a requires the MTA to purchase recycled products when the price for such products is reasonably competitive and the quality is adequate for the intended purpose. "Reasonably competitive" means a comparable recycled product manufactured, in whole or in part, with secondary materials with a cost premium of no greater than ten percent (10%). Printed material on recycled paper shall include a printed symbol indicating that the material is printed on recycled paper. A "recycled product" means any product that has been manufactured from secondary materials, as defined in New York Economic Development Law Section 261(1), and that meets the requirements of New York Environmental Conservation Law Section 27-0717(2).

**13.3. Federal Requirements.** Vendor shall comply with Resource Conservation and Recovery Act ("RCRA") Section 6002, as amended (42 U.S.C. 6962), including the regulatory provisions of 40 CFR Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in 40 CFR Part 247 Subpart B. Vendor shall include these requirements in each subcontract financed in whole or in part with FTA-provided Federal assistance, modified only if necessary to identify the affected parties.

**14. Iran Divestment Act.** Vendor shall comply with the Iran Divestment Act of 2012, as codified in NY Finance Law Section 165-a. By entering into the Contract, Vendor certifies pursuant to NY Finance Law Section 165-a that it is not on the "Entities determined to be non-

Responsive bidders/offers pursuant to the New York State Iran Divestment Act of 2012" ("Prohibited Entities List") posted at: <http://www.ogs.ny.gov/about/regs/docs/ListofEntities.pdf>. Vendor further certifies that it shall not utilize any subcontractor identified on the Prohibited Entities List under the Contract. Vendor shall provide the same certification in connection with any Contract renewal or extension. Vendor agrees that any proposed assignee shall be required to certify that it is not on the Prohibited Entities List before the Contract assignment will be approved by the State. If, during the Term, the MTA receives information that a person (as defined in NY Finance Law Section 165-a) is in violation of the above-referenced certifications, then the MTA will review such information and offer the person an opportunity to respond. If the person fails to demonstrate that it has ceased its engagement in violating investment activity within ninety (90) days after the determination of such activity, then the MTA shall take such action as may be appropriate and provided for by law, rule, or contract, including imposing sanctions, seeking compliance, and recovering damages, and such failure shall be considered a Default Event. The MTA reserves the right to reject any Bid, request for assignment, renewal, or extension from a Bidder/Vendor appearing on the Prohibited Entities List prior to the award, assignment, renewal, or extension, and to pursue a responsibility review for any Bidder/Vendor that is awarded a Contract and appears on the Prohibited Entities List after Contract award.

**15. State Lobbying Law.** To the extent that the Contract is a "procurement contract" as defined in NY Finance Law Sections 139-j and 139-k (the "Lobbying Law"), by signing the Contract, Vendor certifies and affirms that all disclosures made in accordance with the Lobbying Law are complete, true, and accurate. The Lobbying Law imposes fines and penalties against persons and organizations engaging in impermissible contacts about a governmental procurement and provides for the debarment of repeat violators. The affirmation, certifications, and disclosure of prior non-responsibility determinations submitted with the Bid are incorporated into the Contract by reference. For certain Contract modifications or Change Orders, Vendor shall be required to submit new disclosure and certification forms ("Disclosure of Prior Non-responsibility Determinations" and the "Affirmation and Certification") as part of the Change Order process. Vendor shall disclose in its Bid, and immediately update the MTA in writing during the Term, all findings of non-responsibility due to intentional provision of false or incomplete information to a covered agency or authority within the past four (4) years with respect to the Lobbying Law. It shall be a Default Event if the MTA determines that Vendor's "Affirmation and Certification" and "Disclosure of Prior Non-responsibility Determinations" forms submitted with its Bid were intentionally false or intentionally incomplete.

**16. Omnibus Procurement Act.**

**16.1. Relevant Threshold.** If the Total Contract Price is equal to or greater than one million dollars (\$1,000,000) (the "Omnibus Threshold"), then Vendor shall document its efforts to encourage the participation of New York State Business Enterprises (each, an "NYSBE") as suppliers and subconsultants by showing that Vendor has: (i) solicited bids, in a timely and adequate manner, from NYSBEs, including certified MBE/WBEs; (ii) contacted the New York State Department of Economic Development to obtain NYSBE listings; (iii) placed notices for subconsultants and suppliers in newspapers, journals, or other trade publications distributed in New York State; or (iv) participated in bidder outreach conferences. Documentation of such efforts must be provided to the MTA upon its request. If Vendor determines that NYSBEs are not available to participate in the Contract as subconsultants or suppliers, then Vendor shall provide a statement to the MTA indicating the method by which such determination was made. If Vendor does not intend to use subconsultants, then Vendor shall provide a statement to the MTA verifying this.

**16.2. Compliance with the Federal Equal Opportunity Act of 1972; Offset Credits.** Vendor shall comply with the Federal Equal Opportunity Act of 1972 (P.L. 92-261), as amended. Vendor shall cooperate with any New York State effort to obtain offset credits from foreign countries as a result of the Contract.

**16.3. Notification to New York State Residents.** If the Total Contract Price meets or exceeds the Omnibus Threshold, then Vendor shall make reasonable efforts to notify New York State residents of employment opportunities by listing any such positions with the New York State Department of Labor (the "NYSDDL"), Division of Employment and Workforce Solutions, or to otherwise notify New York State residents in a manner consistent with existing collective bargaining agreements. Vendor shall document such efforts and provide said documentation to the MTA or the State, upon request.

**16.4. Availability of New York State Subconsultants and Suppliers.** Information on the availability of New York State subconsultants and suppliers is available: (i) online by going to the following address and signing up for a free account with the New York State Contract Reporter: <https://www.nyscr.ny.gov/register.cfm>; or (ii) by contacting the New York State Department of Economic Development, Division of Small Business, at 518-292-5266.

**16.5. Certified Minority and Women-Owned Business Enterprises.** A directory of New York State certified MBE/WBEs is available: (i) online at: <https://ny.newnycontracts.com/FrontEnd/VendorSearchPublic.asp>; (ii) by contacting the Empire State Development's Division of Minority and Women's Business Development: (a) Albany, NY 12245, (518) 292-5250, or (b) 633 Third Avenue, 33rd Floor New York, NY 10017 (212) 803-2414; or (iii) by contacting the MTA's Department of Diversity and Civil Rights at 646-252-1385 for an appointment to inspect the directory at 2 Broadway, 16th floor, New York, NY 10004. At Vendor's request, the Department of Diversity and Civil Rights will assist a firm in reviewing the directory.

**16.6. Future Contracting Opportunities.** Entities and individuals that want to be informed by email of future contracting opportunities advertised in the New York State Contract Reporter may sign up for a free account at: <https://www.nyscr.ny.gov/contracts.cfm> to receive notices.

**16.7. Registration.** Entities and individuals that want to sign up, at no charge, to be included in the New York State Business Registry, which may be used by various New York State public

agencies and by prime consultants who may contact businesses directly about opportunities, may go to <https://www.nyscr.ny.gov/register.cfm>. Requests for listing in this registry may be made by: (i) an NYSBE that is not currently listed in this registry, and (ii) a business in any other state or country, provided the state or country in which the company is located does not engage in discriminatory purchasing practices. These discriminatory jurisdictions are identified within the Business Registry application.

**16.8. Discriminatory Jurisdictions.** If Bidder's principal place of business is located in a country, nation, province, state, or political subdivision that penalizes New York State vendors, and if the proposed Work will be substantially produced or performed outside of New York State, then the Omnibus Procurement Act 1994 and 2000 amendments (Chapters 684 and 383, respectively) require that such Bidder be denied contracts that it may otherwise obtain. Contact New York State Department of Economic Development for a current list of jurisdictions subject to this Section 16.8 (Discriminatory Jurisdictions).

**17. Comptroller Approval.** Pursuant to NY Public Authorities Law Section 2879-a, the Contract may be subject to the Office of the State Comptroller's review and approval and, if such review and approval is required, then the Contract shall not be valid or binding upon the MTA unless the Office of the State Comptroller reviews and approves the Contract.

**18. Maintenance of Workers' Compensation Insurance.** Pursuant to NY Finance Law Section 142, Vendor shall secure and maintain workers' compensation and disability insurance coverage throughout the Term for the benefit of employees who are required by law to be so covered by such insurance. The Contract shall be void and of no effect unless Vendor complies with the obligations set out in this Section 18 (Maintenance of Workers' Compensation Insurance).

#### **19. Domestic Steel Content.**

**19.1. Domestic and Foreign Steel Product Applicability.** Pursuant to NY Public Authorities Law Section 2603-a, this Section 19 (Domestic Steel Content) shall apply to use of domestic and foreign steel products if the Total Contract Price exceeds fifty thousand dollars (\$50,000) or, if this Contract is for the construction, reconstruction, alteration, repair maintenance or improvement of public works and exceeds one hundred thousand dollars (\$100,000). Although Bidders are encouraged to utilize domestic steel and to submit Bids that include the use of steel products containing domestic steel components, Bidders may also submit Bids that include the use of steel products not domestically produced. Bidders shall certify the portion of the Total Contract Price that represents the cost of steel components in the Bid, broken down by the cost of domestic steel components and foreign steel components. As used herein, the term "steel component" means a product rolled, formed, shaped, drawn, extruded, forged, cast, fabricated, or otherwise similarly processed, or processed by a combination of two (2) or more operations, from steel.

