

DATE: 12/3/2024

NON-CONSTRUCTION CONTRACT SOLICITATION NOTICE

MTA- HQ IS NOW ADVERTISING FOR THE FOLLOWING:

SSE #:0000488827

OPENING/DUE DATE: 01/24/2025

TYPE OF SOLICITATION: RFP

DOCUMENT AVAILABILITY DATE: 12/12/2024

SOLICITATION TITLE: MTA BT SPEAR to Hexagon EAM.

DESCRIPTION: The Metropolitan Transportation Authority, its subsidiaries and affiliates (collectively, the “MTA”) hereby solicits a technical and cost proposal for New EAM BUS Computer Maintenance Management System (Hexagon EAM) Setup and Configuration services, in its entirety, including all implementation and professional services for MTA, in accordance with the Scope of Work (Attachment A), and the other attachments and appendices listed below.

MTA intends to select up to one (1) firm to provide the required services on an as needed basis. The anticipated contract term for this solicitation is four (4) years with a potential to renew for up to two (2) two-year options at the MTA’s sole discretion.

Funding: Operating 100%

Goals: WBE: 15% MBE: 15% SDVOB: 6%

Est \$ Range: \$5M - \$10M

Contract Term: Four years with a potential to renew up to Two - two-year options

PLEASE SEE ATTACHED PROECT OVERVIEW FOR ADDITIONAL INFORMATION

(X) PRE-BID CONFERENCE:

DATE: 1/8/2025

TIME: 3:00 PM

Virtual via Microsoft Teams- vendors must request link by emailing the Procurement Manager at kkamath@mtabsc.org before 1/8/2025

() SITE TOUR N/A

DATE:

TIME:

PLACE:

FOR MORE INFORMATION, PLEASE CONTACT

PROCUREMENT REPRESENTATIVE: Kartik Kamath

EMAIL: kkamath@mtabsc.org

MTA Procurement
333 West 34th Street, 10th Floor
New York, NY 10001

Lisette Camilo
Chief Administrative Officer



Date: December 16, 2024

**Re: Request for Proposal (“RFP”) No: SSE No. 0000488827
New EAM BUS Computer Maintenance Management System (Hexagon EAM) Setup &
Configuration**

Prospective Proposer:

The Metropolitan Transportation Authority, its subsidiaries and affiliates (collectively, the “MTA”) hereby solicits a technical and cost proposal for New EAM BUS Computer Maintenance Management System (Hexagon EAM) Setup and Configuration services, in its entirety, including all implementation and professional services for MTA, in accordance with the Scope of Work (Attachment A), and the other attachments and appendices listed below.

MTA intends to select up to one (1) firm to provide the required services on an as needed basis. The anticipated contract term for this solicitation is four (4) years with a potential to renew for up to two (2) two-year options at the MTA’s sole discretion.

BACKGROUND

The MTA seeks professional consultation services for the setup, configuration, and implementation from the MTA’s existing Spear Computerized Maintenance Management System (CMMS) to Hexagon Enterprise Asset Management (EAM) CMMS across the MTA Bus organization (the “Services”). It impacts all MTA Bus employees — represented and unrepresented populations.

Such Services shall include, but not be limited to, discovery, design, build, test, adjustment, and implementation for Revenue Bus Fleet, Non-Revenue Fleet, and Facilities. These systems manage asset inventory, asset hierarchy, work orders, warranty, material cost and labor hours across three asset classes within the Authority.

The MTA seeks qualified IT managed services providers from proposers qualified to perform work on the Hexagon EAM systems with experience and capabilities to implement large-scale Hexagon EAM projects that are expected to take more than 4 years for completion.

The contract with the selected vendor will be utilized on an as-needed basis through the issuance of task orders. The vendor may be required to manage more than one task order at any given time. Task orders will be issued pursuant to the procedures set forth in Section 3 (*Task Order Award Process*). There is no guarantee that any selected prequalified firm will be awarded any task order or dollar amount.

It is anticipated that the term of the contract awarded from this solicitation shall be for a period of four (4) years with a potential to renew for up to two (2) two-year options at the MTA’s sole discretion. MTA shall have the unilateral option to renew the contract or terminate the contract sooner at MTA’s sole discretion. MTA reserves the right, prior to contract award, to change the length of the initial contract term and the renewal term.

OBJECTIVES

The proposer shall provide all implementation and professional services relating to Hexagon Consulting and Implementation Retainer Services as set forth in the Scope of Work as needed by the MTA.

RFP SCHEDULE

The dates associated with each activity are subject to change by MTA’s sole discretion.

Date	Activity
12/16/2024	Issuance of RFP
01/08/2025	Pre-proposal Conference
01/10/2025	Deadline to submit written questions
01/24/2025	Submission of Proposals
The dates for the following activities are target dates only. The activities may be completed earlier or later than the dates shown.	
TBD	Proposer oral presentations (if applicable)
TBD	Conclude negotiations with potential awardees

SUBMISSION OF PROPOSALS

The MTA will be conducting this procurement through a secure online portal managed by Conductiv. Conductiv’s web-based process has been customized for MTA to electronically receive proposals in an electronically secure manner.

The Technical Proposal must be in a separate document file from the Cost Proposal. Separate modules are provided for the submission of the Technical and Cost Proposals. The current scheduled due date for MTA to receive proposals through the Conductiv portal is January 24, 2025 by 3:00 PM Eastern Time. No proposals will be accepted after that deadline unless that deadline is extended in MTA's sole discretion. Proposer must include with its Technical Proposal a cover letter which identifies by name and title, telephone number, and email address, the individual with the authority to negotiate for the firm.

MTA is including with this RFP information about the MTA and its requirements, which is confidential due to security and proprietary concerns. Accordingly, before a prospective proposer can receive the RFP and prior to releasing any confidential information, the MTA requires all prospective proposers to sign and return a Confidentiality and Non-Disclosure Agreement (“NDA”).

To obtain access to the RFP documents, a prospective proposer must contact MTA authorized representative Mr. Elvis Herrera from Conductiv by telephone at (917) 579-2486 or by email to eherrera@conductiv.com or elvis.herrera1@mtabsc.org.

MTA will evaluate proposals received based on the selection criteria specified in the RFP documents, and at the MTA’s sole discretion: negotiate in person, by telephone or by email with one or more proposers, and make up to the number of awards specified in the RFP documents.

There is no charge to a proposer to participate in this process and no fees will be charged to any proposer that is awarded a contract.

The scheduled due date for MTA to receive proposals through the Conductiv portal is **January 24, 2025 by 3:00 PM Eastern Time** (see RFP Schedule section). No proposals will be accepted after the due date, unless that date is extended in MTA's sole discretion.

Each proposal must include a general response addressing all the items under the Technical Proposal, which general response should not exceed ten pages, excluding the required Attachments, Appendices and any other additional Exhibits addressed in the Technical Proposal section.

All or some proposers that submit proposals in response to the RFP may be asked to make an oral presentation about their proposals. Whether a proposer is requested to make such a presentation is not determinative of the final evaluation of the proposer according to the evaluation criteria set forth herein.

Proposers must be available to make an **oral presentation**, if so requested, during the week of January 27, 2025; and if awarded the contract, the proposer must be available to start work shortly thereafter.

POINT OF CONTACT WITH THE MTA

Please be advised that all MTA agency procurement opportunities are subject to the NYS Procurement Lobbying Law. A prospective proposer is not permitted to contact any MTA personnel other than the designated point of contact at the MTA Procurement Department, Kartik Kamath at KKAMATH-Consultant@nyct.com or (646) 252-9278.

Proposers are advised that from the date of issuance of this RFP until the award of the contract, if any, the only persons authorized by the MTA for contact regarding this procurement is the above designated point of contact, as stipulated in the MTA Vendor Code of Ethics. The New York State Lobbying Law defines “contact” as oral, written or electronic communications with the MTA during the procurement process which is intended to influence the procurement. Any violation will be reported and may result in a non-responsibility determination, disqualification from award or debarment for a period of up to four (4) years. For additional information about the Lobbying Law, contact the NYS Office of General Services at (518) 474-5607 or visit <http://www.ogs.ny.gov/ACPL/>.

PRE-PROPOSAL CONFERENCE

To assist prospective proposers in the preparation of their proposals, a virtual Pre-Proposal Conference is planned for January 8, 2025 at 1:00 PM Eastern Time. Although registration for this conference is not required, prospective proposers who desire to attend the Pre-Proposal Conference **must** notify the MTA’s designated point of contact, in writing, at KKAMATH-Consultant@nyct.com by 12:00 PM Eastern Time on January 6, 2025. At that time, a signed copy of the NDA must also be issued with no exceptions.

Attendance at the Pre-Proposal Conference is not mandatory and shall be informal to the extent that the MTA is not bound by any statement made at such conference unless such statement is subsequently issued in an addendum which will be sent to prospective proposers.

PROPOSER INQUIRIES

Any questions regarding this RFP shall be made in writing via email by January 10, 2025 to the MTA’s designated point of contact, Kartik Kamath at KKAMATH-Consultant@nyct.com or (646) 252-9278. Any answers to questions as well as any additional provisions MTA may decide to include in the RFP, will be issued in writing by MTA as an addendum to the RFP.

ADDITIONAL INFORMATION TO AND FROM PROPOSERS

Should MTA require additional information from the proposer about the RFP documents submission, such information shall be provided within the timeframe specified by the MTA.

PERIOD OF PERFORMANCE

The contract awarded from this RFP (the “Contract”), if any, shall be for four (4) years with a potential to renew for up to two (2) two-year options at the MTA’s sole discretion. The expected commencement date is on or about February 15, 2025.

EVALUATION CRITERIA

General Considerations

An MTA evaluation committee (“Evaluation Committee”) will evaluate proposals on a variety of quantitative and qualitative criteria and make a recommendation for award, which will be subject to approval by the MTA Board. The MTA reserves full discretion to evaluate and determine the responsiveness, responsibility, and financial and long-term technology soundness of a proposer alone and in comparison, to other proposers, and which proposal is in the MTA’s best interests. There is no obligation on the part of the MTA to award a Contract based on one factor, such as the lowest cost or the most qualified proposer. MTA reserves the right in its sole discretion, without any further evaluation, to reject an incomplete or non-compliant proposal, or to require that a proposer provide additional information.

Proposals shall be evaluated based on the following criteria, based on the following order of importance:

SELECTION CRITERIA	Points
<p>Public Sector Experience and Knowledge</p> <ul style="list-style-type: none"> • Preferred knowledge of working with Computerized Maintenance Management System (CMMS) 10+ years in large public sector bus transit system (500+ buses), demonstrating prior experience of the proposer (and any proposed sub-consultants). • Identify two or more large public bus systems where the proposer implemented Spear to Hexagon EAM successfully. 	(25 points)
<p>Technical Evaluation</p> <ul style="list-style-type: none"> • Knowledge of configuration, setup of assets for non-revenue vehicles, facilities, bus equipment and subcontractor equipment (parent and child configurations) using Vehicle Maintenance Reporting Standards (VMRS) with knowledge of Spear system assets to integrate and/or migrate configurations of assets. • Knowledge of preventive maintenance programs that are "mileage based", "asset hours based", "calendar based", and combination of "mileage and/or calendar based" (whichever comes first); warranty conditions; claims generation; and processing of payments/resolutions. • Demonstrate specific qualifications and availability of personnel to be assigned to the project with experience in designing, developing, and deploying specific EAM Hexagon and EAM products, mobile applications, integrating ESRI, ArcGIS, Integrated Parts Catalogue (IPC) in a public sector bus transit system. • Proposer’s responsiveness to the MTA Scope of Work (Attachment A). • Compliance with Professional Services Agreement Terms and Conditions (Attachment C). • Compliance with MTA Cybersecurity Requirements (Appendix M). 	(30 points)
<p>Enterprise Asset Management Integration</p> <ul style="list-style-type: none"> • Experience with integration with other systems (interfaces), uploading of current assets and active work orders while maintaining a link to the historical data from the various systems in use today or in the past at New York City 	(30 points)

Transit Department of Buses (DOB), Support Fleet Services (SFS) and Facilities. <ul style="list-style-type: none"> • Knowledge of public sector bus transit industry best practices, flow, techniques, methods, and processes for buses, facilities, and non-revenue assets. • Experience in providing complete project plan including system design, setup and configuration of Hexagon EAM work scheduling, timekeeping, unscheduled work planning, scheduled work planning, workforce picks, material and inventory, fuel management system (DOB uses Fleetwatch) and tracking location of equipment by permanent/owned location, loaned to/from location and shop and/or vendor location in real time. 	
Cost Evaluation <ul style="list-style-type: none"> • The overall and itemized costs proposed • Discounts offered 	(5points)
Diversity Practice <ul style="list-style-type: none"> • Diversity Practices Questionnaire (Attachment I) 	(10points)

MTA reserves the right to award the Contract(s) to the most responsible proposer(s) submitting a proposal which is most advantageous and in the best interest of the MTA. MTA shall be the sole judge of the proposal(s) that is/are in its best interest and its decision is final. There is no obligation on the part of the MTA to award a Contract(s) to the lowest proposer (least cost to the MTA).

TECHNICAL PROPOSAL

The Technical Proposal shall be developed in accordance with the requirements outlined in the Attachment A – Scope of Work and shall include all deliverables identified. In addition, it shall consist of the following:

1. A cover letter with a clear and concise summary identifying your understanding of the objective and scope of work required. This letter shall not exceed three (3) pages and shall be signed by an agent of the proposing firm who is authorized to sign a Contract and bind the proposing firm.
2. Address for each of the firm's offices, and identification of which office:
 - a. is the headquarters and
 - b. which one will handle the MTA account(s).
3. Description of the conceptual approach with details outlining your understanding of the Scope of Work, personnel assigned and description of how you will work with the MTA.
4. References: Submit a summary of five (5) most recent customer references to illustrate the specialized expertise, demonstrated experience, applicable qualifications and available resources of the organization. Preferably these summaries shall be services provided to a similar entity. Each summary shall include at minimum the following information:
 - a. Client name, location, description of service, dates of service and status.
 - b. Services provided.
 - c. Population Base.
 - d. Contractor’s project manager for each project.
 - e. Key project team members (with emphasis on the participation of team members proposed for this project).
 - f. Name and current telephone number and email address of client contact person.

- f. Time spent on-site versus off-site and percent of time allocated to project;
- g. Prior client references including current, verified telephone numbers or email addresses;
- h. A complete staffing organizational chart shall be provided identifying everyone on this project and their roles and responsibilities for up to 8 years in contract duration;
- i. The main point of contact for daily operations, such as route coordination, should be clearly identified and emphasis made on their experience and availability. The proposer shall also submit a complete organizational chart of all employees to be slated for this project, including titles and roles, and all subcontractors.

The MTA reserves the right to request additional information on any personnel proposed to work on this project.

MTA FORMS AS DETAILED BELOW:

Proposers shall familiarize themselves with the Attachments and Appendices provided with the RFP (as listed below), to be completed and signed, as applicable.

Completed MTA Forms shall be attached to the Technical Proposal responses documentation and submitted on or before 3:00 PM Eastern Time on January 24, 2025.

Attachment A: Scope of Work
Attachment A-1: Price Schedule
Attachment A-2: Vendor Questionnaire
Attachment B: Contractor Responsibility Form
Attachment C: Professional Services Agreement
Attachment D: Omnibus Procurement Act
Attachment E: Prompt Payment Regulations
Attachment F: New York State Lobbying Law Compliance (with Forms 1 and 2)
Attachment G: MTA Vendor Code of Ethics
Attachment H: Iran Divestment Act Certification
Attachment I: Diversity Practices Questionnaire
Appendix B – Affirmative Action/Equal Employment Opportunity Requirements
Appendix C – Guidelines for Contractors
Appendix E – Financial Disclosure
Appendix K – Executive Order 177 Certification
Appendix L – Sexual Harassment Prevention Compliance
Appendix M – MTA Cybersecurity Requirements and Certification
Appendix N – Executive Order 16 Certification

COST PROPOSAL

The Cost Proposal shall be submitted in a separate file from the Technical Proposal. While cost will not be a factor in evaluating the Technical Proposal, the MTA will enter into an agreement only if the proposer's Cost Proposal, as proposed or negotiated, is reasonable in MTA's sole judgment. MTA currently anticipates that payments made pursuant to the Contract with the successful proposer will be paid upon completion of work and acceptance of any deliverables and is subject to appropriate cost controls. Detailed breakdown of the Cost Proposal may be requested by MTA to determine cost reasonableness.