**19.2. Steel Products.** Supplies, material, or equipment shall be deemed to be made of, fabricated from, or contain steel components, if the cost of such component(s) exceeds fifty percent (50%) of the cost of the material content of the supplies, materials, or equipment, and such supplies, materials, and equipment shall be referred to herein as "steel products".

**19.3. Production in the United States; Reasonable Costs.** A steel component, including structural steel and reinforcing steel, shall be deemed to have been produced or made in whole or in substantial part in the United States, its territories, or possessions if the cost of the portion thereof, including both materials and processes, produced or made in the United States, its territories, or possessions, exceeds fifty percent (50%) of the cost of the component. Such steel components shall be referred to herein as "domestic steel components". The cost of domestic steel components shall be deemed reasonable if the lowest responsible and responsive Bidder has offered all or substantially all domestic steel components.

**19.4. Responsible and Reasonable Steel Components.** If a Bid including domestic steel components is responsible and responsive, but not lowest, then a credit of six percent (6%) of the cost of the foreign steel components contained in the lowest responsible and responsive Bid shall be applied, and the Contract shall be awarded to the lowest responsible and responsive Bidder offering domestic steel components if the application of the credit to its Bid makes such Bid the lowest responsible and responsive Bid.

**19.5. Exception.** The six percent (6%) credit contemplated in 19.4 (Responsible and Reasonable Steel Components) above shall not be applied if doing so would result in selecting a Bidder with a lower amount of domestic steel components as part of its Bid than another Bidder with a higher amount of domestic steel components as part of its Bid.

**19.6. Steel Component Conclusive Presumption.** If no Bid is received that includes steel components produced or made in the United States, a conclusive presumption shall be made that such steel components are not available domestically.

**19.7. Automotive Products Trade Act.** Motor vehicles and automobile equipment assembled in Canada in conformity with the United States-Canadian trade agreement known as the "Automotive Products Trade Act of 1965" shall not be deemed of foreign origin.

#### **20. Service-Disabled Veteran Owned Businesses.**

**20.1. Participation Opportunities for New York State Certified Service-Disabled Veteran Owned Businesses.** New York State Executive Law Article 17-B provides for more meaningful participation in public procurements by certified Service-Disabled Veteran-Owned Businesses (each, an "SDVOB"), thereby further integrating such businesses into New York State's economy. The MTA recognizes the need to promote the employment of service-disabled veterans and to ensure that certified SDVOBs have opportunities for maximum feasible participation in the performance of MTA contracts. In recognition of the service and sacrifices made by Service-Disabled veterans and their economic activity in doing business in New York State, Bidders and Vendor are expected to consider SDVOB participation when fulfilling Contract requirements, including participation as subcontractors, suppliers, protégés, or in other partnering or supporting roles.

#### **20.2. SDVOB Contract Goals.**

**20.2.1. Goals Specified for the Utilization of SDVOBs.** The goal specified for SDVOB utilization is expressed as a percentage of the Total Contract Price. The SDVOB participation goal is shall be stated in the MTA Information for Bidders, which goal is based on the current availability of qualified SDVOBs. For purposes of providing meaningful SDVOB participation, Bidders and Vendor should reference the directory of New York State Certified SDVOBs (available at: [http://ogs.ny.gov/Core/docs/CertifiedNYS\\_SDVOB.pdf](http://ogs.ny.gov/Core/docs/CertifiedNYS_SDVOB.pdf)). Questions regarding compliance with SDVOB participation goals should be directed pre-award to the MTA Designated Point of Contact, and post-award to the Project Manager. Vendor is encouraged to contact the Office of General Services Division of Service-Disabled Veterans Business Development at 518-474-2015 or [VeteransDevelopment@ogs.ny.gov](mailto:VeteransDevelopment@ogs.ny.gov) to discuss additional methods of maximizing SDVOB participation.

**20.3. SDVOB Utilization Plan.** As further set out in this Section 20.3 (SDVOB Utilization Plan), Bidders and Vendor shall document its good faith efforts to provide meaningful participation by SDVOBs in connection with the Contract.

**20.3.1. SDVOB Utilization Plan Submission.** Pursuant to 9 NYCRR 252.2(i), the apparent low Bidder shall, by close of business on the seventh (7<sup>th</sup>) calendar day after the public Bid opening date, submit to the MTA a completed SDVOB Utilization Plan on Form SDVOB 100. Bidders are required to submit a completed SDVOB Utilization Plan on Form SDVOB 100 with their Bid.

**20.3.2. Description of SDVOB Work.** The SDVOB Utilization Plan shall include: (i) a list of the SDVOBs that Bidder intends to use in connection with the Contract; (ii) a description of the Work that Bidder intends the SDVOB to perform to meet the utilization goals; and (iii) the estimated dollar amounts to be paid to an SDVOB or, if not known, an estimate of the percentage of Work the SDVOB will perform. By signing the Utilization Plan, Bidders acknowledge that making false representations or providing information that shows a lack of good faith as part of, or in conjunction with, submitting a SDVOB Utilization Plan is prohibited by law, constitutes a Default Event, and may result in penalties including loss of eligibility to participate in future Solicitations and the withholding of payments. Any modifications or changes to the agreed SDVOB participation after Contract award and during the Term must be reported on a revised SDVOB Utilization Plan and submitted to the MTA Department of Diversity and Civil Rights ("DDCR").

**20.3.3. DDCR Review; Notice of Deficiency.** The DDCR will review the submitted SDVOB Utilization Plan and notify Bidder/Vendor of acceptance or issue a notice of deficiency within twenty (20) calendar days of DDCR's receipt. If a notice of deficiency is issued, then Bidder/Vendor shall submit to DDCR a written remedy in response to the notice of deficiency within seven (7) business days of receipt thereof. If the written remedy is not timely submitted or found by DDCR to be inadequate, then DDCR shall notify Bidder/Vendor and direct Bidder/Vendor to submit, within five (5) business days of notification by DDCR, a request for a partial or total waiver of SDVOB participation goals on Form SDVOB 200. Failure to file the waiver form in a timely manner may be grounds for disqualification of the Bid.

**20.3.4. Disqualification of Bidder.** The MTA may disqualify a Bidder as non-responsible if: (i) Bidder fails to submit an SDVOB Utilization Plan; (ii) Bidder fails to submit a written remedy to a notice of deficiency; (iii) Bidder fails to submit a waiver request; or (iv) DDCR determines that Bidder has failed to document good faith efforts.

**20.3.5. Vendor SDVOB Certification.** If awarded the Contract, Vendor certifies that it shall follow the submitted SDVOB Utilization Plan.

**20.3.6. SDVOB Material Breach.** Vendor's failure to use SDVOBs as agreed in the Utilization Plan shall constitute a Default Event and, upon the occurrence of such non-use, the MTA shall be entitled to any remedy available, including a finding of Vendor non-responsibility.

#### **20.4. Request for Waiver.**

**20.4.1. Partial or Total Waiver.** Prior to submission of a request for a partial or total waiver, Bidder/Vendor shall speak pre-award to the designated MTA procurement representative and post-award to the Project Manager for guidance.

**20.4.2. Required Documentation for Request.** Pursuant to 9 NYCRR 252.2(m), if Bidder/Vendor is able to document good faith efforts to meet the goal requirements set forth in Section 20.4.4 (SDVOB Utilization Plan and Monthly SDVOB Vendor Compliance Report), then Bidder/Vendor may submit a request for a partial or total waiver on Form SDVOB 200, accompanied by supporting documentation. Bidder/Vendor may submit the waiver request at the same time that it submits its SDVOB Utilization Plan. If a waiver request is submitted with the SDVOB Utilization Plan and it is not accepted by DDCR at that time, then the provisions of Sections 20.5 (Required Good Faith Efforts), 20.6 (Monthly SDVOB Vendor Compliance Report), and 20.7 (Breach of Contract and Damages) shall apply. If the documentation included with Bidder's/Vendor's waiver request is complete, then DDCR shall evaluate the request and issue a written notice of acceptance or denial within twenty (20) calendar days of DDCR's receipt.

**20.4.3. Subsequent Request for Waiver.** Throughout the Term, Vendor shall attempt to utilize, in good faith, SDVOBs identified in its SDVOB Utilization Plan. Requests for a partial/total waiver of established goal requirements made subsequent to Contract award may be made during the Term to DDCR, but must be made prior to the submission of a request for final payment on the Contract.

**20.4.4. SDVOB Utilization Plan and Monthly SDVOB Vendor Compliance Report.** If DDCR, upon review of the SDVOB Utilization Plan and Monthly SDVOB Vendor Compliance Report Form SDVOB 101 determines that Vendor is failing or refusing to comply with the SDVOB utilization goals and no waiver has been issued for such non-compliance, then DDCR may issue a notice of deficiency to Vendor. Vendor must respond to the notice of deficiency within seven (7) business days of Vendor's receipt of the same. Such response may include

a request for partial or total waiver of the SDVOB utilization goals. Waiver requests should be sent to DDCR.

**20.5. Required Good Faith Efforts.** Pursuant to 9 NYCRR 252.2(n), Vendor shall document its good faith efforts toward utilizing SDVOBs on the Contract. Evidence of required good faith efforts shall include: (i) copies of solicitations to SDVOBs and any responses thereto; (ii) explanations of the specific reasons each SDVOB that responded to Vendor's solicitation was not selected; (iii) dates of any pre-bid, pre-proposal, pre-award, or other meetings attended by Vendor, if any, scheduled by DDCR or the MTA with certified SDVOBs whom DDCR or the MTA determined were capable of fulfilling the SDVOB goals; (iv) information describing the specific steps undertaken to reasonably structure the Contract scope of work for the purpose of subcontracting with, or obtaining supplies from, certified SDVOBs; and (v) other information deemed relevant to the waiver request.

**20.6. Monthly SDVOB Vendor Compliance Report.** Pursuant to 9 NYCRR 252.2(q), Vendor shall submit monthly SDVOB Vendor Compliance reports (using Form SDVOB 101, Monthly Compliance Report) to DDCR throughout the Term by the tenth (10<sup>th</sup>) day of each month, with each such report detailing the preceding month's activity and documenting progress made towards achieving the SDVOB utilization goals. The Form SDVOB 101 should be emailed to DDCR at: [DDCRMonthlyParticipationReports@nycf.com](mailto:DDCRMonthlyParticipationReports@nycf.com), and the email subject line should include the Contract number for which the Form SDVOB 101 is being submitted.

**20.7. Breach of Contract and Damages.** Pursuant to 9 NYCRR 252.2(s), the MTA's determination that Vendor has willfully and intentionally failed to comply with the SDVOB participation goals shall constitute a Default Event.

**20.8. SDVOB Reporting Forms.** When applicable, the Contract contains the following forms: (i) Form SDVOB 100 (SDVOB Utilization Plan Form); (ii) Form SDVOB 200 (Application For Waiver); and (iii) Form SDVOB 101 (Monthly SDVOB Participation Report).

**21. Prompt Payment.** In addition to the prompt payment provisions included in the Terms and Conditions, this Section 21 (Prompt Payment) includes various details regarding payments made pursuant to the Contract.

**21.1. Prompt Payment to DBE Subcontractors.** Vendor shall pay all DBE subcontractors, including retainage, for satisfactory performance of their contracts no later than thirty (30) days from receipt of each payment by the MTA (including any retainage) in accordance with U.S. Department of Transportation regulations, "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs," 49 CFR Part 26. Pursuant to 49 CFR 26.29(c), work is "satisfactorily" completed when (i) all the tasks called for in the subcontract have been accomplished and documented as required by the MTA, or (ii) the MTA has made an incremental acceptance of a portion of the Work that covers the subcontractor's work. Vendor may only delay or postpone payment to a DBE subcontractor for good cause and with the MTA's prior written approval. Vendor shall include in any subcontract with a DBE subcontractor language providing that Vendor and the DBE subcontractor shall use appropriate alternative dispute resolution mechanisms to resolve payment disputes. The MTA shall not reimburse Vendor for any part of the Work performed by DBE subcontractors unless and until Vendor ensures that the DBE subcontractors are promptly paid for any work that they have performed. Vendor's failure to comply with this Section 21.1 (Prompt Payment to DBE Subcontractors) shall constitute a Default Event.

**21.2. Prompt Payment to Subcontractors and Retainage.** If the Contract constitutes a public work contract, then Vendor shall (i) pay all subcontractors, including each MBE/WBE subcontractor under the Contract, for the work performed under its subcontract no later than seven (7) calendar days from the receipt of any payment that Vendor receives from the MTA for Work performed by the subcontractor, and (ii) pay interest at the rate required by law if payment is not made within the required seven (7) calendar days. If the Contract is not a public work contract, then Vendor shall pay all subcontractors under the Contract for the satisfactory performance of their subcontracts no later than thirty (30) days from the receipt of each payment that Vendor receives from the MTA for Work performed by the subcontractor. If the Contract includes retainage, then Vendor shall not retain more than the lesser of five percent (5%) and the retainage percentage provided in the Contract between the MTA and Vendor, except that Vendor may retain not more than ten percent (10%) of each payment to the subcontractor where, prior to entering into a subcontract with Vendor, Vendor requested that the subcontractor provide a performance bond and a payment bond for subcontractors, labor, or material suppliers, each in the full amount of the subcontract and the subcontractor was unable or unwilling to provide such bonds. Vendor shall return retainage to any subcontractors within thirty (30) days of receiving a payment from the MTA that returns Vendor's retainage for Work that the subcontractor satisfactorily performed.

**21.3. Prompt Payment Flow Down.** Vendor shall insert into every first-tier subcontract with its subcontractors provisions requiring the subcontractor to comply with the requirements of NY Public Authorities Law Section 1269-g, and to require compliance by its lower-tier subcontractors and to file with Vendor a certification of compliance, under penalty of perjury, within ninety (90) days of the effective date of each such subcontract.

**22. Prohibition on Purchases of Tropical Hardwoods.** By submitting a Bid, Vendor certifies and warrants that all wood products to be used under the Contract shall be in accordance with NY Finance Law Section 165, which prohibits the purchase and use of tropical hardwoods by the MTA, unless specifically exempted, specified in the Contract, or Vendor has received written permission from the MTA. Vendor shall be responsible for obtaining any exemptions. If any Work involves the use of woods, whether supply or installation, to be performed by a subcontractor, then Vendor shall indicate and certify in its Bid that the subcontractor has been informed of and is in compliance with requirements regarding use of tropical hardwoods as detailed in NY Finance Law Section 165. Bidders shall include in their Bids proof of qualification for any exemptions to the requirements in Section 165, which are subject to MTA approval, and failure

to provide such proof may be cause for a nonresponsive determination.

**23. Assignment of Claims.** Vendor hereby assigns to the MTA all right, title, and interest in and to all claims and causes of action arising under applicable federal and state antitrust laws relating to Work purchased or procured pursuant to the Contract.

**24. International Boycott Prohibition; Compliance with Administrative Code.** Pursuant to NY Labor Law Section 220-f and NY Finance Law Section 139-h, if the Contract exceeds \$5,000, then Vendor agrees, as a material condition of the Contract, that neither it nor any of its substantially owned or affiliated persons, firms, partnerships, or corporations has participated, is participating, or shall participate in an international boycott in violation of the federal Export Administration Act of 1979 (50 USC App. Sections 2401 et seq.) or the United States Department of Commerce's regulations promulgated thereunder. If the United States Department of Commerce or other United States agency issues a final determination after the Effective Date that Vendor, or any of the aforesaid affiliates, is convicted or is otherwise found to have violated said laws or regulations or otherwise participated in an international boycott, then the Contract shall be rendered forfeit and void. Pursuant to 2 NYCRR 105.4, Vendor shall so notify the State Comptroller within five (5) business days of any such conviction, determination, or disposition of appeal. Vendor further agrees to comply with New York City Administrative Code Section 6-114 and the Comptroller-issued rules thereunder.

**25. Energy Conservation.** Vendor shall comply with mandatory energy efficiency standards and policies contained in 42 USC §6321 et seq. and New York State Energy Law Article 11. Vendor shall ensure that all Work, including Work performed by a subconsultant, complies with the requirements in this Section 25 (Energy Conservation). Vendor shall further comply with Executive Orders 111 and 142, which require the MTA to:

**25.1. Energy Efficiency.** With respect to energy efficiency: (i) implement energy efficiency practices and meet the ENERGY STAR® building criteria for energy performance and indoor environmental quality in its existing buildings to the maximum extent possible; (ii) in the design, construction, operation, and maintenance of new MTA buildings, to the maximum extent practicable, follow guidelines for construction of "Green Buildings", including guidelines set forth in the Tax Law §19, which created the Green Buildings Tax Credit, and the U.S. Green Buildings Council's LEED™ rating system; (iii) in the construction of new MTA buildings, achieve a twenty percent (20%) improvement in energy efficiency performance relative to levels required by New York State's Energy Conservation Construction Code, as amended; and (iv) in the substantial renovation of existing MTA buildings, incorporate energy-efficiency criteria consistent with ENERGY STAR® and any other energy efficiency levels as may be designated by New York State Energy Research and Development Authority into all specifications developed for new construction and renovation.

**25.2. ENERGY STAR® Energy-Efficient Products; E85 Ethanol and Bio-Diesel.** With respect to new products and replacing existing MTA equipment, select ENERGY STAR® energy-efficient products. With respect to fuel, purchase, allocation, distribution, and use E85 ethanol and bio-diesel if feasible.

**25.3. Energy Generation; Alternative-Fuel Vehicles.** With respect to purchasing energy, increase the MTA's purchase of energy generated from wind, solar, thermal, photovoltaics, sustainably managed biomass, tidal, geothermal, methane waste, and fuels cells. With respect to MTA vehicles, procure increasing percentages of alternative-fuel vehicles and implement strategies to reduce petroleum consumption and emissions by using alternative fuels and improving vehicle fleet fuel efficiency.