In addition, please make sure to itemize the Cost Proposal (see Attachment A-1 Price Schedule) and include the following considerations:

1. Estimate of labor rates by job title.
2. Average hourly salary by discipline, where applicable.
3. State indirect cost rates (fringe benefits, overhead, etc.) by rate and dollar amount, and whether this is the only indirect rate your firm uses. Provide a listing of overhead accounts. If your firm has been recently audited by the Federal government or New York State, provide documentation of rates negotiated/accepted.
4. Lump sum profit - It is the practice of MTA to allow, as a maximum, eight percent (8%) for profit computed on direct labor and indirect cost.
5. Indicate whether, for any of your direct or indirect costs, you charge a component of the federal or any state or local government a charge which is different than the charge you propose to MTA. If yes, itemize and discuss the relevant governmental charge.
6. Proposers are encouraged to include in their Cost Proposals any discounts, or other savings or benefits that are offered to MTA based on:
 - i) electronic submission of invoices;
 - ii) frequency of invoicing; and
 - iii) early payment of an invoice.

Please note that, in addition to submission of an invoice to the MTA Business Service Center, a proposer will be required to submit to the Project Manager any required documentation to back up the invoice.

7. Indicate your firm's Federal Tax I.D. number.
8. Individual's Social Security number, if applicable.
9. Completed documents which are to be included with your Cost Proposal as follows:
 - a. Listing of overhead accounts/government audit (see paragraph 3 above) for prime, and subcontractor (if any).

MTA FORMS/ATTACHMENTS DETAILS AND APPLICABLE LAWS

1. **ATTACHMENT A – SCOPE OF WORK**
2. **ATTACHMENT A-1 – PRICE SCHEDULE**
3. **ATTACHMENT A-2 – VENDOR QUESTIONNAIRE**
4. **ATTACHMENT B – CONTRACTOR RESPONSIBILITY FORM**
5. **ATTACHMENT C – PROFESSIONAL SERVICES AGREEMENT**

The MTA intends to issue to the successful proposer a contract for SPEAR to Hexagon Setup, Configuration and Implementation Retainer Services as set forth in Attachment C (MTA Standard Form of Contract) and in accordance with all attachments, appendices, and exhibits referenced therein and in this RFP. Any terms, conditions or other provisions in a proposal or other submitted documents that are contrary or inconsistent with Attachment C will not be incorporated into or become a part of the Contract awarded pursuant to this RFP, will not be binding on the MTA and are considered void. The Contract awarded pursuant to this RFP shall govern any statement/scope of work, purchase order or other contract document issued by the MTA in connection to this RFP, unless expressly modified in writing and agreed to by the parties as set forth in Attachment C.

6. **ATTACHMENT D – OMNIBUS PROCUREMENT ACT**

Proposers are advised that an awarded contract is subject to the provisions of the Omnibus Procurement Act of 1992, Chapter 844, Laws of 1992 (see Attachment D).

7. ATTACHMENT E – PROMPT PAYMENT REGULATIONS

Section 2880 of the Public Authorities Law, and MTA’s guidelines pursuant thereto, requiring prompt payment of Contractor's invoices apply to any contract awarded because of this RFP. The attached letter entitled "Prompt Payment of Invoices" (Attachment E), gives information regarding the regulation.

8. ATTACHMENT F – NEW YORK STATE LOBBYING LAW OF 2005 AND CORRESPONDING FORM 1 AND FORM 2

Chapter 1 of the Laws of 2005, as amended by Chapter 596 of the Laws of 2005 (collectively referred to as the “Lobbying Law”), was signed into law by the Governor in August 2005. The Lobbying Law makes major changes to the Legislative Law and State Finance Law, which regulate lobbying on government procurement initiatives. In particular, the Lobbying Law creates two new sections in the State Finance Law: Section 139-j to address restrictions on “contacts” during the procurement process; and Section 139-k to address the disclosure of contacts and the responsibility of bidders and proposers during procurements. These sections are effective as of January 1, 2006.

If it is found that a proposer has knowingly and willfully violated State Finance Law Section 139-j (3), the proposer and any of its subsidiaries, related or successor entity will be determined to be a non-responsible bidder and shall not be awarded the contract. A subsequent finding of non-responsibility by the vendor or contractor within four years of a prior determination of non-responsibility results in the proposer being ineligible to submit a proposal on or be awarded any procurement contract for four years from the date of the second finding of non-responsibility. See State Finance Law Section 139-j (10) (b).

Attachment F, Compliance with New York State Finance Law Sections 139-j and 139-k, is attached and made part of this RFP in compliance with the Lobbying Law. In complying with the Lobbying Law, proposers are required to complete and submit with their proposal the two forms (Form 1 and Form 2) attached to Attachment F herewith. For additional information regarding the Lobbying Law, all Proposers are urged to contact the New York State Office of General Services at (518) 474-5607, or access their website: <http://www.ogs.state.ny.us/aboutOgs/regulations/defaultAdvisoryCouncil.html>.

9. ATTACHMENT G – MTA VENDOR CODE OF ETHICS

The Metropolitan Transportation Authority has adopted a Vendor Code of Ethics (the “Code”), which is applicable to all Vendors, as defined by the Code, involved in the procurement process for the award and performance of the Contract. The Code is available for immediate review by the Proposer on the MTA Website at www.mta.info/mta/procurement/vendor-code.htm, and all proposers must certify compliance with the Code (See Attachment G to this RFP).

10. ATTACHMENT H – IRAN DIVESTMENT ACT

This Agreement is subject to New York State Finance Law 165-a, Iran Divestment Act of 2012 which requires the Office of General Services to post on its web site (<http://www.ogs.ny.gov/about/regs/docs/ListofEntities.pdf>) a list of persons who have been determined to engage in investment activities in Iran. MTA may not enter into or award a Contract unless it obtains certification, Attachment H, from a proposer that they are not on the list. Certification must be returned with proposal documents.

11. ATTACHMENT I – DIVERSITY PRACTICES QUESTIONNAIRE

MTA has determined, pursuant to New York State Executive Law Article 15-A, that the assessment

of the Diversity Practices of Proposers to this Request for Proposal (“RFP”) is practical, feasible and appropriate. Accordingly, proposers to this RFP shall be required to include as part of their Proposal, the completed, Proposer Diversity Practices Questionnaire (“Attachment I”), which contains the questions that the proposer must answer regarding Diversity Practices. This questionnaire provides the MTA with information pertaining to your diversity program and practices.

12. APPENDIX B – AFFIRMATIVE ACTION/EQUAL EMPLOYMENT OPPORTUNITY PROGRAM

i. EEO/Non-Discrimination

In connection with the Contract awarded pursuant to this RFP, the successful proposer will not discriminate against any employee or applicant for employment for work under the Contract, or any subcontract thereunder, because of race, creed, color, national origin, sex, age, disability or marital status, nor will it discriminate against any person who is qualified and available to perform the work to which the performance relates. The successful proposer will undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status. The Contract awarded pursuant to this RFP is subject to the Affirmative Action/EEO Requirements set forth in Appendix B.

ii. Affirmative Action/EEO Submission Requirements

The successful proposer will be required to submit an EEO Policy Statement and a copy of their current EEO-1 form, detailing the firm's workforce composition (see Appendix B) within seven (7) calendar days after it receives verbal notification. MTA’s Procurement Division may extend the deadline for submission of an EEO-1 Form or an EEO Policy Statement. Any requests for an extension must be submitted to the MTA’s Procurement Division for the attention of the Contract Manager.

13. APPENDIX C – GUIDELINES FOR CONTRACTORS

14. APPENDIX E – FINANCIAL INTEREST DISCLOSURE

Proposers are advised that, due to the sensitive nature of the work to be performed under the contract, certain of the employees of the successful proposer and/or its subcontractors who will be performing tasks in such sensitive areas will be required to file financial interest reports (see Appendix E).

15. APPENDIX K – EXECUTIVE ORDER 177

The New York State Human Rights Law, Article 15 of the Executive Law, prohibits discrimination and harassment based on age, race, creed, color, national origin, sex, pregnancy or pregnancy-related conditions, sexual orientation, gender identity, disability, marital status, familial status, domestic violence victim status, prior arrest or conviction record, military status or predisposing genetic characteristics.

Proposers are hereby notified that this RFP is subject to Executive Order 177, which prohibits New York State agencies, including the MTA, from entering into contracts with entities that support discrimination. This certification must be submitted with each proposer’s proposal, prior to contract award, no exceptions.

16. APPENDIX L – SEXUAL HARRASSMENT COMPLIANCE

17. APPENDIX M – MTA CYBERSECURITY REQUIREMENTS AND CERTIFICATION

18. APPENDIX N – EXECUTIVE ORDER 16 CERTIFICATION

NEW YORK STATE COMPTROLLER REVIEW/APPROVAL

In accordance with Public Authorities Law §2879-a, the contract resulting from this RFP may be subject to review and/or approval by the Office of the State Comptroller (OSC), and shall not be valid, effective or binding until it has been approved by the OSC, if such review and/or approval is required.

SPECIAL NOTICE TO CONTRACTORS: VENDOR DEBARMENT FOR MTA CONTRACTS

In accordance with Public Authorities Law §1279-h, the proposer will be debarred and will not be permitted to bid on future MTA contracts for a period of five years if, pursuant to regulation established by the MTA for the debarment of proposers, a final determination is made by the MTA that the proposer failed to substantially complete all work within the time frame set forth in the Contract, including any subsequently executed change order, by more than ten percent of the contract term, or that the proposer's claimed costs exceeds ten percent or more of the total contract cost, including costs associated with any subsequently executed change orders, and where such claimed costs are deemed to be invalid pursuant to the contractual dispute resolution process.

MISCELLANEOUS

- a. MTA reserves the right to negotiate with one or more proposers, to award to one or more proposers, or to reject any and all proposals as it may determine in its sole and absolute discretion. The MTA assumes no liability for any costs that the proposer incurs as a result of (a) responding to this RFP and contract negotiations, if any, related to this RFP. The awarded proposer(s) shall not bill the MTA for any expense that was incurred prior to the time that the MTA and the proposer(s) sign the contracts awarded from this RFP.
- b. MTA reserves the right to cancel the award of a contract at any time including before its execution, if MTA deems such cancellation to be in its best interest. In no event will MTA have any liability whatsoever for cancellation of an award prior to execution of a contract. Proposer assumes sole risk and responsibility for its expenses prior to execution of the contract and shall not commence work until receipt of the written notice to proceed.
- c. A proposal shall be irrevocable for a period of no less than 120 days from the proposal due date set by MTA therein. All pricing proposed is subject to negotiation, at MTA's sole discretion.
- d. The proposer agrees that if it is awarded the Contract, all the documents submitted to the MTA in connection with the RFP, including all terms and conditions, information, data, certifications, disclosures and this RFP, including all attachments, appendices and exhibits hereto, shall be incorporated into the contract awarded from this RFP.

Sincerely,

Kartik Kamath

Kartik Kamath

Sr Manager

MTA HQ EAM Procurement - Technology & Telecommunications

SPECIAL NOTICE TO VENDORS

VENDOR DEBARMENT FOR MTA CONTRACTS

In accordance with Public Authorities Law §1279-h, the Vendor awarded the contract resulting from this solicitation will be debarred and will not be permitted to bid on future MTA contracts for a period of five (5) years if, pursuant to regulation established by the MTA for the debarment of Vendors, a final determination is made by the MTA that such Vendor failed to substantially complete all work within the time frame set forth in such contract, including any subsequently executed change order, by more than ten percent of the contract term, or that the Vendor's claimed costs exceeds ten percent or more of the total contract cost, including costs associated with any subsequently executed change orders, and where such claimed costs are deemed to be invalid pursuant to the contractual dispute resolution process.

SCOPE OF WORK - DEPARTMENT OF BUSES

CONSULTING CONTRACT **New EAM BUS Computer Maintenance** **Management System (Hexagon EAM) Setup &** **Configuration**

I. Overview

- A. New York City Transit – Department of Buses and MTA Bus Company requires independent professional consultation services for the setup, configuration, and implementation from Spear CMMS to Hexagon EAM CMMS (the “Services”). Such Services shall include, but not be limited to, discovery, design, build, test, adjustment, and implementation for Revenue Bus Fleet, Non-Revenue Fleet, and Facilities. These systems manage asset inventory, asset hierarchy, work orders, warranty, material cost and labor hours across three asset classes within the Authority.
- B. The Contractor shall perform the Services on site at the DOB Office at the East New York Facility, located at 25 Jamaica Ave, Brooklyn, New York. The Contractor may also be required to report to or travel to other locations as deemed necessary by the Authority including, but not limited to, Authority depots, non-Revenue shops, and facilities located within New York State. The Authority’s Project Manager (“PM”) will assign each Task Order to the Contractor, along with the background information, bus location(s) and any other relevant information. The Contractor shall perform Services in a manner that will not cause a disruption in the Authority’s ability to maintain full and efficient transit bus service.

II. Authority Support of Contractor

- A. The Authority shall provide the following in support of the Contractor:
 - 1. The Authority’s existing Spear CMMS, Infor 11 I, and MP2 will serve as the primary source for migrated data. Such Spear SME will leverage their knowledge of existing systems and assist the Contractor in data mapping and loading of selected data.
 - 2. The Authority’s Spear SME will provide expertise to the Contractor on asset configurations, warranty, and Vehicle Maintenance Reporting Standards (VMRS) coding and tables to be uploaded.
- B. The Authority’s PM will review all deliverables and determine, in their sole discretion, whether a Task Order has been completed by providing final approval of the Task Order in writing to the Contractor.

III. Contractor Service Requirements

- A. As required by each Task Order, the Services may include, but are not limited to, the following:
 - 1. The Contractor shall provide professional services relating to ensuring compliance in the setup, configuration and implementation of Computerized Maintenance Management Systems (CMMS), Spear, Infor 11 I, and MP2, to EAM Hexagon.
 - 2. Using proven configuration from other public transit bus systems, Flex SQL, and templates, the Contractor shall configure the Authority’s CMMS to best industry practices.
 - 3. The Contractor shall review and evaluate industry and regulatory standards and provide reports and technical design documents.

4. The Contractor shall provide technical assistance relating to the following, at a minimum:
 - a. Asset classes, asset hierarchy, asset records management and asset performance.
 - b. Work scheduling, timekeeping, unscheduled work planning, VMRS repair actions and, work close out process.
 - c. Maintenance, preventative maintenance, and maintenance overhaul programs/planning.
 - d. Preventative Maintenance: calendar based, mileage based, hours based and calendar and/or mileage-based cycles.
 - e. Assets, labor, material, cost analysis, warranty contracts, vendors, claims, payment, finance, and procurement. Creating warranty conditions, (up-load) vendor documentation (i.e., parts catalogs).
 - f. Material/inventory, purchase orders, vendor parts supplies, receiving/issuing, material returns, material min / max.
 - g. Workforce, Picks, Work schedules, Timekeeping.
 - h. Ensure that the interface with established Bus Scheduled Operation (SO) Mobile Application, which today uses 440 mobile devices, will seamlessly connect with the new EAM system to continue providing mobile inspection capabilities and augment it to use in other areas such as Facilities and SFS inspections.
 - i. Configure setup and training on an Integrated Parts Catalog (IPC) to: (1) track parts used in work orders, types of parts used (new, used, rebuilt); and (2) aid in the ordering of parts both internally (PeopleSoft / Talon) and through 3rd party vendors.
 - j. The uploading of current assets in DOB, SFS and Facilities while maintaining a link to the historical data from the various systems in use today.
 - k. Ensure that all existing interfaces, GSI, Fuel Management (Fleet watch), Clever Devices, Road Calls, etc. are integrated with the new system.
 - l. Uploading an estimated 5,000 to 6,000 users and setting them up with security rights to perform their business functions.
 - m. Creating a user experience, in the form of screens, searches and reports that provide a flow that is intuitive to the different functions of each user as they conduct their daily activities, providing safe, reliable, service.
 - n. Clarification of what asset management data is being collected and how to assist those recording data to make it more transparent and easier to enter (for example: identifying parts that are under warranty and how to safeguard the part for warranty reimbursement).
 - o. Identification of the maintenance related decisions made at each level that supports asset management decisions so that the functions performed, and their importance, are clearly defined to all users.
 - p. Providing high quality maintenance data information that supports timely asset management decision making for business processes using Departments of Buses existing systems, AI-generated prognostic tools (Preteckt / Clever), Tableau BI, and any future AI predictive analytics.
 - q. Perform inspections throughout manufacturing process to account for the Authority's current and upcoming asset/equipment contracts.
 - r. Capital asset forecasting, State of good repair, and capital asset planning for 5, 10 and 20 years.

5. The Contractor shall provide all documents (e.g., drawings, specifications, reports, data, analysis, etc.) associated with any Services performed under the Task Order. The Contractor may be required to create specifications, directives, technical service bulletins, and shop work scopes for the Authority. These documents will become the property of the Authority at the completion of the Task Order.

- B. The Contractor shall be responsible for reviewing the details of each Task Order. In its performance of each Task Order, the Contractor shall provide the following deliverables:
 - 1. A Scope of Work that details the setup, configuration, and implementation using proven configurations from other public bus transit systems, and Flex SQL that enhances the Authority’s business processes.
 - 2. Detailed estimated costs.
 - 3. Approximate projected timelines to complete the projected tasks.
 - 4. A preliminary summarized brief report on discovery, design, build, test, adjustment, and implementation for Revenue Bus Fleet, Non-Revenue Fleet, and Facilities.
 - 5. Additional estimates or options for deployment services, on-prem services, and ongoing sustainment. This will be for up to two (2) two-year options exercisable in the Authority’s sole discretion.

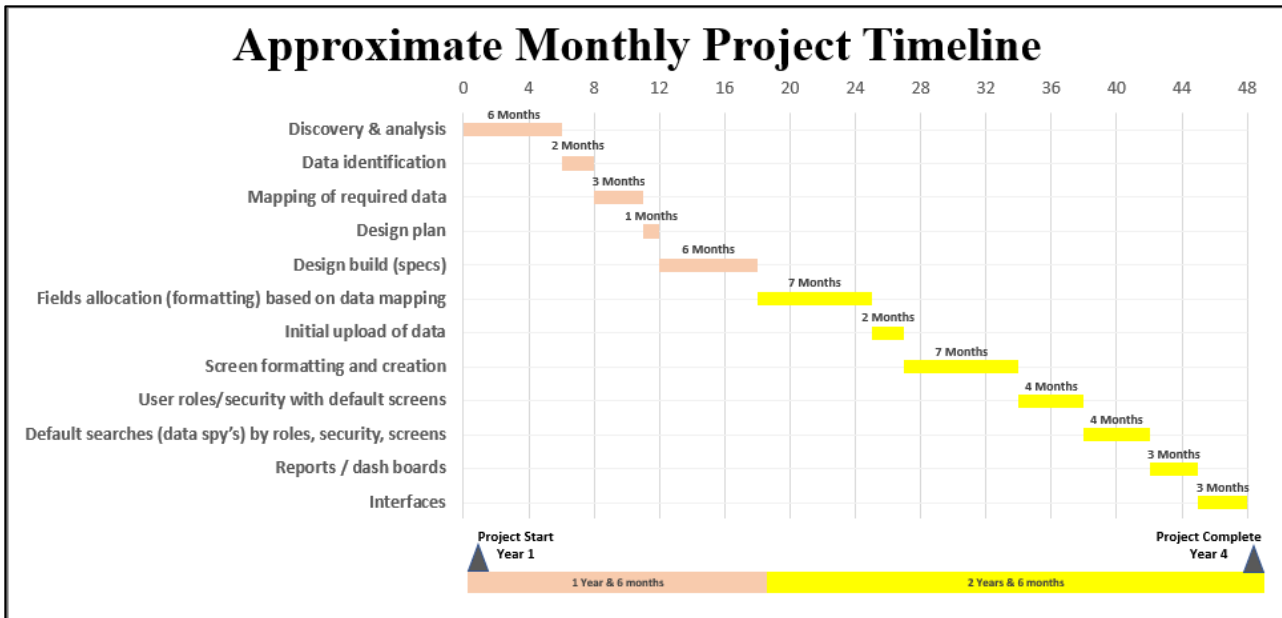
- C. The Contractor shall exercise its best independent judgment to provide the following Services:
 - 1. Provide consultant services and solutions to identify approximate project timelines based on prior public sector bus transit customers.
 - 2. Assist in identifying public bus transit best industry practices, process flow, and business techniques, methods, and processes.
 - 3. Systems development and lifecycle implementation timelines that consist of discovery, design, build, test, adjust, train, and implementation.
 - 4. Perform all other Services as required by a Task Order.

- D. The Contractor shall attend and participate in meetings, including meetings within the New York metropolitan area, and/or conference calls regarding the specific tasks described above and other tasks related to completion of the assigned Task Order. This shall also include providing presentations, memorandums, or rendering expert opinions to other stakeholders when requested.

- E. Deliverables, Objectives and Approximate Timelines

Total duration of 4 years, comprised of the following:	
• 1 year and 6 months	
<u>Discovery & analysis</u> MTA goals tailored to implementation plan to achieve those goals	6 months
<u>Data identification</u> Roles, responsibilities, codes tables, part numbering, equipment hierarchies, work order types, priority levels, etc.	2 months

<p><u>Mapping of required data</u></p> <p>Cross-functional to help build alignment with all agencies (facilities, non-rev fleet and bus)</p>	3 months
<p><u>Design plan</u></p> <p>Modules needed to meet needs; what is new/good to have/improves on existing; risk management; existing data integrity (assets)</p>	1 month
<p><u>Design build (specs)</u></p> <p>PM schedules, equipment models, costs, warranty conditions and claims processing, parts/assets numbering, etc.</p>	6 months
<p>• 2 years and 6 months</p>	
<p><u>Hexagon build per specs:</u></p> <ul style="list-style-type: none"> ○ Fields allocation (formatting) based on data mapping ○ Initial upload of data, Integrated Parts Catalog (IPC) 	7 months
Screen formatting and creation	7 months
User roles/security with default screens	4 months
Default searches (data spy's) by roles, security, screens	4 months
Reports / dashboards	3 months
Interfaces	3 months



- F. The Contractor shall provide written reports, as required, regarding the specific tasks described above and other tasks as requested by the PM.
- G. The Contractor shall provide to the PM weekly (telephone) and monthly (written) status reports detailing the status of each Task Order assigned under this Contract.
- H. The Contractor must be able to perform multiple projects for the Authority simultaneously. The Contractor shall have an adequate staff of qualified technicians, engineers, and office personnel capable of executing the technical assignments under the guidance and supervision of the PM to fulfill the requirements of this Scope of Work.

- I. When specialized professional expertise is needed beyond the Contractor's expertise, the Contractor may utilize subcontractors in accordance with Article IX (Subcontracts) of the Agreement.

IV. Project Scoping

The Contractor shall provide project scoping as follows:

A. Task Assessment

The initial responsibility of the Contractor shall be to assess both the practicality and feasibility of the task that has been proposed by the Authority. The Contractor shall take the appropriate measures to determine whether it may be possible to achieve the objectives given all perceivable obstacles. The Contractor, within an agreed upon time frame, shall present to the PM a project Scope of Work together with an outline of the tasks, steps, and a professional assessment of the pros and cons regarding the overall project feasibility. The PM will use this assessment in determining whether it is prudent to move forward with the project/task, and separately assign any further work pursuant to Section B, below.

B. Proposed Scope of Work and Cost Estimate

Upon notification to the Contractor that the Authority intends to proceed with the task, the Contractor shall provide the PM with a detailed plan which consists of a summary and outline of the steps and measures it will take to accomplish the objective. The detailed work plan shall include a schedule and a detailed cost estimate that corresponds to each task/major activity described in the project Scope of Work and outline. The PM will determine what tasks/major activities, if any, may be excluded from the plan. The Contractor would then prepare a revised plan taking into consideration what the Authority determines is adequate.

The cost estimate for the proposed Scope of Work and time schedule (where established) shall be regarded as the baseline against which the status and progress of the project is measured and reported. Once the project has commenced, adjustments may only be made after receipt of the PM's written approval. Prior to receiving approval to perform additional work, the Contractor shall provide the PM with adequate written justification detailing the steps completed to date. In conjunction with that requirement, the Contractor shall also provide an action plan for the completion of the project.

V. Budget Control

The Contractor shall utilize appropriate cost control measures to remain within the estimate provided in the proposed Task Order. Unless separate written approval is given by the PM, the estimate for each phase of the project may not be exceeded. The Contractor shall submit a written monthly progress report along with invoice by the last day of following month to the PM. The progress report shall include costs, percentage of completion, and schedule information for all active projects. It is understood that if the quantity of personnel, hours and/or materials agreed to for a particular Task Order is greater than the actual quantities utilized during the performance of the Task, then the Project Manager shall review the actual quantities and have the right to equitable adjustments to the previously agreed-upon itemized amounts or quantities, and accordingly, to the not-to-exceed Task Order price.

VI. Task Order Meetings

The Contractor shall be responsible for attending and assisting in the preparation for project meetings with the Authority personnel and/or third parties. The Contractor shall also provide documentation pertaining to the particular Task Order, such as presentation material and meeting minutes. The Contractor shall carefully anticipate the number of meetings which will be necessary, as the cost of all meetings shall be included in the Contractor's cost estimate for any Task Order. Special and/or emergency project meetings, however, may be permitted, if necessary, by written authorization of the PM.

VII. Working and Final Drafts

The Contractor shall submit working and final drafts on all work products in a timely manner to allow for adequate review and revision prior to final submittal.

VIII. Contract Plan and Specification Preparation

The Contractor shall, where required, prepare a Scope of Work and specifications for work, which may be a part of the Contractor's final report if so directed by the Authority Project Manager(s).

IX. Presentation of Findings

For each assigned Task Order, and pursuant to the Contractor's observation and research, the Contractor's findings and recommendations shall be provided to the PM in writing. With prior approval of the PM, the Contractor may incorporate visual aids (e.g., PowerPoint presentation, graphic illustration), where appropriate, for a more effective presentation.

X. Reports/Work Products

All reports and other work products under this Agreement shall become the property of the Authority.

XI. Invoice Preparation

Invoices for the Services performed shall be provided to the PM and the MTA Business Service Center monthly and shall be submitted by the last day of the following month. The invoice will bill for the actual time worked in performing each task. Invoices shall pertain exclusively to the Services performed and shall include the description of Services provided with percentage completed, date and name with title and hours for all personnel, running total against total time allocated for each task, and location of work performed. When applicable, documentation verifying costs (e.g., receipts for travel expenses) shall accompany the invoice. The PM shall authorize payment of the Contractor's invoice for a given Task Order upon final inspection and certification by the Project Manager, that the Services have been completed in compliance with the terms of the Task Order and the agreed-upon price.

[end of section]

**ATTACHMENT A-1:
PRICE SCHEDULE**

MTA Bus RFP # 0000488827 SPEAR to Hexagon EAM

Cost Estimate

Vendor Name:

Vendor Contact:

Instructions: Please provide the rates in the YELLOW cells for each role (or update the estimates provided). Please add additional roles/titles as you feel appropriate to satisfy the Scope of Work.

Core Team: Provide hourly rates for each			
Role / Title	Role description	Experience	Hourly Rate
Engagement Partner		Advanced (15 years+)	
Program Manager		Advanced (15 years+)	
Project Manager			
Solution Architect		Advanced (15 years+)	
SPEAR/Hexagon Solutions Leads		Senior (5 - 15 years+)	
Sr.Solution Consultants		Intermediate (2 - 5 years+)	
Integrations Consultant		Senior (10 - 15 years+)	
Reports Consultant			
UA/ED Consultant			
Testing & Cutover Lead			
Total			\$ -

Surge Support: Provide hourly rate for each:				
Role Type	Role description	Hourly Rate	Average Hours needed per year	Total
Network/Network Security Architecture and Design	Provide deep architecture, design and implementation experience across network and network security services for both IT and OT. Also provide insight into leaders within a specific technology and leading practices		100	\$0.00

Architecture and Design	Provide deep architecture, design and implementation experience for Cloud deployments and migrations. Also provide insight into leading practices		150	\$0.00
Application Architect	Provide support for the development of architecture across application, business and infrastructure		150	\$0.00
Infrastructure Strategy	Assist in the development of strategic goals for modernizing/transforming the overall infrastructure; these resources can be in specific domains or across the overall infrastructure environment		100	\$0.00
Strategy	Assist in the development of how cloud fits within the short-term and long-term goals of the organization		100	\$0.00
Technical Project Manager	Provide oversight and management of large projects across all aspects of IT (these resources will have technical experience within specific areas of IT)		250	\$0.00
Business Analysis	Assist in the development of technical and business requirements in support of the technical domain or financial resources		200	\$0.00
Training	Assist in the development of training materials and the delivery of training related to the IT aspects of projects		150	\$0.00
Testing	Assist in the development of test plans and the executions of testing related to the IT aspects of projects		200	\$0.00

ATTACHMENT A-2:
VENDOR QUESTIONNAIRE



ATTACHMENT B

THE CONTRACTOR RESPONSIBILITY FORM

AND

THE CONTRACT SPECIFIC RESPONSIBILITY FORM

ATTACHMENT B

3/2021

MTA HQ CONTRACTOR RESPONSIBILITY FORM

INSTRUCTIONS:

1. Attachment B, Contractor Responsibility Form (the “Responsibility Form”) consists of both the Contractor Responsibility Form and the Contract Specific Responsibility Form. Both forms must be completed for: (i) all contracts in the amount of \$250K or greater; (ii) Contractors and Subcontractors in contracts involving “Special Circumstances” (as defined below); (iii) all known Subcontractors having “Significant Subcontracts” (as defined below); (iv) change orders which require approval by the MTA Board; and (v) whenever required by the MTA. The individual who signs this Responsibility Form must have the authority to legally bind the contractor or subcontractor.
2. If Contractor has previously submitted a Responsibility Form within the past twelve (12) months and if there have not been any changes to information contained in the previously submitted form, the Contractor does not need to complete this Responsibility Form. Instead Contractor may complete the Certification of No Change.
3. Contractor must answer all questions in this Responsibility Form. “None” or “not applicable” may be used for those questions where these responses are appropriate, but no answers can be left blank. Information that Contractor believes to be unfavorable must be disclosed. While unfavorable information will be considered in the MTA’s overall responsibility finding, it will not necessarily result in the denial of a contract award.
4. Contractor may attach additional sheets to its response if more space is needed to fully respond to any question. If after submitting the Responsibility Form, Contractor realizes any of its responses to the questions are incorrect, incomplete or the answer(s) have otherwise changed, Contractor must promptly submit written notice of those changes to the designated point of contact for the solicitation. If the contract has since been awarded, then the notice of changes must be submitted to both the Agency’s Chief Procurement Officer and the designated point of contact for the contract.
5. Contractor shall fully cooperate with the MTA in connection with the MTA’s review of its responses to this Responsibility Form, including any MTA requests for further information/discussions and backup documentation.
6. Unless otherwise stated in this document, the applicable time frame for all questions is the prior ten (10) years.
7. Contractor must affirmatively demonstrate its responsibility both prior to award and throughout the life of the contract in order to be deemed “Presently Responsible” (as defined below).

MTA HQ CONTRACTOR RESPONSIBILITY FORM

8. Definitions:
- a. Contractor: Any entity that intends to contract with the MTA or become a Significant Subcontractor, including contractors, suppliers, bidders, proposers or entities that wish to participate in future MTA procurement solicitations.
 - b. Control: (i) directing or having the right to direct daily operations; and/or (ii) holding a ten percent (10%) or more ownership interest in the company.
 - c. Managerial Employees: Employees who operate in a supervisory capacity and, either by virtue of their title or their duties, operate with discretion over solicitation, letting, or management of contracts with public agencies.
 - d. MTA: the Metropolitan Transportation Authority and its present and future subsidiary and affiliate agencies, including New York City Transit Authority (“NYCT”) and its subsidiary agencies including Manhattan and Bronx Surface Transit Operating Authority (“MaBSTOA”) and Staten Island Rapid Transit Operating Authority (“SIRTOA”), Triborough Bridge and Tunnel Authority (“TBTA”), Metro-North Commuter Railroad Company (“MNR”), Long Island Rail Road (“LIRR”), MTA Bus Company (“MTA BC”), MTA Construction and Development Company (“MTAC&D”) and First Mutual Transportation Assurance Company (“FMTAC”).
 - e. Monitor: an independent private sector firm with legal, audit, investigative and loss prevention skills, employed voluntarily or by compulsory process, to monitor an entity’s business activities in order to ensure compliance with relevant laws and regulations, and to uncover and report unethical or illegal conduct within and against the entity. This definition includes Independent Private Sector Inspector Generals.
 - f. Present Responsibility: Ongoing review of Contractor’s fitness for work.
 - g. Significant Subcontracts: subcontracts in which the Subcontractor is proposed to perform work (i) valued at \$1 million or more and more than 10% of the prime contract value; or (ii) valued at \$5 million or more; or (iii) in Special Circumstances subcontracts of \$100,000 or more. A Significant or Special Circumstances Subcontractor is required to complete and submit the Responsibility Form. The Contractor that is proposing, or requesting approval for, the Significant or Special Circumstances Subcontractor will obtain the completed Responsibility Form from the Subcontractor and provide it to MTAHQ.
 - h. Special Circumstances: Contracts or subcontracts valued at \$100,000 or more relating to the following types of work: painting, scrap, concrete, lead, asbestos, and carting, or such other areas as the MTA may designate from time to time.