**26. Compliance with NY Public Authorities Law Section 1269-g.** The following shall apply to Vendor and any subcontractors if the Contract is a public works contract involving the employment of laborers, workmen, or mechanics.

**26.1. Applicable Rules and Regulations.** Vendor shall comply with NY Public Authorities Law Section 1269-g, as amended and supplemented, and with all rules and regulations that the MTA adopts pursuant to such law.

**26.2. Posting and Distributing Required Information.** No later than ninety (90) days from the Effective Date, Vendor shall file with the MTA a certification signed by an officer of Vendor, and sworn to under penalties of perjury, that Vendor has complied with Section 1269-g by posting and distributing the information specified in Section 1269-g(2) in the manner required by Section 1269-g(1). Such certification shall include a copy of the information that Vendor posted and distributed and a description of how it has been posted and distributed.

**26.3. Responsibility to Communicate Required Information.** Once the MTA has posted on its public websites (currently [www.mta.info](http://www.mta.info)) sample statements, displays, and other materials that provide the information required by Section 1269-g, Vendor may use such sample statements, displays, and other materials in complying with Section 1269-g. Until the MTA has posted such information, Vendor shall accurately and completely prepare and communicate the required information, including: (i) the telephone numbers and addresses to report fraud or other illegal activity to the appropriate officers of the MTA inspector general and the New York Attorney General; (ii) a detailed description of conduct prohibited by NY Finance Law Section 189, and the role of that act in preventing and detecting fraud and abuse in Work paid for by the MTA or with funds originating from the MTA; (iii) a notice to prospective *qui tam* plaintiffs on how to file a *qui tam* action, including the necessity to contact private counsel skilled in filing such actions and of the potential for cash rewards in such actions based on the percentage of the funds recovered by the government; and (iv) a description of the prohibitions on employer retaliation against persons who file or assist actions under Article 13 of NY Finance Law (the New York False Claims Act) pursuant to Section 191 therein, or who report illegal conduct that threatens the health or safety of the public pursuant to NY Labor Law Section 740.

**26.4. Subcontracting Requirements.** Vendor shall include in every first-tier subcontract, and require the inclusion in all lower-tier subcontracts, a provision requiring (i) each

subcontractor to comply with the requirements of NY Public Authorities Law Section 1269-g, as amended and supplemented, and with any statements, displays, and other materials, and rules and regulations that the MTA adopts pursuant to Section 1269-g(6), and (ii) that, no later than ninety (90) days from the effective date of each subcontract, each subcontractor file with Vendor a verified statement (a) certifying that such subcontractor has complied with Section 1269-g by posting and distributing the information specified in Section 1269-g(2) in the manner required by Section 1269-g(1), and (b) that includes a copy of the information that such subcontractor posted and distributed.

**26.5. Compliance Certification.** Vendor shall file with the MTA, no later than ninety (90) days from the effective date of each subcontract of any tier, a certification that (i) is signed by an officer of subcontractor and sworn to under penalties of perjury certifying that such subcontractor has complied with Section 1269-g by posting and distributing the information specified in Section 1269-g(2) in the manner required by Section 1269-g(1), and (ii) includes a copy of the information that Vendor posted and distributed and a description of how that information has been posted and distributed.

**26.6. Flow Down of NY Public Authorities Law Section 1269-g.** Any payment to Vendor under the Contract is conditioned upon Vendor's material compliance with this Section 26 (Compliance with NY Public Authorities Law Section 1269-g). Vendor shall insert into every first-tier subcontract, and require insertion into all lower-tier subcontracts, a provision stating that any payments made pursuant to the subcontract are conditioned upon subcontractor's material compliance with Section 1269-g. Vendor shall submit with each request for payment a certification signed by an officer of Vendor and sworn to under penalties of perjury certifying that Vendor and every subcontractor has continued to comply with Section 1269-g, as amended and supplemented, and with any statements, displays, and other materials, and rules and regulations that the MTA adopts pursuant to Section 1269-g(6).

## **27. Wage and Hour Provisions.**

**27.1. Submission of Certified Payroll Transcripts for Public Works Contracts.** Pursuant to NY Labor Law Article 8, Vendor and subcontractors on public works projects shall submit monthly payroll transcripts to the MTA. Upon mutual agreement of Vendor and the MTA, the submission may be in a specified format provided that: (i) Vendor/subcontractor retains the original records, and (ii) an original signed letter by a duly authorized individual of Vendor/subcontractor attesting to the truth and accuracy of the records accompanies the agreed-upon format. For the avoidance of doubt, this Section 27.1 (Submission of Certified Payroll Transcripts for Public Works Contracts) does not apply to NY Labor Law Article 9 pertaining to building services contracts.

**27.2. Posting; Payroll Records.** Vendor shall publicly post on the worksite, in a prominent and accessible place, a legible schedule of the prevailing wage rates and supplements. Vendor shall also post Public Work Project posters regarding prevailing wages, which may be obtained from the NYSDOL. Vendor and its subcontractors shall notify all laborers, workers, and mechanics engaged in the Work in writing of the prevailing wage rate for their job classification on every pay stub for such workers. At the beginning of the Work and with the first paycheck after July 1 of each year, Vendor and subcontractors shall provide all laborers, workers, and mechanics with written notice of: (i) the telephone number and address of the NYSDOL in the NYSDOL-required format, and (ii) a worker's right to contact the NYSDOL if such worker is not receiving the proper wage rate supplement. Failure to comply with the NYSDOL requirements shall result in penalties as determined by the NYSDOL. Pursuant to NY Labor Law Articles 8 and 9, Vendors and subcontractors shall keep original payrolls or transcripts subscribed and affirmed as true under the penalties of perjury as required by law. For public works contracts over twenty-five thousand dollars (\$25,000) where Vendor or subcontractor maintains no regular place of business in New York State, then such records shall be kept at the worksite while Work is being performed. For building services contracts, such records must be kept at the worksite while Work is being performed. Vendor employees and subcontractors who work in excess of eight (8) hours in a day or forty (40) hours in a week shall be paid at the overtime rate identified by the NYSDOL.

**27.3. Contract Work Hours and Safety Standards Act.** If the Contract involves the employment of laborers or mechanics, then the requirements of the following shall apply: 40 U.S.C. 3701 et seq., specifically, the wage and hour requirements of 40 U.S.C. 3702; the implementing regulations at 29 CFR Part 5; the safety requirements of Section 107 of the Contract Work Hours and Safety Standards Act at 40 U.S.C. 3704; the implementing regulations at 29 CFR Part 1926; and the implementing regulations at 29 CFR Part 5, including the clauses contained in 29 CFR 5(b) and Sections 27.4 (Overtime Requirements), 27.5 (Violation; Liability for Unpaid Wages; Liquidated Damages), 27.6 (Withholding for Unpaid Wages and Liquidated Damages), and 27.7 (Subcontracts). Vendor or subcontractor shall maintain payrolls and basic payroll records for all laborers and mechanics (including guards and watchmen) working under the Contract throughout the Term and for three (3) years from the completion thereof or for as long as any records are required to be kept pursuant to the Contract. Such records shall contain each employee's: (i) name and address; (ii) Social Security number; (iii) correct classifications; (iv) hourly wages paid; (v) daily and weekly number of hours worked; (vi) deductions made; and (vii) actual wages paid. Such records shall be made available by Vendor or subcontractor for inspection, copying, or transcription by authorized representatives of the MTA, FTA, the U.S. Department of Transportation ("DOT"), or the Department of Labor, and Vendor or subcontractor shall permit such representatives to interview employees during working hours on the job.

**27.4. Overtime Requirements.** Vendor and subcontractors shall not require or permit a laborer or mechanic to work in excess of forty (40) hours in any work week unless such laborer or mechanic is compensated at a rate not less than one and one-half (1.5) times the basic pay rate for all hours worked in excess of forty (40) hours in such work week, if employed for such

Work.

**27.5. Violation; Liability for Unpaid Wages; Liquidated Damages.** If a violation of 29 CFR 5.5(b)(1) occurs, then Vendor and any subcontractor shall be liable for the unpaid wages. In addition, such Vendor and/or subcontractor shall be liable to the United States (in the case of Work for the District of Columbia or a territory, to such district or to such territory) for liquidated damages, which shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of 29 CFR 5.5(b)(1) in the sum of ten dollars (\$10) for each calendar day on which such individual was required or permitted to work in excess of the standard work week of forty (40) hours without payment of the overtime wages required by 29 CFR 5.5(b)(1).

**27.6. Withholding for Unpaid Wages and Liquidated Damages.** The FTA or the recipient shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of Work performed by Vendor or subcontractor under the Contract or any other federal contract with the same Vendor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by Vendor, such sums as may be determined to be necessary to satisfy any liabilities of such Vendor or subcontractor for unpaid wages and liquidated damages as provided in 29 CFR Part 5 (Davis-Bacon Related Acts Provisions and Procedures, Section 5.8).