MTA HQ CONTRACTOR RESPONSIBILITY FORM

PART I IDENTITY OF CONTRACTOR:

- A. Contractor's full legal name: _____
- B. Contractor's mailing address: _____

- C. Contractor's street address (only if different than mailing address): _____

- D. If Contractor has changed its mailing address or street address within the past five (5) years, list all prior addresses within that five (5) year period:

- E. Name, e-mail and telephone number of Contractor's primary point of contact with the MTA:

- F. Contractor's Employer Identification Number ("EIN"): _____
- G. Type of legal entity (corporation, joint venture, sole proprietorship, etc.):

If the Contractor is a joint venture or partnership, please list all parties to the joint venture and partners to the partnership. All partners and parties listed below are required to each complete their own Responsibility Form.

- (1) Partner/Party name: _____
TIN, EIN, or SSN _____ Percentage of Ownership: _____
- (2) Partner/Party name: _____
TIN, EIN, or SSN _____ Percentage of Ownership: _____
- (3) Partner/Party name: _____
TIN, EIN, or SSN _____ Percentage of Ownership: _____

- H. List year Contractor was organized/incorporated and the state of organization/incorporation. If organized under the laws of a foreign country, please list the country:

MTA HQ CONTRACTOR RESPONSIBILITY FORM

I. List any doing business as or “DBA”, name, trade name or abbreviation the Contractor has used over the past five (5) years.

PART II IDENTITY OF PERSON COMPLETING THIS FORM:

A. Name: _____

B. Employer/Title: _____

C. Office and mobile number: _____

D. Email address: _____

PART III CONTRACTOR REPRESENTATIONS:

The following questions apply to any bid, proposal, or contract between Contractor and any governmental entity, including but not limited to the City and State of New York, the United States government or the MTA. (If the answer to any question is “YES”, Contractor must provide all relevant information on a separate sheet annexed hereto). Please check this box if a separate sheet is attached:

The following questions apply to: (i) Contractor, Contractor’s parent(s), subsidiaries and affiliates of Contractor (if any); (ii) any joint venture (including its individual members) and any other form of partnership (including its individual members) which include Contractor or Contractor’s parent(s), subsidiaries, or affiliates of Contractor, (iii) Contractor’s directors, officers, principals, Managerial Employees, and any person or entity with a 10% or more ownership interest in Contractor; (iv) any legal entity controlled, or 10% or more of which is owned, by Contractor, or by any director, officer, principal, Managerial Employee of Contractor, or by any person or entity with a 10% or more interest in Contractor.

A. Within the past five (5) years, has Contractor been declared not responsible by any governmental entity? YES NO

B. Within the past ten (10) years, has Contractor been debarred, suspended, or otherwise disqualified from bidding, proposing, or contracting by any governmental entity? YES NO

C. Is there a proceeding pending relating to Contractor’s responsibility, debarment, suspension, or qualification to receive a public contract with any governmental entity? YES NO

D. Within the past five (5) years, has Contractor defaulted on a contract or been terminated for cause? YES NO

MTA HQ CONTRACTOR RESPONSIBILITY FORM

E. Within the past ten (10) years, has any entity requested or required enforcement of any of its rights under a surety agreement on the basis of the Contractor’s default or in lieu of declaring Contractor in default?

YES NO

F. Within the past five (5) years, has the Contractor been required to engage the services of a Monitor in connection with the award of or in order to complete, any contract?

YES NO

G. Within the past five (5) years, have Contractor’s safety practices/procedures been evaluated and ruled as less than satisfactory?

YES NO

H. Has Contractor’s workers compensation experience rating been 1.2 or greater at any time in the last five (5) years? If “yes”, please explain and provide ratings for the most recent five (5) years.

YES NO

PART IV QUESTIONS WHICH MUST BE ANSWERED BY “YES” or “NO”:

Please attach a complete organization chart and indicate on that chart which entities are in a direct line of report to and from Contractor in the same business group.

If the Contractor answers “YES” to any question below, it must provide all relevant information on a separate sheet that must be attached to this Responsibility Form. Please check this box if a separate sheet is attached.

After diligent inquiry, in connection with the business of the Contractor or any other company that is related to Contractor by a direct line of reporting, in the same business group, do any of the following questions apply to: (i) Contractor, Contractor’s parent(s), subsidiaries and affiliates of Contractor (if any); (ii) any joint venture (including its individual members) and any other form of partnership (including its individual members), which includes Contractor or Contractor’s parent(s), subsidiaries, or affiliates of Contractor; (iii) Contractor’s directors, officers, principals, Managerial Employees, and any person or entity with a 10% or more interest in Contractor; (iv) any legal entity Controlled, or 10% or more of which is owned, by Contractor, or by any director, officer, principal, Managerial Employee of Contractor, or by any person or entity with a 10% or more interest in Contractor:

A. Within the past ten (10) years has been convicted of or pleaded nolo contendere to: (i) any felony; or (ii) a misdemeanor related to truthfulness in connection with business conduct?

YES NO

B. Within the past ten (10) years, had or has pending before any state or federal grand jury or court an indictment or information of the commission of a crime which has not been favorably terminated?

YES NO

MTA HQ CONTRACTOR RESPONSIBILITY FORM

C. Within the past ten (10) years, has been or is the subject of a pending investigation by any grand jury, commission, committee or other entity or agency or authority of any local, state, or the federal government in connection with the commission or alleged commission of a crime?

YES NO

D. Within the past ten (10) years, has been or is currently disqualified from selling or submitting bids/proposals to, or receiving awards from, or entering into any contract with any government entity?

YES NO

E. Within the past five (5) years, has refused to testify or to answer any question concerning a bid or contract with any entity when called before a grand jury or other committee, agency or forum which is empowered to compel the attendance of witnesses and examine them under oath, upon being advised that neither the person's statement nor any information or evidence derived from such statement will be used against that person in any subsequent criminal proceeding?

YES NO

F. Has been or is currently disqualified from selling or submitting a bid to, or receiving an award from, or entering into any contract with any public entity or public authority within the State of New York because, within the past five (5) years, such entity or person refused to testify or to answer any relevant question concerning a transaction or contract with the State of New York, any political subdivision of the State of New York, or a public authority or a public department, agency or official of the State of New York or of a political subdivision of the State of New York, when called before a grand jury or other state or local department, commission or agency which is empowered to compel the attendance of witnesses and examine them under oath, upon being advised that neither that person's statement nor any information or evidence derived from such statement will be used against that person in any subsequent criminal proceeding?

YES NO

G. Within the past ten (10) years, has been convicted of or had a civil judgment rendered against it for or in relation to: (i) commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state or local) transaction or contract under a public transaction; (ii) collusion with another person or entity in connection with the submission of bids/proposals; (iii) violation of federal or state antitrust statutes or False Claims Acts; or (iv) commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statement(s) or receiving stolen property?

YES NO

H. Within the past ten (10) years, has entered into a deferred prosecution agreement, or a non-prosecution agreement?

YES NO

MTA HQ CONTRACTOR RESPONSIBILITY FORM

Explain any “YES” answer in Part IV in the space provided below (or attach additional pages immediately after this page and indicate below that additional pages have been attached).

PART V ADDITIONAL QUESTIONS:

In the event of an answer of “Yes” to any questions in Part V, Contractor must provide all relevant information on a separate sheet of paper attached to this Responsibility Form.

- A. List the name, title, and home and business address of each person or legal entity that holds 10% or more ownership or Control interest in Contractor (attach additional sheets as necessary):
- 1.

Name:	
Title:	
Home Address:	
Business Address:	
Email Address:	
Business Phone #:	

MTA HQ CONTRACTOR RESPONSIBILITY FORM

2.

Name:	
Title:	
Home Address:	
Business Address:	
Email Address:	
Business Phone #	

3.

Name:	
Title:	
Home Address:	
Business Address:	
Email Address:	
Business Phone #:	

B. List the name, title, and home and business address of each director and principal officer of Contractor (attach additional sheets as necessary):

1.

Name:	
Title:	
Home Address:	
Business Address:	
Email Address:	
Business Phone #:	

2.

Name:	
Title:	
Home Address:	
Business Address:	
Email Address:	
Business Phone #:	

3.

Name:	
Title:	
Home Address:	
Business Address:	
Email Address:	
Business Phone #:	

MTA HQ CONTRACTOR RESPONSIBILITY FORM

C. In the past three (3) years, has Contractor been a subcontractor on any contract with MTA?
YES NO

If the answer is yes, please provide the contract number, contract description and name of the prime Contractor (attach additional sheets as necessary).

D. In the past seven (7) years, has the Contractor filed for bankruptcy protection?
YES NO

E. In the past five (5) years, have there been any judgments, injunctions, or liens (including tax liens) in the amount of \$100,000 or more rendered including but not limited to, judgments based on taxes owed, fines and penalties assessed by a government agency against the Contractor?
YES NO

F. Are there any judgments, injunctions, or liens for \$100,000 or more each against Contractor that remain open, unsatisfied or in effect today?
YES NO

G. During the past five (5) years, has the Contractor failed to file, or been delinquent in filing, any federal, state or local tax return?
YES NO

H. Does the Contractor own or rent office space? Please provide details. YES NO

I. Does any owner or principal officer of the Contractor, or any member of their immediate family, have an ownership interest in any entity that holds the title or lease to any real property used by the Contractor?
YES NO

J. Does Contractor share office space, staff, equipment, or expenses with any other entity/entities? If "YES", please list the name of the entity/entities, where the office space/equipment is located, who owns the office space/equipment, the names of the staff that are shared and their functions and titles, and the expenses that are shared, along with the duration of all of the above.
YES NO

MTA HQ CONTRACTOR RESPONSIBILITY FORM

K.

1. List all contracts completed during the last three (3) years. If more than three (3) contracts have been completed in the past three (3) years, list the last three (3) contracts completed. If the answer is none, type "None". _____

a. Brief description of work performed: _____

Contract number: _____ Dollar amount of award: _____

Date Completed: _____ Dollar amount at completion: _____

Name/Telephone number of company and owner's representative: _____

b. Brief description of work performed: _____

Contract number: _____ Dollar amount of award: _____

Date Completed: _____ Dollar amount at completion: _____

Name/Telephone number of company and owner's representative: _____

c. Brief description of work performed: _____

Contract number: _____ Dollar amount of award: _____

Date Completed: _____ Dollar amount at completion: _____

Name/Telephone number of company and owner's representative: _____

MTA HQ CONTRACTOR RESPONSIBILITY FORM

2. List each contract completed by Contractor during the last three (3) years for which liquidated damages or penalties were assessed against Contractor, along with the reason for the assessment of damages/penalties. If the answer is none, type "None". _____

a. Brief description of work performed: _____

Contract number: _____ Dollar amount of award: _____

Date Completed: _____ Dollar amount at completion: _____

Name/Telephone number of company and owner's representative: _____

Reason: _____

b. Brief description of work performed: _____

Contract number: _____ Dollar amount of award: _____

Date Completed: _____ Dollar amount at completion: _____

Name/Telephone number of company and owner's representative: _____

Reason: _____

MTA HQ CONTRACTOR RESPONSIBILITY FORM

c. Brief description of work performed: _____

Contract number: _____ Dollar amount of award: _____

Date Completed: _____ Dollar amount at completion: _____

Name/Telephone number of company and owner's representative: _____

Reason: _____

3. Has the Contractor been awarded any contracts by the MTA where the work has not yet reached substantial completion? If none, state "None". _____ If yes, provide the following information (attach additional sheets if necessary).

Name of Contracting Entity: _____ Contract number: _____

Award Date: _____ Contract period: _____

Brief description of the work to be performed: _____

Awarded to Contractor as prime contractor or joint venture? _____

Percent of Completion: _____

Name/Telephone number of owner's representative: _____

MTA HQ CONTRACTOR RESPONSIBILITY FORM

4. Does the Contractor have any active contracts with any government entity where the contract work is being managed by the same office that manages its contracts with MTA? If none, state "None". _____ If yes, provide the following information. Contractor need not provide more than three (3) such descriptions (include the most recent and highest dollar value contracts).

Name of Contracting Entity: _____ Contract number: _____

Award Date: _____ Contract period: _____

Brief description of the work to be performed: _____

Awarded to Contractor as prime contractor or joint venture? _____

Percent of Completion: _____

Name/Telephone number of owner's representative: _____

5. Has the Contractor performed or is performing as a subcontractor on any contracts awarded by the MTA where the contract has not yet reached substantial completion? If none, state "None". _____ If yes, provide the following information (attach additional sheets if necessary).

Name of Contracting Entity: _____ Contract number: _____

Award Date: _____ Contract period: _____

Brief description of the work to be performed: _____

Awarded to Contractor as prime contractor or joint venture? _____

Percent of Completion: _____

Name/Telephone number of owner's representative: _____

MTA HQ CONTRACTOR RESPONSIBILITY FORM

L. Furnish the following information for each contract for which, during the last three (3) years, the Contractor was:

- (1) Defaulted and terminated; or
- (2) Sued to compel performance; or
- (3) Sued to recover damages, including, without limitation, upon an alleged breach of contract, misfeasance, error or omission or other alleged failure on Contractor's part to perform as required by the contract; or
- (4) Called upon a surety to perform the work; or
- (5) Required to engage the services of a Monitor in connection with the award of or in order to complete, any public or private contract; or
- (6) Required to draw on a letter of credit in lieu of a performance bond.

a. Brief description of work performed: _____

Contract number: _____ Dollar amount of award: _____

Date Completed: _____ Dollar amount at completion: _____

Name/Telephone number of company and owner's representative: _____

If none of the above situations occurred during the last three (3) years, state "NONE" here: _____

MTA HQ CONTRACTOR RESPONSIBILITY FORM

M. Attach additional sheets as needed in response to 1 below. If the answer is none, type "None".

1. List all employees, consultants and independent contractors of the Contractor who are currently employees of the MTA:

Name: _____

Currently employed by: (check as appropriate)

MTA NYCT MaBSTOA SIRTOA MNR LIRR
TBTA MTAC&D MTA BC

Name: _____

Currently employed by: (check as appropriate)

MTA NYCT MaBSTOA SIRTOA MNR LIRR
TBTA MTAC&D MTA BC

Name: _____

Currently employed by: (check as appropriate)

MTA NYCT MaBSTOA SIRTOA MNR LIRR
TBTA MTAC&D MTA BC

N. Does the Contractor have any subsidiary or affiliate companies in a direct line of report to the Contractor within the same business group?

YES NO

O. Is Contractor a subsidiary of another entity in a direct line of report in the same business group?

YES NO

P. Within the past five (5) years or currently, does Contractor, any director, officer, principal, Managerial Employee of Contractor, or any person or entity with a 10% or more interest in Contractor have an interest of 10% or more in any other legal entity?

YES NO

Q. If the answer to N, O, or P, is "YES", would Contractor's answers pertaining to Part V Questions A through M above be the same for each such parent, subsidiary, affiliate, firm or legal entity in a direct line of report to or from Contractor within the same business group? If not, please provide a full explanation on a separate sheet of paper.

YES NO

MTA HQ CONTRACTOR RESPONSIBILITY FORM

PART VI IDENTITY OF OWNERS/PARTNERS

Who are the owners and/or partners of the Contractor and what percentage does each such person or entity own?

Name of Partner/Owner	Percentage Owned

MTA HQ CONTRACTOR RESPONSIBILITY FORM

PART VII CONTRACT SPECIFIC RESPONSIBILITY FORM

This form is to be completed and submitted with the Schedule __, Contractor Responsibility Form.

..

Contract #: _____ (the "Contract").

Contractor/Subcontractor name:

If Subcontractor, provide prime Contractor name:

1. TECHNICAL RESOURCES

Attach an explanation that will assist the MTA in determining whether Contractor and/or Significant Subcontractor have the necessary technical resources to perform the Contract work. Please include information relating to staffing, facilities, equipment, and tools that Contractor or Significant Subcontractor will commit to the performance of this Contract. If this information has already been provided elsewhere, please note the section of the bid/proposal that is responsive.

See Section: _____

Please check this box if a separate sheet providing an explanation is attached.

2. LICENSES

Please list any licenses, permits, or certifications that Contractor or Significant Subcontractor or your employees hold that may be relevant to this Contract. If the license, permit or certification has been revoked or suspended, please state so and explain the details.

License/Permit/Certification	Name of Holder	Issuing State or Entity

MTA HQ CONTRACTOR RESPONSIBILITY FORM

3. Have any of Contractor or Significant Subcontractor officers, partners, owners, managers, or employees had any (irrespective of whether they are contract specific) licenses, permits, or certifications revoked or suspended in the past three years? If “Yes”, explain details below (or attach a separate sheet).

4. PERFORMANCE BOND INFORMATION

(This section is only applicable to solicitations in which the Contractor is required to provide a performance bond. This section is not applicable to Significant Subcontractors.)