**27.7. Subcontracts.** Vendor or any subcontractor shall insert in any subcontracts the clauses set forth in Sections: (i) 27.4 (Overtime Requirements); (ii) 27.5 (Violation; Liability for Unpaid Wages; Liquidated Damages); (iii) 27.6 (Withholding for Unpaid Wages and Liquidated Damages); and (iv) 27.7 (Subcontracts) and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. Vendor shall be responsible for compliance by any subcontractor or lower tier subcontractor with this Section 27.7 (Subcontracts).

**28. Ethics Compliance.** Vendor and its employees shall comply with the requirements of New York Public Officers Law Sections 73 and 74, and other State codes, rules, regulations, and executive orders establishing ethical standards for the conduct of business with New York State. By submitting a Bid, Bidder certifies full compliance with such requirements in any present or future dealings, transactions, sales, contracts, services, offers, relationships, etc., involving New York State and its employees. Violation of this Section 28 (Ethics Compliance) may result in disqualification from a Solicitation, criminal and civil proceedings, and shall otherwise constitute a Default Event.

**29. Emergency Contracts.** If either (i) a disaster emergency is declared by Executive Order pursuant to Article 2-B of New York Executive Law Section 28, or (ii) a determination is made pursuant to NY Finance Law Section 163(10)(b) that an emergency exists requiring prompt and immediate delivery of Work, then the MTA shall have the right, in its sole discretion, to address the needs of such emergency, and to obtain Work from any source, including the Vendor. Vendor shall not be entitled to any claim or lost profits for Work procured from sources other than the Contract pursuant to this Section 29 (Emergency Contracts). The applicable procurement record shall include an explanation of the nature of any emergency identified pursuant to this Section 29 (Emergency Contracts).

**30. Quality Provisions Program.** Prior to Contract award, the MTA has the right: (i) to inspect facilities and evaluate Bidder's capability to provide the specified Work in the required quality, and (ii) to use the result of such evaluation in determining whether to accept or reject a Bid. Vendor shall have in effect a written quality system program that: (a) defines those actions, procedures, and requirements necessary to ensure that all aspects of the Work conform to the Contract requirements; (b) conforms with International ISO 9000 Series quality standards, or the technical equivalent national ANSI/ASQC Q90 Series; and (c) demonstrates Vendor's capability to control the processes that determine the acceptability of the Work supplied. Vendor shall address each quality system element to show the control it shall use to progress the Work according to the Contract.

**31. Minority and Women-Owned Business Enterprises.** New York Executive Law Article 15-A authorized the creation of the Division of Minority and Women's Business Development to promote state contract employment and business opportunities for minorities and women. Vendor's willful and intentional failure to comply with the minority and women-owned participation requirements of Article 15-A as set forth in the Contract shall constitute a Default Event, and Vendor shall be liable to the MTA for liquidated or other appropriate damages due to such failure and the MTA shall be entitled to all remedies at law or in equity and as may otherwise be provided for in the Contract.

**32. Cleaning Products.** Pursuant to Executive Order 134 (Directing State Agencies to Reduce the Environmental Impact of Cleaning of State Facilities), if the Work involves the use or sale of cleaning products, then Vendor shall procure and use cleaning products with properties that minimize potential impacts to human health and the environment consistent with maintenance of effectiveness of these products for the protection of public health and safety.

**33. Compliance with New York State Executive Order No. 4.** Pursuant to Executive Order No. 4 titled "Establishing a State Green Procurement and Agency Sustainability Program" ("EO 4"), all copy paper, janitorial paper, and other paper supplies purchased by the MTA shall be composed of one hundred percent (100%) post-consumer recycled content to the maximum extent practicable, and all copy paper and janitorial paper shall be processed chlorine-free to the extent practicable, unless such products do not meet the required form, function, or utility included in the Contract or the cost of the product is not competitive.

**33.1. 100% Post-Consumer Recycled Paper; Renewable Resources.** All paper products shall be composed of one hundred percent (100%) post-consumer recycled paper that is processed chlorine free or elemental chlorine free. Where such post-consumer recycled paper is not available, Bidder shall include in its Bid the highest available post-consumer recycled

content that is processed chlorine free or elemental chlorine free: e.g. 50% or 30% post-consumer recycled content chlorine free or elemental chlorine free. If post-consumer recycled chlorine free or elemental chlorine free paper product is unavailable, then virgin paper shall be from a sustainably-managed renewable resource. Product composition certifications shall be noted and presented with the Bid, and such certifications may include Green Seal, EcoLogo, environmental choice, and the chlorine free products association. All non-recycled or virgin content of proposed products shall be derived from a sustainably managed renewable resource and must be certified as such through an appropriate third party certification program recognized by the paper industry, such as the Forest Stewardship Council (FSC) and Sustainable Forestry Initiative (SFI). Confirmation of compliance with the requirements set out in this Section 33.1 (100% Post-Consumer Recycled Paper; Renewable Resources) shall be attached to and submitted with Bids, and the failure to submit the required documentation may result in the rejection of the Bid.

**33.2. Paper Packaging.** Paper packaging must show recycled content, and bear the recycle logo or note paper source from a sustainably-managed renewable resource. Bidder shall not change the percent of post-consumer recycled content of the paper specified in its Bid pre- or post-award.

**33.3. Printed Materials.**

**33.3.1. Letterhead, Forms, Memo Pads, and Envelopes.** Letterhead, forms, memo pads, and envelopes must meet the paper product requirements set out in Section 33.1 (100% Post-Consumer Recycled Paper; Renewable Resources). Materials printed on recycled stock must include a printed statement or symbol on the printed material indicating that the document is printed on recycled stock. The recycle symbol or statement is to be positioned on the back of all recycled envelopes.

**33.4. Publications.**

**33.4.1. Compliance; Recycled Paper Notification.** Publications must meet the paper product requirements set out in Section 33.1 (100% Post-Consumer Recycled Paper; Renewable Resources). Recycled paper logo or the words "Printed on recycled paper" must be printed on all publications using recycled paper. Publications must be double-sided unless otherwise noted. Vendor shall report to the MTA on applicable invoice(s) the amount of paper used by weight or volume of paper product if the Contract involves printing. Water-based or bio-based ink (vegetable based) must be used in the printing of all publications unless unavailable. Use of water-based developers, adhesives, cleaning systems, coatings, varnishes, low volatile organic compounds ("VOCs"), and less hazardous press materials is required unless otherwise unavailable.

**33.4.2. Minimum Standards of Performance.** Consideration will be given to Bidders who demonstrate the following environmental standards of performance: (i) maximized use of digital on-demand printing, direct to plate prepress systems and automatic blanket washers; (ii) maximized in-process recycling of press cleaning solvents, fixer, ink, developer, and rinse water; (iii) maximized silver recovery; (iv) maximized recycling of paper, ink, film, and other materials; (v) produced printed materials that are recycle friendly e.g., glueless binding, uncoated paper, avoiding heavy ink coverage, and dark or fluorescent papers; and (vi) avoidance of use of heavy metals, toluene, benzene, formaldehyde, alcohol, chlorinated solvents, and other hazardous materials.

**33.5. Ink.** All lithographic inks used in the production of MTA printing requirements shall be water-based or vegetable based, which will reduce the amount of VOCs released into the environment. Ink should meet or exceed the EcoLogo Certification Criteria Document for Printing Inks (CCD-040). In accordance with Article 2, section 7-a of the New York State Printing and Public Documents law, vegetable based ink must contain the following minimum percentages of vegetable oil as follows: (i) News Inks – 40%; (ii) Sheet Fed Inks - 20%; (iii) Forms Inks - 20%; and (iv) Heat Set Inks - 10%.

**34. Certain Representations and Warranties regarding Ethics.**

**34.1. Specific Representations and Warranties.** In addition to all other representations and warranties included in the Contract, Bidder and Vendor represent, warrant, and covenant as follows:

**34.1.1. No Inducement.** No payment, gift, or thing of value has been made, given, or promised in order to be awarded the Contract or any other agreement with the MTA. A breach of this Section 34.1.1 (No Inducement) shall constitute a Default Event, and the MTA shall otherwise have the right to annul the Contract without liability, and to recover all monies paid to Vendor. Vendor expressly waives all claims for, and entitlements to recover, any sums due under the Contract if the MTA exercises its rights set out in this Section 34.1.1 (No Inducement).

**34.1.2. Conflicts of Interest.** No officer, director, employee, agent, or other contractor of the MTA (and its subsidiaries and affiliates), or their immediate family or household members, has directly or indirectly received or been promised any form of benefit, payment, or compensation, whether tangible or intangible, in connection with the Contract award.