Provide the names and addresses of the surety or sureties that will provide the performance bond required by this Contract.

Name	Address	Amount

5. SUBCONTRACTS

(This section is not applicable to Significant Subcontractors.)

Which portions of this Contract, if any, does Contractor expect to subcontract? Attach an additional sheet if necessary. If subcontractors are not currently identified, you may insert TBD in the cell titled, Name and Address of Proposed Subcontractor(s).

Name and Address of Proposed Subcontractor(s)	Portion of Work	Estimated \$ Value of Work

MTA HQ CONTRACTOR RESPONSIBILITY FORM

6. PRIOR MTA EMPLOYEES

List all employees of the Contractor who are or have been MTA or any MTA subsidiary or affiliate employees who were involved on behalf of Contractor or any subcontractor (including but not limited to Significant Subcontractors) with the preparation of the bid/proposal for the Contract or would be involved in the performance of the Contract if it is awarded to Contractor.

Name: _____

Previously or currently employed by: (check as appropriate)

MTA NYCT MaBSTOA SIRTOA MNR LIRR
TBTA MTAC&D MTA BC

Name: _____

Previously or currently employed by: (check as appropriate)

MTA NYCT MaBSTOA SIRTOA MNR LIRR
TBTA MTAC&D MTA BC

Contractors and subcontractors are reminded that Section 73 of the Public Officers Law and the MTA Vendor Code of Ethics place strict limitations on former MTA employees being employed by or receiving compensation from MTA Contractors, Subcontractors, bidders or proposers.

7. FINANCIAL INFORMATION

(This section is not applicable to Significant Subcontractors.)

Contractor confirms that it has submitted certified copies of its financial statements for the past three (3) fiscal years and the Financial Responsibility Data Workbook to the Document Repository. If Contractor does not have certified financial statements, it should provide financial statements sworn to by Contractor’s Chief Financial Officer, along with any other relevant information that will assist the MTA in evaluating and determining whether the contractor has sufficient financial resources to perform the Contract.

MTA HQ CONTRACTOR RESPONSIBILITY FORM

CERTIFICATION

Contractor/Subcontractor certifies that the responses contained in the Contractor Responsibility Form, and the responses contained in the Contract Specific Responsibility Form, are true, accurate and complete as of the date of this submission and authorizes MTA to verify any such information through a background check or other method(s) that the MTA deems appropriate.

Contractor/Subcontractor acknowledges and understands that its responses to this Contractor Responsibility Form and its responses to the Contract Specific Responsibility Form, will be used for the purpose of determining Contractor's/Subcontractor's responsibility in connection with an MTA contract or change order award, and that Contractor's/Subcontractor's failure or refusal to provide the information and authorization requested may impact or otherwise prevent Contractor/Subcontractor from being deemed eligible to receive the prospective contract or change order award.

Signatory certifies that they are duly authorized by the Contractor/Subcontractor to sign this Contractor Responsibility Form on the Contractor's/Subcontractor's behalf and to bind the Contractor/Subcontractor to the responses contained in this document and in the Contract Specific Responsibility Form.

Signature: _____ Date: _____

Name (print): _____ Title: _____

Information received by the MTA in connection with this form will be maintained by the agency in accordance with all applicable legal requirements, including those contained in the NYS Personal Privacy Protection Law

MTA HQ CONTRACTOR RESPONSIBILITY FORM

CERTIFICATION OF NO CHANGE

(If applicable, complete and submit the original, signed Certification of No Change and attach a copy of the previously submitted Responsibility Form.)

1. I am _____ of _____.
(Print name and title) (Print name of firm)
2. The firm is the Contractor/Subcontractor for Contract _____. I am duly authorized to sign this Certification of No Change on behalf of said firm and duly signed this document pursuant to said authorization.
3. The Contractor/Subcontractor previously submitted a MTA [*AGENCY HERE*] Responsibility Form within one (1) year prior to the date hereof, to MTAHQ.
4. Attached is an accurate and true copy of such previously submitted MTA [*AGENCY HERE*] Responsibility Form.
5. I hereby certify that there has been no change in the information specified on such attached Responsibility Form, except as follows: _____

6. I acknowledge and understand that the previously submitted MTA [*AGENCY HERE*] Responsibility Form includes provisions which are deemed included in the Contract if awarded to the firm.

Signatory certifies that they are duly authorized by the Contractor/Subcontractor to sign this Responsibility Form on the Contractor's/Subcontractor's behalf and to bind the Contractor/Subcontractor to the responses contained in this document.

Signature: _____

Date: _____

Name (print): _____

Title: _____

PROFESSIONAL SERVICES AGREEMENT

METROPOLITAN TRANSPORTATION AUTHORITY

AND

[]

Agreement Number: []
(MTA Purchase Order Number: [])

This Professional Services Agreement (these "Terms and Conditions", and together with all issued and executed Task Orders, the "Agreement") for consultant support in connection with the implementation of a Kronos system update dated as of the [] day of [], 20[] (the "Effective Date") between METROPOLITAN TRANSPORTATION AUTHORITY, with offices at 2 Broadway, New York, New York 10004, a public benefit corporation organized and existing under the laws of the State of New York and hereinafter referred to as the "Authority", and [COMPANY NAME], [type of legal entity] having an office at [] and being hereinafter referred to as the "Contractor" (the Authority and the Contractor are each, a "Party" and collectively, the "Parties").

Recitals

WHEREAS, the Contractor submitted a proposal in response to the Authority's Request for Proposals dated [] as amended on [] (the "RFP");

WHEREAS, pursuant to the RFP, the Consultant has been selected as one of several entities that may be permitted to compete to receive future Task Orders based on separate solicitations; and

WHEREAS, the Contractor acknowledges that this Contract does not guaranty that the MTA will engage the Contractor to perform any Services, award any Task Orders to the Contractor, or otherwise pay any amounts to the Contractor unless set out in a Task Order.

NOW, THEREFORE, for good and sufficient consideration, including the mutual covenants hereinafter set forth, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

Table of Contents

Agreement

ARTICLE I- DEFINITIONS

Defined terms used in this Agreement have the meanings set out below. Additional terms are define in context.

A. The term “Accept”, “Accepted”, or “Acceptance” means that the Authority has determined that the Services have satisfied the Acceptance Criteria.

B. The term “Acceptance Criteria” has the meaning set out in Article IIA.1.

C. The term “Authority Data” means data and information: (i) received from or accessed via the Authority or otherwise submitted to Contractor by or on behalf of the Authority or its affiliates; (ii) obtained, developed or produced by Contractor or its subcontractors in connection with this Agreement; (iii) that Contractor or its subcontractors have access to in connection with the provision of the Services; or (iv) derivatives, extrapolations, metadata, or summaries related to the foregoing.

D. The term “Contract Manager” means the Authority representative (and their designees and representatives) responsible for administering this Agreement. Where the provision of Services must be “Accepted” or “approved” or be performed “as directed” or “as required” (or words of like import), the approval, direction or requirement will be made by the Contract Manager(s).

E. The term “Deliverables” means those items and deliverables that Contractor is obligated to provide pursuant to this Agreement, including Task Orders.

F. The term “Documentation” means all printed, electronic, or verbally provided: (i) user manuals and training materials; (ii) product descriptions and other specifications (including performance standards); (iii) requirements in Task Orders; and (iv) technical and operating manuals.

G. The term “Good Industry Practice” means the exercise of the skill, care, due diligence, prudence, foresight, and judgment in relation to any undertaking or any circumstances that would be expected from an expert provider of work similar to one or more components of the Services that Contractor is providing under this Agreement.

H. The term “Intellectual Property Rights” means any rights (whether owned or licensed) existing now or in the future under patent law, copyright law, trademark law, data and database protection law, trade secret law, and any and all similar proprietary rights. The term “Intellectual Property Rights” means those rights as they exist as of the Effective Date, and all such rights subsequently acquired.

I. The term “MTA Indemnified Parties” means, collectively: (i) the Authority 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 Capital Construction 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; and (iv) all other entities that may in the future be affiliates of any entity identified in (i), (ii), or (iii) of this sentence. The term “MTA Indemnified Parties” also includes those additional third parties identified in the RFP.

J. The term “Proposal” has the meaning set out in the Recitals.

K. The term “Purchase Order” means an Authority-issued document that expressly identifies this Agreement and notifies the Contractor of the Services ordered under this Agreement or a Task Order.

L. The term “RFP” has the meaning set out in the Recitals.

M. The term “Services” means those services and Deliverables that Contractor provides to, or is obligated to provide to, the Authority pursuant to this Agreement including any Task Order.

N. The term “Task Order” mean task order specifying the Services to be provided, that is signed by both Parties, and that references this Agreement.

O. The term “Unexcused Delay” shall mean a delay for which the Contractor is solely responsible, and which entitle the Contractor to neither a time extension nor any added compensation.

ARTICLE II – SCOPE OF SERVICES

A. The terms and conditions of the Request for Proposals #426497 are incorporated herein by reference. The Contractor agrees to perform the Services for the benefit of the Authority and its affiliates set forth and described in: (i) the applicable Task Order; and (ii) the RFP (including the scope of work), each of which is herein incorporated by reference, except as the same may be hereinafter modified.

B. Notwithstanding anything to the contrary, if any services, functions, deliverables, or responsibilities not specifically described in this Agreement (including, but not limited to, Task Orders) are inherent, necessary, or a customary part of the Services, or are required for the Authority’s use and enjoyment of the Services, then such services, functions, and responsibilities shall be deemed to be included within the scope of the Services and shall be delivered to the Authority without cost, as if such services, functions, deliverables or responsibilities were specifically described in this Agreement.

C. To the maximum extent possible, Contractor shall employ open architecture principles, that comply with Good Industry Practice, in its Services and with respect to Deliverables. If the scope of work set out in a Task Order contain APIs, then the APIs shall be in a form and content, and shall include Documentation, all sufficient to permit a software engineer of reasonable skill to write to and otherwise use the APIs for their intended purposes.

D. All Authority Data shall be stored in an industry-standard format that is not proprietary to Contractor or any of its service providers, vendors, or subcontracts and such Authority Data shall be fully accessible and portable by the Authority upon demand without any additional cost or expense.

E. If the Services contain Deliverables that are software, then Contractor shall adhere to the support and maintenance obligations and service level agreements (if applicable) for such Deliverables in the applicable Task Order.

F. Contractor Personnel.

1. Subject to the requirements set out in this Agreement, Contractor shall have the right to determine the employees, agents, representatives, or permitted subcontractors (collectively, "Contractor Personnel") that shall be assigned to perform the Services.

2. Contractor shall appoint Contractor Personnel who have the requisite knowledge, training, expertise, experience and skill and appropriate qualifications to perform the Services. Contractor Personnel shall provide the Services with promptness and diligence, and in all events pursuant to the requirements set out in this Agreement (including in the applicable Task Orders). Contractor shall be solely responsible for the management and oversight of Contractor Personnel's provision of the Services, and for the integrity and quality of the Services.

3. Contractor shall require Contractor Personnel to satisfy a background investigation that, at a minimum, consists of the following a verification of: (i) name; (ii) employment eligibility, including, *e.g.*, social security number; (iii) most recent education; and (iv) most recent employment; provided, however, that if said employment was for less than six (6) months, Contractor shall verify employment with the employee's (or potential employee's) last two (2) employers (to the extent available). In the event any employee or candidate does not meet such background check requirements, the Contractor shall not assign such Contractor Personnel to the Authority account or allow such employee or candidate access to the Authority's Confidential Information.

4. To the extent set out in a Task Order, the Authority shall designate specific roles/resources supplied by the Contractor as key personnel ("Key Personnel"). The individuals making up the Key Personnel shall be mutually agreed upon between the Parties in the applicable Task Order. Any changes or replacement of such Key Personnel shall only be by a person who is approved in advance in writing by the Authority. The Contractor shall not reassign Key Personnel to other duties or otherwise remove them from working on the Authority account without the Authority's express advance written consent, except through termination of such personnel for cause by Contractor or through the resignation, long term illness or disability, or death of such Key Personnel. Unless otherwise explicitly superseded in a Task Order, Contractor agrees that all Key Personnel shall be dedicated full-time on an exclusive basis to providing the Services.

5. The Contractor shall comply with the Authority policies, procedures, and processes applicable to the Services (collectively, the "Authority Policies"), including the Guidelines for Contractors as set forth in Appendix C, and any other the Authority rules, regulations, and procedures specified to Contractor by the Authority, including those specified in separate requests for proposals issued in connection with this Agreement. The Authority shall have the right to update the Authority Policies during the Term in order to comply with applicable law, industry best practices, and changes to the Authority's operations. The Contractor shall comply with all such updated the Authority Policies.

6. Upon written notice from the Authority requesting that any Contractor Personnel be removed from the performance of the Services, the Contractor shall promptly remove such Contractor Personnel. The Contractor will be responsible for all costs associated with onboarding any replacement Contractor Personnel, including any “ramp up” or “knowledge transfer” to enable any replacement personnel to fully perform all tasks and responsibilities in an effective manner as required hereunder.

7. If the Contractor is unable to correct any nonconformity with the requirements of Contractor Personnel herein within thirty (30) days of the Authority’s notice of such nonconformity, then the Authority shall be entitled, without limiting any other rights or remedies it may have hereunder or under law or equity, to either: (i) grant Contractor additional time to correct such nonconformity; or (ii) terminate the applicable Task Order or this Agreement, whereupon the Contractor shall promptly refund to the Authority any amounts paid for the terminated Services.

G. Unless otherwise set out in a Task Order, the Authority shall have the right to direct the Contractor to suspend all or any part of the Services for a period of up to sixty (60) calendar days, and such direction shall be provided in writing (each, a “Stop Work Order”). Upon the Contractor’s receipt of a Stop Work Order, Contractor shall cease performing the applicable portion of the Services and take all steps necessary to minimize the incurrence of costs allocable to the applicable Services being suspended. Within sixty (60) days of the Authority’s provision of a Stop Work Order, the Authority shall either cancel the Stop Work Order, terminate this Agreement, the applicable Task Order, or issue a modification to this Agreement that removes such Services from this Agreement or the corresponding Task Order. The Authority shall, in its reasonable discretion and to the extent applicable, make an equitable adjustment to the delivery schedule and/or fees due to the Contractor (excluding profit) due to the Stop Work Order. The Contractor shall immediately resume its performance of the Services upon cancellation of a Stop Work Order regardless of whether the Authority has made such an equitable adjustment. The Contractor shall be prohibited from submitting any claims for compensation relating to a Stop Work Order unless such claims are submitted in writing within twenty (20) days following the Authority’s issuance of a Stop Work Order. Notwithstanding anything to the contrary, if the Authority determines that the suspension of Services was necessary due to the Contractor’s defective or incorrect Services, unsafe work conditions caused by the Contractor, or any other reason caused by the Contractor’s acts or omissions, then the Contractor shall not be entitled to an equitable adjustment.

ARTICLE II – ACCEPTANCE AND REJECTION; INSPECTION

A. All Services are subject to the Authority’s inspection and Acceptance. Unless otherwise set out in this Agreement or any Task Order, and in addition to any inspection performed pursuant to Article IIB, the following process applies to the Authority’s inspection of the Services:

1. The Contractor shall notify the Authority in writing when an applicable portion of the Services has been provided to the Authority in compliance with this Agreement and the corresponding Task Order, and is otherwise in a form ready for inspection and acceptance testing. Upon the Authority’s receipt of such notice, or the Authority’s determination that such Services are

ready for inspection and acceptance testing, the Authority shall use good faith efforts to inspect such Services within thirty (30) calendar days (the "Inspection Period") to determine whether the Services: (i) comply with requirements of the applicable Task Order and this Agreement; (ii) are free of defects in material or workmanship; and (iii) otherwise meet the Authority's reasonable expectations (collectively, the "Acceptance Criteria"). If the Authority determines that the Services meet the Acceptance Criteria, then the Authority shall pay for such Services in accordance with this Agreement and the corresponding Task Order, and such Services shall be deemed inspected and Accepted by the Authority upon its issuance of payment for such Services. The Contractor agrees that no other Authority action shall constitute the Authority's Acceptance of the Services. If the Authority determines that the Services fail to meet the Acceptance Criteria, then it will reject the Services and notify Contractor of the same in writing (each, a "Deficiency Notice"). Each Deficiency Notice shall describe: (a) the deficiencies preventing Acceptance; and (b) Authority-required corrective actions. The Contractor acknowledges that: (1) the Authority's use of Services shall not constitute its Acceptance of the Services; and (2) the Authority's failure to reject the Services shall not be deemed to be, or otherwise imply, its Acceptance of such Services for any purpose.

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

3. The Authority's (or its employee's) acceptance of the Services, granting an extension of time, taking possession of the Services, or other similar actions, shall not operate as a waiver of obligation under this Agreement or the Authority's right to damages. By way of clarification, and not limitation, the Authority's inspection and Acceptance of the Services shall not prohibit the Authority from subsequently rejecting the Services, revoking such Acceptance, or recovering damages for the Services that is not free from patent or latent defects.

B. In addition to the Authority's rights set out in Article IIA, all Services are subject to the Authority's inspection and testing, to the extent practicable, at all time and places, including at the location where the Services are being performed (the "Inspection Right"). The Inspection Right includes the right: (i) to make the most thorough and minute inspection of the Services, including materials and their manufacture or preparation; and (ii) to draw Contractor's attention to deficiencies in the Services or other variations from this Agreement requirements. The Inspection Right is intended solely for the Authority's benefit. The Inspection Right does not, and the Authority's failure to draw the Contractor's attention to a defect does not, give the Contractor any right or claim against the Authority, and does not relieve the Contractor from its obligations under this Agreement. The Contractor shall at all times provide the Contract Manager access to all facilities necessary, convenient, or desirable for inspecting the Services. The Contract Manager shall be admitted at any time without delay to where the Services are being performed and shall be permitted to inspect materials at any place or stage of their development, preparation, shipment, or delivery. If the Services or any part thereof are found defective, the Contractor shall, without cost to the Authority, promptly remedy such defect in order to achieve compliance with the requirements of this Agreement and the corresponding Task Order. The Authority shall use good faith efforts to not unreasonably disrupt Contractor's provision of the Services when exercising its Inspection Right.

ARTICLE III – AUTHORITY OF THE CONTRACT MANAGER

A. The Contract Manager shall have general authority to give the Contractor orders and directions with respect to this Agreement, including, but not limited to, the right at any time to direct the return of any Authority material or equipment removed by the Contractor as part of the Services. The Contract Manager shall, in all cases, have the authority to determine the value, acceptability and fitness of the Services under this Agreement, and to raise any questions pertaining to the Agreement and its fulfillment on the part of the Contractor. Any and all material or equipment required or proposed to be incorporated in the Services shall be subject to the approval of the Contract Manager and shall not be incorporated in the Services until such approval has been provided.

B. The Contractor agrees that all questions that it has relating to this Agreement shall be first raised with the Contract Manager, including those relating to: (i) the value, acceptability, and fitness of the Services; (ii) either Party's fulfillment of its obligations under this Agreement; (iii) negligence, fraud, or misrepresentation before or subsequent to acceptance of the Proposal; (iv) interpretation of the Agreement; and (v) claims for damages, compensation and losses. The Contract Manager shall provide all necessary explanations as to the meaning and intention of the Authority with regards to specifications, drawings, standards, and any other direction that requires additional explanation, and shall give all orders and directions contemplated therein or thereby including such orders and directions as may be necessary when difficult or unforeseen conditions shall arise during the performance of the Services as required by this Agreement. The Contract Manager will provide appropriate explanations and reasons for decisions made if requested by the Contractor.

C. The Contractor shall be bound by and promptly obey and follow every Contract Manager-issued direction or order regarding the performance and the nature and manner of performance arising out of, under, or in connection with, or related to or on account of, this Agreement, whether in writing or orally and then confirmed in writing, including any direction that the Contract Manager may give by way of withdrawal, modification or reversal of any previous direction given by the Contract Manager, and regardless of whether the Contractor agrees with the Contract Manager's determination. The Contract Manager's orders shall be in writing unless not practicable, in which event any oral order must be confirmed in writing by the Contract Manager as soon thereafter as practicable. If requested by the Contractor, the Contract Manager shall promptly provide the Contractor appropriate explanations and reasons for the Contract Manager's determinations and orders.

ARTICLE IV – CONTRACTOR'S EMPLOYEES

A. All experts, consultants, or employees of the Contractor providing the Services are neither employees of the Authority nor under contract to the Authority. The Contractor alone is solely responsible for such experts, consultants, and employees work, direction, compensation, and personal conduct while engaged under this Agreement. Nothing in this Agreement shall impose any liability or duty on the Authority for the acts, omissions, liabilities, or obligations of the Contractor or any other person, firm, company, agency, association, corporation, or organization engaged by the Contractor as expert, consultant, independent contractor, specialist, trainee, employee, servant, or agent, or for taxes of any nature including but not limited to unemployment insurance, workers' compensation, disability benefits and social security, or, except as specifically stated in this Agreement, to any person, firm or corporation.

B. All employees of the Contractor or any subcontractor or other persons providing Services shall wear a visible identification badge at all times while on Authority property and shall observe all rules and regulations applicable to such Authority property. The identification badge shall contain the employee's name, picture, title of position, name of company and address of company.

C. Employees of the Contractor who are found to be intoxicated, or who have been found partaking in, or appear to be under the influence of, intoxicating or alcoholic beverages or controlled substances while on the work site, or while engaged in providing the Services or during their break period, shall be summarily removed by the Contractor from the project for the duration of the Agreement.

D. In the event the Authority notifies the Contractor in writing that, in the Authority's opinion, any individual performing on behalf of the Contractor under this Agreement is incompetent, unfaithful or disorderly, such individual shall be discharged from the Services and shall not again be employed on the Services.

ARTICLE V – PAYMENT FOR SERVICES

A. The Authority agrees to compensate the Contractor for the performance of the Services in accordance with the provisions herein and the applicable Task Orders.

B. If, during the Term, both: (i) the Contractor sells or offers services to a third party at a lower price than the price that the Authority is paying for the same or similar Services; and (ii) the quantity services for sale to such third party is the same or less than the quantity of Services that the Authority has or may purchase pursuant to this Agreement, then the Authority's purchase price shall be reduced to such lower price for all Services and all subsequent orders of Services made pursuant to this Agreement.

C. Final Payment.

1. Upon Acceptance of all the Services by the Authority, the Contractor will be paid the remainder of the compensation for Services, as increased or decreased in accordance with the terms of this Agreement, and subject to the deduction of liquidated damages, if any, and to any other provision of the Agreement expressly permitting the withholding or deduction of monies by the Authority. Payment of the remaining compensation shall be deemed final payment for all the purposes of the Agreement.

2. Except as provided in Paragraph 3 below, the Contractor's acceptance (or acceptance of any person claiming under the Contractor) of the final payment for the Services, whether such payment be made pursuant to any judgment or order of any court or otherwise, shall be and shall operate as a release to the Authority from all claims and liabilities for anything theretofore done or furnished for, or relating to, the Services, or for any prior act, neglect, fault or default by the Authority, their respective officers, agents or employees, relating to, or affecting the Services. No payment, however, final or otherwise, shall operate to release the Contractor or its sureties from any obligations in connection with this Agreement.

3. The Contractor, however, shall not be barred from commencing an action for breach of this Agreement under this Paragraph C provided that a detailed and verified statement of claim is served upon the Authority not later than forty (40) days following the Authority's provision of such final payment. The statement shall specify the items upon which the action will be based, and any such action shall be limited to such items.

ARTICLE VI – PRICE TO INCLUDE

The Authority shall pay, and the Contractor shall accept, the amounts set forth in the applicable Task Order as full compensation for all costs and expenses of completing the Services in accordance with this Agreement including, but not limited to, all labor and material required to be done or furnished under this Agreement; all overhead, expenses, fees and profits; all risks and obligations set forth in the Agreement; any applicable fees or taxes; and all expenses due to any unforeseen difficulty encountered in the prosecution of the Services.

ARTICLE VII – TAX EXEMPTION

A. The Authority, a public authority and public benefit corporation of the State of New York, including each of its affiliate and subsidiary agencies, is exempt from New York State and local sales and compensating use taxes pursuant to Sections 1266 and 1275 of the Public Authorities Law.

B. In addition, the Authority, including each of its affiliate and subsidiary agencies, is exempt from New York sales and compensating use taxes on all tangible personal property, materials, equipment, and components, sold to Contractors or subcontractors in connection with the Services and which shall become an integral component part of those Services. Therefore, the Contractor shall not pay any State of New York sales or compensating use taxes on the sale or transfer for any personal property which will become an integral component part of the Services.

C. The Contractor warrants to the Authority that Contractor's pricing to the Authority pursuant to this Contract excludes any taxes that are eligible for exemption.

D. In the event the Contractor believes that an exemption from a tax may not apply, the Contractor shall bring such situation to the attention of the Authority and either comply with instructions received from the Authority or authorize the Authority to pursue the exemption on behalf of the Contractor and the Authority.

ARTICLE VIII– PROMPT PAYMENT

A. All payments will be made pursuant to Section 2880 of the Public Authorities Law (the Prompt Payment Law) and implementing rules and regulations set forth at 21 NYCRR Part 1002 (the "Prompt Payment Statement"). Any terms used in this Article, which are not defined in this Article, shall have the meanings ascribed in the Prompt Payment Statement. A copy of the Prompt Payment Statement may be obtained from the Contract Officer.

B. In accordance with the Prompt Payment Statement, all payments will be made within thirty (30) days, excluding legal holidays, of the "Receipt of Proper Invoice," as defined herein and/or in the Prompt Payment Statement.

C. The Authority reserves the right to conduct an inspection or audit of any preliminary estimate and the final payment estimate to verify that the amount to be paid is in accordance with the provisions of this Agreement. The applicable "Receipt of Invoice" date will be deemed extended ten (10) business days in the event the Authority elects to conduct an inspection or audit.

D. Notwithstanding anything to the contrary in this Agreement, the thirty (30) day payment period in Paragraph B. above will be tolled as set forth below, whenever the audit or inspection reveals a defect in delivered materials or services, or suspected improprieties of any kind, which might include, but is not limited to, a determination by the Contract Manager that the Contractor is in breach of a material term of this Agreement. In any such case, the Receipt of Invoice date shall be tolled until the date that acceptable goods or services are delivered or provided, or the date that the improprieties are resolved.

E. Interest for late payments hereunder shall be payable in accordance with the Prompt Payment Statement.

F. The Designated Payment Office shall mean MTA's Business Service Center (BSC), which may be changed at any time upon notification in writing to the Contractor.

G. A maximum of one (1) invoice per month may be submitted. However, each invoice may contain multiple milestones or items.

ARTICLE IX – SET OFFS, WITHHOLDING, AND DEDUCTIONS

A. The Authority may disapprove and set-off, deduct and/or withhold any payment (in whole or in part, as may be applicable) if and to the extent that:

1. An invoice and/or supporting documentation are not correct and complete (as set forth in herein).

2. The Services covered by an invoice (and/or previous invoices), or the Contractor's rate of progress, do not comply with the Agreement (in the Contract Manager's judgment).

3. Any material statement or representation in any invoice or other required documentation submitted therewith by the Contractor with respect to the Agreement or the Services is or was untrue when made.

4. The Contractor has failed to provide Services in accordance with the terms of the Agreement, including without limitation, as may be applicable, manuals, as-built drawings or specifications, safety plan(s), and quality assurance/ quality control documentation.

5. The Services covered by an invoice are subject to a Deficiency Notice pursuant to Article II (Acceptance and Rejection; Inspection).

6. Any claim, lien or judgment shall be made by any person or corporation against the Contractor, the City of New York, the Authority, the State of New York, or the Federal Government, including claim(s), lien(s) or judgment(s) by the Authority against the Contractor, for which the Contractor is liable under this Agreement or, otherwise by law with respect to matters pertaining to the Services of this Agreement, the amount of such claim, lien or judgment or so much thereof as may be deemed reasonable shall be retained by the Authority, in addition to the other sums herein authorized by the Agreement to be so retained, out of any monies then due or thereafter becoming due to the Contractor hereunder as security for the payment of such claim, lien or judgment.

7. Such set-off, deduction and/or withholding is otherwise provided for in the Agreement, including without limitation as set forth in Article X (Liquidated Damages).

8. Such set-off, deduction and/or withholding is for any unpaid legally enforceable debt owed by the Contractor to the Authority as provided in the Prompt Payment Statement.

ARTICLE X – LIQUIDATED DAMAGES

A. Time is of the essence for this Agreement. Unless granted an extension of time by the Authority, the Contractor guarantees to deliver Services in accordance with the Services schedule in the applicable Task Order. The Authority shall be entitled to assess liquidated damages based upon the Contractor’s failure to meet the requirements set out under an applicable Task Order. The Authority shall have the right to assess, and the Contractor shall pay upon such assessment, liquidated damages for a delay in the delivery Services, except as may be extended by the Authority (the “Delay LDs”).

B. Inasmuch as the amount of Delay LDs arising from the loss to the Authority will be extremely difficult to ascertain, the Parties expressly agree that such damages will be liquidated and paid as set out in applicable Task Orders.

ARTICLE XI – NEW YORK LAWS / CHOICE OF LAW, CONSENT TO JURISDICTION AND VENUE

A. This Agreement shall be deemed to be executed in the City of New York, State of New York, regardless of the domicile of the Contractor and shall be governed by and construed in accordance with the laws of the State of New York without regard to any conflict of law principles.

B. The Parties agree that any and all claims asserted by or against the Authority arising hereunder or related hereto shall be heard and determined either in the courts of the United States located in New York City (“Federal Courts”) or in the courts of the State of New York (“New York State Courts”) located in Kings County or New York County. To affect this agreement and intent, the Contractor agrees:

1. If the Authority initiates any action against the Contractor in Federal Court or in New York State Court, service of process may be made on the Contractor either in person, wherever such Contractor may be found, or by Certified Mail addressed to the Contractor at its address as set forth herein or to such other address as the Contractor may provide to the Authority in writing.

2. With respect to any action between the Authority and the Contractor in a New York State Court, the Contractor hereby expressly waives and relinquishes any rights it may otherwise have (a) to move to dismiss on grounds of forum non convenience, (b) to remove to Federal Court; and (c) to move for a change of venue to a New York State Court outside Kings county or New York county.

3. With respect to any action between the Authority and the Contractor in Federal Court located in New York City, the Contractor expressly waives and relinquishes any

right it might otherwise have to move to transfer the action to a Federal Court outside the City of New York.

4. If the Contractor commences any action against the Authority in a court located other than as provided for herein, upon request, the Contractor shall either consent to a transfer of the action to a court of competent jurisdiction, as set forth herein, or, if the court where the action is initially brought will not or cannot transfer the action, shall consent to dismiss such action without prejudice and thereafter reinstitute the action in a court of competent jurisdiction as provided for herein.

ARTICLE XII – CLAIMS BY CONTRACTOR

If the Contractor seeks to make a claim (other than for changes to the Services pursuant to Article XXXIII (Modifications)) for compensation against the Authority for any loss or damage of any nature arising under this Agreement by reason of any act, neglect, fault or default of the Authority or its agents, the Contractor shall submit to the Authority a written statement within fifteen (15) days after the sustaining of such loss or damage. Such statement shall detail the nature of the claim, including a description of the damage sustained and the amount of compensation sought by the Contractor. Compliance with this Article shall be a precondition to the Contractor's submission of a dispute pursuant to Article XXXIV (Disputes) with respect to any claim for compensation. The Contractor shall be deemed to have waived any claim for compensation not submitted in compliance with the requirements set out in this Article, including such fifteen (15) day requirement. Any payment made by the Authority pursuant to this Article on account of any damage suffered in connection with or arising out of the performance of this Agreement or any part thereof, shall not be construed as a recognition or admission of any legal liability.

ARTICLE XIII – STATUTE OF LIMITATIONS ON RIGHT TO SUE THE AUTHORITY/ NO CLAIM AGAINST AUTHORITY OFFICERS, AGENTS OR EMPLOYEES

A. No action by the Contractor against the Authority shall be taken upon any claim arising out of or based upon this Agreement, or by reason of any act or omission or requirement of the Authority or its agents, unless such action is commenced within six (6) months after the completion of the Agreement or earlier termination thereof. No new actions shall be allowed to commence, and no additional time shall be allowed to begin anew any other action if an action commenced within the time herein limited be dismissed or discontinued, notwithstanding any provision in the New York Civil Practice Law and Rules ("CPLR") to the contrary. Nothing herein shall extend the time, as provided in the CPLR, to commence a lawsuit.

B. In the event that the Contractor has filed with the Authority a statement of claim pursuant to Article XII (Claims by Contractor), the Contractor's statute of limitations with respect to said claim(s) only shall be tolled until the final determination by the Authority under Article XXXIV (Disputes).

C. No member, officer, agent or employee of the Authority shall be liable personally hereunder or by reason hereof.

ARTICLE XIV – AUTHORITY MAY AVAIL ITSELF OF ALL REMEDIES

The Authority shall have the right to avail itself of each and every remedy herein specifically given to it or now or hereafter existing at law or in equity, 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 Authority, and the exercise, or the beginning of the exercise, of one (1) remedy shall not be deemed to be a waiver of the right to exercise, at the same time or thereafter, any other remedy.