**34.1.3. Undisclosed Conflicts.** There are no undisclosed persons or entities interested with Vendor in the Contract. The Contract is entered into by Vendor without any connection with any other entity or person submitting a Bid, and without collusion, fraud, or conflict of interest. No elected or appointed officer or official, director, employee, agent, or other contractor of the MTA (and its subsidiaries and affiliates), or of the City or State of New York (including elected and appointed members of the legislative and executive branches of government), or their immediate family or household members: (i) is interested on behalf of or through Vendor directly or indirectly in any manner whatsoever in the execution or the performance of the Contract, the Work, or any portion of the revenues thereof, or (ii) is an employee, agent, advisor, or consultant to Vendor or, to the best of Vendor's knowledge, any subcontractor or supplier to Vendor. The MTA, in its sole discretion, may consent in writing to waive this Section 34.1.3 (Undisclosed Conflicts) with respect to an individual or entity if Vendor provides the MTA with a written request for such waiver, in

advance, which identifies all of the individuals and entities involved and sets forth in detail the nature of the relationship and why it would not constitute a conflict of interest.

**34.1.4. Faithful Performance.** Neither Vendor nor any of its officers, directors, employees, agents, parents, subsidiaries, or affiliates have an interest that is in conflict with Vendor's faithful performance of its obligations under the Contract. The MTA, in its sole discretion, may consent in writing to such a relationship; provided, however, that Vendor provides the MTA with advanced written notice that identifies all the individuals and entities involved and sets forth in detail the nature of the relationship and why it is in the MTA's best interest to consent to such relationship.

**34.1.5. New York City Charter Compliance; Conflicts of Interest Board.** Pursuant to New York City Charter ("City Charter") Section 2604 and other related sections, the New York City Administrative Code, and the New York State Penal Law, no elected City official or other officer or employee, nor any person whose salary is payable, in whole or in part, from the City Treasury, shall participate in any decision relating to the Contract that affects his or her personal interest or the interest of any corporation, partnership, or other entity in which he or she is, directly or indirectly, interested; nor shall any such official, officer, employee, or person have any interest in, or in the proceeds of, the Contract. This Section 34.1.5 (New York City Charter Compliance) shall not prevent Bidder's directors, officers, members, partners, or employees from participating in decisions relating to the Contract where their sole personal interest is in Bidder. Bidder and Vendor shall not employ a person, or permit a person to serve as a member of the Conflicts of Interest Board (as defined in City Charter Chapter 68) or as an officer of Bidder, if such employment or service would violate Chapter 68.

**34.1.6. Limitations on Employment.** Pursuant to New York Public Officers Law Section 73(8), no MTA employee during their employment or for two (2) years thereafter shall have any interest, direct or indirect, in the Contract or the proceeds thereof. Vendor shall not employ or permit any individual to work on the Contract or receive compensation therefrom: (i) for a period of two (2) years after her/his employment has terminated with the MTA (including its affiliates and subsidiaries); and (ii) who, at any time while employed with the MTA (including its affiliates and subsidiaries), was directly concerned with the subject matter of the Contract, personally participated in the Contract, or had the subject matter of the Contract under her or his active consideration. The MTA reserves the right to require Vendor to remove any individual impermissibly employed by Vendor in connection with the Work, and Vendor shall promptly remove any such individual upon the MTA's request.

**34.2. Supplemental Applicability; Ongoing Disclosure Obligation.** The obligations included in Section 34.1 (Specific Representations and Warranties) are supplemental to, and not in lieu of, all applicable laws concerning conflicts of interest and professional standards. If there is a difference among the standards applicable under the Contract and those provided by statute or professional standard, then the stricter standard shall apply. If Vendor has no prior knowledge of a conflict of interest contemplated herein, and acquires information that may indicate an actual or apparent conflict of interest or other failure to comply with applicable requirements, then Vendor shall promptly bring such information to the attention of the Contract Manager. Vendor shall thereafter cooperate with the MTA's review and investigation of such information, and comply with the instructions Vendor receives from the MTA in regard to remedying the situation.

**35. HIPAA Compliance.** Vendor, its agents, employees, and subcontractors shall ensure that any reproduction or copying of any plans, drawings, specifications, surveys, maps, reports, studies, records, or other documentation related to the Work or the MTA shall only be made on Health Insurance Portability and Accountability Act ("HIPAA") compliant photocopiers or multifunctional printer/copier/scanner/fax machines. Vendor shall otherwise fully comply with HIPAA.

**36. Employment Eligibility Verification.** Vendor shall comply in all respects with the Immigration Reform and Control Act of 1986, as amended ("IRCA"), with respect to all persons performing Work on its behalf, including employees and agents of Vendor and any subcontractor. Specifically, for each such employee/agent, including U.S. citizens, Vendor shall complete and retain, and cause any subcontractor to complete and retain, an Employment Eligibility Verification Form (Form I-9), in accordance with applicable laws and regulations. Vendor assumes all liability, including the defense thereof, that may result from a claim or finding that Vendor or any subcontractor violated the IRCA with respect to any person performing Work on its behalf.

**37. Antidumping.** Vendor shall indemnify and hold harmless the MTA from any dumping duty, loss, or expense, including reasonable attorney fees, that the MTA may incur arising from any claim or demand alleging that the sale of the apparatus covered by the Contract at the price therefor violates the antidumping provisions of any applicable laws.

**38. Clayton Act Compliance.** The Contract is subject to all of the provisions of the Clayton Anti-Trust Act, 15 U.S.C. 12-27. It shall be a Default Event, and the MTA shall notify Vendor, if the MTA is advised by its counsel that the Contract offends, or is contrary to, the provisions of said Act.

**39. Audit, Access to Records, Inspection.**

**39.1. Recordkeeping Obligations.** Vendor shall keep, and cause each subcontractor to keep, records and books of account, showing the actual cost to it of all labor, material, equipment, supplies, services, and other expenditures for which compensation is payable under the Contract.

**39.2. Audit Access; Copying.** Vendor shall provide the MTA, the New York State Comptroller, the FTA Administrator, the U.S. Comptroller General, and any of their authorized representatives' access to all of Vendor's books, documents, papers, and records that are pertinent to the Contract for the purposes of making audits, examinations, excerpts, and transcriptions. Pursuant to 49 CFR 633.17, Vendor shall provide the FTA Administrator or her/his authorized representatives, including any project management oversight contractor, access to Vendor's records and construction sites pertaining to a major capital project (as

defined at 49 U.S.C. 5302(a)(1)) that is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311. Vendor agrees that the foregoing parties shall have the right to reproduce and copy by any means full copies, excerpts, and transcriptions of such records as they deem necessary. Vendor shall maintain all books, records, accounts, and reports required under the Contract for a period of not less than seven (7) years after Contract termination or expiration, except if litigation or settlement of claims arising from the performance of the Contract occurs, in which case Vendor shall maintain same until the MTA, the New York State Comptroller, the FTA Administrator, the U.S. Comptroller General, or any of their duly authorized representatives have disposed of all such litigation, appeals, claims, or exceptions related thereto.

**39.3. Original Accounting Records; Audited Financial Records.** Vendor shall furnish any auditor with originals of all accounting records. The absence of original supporting documents, including time sheets and invoices not on regular business stationery, may result in the disallowance of the claimed expenses. The MTA, in its sole discretion, may accept photocopied records in lieu of originals, but in no event where Vendor is unable to explain the loss of original documents to the MTA's satisfaction. Vendor shall furnish to the MTA its audited financial records and statements where available.

**39.4. Record Availability.** Vendor shall make available to the MTA and its representatives, upon reasonable request, all books, records, financial statements, and tax returns that the MTA deems necessary to support all direct and indirect costs expended in connection with the Contract. Vendor shall also make available all books, records, financial statements, and tax returns for all affiliated parties to whom Vendor has made payments that are being claimed under the Contract as either direct or indirect costs.

**40. Civil Rights Requirements; Equal Employment Opportunity; Equal Pay Equity.**

**40.1. Nondiscrimination.** Pursuant to Title VI of the Civil Rights Act (as amended), 42 U.S.C. §§2000d and e, the Age Discrimination Act of 1975 Section 303 (as amended), 42 U.S.C. §6102, the Americans with Disabilities Act of 1990 Section 202, 42 U.S.C. §12132, and 49 U.S.C. §5332, Vendor agrees that it shall not discriminate against any employee or employment applicant because of race, color, creed, national origin, sex, age, or disability. Vendor further agrees to comply with applicable Federal implementing regulations and other implementing requirements that the FTA may issue.

**40.2. Race, Color, Creed, National Origin, Sex.** Pursuant to Title VII of the Civil Rights Act (as amended), 42 U.S.C. §2000e, and 49 U.S.C. §5332, Vendor shall comply with all applicable equal employment opportunity requirements of U.S. DOL regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 CFR Part 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity,"), and with all applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Contract. Vendor shall 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 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. Vendor further agrees to comply with any implementing requirements that the FTA may issue.

**40.3. Age.** Pursuant to the Age Discrimination in Employment Act of 1967 Section 4, 29 U.S.C. §§621 through 634 (as amended), its implementing regulations, 29 CFR Part 1625, and 49 U.S.C. §5332, Vendor shall refrain from discrimination against present and prospective employees for reason of age. Vendor further agrees to comply with any implementing requirements that the FTA may issue.

**40.4. Disabilities.** Pursuant to the Americans with Disabilities Act Section 102 (as amended), 42 U.S.C. §12112, Vendor shall 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 CFR Part 1630, which pertain to the employment of persons with disabilities. Vendor further agrees to comply with any implementing requirements that the FTA may issue.

**40.5. Other Applicable Equal Employment Opportunity Requirements.** Vendor shall comply with all other applicable equal employment opportunity requirements of U.S. Department of Labor and FTA implementing regulations, and with any applicable Federal statutes, executive orders (including New York Executive Order 177), regulations, and Federal policies.

**40.6. Safety, Apparatus, Danger Signs, and Signals.** Vendor shall erect and maintain such danger signs, signals, red lights, guards, protective enclosures, platforms, and notices necessary to adequately protect the Work and all individuals against injury to their person or damage to their property, and shall promptly replace any of the foregoing that must be removed temporarily during the Work. If replacement is not properly made, then the MTA shall have the right to effect such replacement at Vendor's sole expense. Pursuant to Title VI of the Civil Rights Act, Vendor may be required to erect any and all signs in one or more languages in addition to English as an accommodation for persons with Limited English Proficiency.

**40.7. Non-Discrimination Requirements.** Vendor shall comply with all applicable federal, state, and local Civil Rights and Human Rights laws regarding equal employment opportunities and the provision of the Work. Pursuant to New York Executive Law Article 15 (the Human Rights Law) and all other state and federal statutory and constitutional non-discrimination provisions, Vendor and its subcontractors shall not discriminate against any employee or applicant for employment because of race, creed, color, sex (including gender identity or expression), national origin, age, disability, sex origin, sexual orientation, military status, predisposing genetic characteristics, marital status, or domestic violence victim status, and

shall not: (i) discriminate in hiring against the New York State citizen who is qualified and available to perform the work; or (ii) discriminate against or intimidate any employee hired to perform the Work. Vendor is subject to fines of fifty dollars (\$50.00) per person per day for any violation of NY Labor Law Section 220-e or Section 239, and a second or subsequent violation of such Sections constitutes a Default Event and shall result in Vendor's forfeiture of all moneys due under the Contract.

**40.8. New York State Executive Order No. 162 - Ensuring Equal Pay Equity by State Contractors ("EO 162").** Pursuant to EO 162, Vendors and Vendors' subcontractors are required to report separately the gross wages paid to each of their employees performing Work on a monthly or quarterly basis. Vendors and Vendors' subcontractors must report only gross wages for Work paid to employees during the period covered by the Report Spreadsheet. "Gross wages" shall mean those wages reported by employers to employees on their wage statements. Gross wages include every form of compensation for employment paid by an employer to his, her or its employees, whether paid directly or indirectly by the employer, including salaries, commissions, bonuses, tips and the reasonable value of board, rent, housing, lodging or similar advantage received.

**40.9. Applicability; Contract Thresholds.** For commodities and services contracts in excess of \$25,000.00, each Vendor must (a) report employee gross wages on the Workforce Utilization Report on a quarterly basis, and (b) ensure that each subcontractor performing Work reports such information on a quarterly basis, unless otherwise directed by the Contract Documents. For construction contracts in excess of \$100,000.00, each Vendor must (a) provide Workforce Utilization Reports on a monthly basis, and (b) ensure that each subcontractor performing Work also reports such information on a monthly basis, unless otherwise directed by the Contract Documents.

**40.10. Submission Requirements.** This information must be submitted electronically on the standard Workforce Utilization Form provided by the MTA as Attachment C hereto, within ten (10) days following the end of each month or quarter during the term of the Contract, as directed hereinabove. Failure to comply with the foregoing requirement of EO 162 may result in a Default Event.

**41. Americans with Disabilities Act (ADA) Access.** Vendor shall comply with 49 U.S.C. §5301(d), which states the Federal policy that elderly and disabled individuals have the same rights as others to use public transportation services and facilities, and that special efforts should be made in planning and designing those services and facilities to implement transportation accessibility rights for elderly and disabled individuals. Vendor shall comply with: (i) Rehabilitation Act of 1973 Section 504, as amended, 29 U.S.C. §794 (prohibiting discrimination on the basis of disability in the administration of programs or activities receiving Federal financial assistance); (ii) the Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. §12101 et seq. (requires that accessible facilities and services be made available to individuals with disabilities); (iii) the Architectural Barriers Act of 1968, as amended, 42 U.S.C. §4151 et seq. (requires that buildings and public accommodations be accessible to individuals with disabilities); (iv) 49 CFR Part 37; and (v) other laws, regulations, or provisions and amendments thereto pertaining to access for individuals with disabilities that may be applicable to the Contract. Vendor agrees to: (a) comply with applicable implementing Federal regulations, and any later amendments thereto, and agrees to follow applicable Federal implementing directives, and (b) include these requirements in each subcontract financed in whole or in part with FTA-provided Federal assistance.

**42. Disadvantaged Business Enterprises.**

**42.1. DBE Policy.** The MTA's policy is that Disadvantaged Business Enterprises ("DBEs") are provided the opportunity to participate in the performance of the Contract. Bidder shall take all necessary and reasonable steps to ensure that DBEs participate and perform Work. A copy of the applicable United States Department of Transportation Regulation, 49 CFR Part 26, is available from the MTA upon written request from MTA Designated Point of Contact.

**42.2. Disadvantaged Business Enterprises (DBE) Requirements.**

**42.2.1. Participation by DBEs in Department of Transportation Financial Assistance Programs.** The Contract is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs". The national goal for participation of DBEs is ten percent (10%). Vendor shall comply with the separate contract goals established by the MTA for the Solicitation.

**42.2.2. DBE Participation Goal.** If a contract goal has been established, Bidder shall document sufficient DBE participation to meet the goal or alternatively, document adequate good faith efforts to do so, as provided for in 49 CFR Section 26.53. Contract award is conditioned on submission of: (i) the names and addresses of DBE firms that will participate in the Contract; (ii) a description of the Work that each DBE will perform; (iii) the dollar amount of the participation of each DBE firm participating; (iv) written documentation of Bidder's commitment to use a DBE subcontractor whose participation it submits to meet the contract goal; (v) written confirmation from the DBE that it is participating in the Contract as provided in Bidder's commitment; and (vi) if the contract goal is not met, then evidence of good faith efforts to do so.

**42.2.3. Failure is a Material Breach.** Vendor shall not discriminate on the basis of race, color, national origin, or sex in the performance of the Contract. Vendor shall comply with applicable requirements of 49 CFR Part 26 in the award and administration of all DOT-assisted Contracts. Vendor's failure to comply with the requirements set out in this Section 42.2.3 (Failure is a Material Breach) constitutes a Default Event, and may result in Contract termination or such other remedy that the MTA deems appropriate. Each subcontract Vendor signs with a subcontractor must include the subcontractor's assurance of compliance with the obligations set out in this Section 42.2.3 (Failure is a Material Breach).

**42.2.4. DBE Reporting.** Vendor shall report its DBE participation obtained through race-neutral means throughout the period of performance.

**42.2.5. DBE Subcontractor Termination.** Vendor shall promptly notify the MTA whenever a DBE subcontractor performing Work is terminated or fails to complete its Work, and Vendor shall make good faith efforts to engage another DBE subcontractor to perform at least the same amount of Work. Vendor may not terminate any DBE subcontractor and perform that Work through its own forces or those of an affiliate without the MTA's prior written consent.

**42.3. Prompt Payment to DBE Subcontractors.** Vendor shall pay all DBE subcontractors, including retainage, for satisfactory performance of their contracts no later than thirty (30) days from Vendor's receipt of each payment by the MTA (including any retainage) in accordance with DOT regulations, "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs," 49 CFR Section 26.29. Pursuant to 26.29(c), Work is "satisfactorily" completed when (i) all tasks called for in the subcontract have been accomplished and documented as required by the MTA, or (ii) the MTA has made an incremental acceptance of a portion of the Work covering the subcontractor's Work. Vendor may only delay or postpone payment to a DBE subcontractor for good cause and with the MTA's prior written approval. Vendor shall include in any subcontract with a DBE subcontractor language providing that Vendor and the DBE subcontractor shall use appropriate alternative dispute resolution mechanisms to resolve any payment disputes. The MTA shall not reimburse Vendor for any DBE subcontractor-performed Work unless and until Vendor ensures that the DBE subcontractors are promptly paid for any Work that they have performed. Vendor's failure to comply with this Section 42.3 (Prompt Payment to DBE Subcontractors) shall constitute a Default Event, which may result in Contract termination or such other remedy as the MTA deems appropriate.

**42.4. DBE Reporting and Recordkeeping.**

**42.4.1. DBE Goal Documentation.** Vendor shall submit documentation concerning its performance in meeting the DBE goal during the Term.

**42.4.1.1. Contract Duration Less Than One Year.** If the Term is less than one (1) year, then within sixty (60) days of the Effective Date, unless extended by the MTA in writing, Vendor shall enter into written subcontract agreements with the DBEs listed in its Schedule of DBE Participation Form (Form A) and accompanying Intent to Perform as a DBE Subcontractor/Subconsultant/Joint Venture Form (Form B) (collectively, the "DBE Participation Forms"), or with DDCR-approved substitutes.