ARTICLE XV – GENERAL PROVISIONS

A. **Adherence to Schedule.** The Contractor agrees that it will at all times employ, maintain and assign to the performance of the Services a sufficient number of competent and qualified Contractor Personnel and other personnel to meet the Services schedule in the applicable Task Order to which reference is hereinafter made.

B. **Cooperation and Coordination.** The Contractor agrees that it will at all times cooperate with the Authority and the Authority’s employees, contractors, and vendors, and that it will coordinate its performance of the Services with the work and requirements of the Authority.

C. **Notices.** All notices required or permitted under this Agreement shall be in writing and shall be deemed sufficiently served if sent by Registered Mail, addressed as follows:

1. To the Authority:

METROPOLITAN TRANSPORTATION AUTHORITY
2 Broadway
New York, NY 10004

Attention: Director of Procurement

2. To the Contractor:

[COMPANY’S NAME IN CAPS]

Attention: []

Either Party may at any time designate a different address by giving notice as provided above to the other Party.

D. **Severability; Headings.** If any provision of this Agreement or any application thereof shall be invalid or unenforceable, the remainder of the Agreement and any other application of such provision shall not be affected thereby. 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 this Agreement.

E. **Appendices.** The following appendices are hereby incorporated by reference and made a part of this Agreement:

Appendix B: Affirmative Action/EEO Provisions
Appendix C: Guidelines for Contractors
Appendix E: Financial Disclosures
Appendix K: Executive Order 177 Certification
Appendix L: Sexual Harassment Prevention Compliance
Appendix M: MTA Cybersecurity Requirements Certification
Appendix N: Executive Order 16 Certification

F. **Waiver; Remedies.** The Authority's failure to require the Contractor's performance of any obligation under this Agreement shall not affect the Authority's full right to require such performance at any time thereafter, nor shall the Authority's waiver of a breach of any obligation under this Agreement be taken, held, or interpreted as a waiver of the obligation itself or any past or subsequent breaches of the same obligation. The Authority shall have the right to avail itself of each and every remedy relating to, or arising from, this Agreement available to the Authority 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 Authority. The Authority'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.

G. **Freedom of Action.** The Authority 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 Contractor.

H. **Determination of Ambiguities; Order of Precedence.** The Authority shall have the sole right to resolve any errors, inconsistencies, ambiguities, or discrepancies, including typographical errors in this Agreement, and Contractor agrees to be bound by such resolutions. Unless the Contract Manager determines otherwise, in the event of a conflict or inconsistency between or among portions of this Agreement, the more stringent provision or requirement shall control, except for situations in which no provision is clearly more stringent, in which case the Contract Manager shall apply the following order of precedence in descending order: (i) the applicable Task Order; (ii) the terms and conditions of this Agreement (not including any Task Order, Appendix, and the RFP); and (iii) the RFP. In no event shall the order of precedence supersede applicable law unless the Contract Manager determines that the requirements set out herein are more stringent than those established by applicable law.

I. **Entire Agreement.** This Agreement constitutes the entire agreement between the Authority and Contractor. The Authority is not bound by any: (i) written or oral statement or representation which is not set forth in this Agreement; and (ii) any written or oral change to this Agreement which is not set forth in a duly executed supplement to this Agreement. Accordingly, the Authority is not liable or obligated for any goods, services, or other costs which are not expressly set forth in this Agreement.

ARTICLE XVI – ALL LEGAL PROVISIONS INCLUDED

As a public entity, the Authority is required by law, rule, or regulation to include certain provisions in this Agreement. Notwithstanding anything to the contrary, if any such provision is not inserted or is not inserted in the correct form, then this Agreement shall be deemed amended to include the required provision in the required form, and such included provisions shall be binding on the Contractor and the Authority.

ARTICLE XVII – MANNER OF PERFORMANCE

The Contractor is engaged in an independent business and agrees to perform the Services in the manner of and as an independent contractor and not as the agent or employee of the Authority. The Contractor shall exercise full control over and supervision of the employment, direction, compensation and discharge of its officers and employees and of all other persons assisting it in the performance of the Services.

ARTICLE XVIII – QUALITY ASSURANCE/QUALITY CONTROL

A. The Contractor shall be responsible for quality assurance and for assuring that the Services conform to the Agreement requirements, including those set out in an applicable Task Order. The Contractor shall (i) establish, implement, maintain, and comply throughout the Term with an effective and economical quality control and quality assurance program (“QA Program”) planned and developed in conjunction with other Contractor functions necessary to satisfy the requirements of this Agreement, and (ii) provide sufficient quality assurance and quality control staffing to support the Contractor's compliance with the QA Program throughout the Term. The QA Program shall establish and implement procedures to ensure that only acceptable Services are provided to the Authority, shall demonstrate recognition of the quality requirements of this Agreement and an organized approach to satisfy these requirements, and otherwise comply with Good Industry Practice. The QA Program shall ensure that quality requirements are determined and satisfied throughout all phases of this Agreement, including design development, purchasing, fabrication, processing, assembly, inspection, testing, packaging, delivery, storage, and systems check. The QA Program also shall provide for the early and prompt detection of actual or potential deficiencies, trends, or conditions that could result in unsatisfactory quality. The Contractor shall be prepared to demonstrate to the Contract Manager's satisfaction that the QA Program is effective and in operation.

B. **Quality Assurance Reviewer.** The Contractor shall employ, subject to the Authority's approval, a licensed and qualified Quality Assurance Reviewer (“QA Reviewer”), which the Contractor has prepared to conduct training, who shall oversee the provision of the Services, review all materials, parts and processes involved in the Services and shall ensure the Contractor adheres to the QA Program and any quality standards developed thereunder. This Quality Assurance Reviewer shall make written reports concerning such adherence available via email to the Contract Manager upon the Contract Manager's written request.

C. In addition, a qualified and responsible individual employed by the Contractor shall be designated and shall be available at all times during the performance of the Services for consultation with the Authority.

ARTICLE XIX – CONTRACTOR’S REPRESENTATIONS AND WARRANTIES

A. In addition to any other representations, warranties, and covenants set out in this Agreement or any Task Order, the Contractor represents, warrants, and covenants (as applicable) to the Authority, as of the Effective Date and throughout the Term, as follows:

1. That the Contractor: (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.

2. That the Contractor has all necessary power, authority, and legal right to execute, deliver, and perform this Agreement. The Contractor has taken all necessary action to authorize the execution, delivery, and performance of this Agreement.

3. That the Contractor’s execution, delivery, and performance of this Agreement 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 bylaws of the Contractor, any mortgage, indenture, lease, contract, or other agreement or undertaking to which Contractor is a party or by which the Contractor 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.

4. That no person has been employed or retained to solicit or secure this Agreement for a commission, percentage, brokerage, contingent fee, or other consideration, except for bona fide employees or bona fide established commercial or selling agencies that the Contractor maintains for the purpose of securing business.

5. That except as specifically disclosed to the Authority in writing prior to the Effective Date, the Contractor 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 the Contractor’s knowledge, any claim, litigation, or proceeding threatened against the Contractor or its properties or revenues: (i) that involves a claim of defective design or workmanship in connection with any contract entered into by Contractor; or (ii) that, if adversely determined, would have an adverse effect on Contractor’s business, operations, property, or financial condition. For purposes of this Article XIX.A.5, a claim, litigation, investigation, or proceeding may be deemed disclosed to the Authority if the Authority has received, prior to the Effective Date, detailed information concerning the nature of the matter involved, the relief requested, and a description of the Contractor’s intended response to such matter.

6. That the Contractor 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 this Agreement. The Contractor 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 the Contractor's ability to: (i) carry on its business as presently conducted; or (ii) perform its obligations under this Agreement or any of the other financing to which it is a party.

7. That neither the Contractor, nor any of its personnel or shareholders, have been the subject of any investigation or have they been 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 Authority. If the Contractor becomes aware of, or any such conviction or indictment be obtained or any such investigation commence during the Term, regardless of the date of the occurrence giving rise to the subject matter of such conviction, indictment or investigation, then the Contractor shall immediately disclose the same in writing to the Contract Manager.

8. That the Contractor shall comply with: (i) all terms and conditions of this Agreement; and (ii) applicable law.

9. That the Contractor shall: (i) perform and provide all Services 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 Authority Policies. The Services shall be fit and suitable for its particular purpose(s) and its use as contemplated under this Agreement, and shall perform to the Authority's reasonable satisfaction, and otherwise be in compliance with Good Industry Practice. The Contractor shall, throughout the Term, employ, maintain, and assign a sufficient number of competent and qualified professionals and other personnel to meet the schedule in this Agreement.

10. That neither the Contractor, nor the Services, do or shall violate any Intellectual Property Rights of any third party.

B. 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 applicable Services, and may not be excluded or modified. The warranties set out in the preceding sentence include Services that does not otherwise constitute "goods" within the meaning of the UCC. The Contractor agrees to take back, replace, and otherwise correct to the Authority's satisfaction, all Services violating such warranties and to assume all risk and costs associated with such remedy. Any Services held by the Authority pending the Contractor's remedy, shall be so held at the Contractor's sole risk and expense. In addition, Services, as delivered or provided, shall include and be covered by all applicable warranties of the manufacturer and any other intermediary, and the Contractor shall be responsible for enforcing such warranties on the Authority's behalf. The

delivery and existence of any such manufacturers' warranties shall not relieve the Contractor of any of its obligations under this Agreement. Except as otherwise provided in this Agreement or a Task Order, Contractor warrants its workmanship for a period of five (5) years from completion of the Services.

ARTICLE XX – CONTRACTOR’S INDEMNIFICATION OBLIGATIONS

A. The Contractor shall defend, indemnify, and hold the Authority and the MTA Indemnified Parties, their subsidiaries, respective affiliates, and related parties (including the City of New York and the State of New York), and their respective officers, directors, employees, and agents (collectively, the “Authority Indemnitees”) harmless from and against any third party claim, action, suit, or proceeding resulting from: (i) the Contractor’s breach of this Agreement; (ii) the Contractor’s failure to comply with law; (iii) any Services’ actual or alleged infringement of a third party’s Intellectual Property Rights; (iv) injury to persons, deaths, or property damage caused by the Contractor or its agents, subcontractors, or employees; and (v) any acts or omissions of the Contractor or its agents, subcontractors, or employees. Subject to Article XXB, the Contractor shall indemnify the Authority Indemnitees for all losses, damages, liabilities, fines, penalties, assessments, and all reasonable costs and expenses (including attorneys’ fees) incurred by the Authority Indemnitees in any such claim, action, suit, or proceeding. The Contractor acknowledges that its indemnification obligations are absolute and not dependent upon any question of negligence on the Contractor’s or the Authority Indemnitees’ part, or on the part of any of their agents, officers, employees, or subcontractors.

B. The Authority shall use its good faith efforts to notify the Contractor within a reasonable time of the assertion of any claim for which the Authority is seeking indemnification (each, an “Indemnified Claim”). If the Authority decides to conduct the defense of an Indemnified Claim, then the Contractor shall reimburse the Authority for all reasonable costs and expenses (including attorneys’ fees) that the Authority Indemnitees incur in connection with their defense of the Indemnified Claim, and the Contractor shall cooperate fully with the Authority in such defense, at the Contractor’s sole cost and expense. If the Authority decides to have the Contractor defend the Indemnified Claim, then the Authority shall notify the Contractor of such in writing and: (i) the Contractor shall hire Authority-approved counsel; (ii) the Contractor shall bear all costs and expenses associated with the Indemnified Claim; (iii) the Contractor shall have sole control of the defense and settlement of the Indemnified Claim, provided that the Authority 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 Authority Indemnitees or the Contractor on behalf of the Authority Indemnitees without the Authority’s express written consent; (iv) the Authority shall cooperate fully with the Contractor in the defense of the Indemnified Claim, at the Contractor’s sole cost and expense; and (v) the Authority shall be entitled to participate in any defense at its own expense and with counsel of its own choosing.

ARTICLE XXI– TERM OF THE AGREEMENT

The initial term of this Agreement is a three (3) year period commencing upon the Notice of Award (the "Initial Term"). The Authority shall have the sole right to extend the Initial Term for up to two (2), one-year periods (each, a "Renewal Term") by providing written notice to the Contractor prior to the conclusion of the then-current term (Initial Term or Renewal Term). The Initial Term and any Renewal Term are collectively referred to herein as the "Term".

ARTICLE XXII – OWNERSHIP AND GRANT OF RIGHTS

A. The Contractor hereby grants to the Authority a worldwide, non-exclusive, sublicensable, fully paid-up, perpetual, royalty-free license in and to those Intellectual Property Rights necessary to permit the Authority: (i) to copy, distribute, modify, and otherwise use and exploit the Services; and (ii) to make, use, and transfer items that embody the Services; provided, however, that the Authority shall exercise such rights solely for the purposes specified in or contemplated by this Agreement and the applicable Task Order, and for the Authority's (or any of its affiliates or subsidiaries) operations.

B. The Authority, under its Intellectual Property Rights, hereby grants to Contractor during the Term, a limited, non-exclusive, non-transferrable, non-sublicensable license to copy and modify Authority Data and to use other Authority resources made available to the Contractor by the Authority (the "Authority Resources"), but solely for the purpose of Contractor fulfilling its obligations to the Authority under this Agreement, and for no other purpose. Contractor acknowledges that the rights granted to it pursuant to this Article XXIIB shall immediately terminate upon any termination or expiration of this Agreement or the applicable Task Order.

C. The Contractor acknowledges that the Authority Data is licensed, not sold, to Contractor. The Contractor agrees that, as between Contractor and the Authority, and subject to Article XXIIB, the Authority is the sole and exclusive owner of all of the right, title, and interest in and to the Authority Data and Authority Resources, and in and to all associated Intellectual Property Rights.

D. The term "Custom Work" means Services that Contractor specifically develops or designs, or causes to be developed or designed, for the Authority pursuant to this Agreement or any Task Order. 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. The Contractor hereby assigns and transfers to the Authority all right, title, and interest in and to all Intellectual Property Rights associated with the Custom Work, and the Contractor shall provide all requested supporting documentation to the Authority to perfect such assignment.

E. Nothing in this Agreement shall be construed to grant the Contractor any rights other than those expressly provided herein. Any rights granted to the Contractor under this Agreement must be expressly provided herein, and there shall be no implied rights pursuant to this Agreement, based on any course of conduct or other construction or interpretation thereof. All rights and licenses not expressly granted herein by the Authority are reserved.

F. The licenses granted to the Authority in this Agreement are rights to “intellectual property” for purposes of Section 365(n) of the U.S. Bankruptcy Code, and the Authority shall be entitled to exercise all rights provided by Section 365(n). The Contractor agrees that it shall not interfere with the Authority’s exercise of such rights, and further agrees that the Authority shall maintain the licenses under the terms of this Agreement, even if the Contractor ceases operations or is purchased or merges into another entity.

ARTICLE XXIII – ASSIGNMENT

A. Contractor may not, by agreement, operation of law, or otherwise, assign, encumber, transfer, convey, sublet or otherwise dispose of this Agreement to any entity or person, in whole or in part, including but not limited to an assignment, transfer or conveyance by change in the control or change in the ownership of Contractor or a change in control or change in the ownership of any entity owning or controlling Contractor, without the prior written consent of the Authority, which consent may be withheld, conditioned, or delayed in the Authority’s sole discretion (provided that Contractor may assign monies due or to become due to Contractor under the Agreement upon prior written notice to Authority and Authority’s written acknowledgment). A “change in control” includes, but is not limited to, any change in the ownership or control of Contractor or any entity owning or controlling Contractor, whether such change results from a merger, or a sale, assignment or transfer of stock, or a sale of assets, or a sale, transfer or assignment of assets to an affiliate or subsidiary, or a sale, transfer or assignment of assets to an affiliate or subsidiary with a subsequent sale or transfer of such affiliate or subsidiary, or a transfer or change in control by contract or other such agreement.

B. Any action by Contractor which violates the provisions of section A, above, shall be deemed to be a breach of the Agreement by Contractor and Authority shall have all rights and remedies available to it under law and equity, including termination of the Agreement.

C. In the event of the assignment of monies due or to become due under this Agreement, the Authority may require that Contractor provide the Authority with such information, documentation, and authorization as the Authority may deem appropriate.