**42.4.1.2. Contract Duration Greater Than One Year.** If the Term is one (1) year or more, then not later than thirty (30) days before a subcontractor commences Work, unless extended by the MTA in writing, Vendor shall enter into written subcontract agreements with the DBEs listed in Vendor's DBE Participation Forms, or with substitutes approved by DDCR.

**42.4.1.3. Executed DBE Subcontracts; Subcontract Modifications; Work Schedule.** Immediately upon execution, and at any other time that DDCR requests, Vendor shall provide a copy of each of Vendor's executed subcontract agreements with DBEs to the MTA. Vendor shall submit all subcontract agreement modifications with DBEs any time a change in any items of Work, material, or subcontract value is agreed upon. Vendor shall submit a work schedule outlining when DBE subcontractors will commence and complete Work.

**42.4.1.4. DBE Monthly Reports; DBE Progress Payment.** Vendor shall submit monthly reports on progress towards meeting its DBE goal to the MTA (and otherwise as required by DDCR) using New York State Contract System's Web Based Monthly Report. Vendor shall promptly notify the MTA if any regularly scheduled progress payment is not made to a DBE.

**42.4.1.5. Risk to DBE Goal.** Vendor shall promptly notify the MTA in writing when Vendor has reason to believe its attainment of the DBE participation goal is in jeopardy. In this regard, Vendor must inform the MTA, in writing with supporting documentation, immediately upon learning that a DBE is unable or unwilling to perform the subcontracted services.

**42.4.2. False Statements or Submissions.** This Section 42 (Disadvantaged Business Enterprises) identifies statements and information that Vendor shall submit to the MTA, and Vendor's willful making of false statements or submission of incorrect information shall constitute a Default Event.

**43. Clean Air and Water Act Requirements.** Vendor shall comply with all applicable standards, orders, and regulations issued pursuant to the Federal Water Pollution Control Act (the "Clean Water Act"), as amended, the Clean Air Act, as amended, 42 U.S.C. §7401 et seq., including Clean Air Act §306, as amended, 42 U.S.C. §7606, 33 U.S.C. §1251 et seq., including Clean Water Act §508, as amended, 33 U.S.C. §1368, and Executive Order 11738. Vendor shall protect underground sources of drinking water in compliance with the Safe Drinking Water Act of 1974, as amended, 42 U.S.C. §§300f through 300j-27. Vendor shall facilitate compliance with Executive Order 11738, including reporting each violation to the MTA, and the MTA shall report each violation as required to assure notification to the FTA and the appropriate EPA Regional Office. Vendor shall include these requirements in each subcontract exceeding one hundred thousand dollars (\$100,000) financed in whole or in part with FTA-provided Federal assistance.

**44. Noise Control Code.** Pursuant to Section 24-216, Noise Abatement Contract Compliance, of Title 24 of Chapter 2 of the New York City Administrative Code (the "Noise Code"): (i) devices and activities that will be operated, conducted, constructed, or manufactured pursuant to the Contract that are subject to the Noise Code shall be operated, conducted, construed, or manufactured without violating the Code, and (ii) such devices and activities shall incorporate advances in the art of noise control developed for the kind and level of noise emitted or produced by such devices and activities, in accordance with regulations issued by the Administrator of the Environmental Protection Administration. Regulations promulgated pursuant to Section 24-216 after the Effective Date shall not alter its terms, conditions, and specifications.

**45. Rail Safety Improvement Act of 2008.** Vendor, and any of its subcontractors who employ one or more safety-related railroad employees, are required to develop and submit a training

program to the Federal Railroad Administration ("FRA") for approval and to adopt and implement the training program no later than January 1, 2018. Vendor shall read the Minimum Training and Qualifications Requirements and sign the corresponding Vendor acknowledgment (Appendix I). Vendor shall read and complete the Rail Safety Improvement Act of 2008 for Control of Alcohol and Drug Use (49 CFR Part 219) for Maintenance of Way Employees letter and sign the corresponding Vendor acknowledgment (Appendix J). Vendor's failure to timely comply with the FRA regulations and requirements set out in this Section 45 (Rail Safety Improvement Act of 2008) may subject Vendor to civil penalties, prohibit Vendor from working on MTA Property, and shall otherwise constitute a Default Event.

**46. Drug and Alcohol Testing.** If applicable, Vendor shall comply with the FTA alcohol and drug requirements set out in Appendix F (Federal Provisions). If applicable, Vendor shall also comply with the following FRA and DOT alcohol and drug policies:

**46.1. Compliance with 49 CFR Parts 40 and 219.** Vendor and its employees, agents, and representatives shall comply with 49 CFR Parts 40 and 219 in the performance of any Work. Vendor shall have in place during the Term a random drug and alcohol testing program pursuant to Part 219 of its own or an agreement with a consortium to administer Vendor's random testing program.

**46.2. Random Testing; Testing Pool.** Vendor shall randomly test, or ensure that the all maintenance of way employees who perform Work for the MTA are randomly tested, for drugs and alcohol in accordance with Part 219. A maintenance of way employee means Vendor, its employees, subcontractors, agents, and any individual performing Work on behalf of Vendor whose duties include the inspection, construction, maintenance, or repair of roadway track, bridges, roadway, signal and communications systems, electric traction systems, roadway facilities, or roadway maintenance machinery on or near track or with the potential of fouling a track, and flagmen, watchmen, and lookouts. Vendor shall establish a minimum random testing pool of fifty percent (50%) for drug testing and twenty-five percent (25%) for alcohol testing of its maintenance of way employees on an annual basis, or such other pool that the FRA designates.

**46.3. Compliance Plan Submittal.** Vendor shall submit to the FRA, and send a copy to the MTA, of its 219 Compliance Plan that complies with 49 CFR Part 219 and that details Vendor's Random Drug and Alcohol Testing Plan, or if Vendor uses a consortium, then the consortium's Random Drug and Alcohol Testing Plan. The FRA shall solely determine whether the 219 Compliance Plan meets regulatory requirements.

**46.4. Plan Submittal Applicability; MTA Rejection.** Vendor shall, within thirty (30) days of the Effective Date, submit to the MTA a Certification of Compliance with FRA Random Drug and Alcohol Use Testing Regulations (Appendix J) that complies with 49 CFR Part 219 or, if Vendor is not in compliance, a certificate that it has submitted its 219 Compliance Plan to the FRA. Vendor shall provide a copy of the 219 Compliance Plan to the MTA with the certification. The MTA shall have the right, in its sole discretion, to reject any 219 Compliance Plan that designates a consortium that is unacceptable to the MTA.

**46.5. Maintenance of Compliance Plan; Audit and Inspection.** Vendor shall, at its expense, maintain its 219 Compliance Plan and any records, data, and materials related to the Compliance Plan for a minimum of six (6) years after Vendor's completion of the Work or termination of the Contract, whichever is later. If Vendor has in place a consortium to administer its random drug and alcohol testing program, then Vendor shall ensure that any agreement with such consortium provides for the maintenance of records, data, and materials as set forth herein. Vendor shall permit the FRA and the MTA, and also shall require its employees, subcontractors, agents (including any consortium administering Vendor's random drug and alcohol testing program), and any individual who is a maintenance of way employee as defined in Part 219, to permit FRA and MTA representatives, to inspect all records, data, and materials related to Vendor's 219 Compliance Plan. Such records shall be made available, upon the FRA's and the MTA's request, at Vendor's place of business during normal working hours or such other place as the FRA and the MTA designates.

**46.6. Drug and Alcohol Certification; Condition Precedent.** Vendor shall submit to the MTA a written certification attesting that it is in compliance with its obligations under Part 219, including the establishment of random test pools and the actual testing of its employees as set forth in Part 219. Vendor shall submit its certification, together with the related testing data (in a form compliant with Part 219), to the MTA on a semi-annual basis, with the semi-annual reporting requirement calculated from the Effective Date. Unless the MTA otherwise authorizes in writing, Vendor shall not perform any Work subject to 49 CFR Part 219 unless Vendor has implemented a random drug and alcohol testing program in accordance with 49 CFR Part 219.

**46.7. Civil Penalties; Order of Precedence.** Failure to comply with this Section 46 (Drug and Alcohol Testing) may subject Vendor to civil penalties and shall constitute a Default Event. In the event of any inconsistency between the terms of this Section 46 (Drug and Alcohol Testing) and the FRA requirements, 49 CFR Part 219 shall govern.

**47. Incorporation of Additional Terms.**

**47.1. Appendix F (Federal Provisions).** In addition to certain provisions included in this Schedule 1 (Applicable Laws and Regulations) that apply to Solicitations subject to federal requirements, the MTA has prepared Appendix F (Federal Provisions) that includes additional federal requirements applicable to Solicitations involving federal funding or that are otherwise subject to federal requirements. The MTA shall provide Appendix F (Federal Provisions) as part of the Contract Documents to the extent it applies to the specific Solicitation, and Vendor can also request Appendix F (Federal Provisions) upon request.

**47.2. Schedule 3 (Connecticut Provisions).** If Vendor provides any Work in Connecticut, then the provisions of Schedule 3 (Connecticut Provisions) shall apply to the Contract, and the MTA shall provide Schedule 3 (Connecticut Provisions) as part of the Contract Documents.