ARTICLE XXIV – GRAND JURY TESTIMONY

A. Upon refusal of the Contractor as an individual or as Contractor member, partner, director or officer, if the Contractor is a firm, partnership or corporation, when called before a grand jury, governmental department, commission, agency or any other body which is empowered to compel the attendance of witnesses and examine them under oath, to testify in an investigation or to answer any relevant questions concerning any transaction or contract entered into with the state, or any political subdivision thereof, or a public authority or with any public department, agency or official of the state or any political subdivision thereof, when immunity has been granted to the witness against subsequent use of such testimony, or any evidence derived therefrom in any subsequent criminal proceeding, then the following shall apply:

1. Such refusing individual, or any firm, partnership or corporation of which such individual is a member, partner, director or officer shall be disqualified for a period of five (5) years after such refusal from submitting bids for, or entering into or obtaining any contracts, leases, permits or licenses with the City of New York, or the Authority or submitting bids for or entering into, or obtaining any contracts, leases, permits or licenses that will be paid out of any monies under the control of or collected by the City of New York or the Authority and/or shall be subject to such other action that the Authority deems appropriate under the circumstances; and

2. This Agreement and any and all such existing contracts, leases, permits or licenses made with or obtained by any such individual or with or by the firm, partnership, or corporation of which such individual is a member, partner, director or officer may be cancelled or terminated by the City of New York or the Authority or the contracting agency or be subject to such action appropriate under the circumstances thereto without incurring any penalty or damages on account of such cancellation or termination, but any monies owing for goods delivered, work done, or rentals, permit or license fees due, prior to the cancellation or termination, shall be paid.

ARTICLE XXV – SUBCONTRACTS

A. Unless otherwise set out in a Task Order, the Contractor, subject to the prior written approval of the Authority (which may be withheld, conditioned, delayed, or withdraw at its discretion), may retain the services of such subcontractors as may be necessary for the proper performance of the Services. Each subcontractor, the terms of each subcontract, and the subcontractor's specific staff members assigned to the performance of the Services, are subject to the Authority's prior approval. Unless otherwise agreed to in writing by the Authority, the terms of each subcontract shall: a) incorporate the provisions of this Agreement (and applicable Task Orders); b) be subject to the prior approval of the Authority in writing before the subcontract is deemed in effect. Contractor shall request approval by sending the Authority a request for approval to the address set out in Article XVC (Notices). Such request shall include a copy of the proposed subcontract and identify and provide relevant information about the specific subcontractor staff members to be assigned to this project.

B. If Contractor enters into agreement with, or directs, the subcontractor to perform work on the Authority's behalf without the sole written permission of the Authority's Procurement Division, the Authority shall not be liable or obligated whatsoever for any goods, services, or other costs which are not expressly authorized by the Authority.

C. Without limiting the generality of the foregoing, if the Contractor engages subcontractors in connection with this Agreement, then: (i) the Contractor shall remain fully and directly liable for all obligations under this Agreement as though no such subcontracting had occurred; and (ii) the Contractor shall be solely responsible for ensuring that any subcontractors it engages fully comply with the Contractor's obligations under this Agreement as if such subcontractor were the Contractor

ARTICLE XXVI – LIAISON

The Contractor shall maintain continuing liaison with and shall report to, as requested by the Authority, all affected public agencies, and the Contractor shall keep the Authority fully informed as to the progress of the Services at all times. The Contractor shall do so not only through regularly issued progress and cost reports and minutes, as herein provided, but through close liaison between Authority personnel and Contractor Personnel. The Contractor shall submit to the Authority minutes of any meetings attended by the Contractor relating to the Services within ten (10) days following such meetings.

ARTICLE XXVII – METHOD AND TIMES OF PAYMENT

A. Contractor will be paid for Services performed in accordance with the provisions herein. Amounts payable hereunder as reimbursement for those actual, reasonable and necessary costs incurred by the Contractor which are directly attributable or properly allocable to the Services shall be billed pursuant to the terms set out in each Task Order. All invoices shall be taken from the books of account kept by the Contractor, shall be supported by copies of payroll distribution, receipted bills or other documents reasonably required by the Authority.

B. Invoices which are prepared and documented in accordance with the requirements stated herein will be paid by the Authority within thirty (30) days after receipt. The MTA Business Service Center (“MTA BSC”) is the component of the Metropolitan Transportation Authority that will make authorized payments to Contractor. All payments by the MTA BSC shall be made via Automated Clearing House ("ACH"). Contractor authorizes the MTA BSC to make payments to Contractor using an ACH designated by the MTA BSC. If you have not previously provided ACH instructions to the MTA BSC or if previously provided ACH instructions have changed, promptly upon award the Contractor shall prepare and submit current ACH information to the MTA BSC. The form for submitting that and other information, the Vendor Master Setup Maintenance form, is available online at <http://www.mtabsc.info/vendors>.

All invoices will require a PO number. If you are not currently using a PO number, contact your agency Procurement Manager or Buyer and submit invoices as follows:

Email: invoice@mtabsc.org
Fax: 212-971-5060
Address: MTA Business Service Center
 Accounts Payable
 333 W. 34th Street, 9th Floor
 New York, NY 10001-2402

C. Purchases by the Authority and its agents are exempt from all New York State and local sales and compensating use taxes. In connection with Contractor’s purchase of materials, equipment and other goods, and services, including travel and lodging, the cost of which are passed through to or reimbursable by the Authority and in connection with which the Authority would directly or indirectly be obligated to pay for any applicable sales or compensating use tax (“Tax Sensitive Purchases”), the Contractor shall, to the extent commercially practicable and with the

Authority's prior approval, structure such Tax Sensitive Purchases to lawfully avoid the applicability of all sales and compensating use taxes, including, for example, by making such Tax Sensitive Purchases as the Authority's agent or making such Tax Sensitive Purchases for resale to the Authority.

D. Before Contractor makes a Tax Sensitive Purchase, Contractor shall notify the Authority of the potential Tax Sensitive Purchase and consult with the Authority about whether and how an exemption or exclusion from sales and compensating use tax can be implemented. To the fullest extent permitted by law, Contractor shall cooperate with the Authority and Contractor's vendors to implement valid exemptions from and avoidance of sales and compensating use taxes in connection with Tax Sensitive Purchases. Such cooperation shall include agreeing to all modifications to this Agreement that the Authority may reasonably deem necessary or appropriate to achieve such objective and which do not have a material adverse effect on Contractor.

E. All of Contractor's subcontracts and purchase agreements applicable to this Agreement shall be assignable to the Authority and shall include an express provision that states that upon an assignment of the subcontract or purchase agreement from Contractor to the Authority, all purchases of goods and services under the subcontract or purchase agreement shall be exempt from New York sales and compensating use tax.

F. If the Authority requests Contractor to act as the Authority's agent in connection with a Tax Sensitive Purchase, (i) the Authority authorizes the Contractor to make such Tax Sensitive Purchase on the Authority's behalf and to legally bind the Authority in all related matters, (ii) the Contractor's role as the Authority's agent shall be limited to the minimum agency role necessary for such Tax Sensitive Purchase to qualify as an exempt purchase by Contractor as agent for the Authority under applicable tax law and regulations, (iii) Contractor shall make such purchase in a manner that complies with all legal requirements applicable to such purchase and the Authority and Contractor shall cooperate to establish appropriate procedures for the associated procurement, and (iv) Contractor shall identify itself to the vendor as acting as agent for the Authority and the sales invoice shall be made out to the Contractor acting as agent for the Authority.

G. If the Authority requests Contractor to make a Tax Sensitive Purchase for resale to the Authority, (i) the Contractor shall not consume the goods or services so procured, (ii) such goods and services shall by operation of this provision be expressly agreed by the parties not to be necessary for Contractor to perform its core service obligations under this Agreement; and (iii) Contractor shall be obligated to resell such goods or services to the Authority.

H. In connection with the implementation of a lawful tax avoidance purchase structure for Tax Sensitive Purchases, the Authority may be required to provide to the Contractor and/or the Contractor may be required to provide to the vendor tax exemption forms, certificates or other documentation.

I. The Contractor shall, to the extent practicable, use tax exemption certificates in connection with the procurement of materials, equipment or services in the performance of this Agreement to avoid charging the Authority with federal, state and local taxes.

J. The MTA Business Service Center (“MTA BSC”) is the component of the Metropolitan Transportation Authority that will make authorized payments to Contractor. All payments by the MTA BSC shall be made via Automated Clearing House (“ACH”). Contractor authorizes the MTA BSC to make payments to Contractor using an ACH designated by the MTA BSC. If the Contractor has not previously provided ACH instructions to the MTA BSC or if previously provided ACH instructions have changed, the Contractor shall, promptly upon execution of this Agreement, prepare and submit current ACH information to the MTA BSC. The form for submitting such ACH information and other information to the MTA BSC, the Vendor Master Setup Maintenance form, is available online at <http://www.mtabsc.info/vendors/>.

K. In addition to the Agreement number shown on the first page of this Agreement, the Authority has assigned a Purchase Order number to the Agreement and for each Task Order, for control purposes. Separate Purchase Order numbers will also be assigned to any supplemental agreements that may be issued in future modifying the Agreement. The Contractor must ensure that when submitting invoices for payment, (i) the Purchase Order number as well as the Agreement number (both shown on the first page of the Agreement and Task Order) are shown on invoices, and (ii) the Company Name shown on invoices exactly matches the Company Name as it is shown on the first page of the Agreement and Task Order. Any invoice that is received by the Authority without the specific information required herein will be returned to the Contractor for correction and resubmission. Properly prepared invoices will be processed promptly for payment in accordance with the provisions herein.

L. Unless otherwise set out in a Task Order, the Authority will retain from each invoice issued pursuant to a Task Order, five percent (5%) of the amounts payable to the Contractor. Upon satisfactory completion of the Services provided pursuant to a Task Order and, if the Authority so elects, the completion by the Authority of its audit of the records and accounts of the Contractor as provided in Article XXVIII hereof, which audit shall be completed as expeditiously as possible, any amounts so retained by the Authority, less any amounts found due the Authority as a result of such audit, shall be paid the Contractor.

ARTICLE XXVIII – RECORDS, ACCOUNTS, INSPECTION AND AUDIT

A. The Contractor shall keep records and books of account, showing the actual cost to it of all items of labor, material, equipment, supplies, services and other expenditures of whatever nature for which compensation is payable herein.

B. The Authority and its representatives shall at all times during normal business hours have access to the premises of the Contractor and any other location where its records are kept and to all work and materials, books, records, correspondence, instructions, working papers, plans, drawings, specifications, receipts, vouchers and memoranda of every description of the Contractor pertaining to the Services, and the Contractor, at its expense, shall preserve such documents for a period of six (6) years after completion of services.

ARTICLE XXIX – LAWS

The Contractor agrees:

(a) To comply with the provisions of all state, federal and local statutes, ordinances and regulations applicable to the performance of this Agreement;

(b) To procure all legally required licenses and permits related to the performance of this Agreement;

(c) That any judicial or administrative claim it may assert will be brought exclusively in a New York State Court or administrative agency located within New York City; and

(d) That this Agreement shall be governed by the laws of the State of New York excluding New York conflict of law rules.

ARTICLE XXX – BONDS AND INSURANCE

A. The Contractor shall procure and thereafter maintain in force until completion of the Services or the earlier termination of this Agreement such bonds and insurance in such forms and such amounts as the Authority may require, including those set out in the RFP.

B. The Contractor shall secure compensation for the benefit of, and keep insured during the Term, such employees as are required to be insured by the provisions of the Worker's Compensation Law.

C. Prior to the issuance of a Task Order, the Authority may require the Contractor to furnish a Performance Bond to the Authority in a form acceptable to the Authority. In the event that: (i) a surety becomes insolvent; (ii) a surety's license is revoked or suspended; or (iii) a surety approved on the basis that it is listed as an approved federal surety has its federal approval revoked or suspended, the Contractor shall, within ten (10) calendar days after notice by the Authority, substitute other and sufficient surety or sureties in forms acceptable to the Authority. The Contractor's failure to comply with its obligations under this Article shall constitute a material breach of this Agreement; provided, however, in lieu of declaring the Contractor in material breach of this Agreement, the Authority shall be entitled to allow the Contractor to continue to perform the Services, in which event the Authority may deduct, from any monies then due or which thereafter may come due to the Contractor, the amount required to be held by such performance bond. The monies so deducted may be held by the Authority as collateral security for the performance of the conditions of the bonds and such monies shall in such case be deemed to have been paid to the Contractor under this Agreement.

ARTICLE XXXI – LOSS OR DAMAGE TO PROPERTY OF THE AUTHORITY

The Contractor shall care for and protect all tangible and intangible property (including data) of the Authority which comes into the possession or custody of the Contractor or that the Contractor otherwise accesses, and shall, at its own cost and expense, promptly repair, remediate, or restore any such property which is lost or damaged by the Contractor to the condition of such property prior to such loss or damage including due to the Contractor's negligence or willful misconduct.

ARTICLE XXXII – AMOUNT OBLIGATED

A. The total amount obligated to the Contractor will be set out in each Task Order and the Authority shall not be required to pay to the Contractor under this Agreement or such Task Order for any sums in excess of that amount unless and until such amount shall have been increased by a modification pursuant to Article XXXIII (Modifications). No change in the scope of the Services, whether or not such change may have an effect on the cost of the Services, shall be made except pursuant to a written modification pursuant to Article XXXIII (Modifications).

B. The Authority shall not be responsible for Contractor costs attributable to: (i) Contractor or subcontractor mistakes or inefficiencies; (ii) Contractor or subcontractor failure to timely identify and resolve problems; or (iii) the training or other time required to bring a replacement person up to the level of proficiency and knowledge of the person being replaced.

ARTICLE XXXIII – MODIFICATIONS

A. Change Order Overview. The Authority shall have the right, in its sole discretion, to order changes to the Service that result in additions or subtractions to the amount, type, or value of the Service, provided that such changes are within the general scope of a Task Order. Services created by ordered changes is referred to herein as "**Extra Services.**" Services removed from the then-current scope of Services by ordered changes is referred to herein as "**Deleted Services.**" Subject to Section Article XXXIIID (Extra Services Directives), all ordered changes that result in Extra Services or Deleted Services shall be embodied in a document signed by both the Authority and the Contractor (each, a "**Change Order**"), as further set out herein.

1. Determination of Certain Compensation for Change Orders. The Contractor's compensation for Extra Services shall be based on those rates included in the Price Schedule.
2. Inclusion of Additional Job Titles. If the Authority and the Contractor agree that labor titles other than those included in the Price Schedule are necessary in the performance of Extra Services, then the additional labor titles shall be permitted to be used; provided, however, that the Authority shall undertake an audit of the Contractor's Records to determine the direct labor and material rates to determine their compliance with Authority policies and standard practices.
3. GAAP Compliance. The Contractor acknowledges that it shall (and cause its subcontractors to) consistently prepare and maintain all of its financial Records in full compliance with GAAP (or their IFRS equivalent) to, among other things, facilitate the Authority's auditing of the Contractor's rates.

B. Change Order Procedures for Extra Services; Basis for Payment. Change Orders for Extra Services shall be developed as follows:

1. Equitable Adjustments to the Total Contract Price and Project Schedule. Change Orders for Extra Services shall result in equitable adjustments to the amount payable pursuant to a Task Order that reflect the reasonable compensation for the Extra Services. Change Orders for Extra Services may also result in equitable

adjustments to any project schedule included in a Task Order to reflect the time needed to perform the Extra Services and the impact on other dates set out in the applicable Task Order.

2. Authority Initiation of a Change Order. The Authority shall notify the Contractor in writing of changes to the Services that result in Extra Services, and such written notice shall include a description of the Extra Services (each, a "**Notice of Proposed Change Order**"). Each Notice of Proposed Change Order shall include a designation of "Normal" or "Complex", as determined by the Authority in its sole discretion, and such designation shall denote the complexity of the proposed Extra Services.
3. Contractor Submission of a Change Order Proposal. The Contractor shall submit to the Contract Manager a detailed written response that includes any requested revisions to the applicable Task Order, including cost adjustments for the Extra Services and a schedule for performing the Extra Services (each, a "**Change Order Proposal**"). Such Change Order Proposal shall be due to the Contract Manager in no event more than fifteen (15) calendar days after the Contractor's receipt of a Notice of Proposed Change Order bearing a "Normal" designation (or such longer period as the Contract Manager may allow), and in no event more than thirty (30) calendar days after the Contractor's receipt of a Notice of Proposed Change Order bearing a "Complex" designation (or such longer period as the Contract Manager may allow). Any unauthorized delay in the Contractor's submission of a Change Order Proposal shall result in a day-for-day reduction in any extension of time to which the Contractor would otherwise have been entitled for the Extra Services. The Contractor must include in all Change Order Proposals accurate, current, and detailed data to support each component of its Change Order Proposal and to demonstrate the reasonableness of the request.
4. Change Order Schedule Impact. To the extent that any Change Order for Extra Services impacts the then-current project schedule included in the applicable Task Order, the Contractor shall submit with its Change Order Proposal an updated schedule that: (i) includes the Extra Services; and (ii) reflects the impact of the Extra Services on all outstanding Services. The Contractor must clearly demonstrate how it proposes to incorporate the Extra Services into the applicable project schedule. If the Contractor fails to include a time extension request with accurate and complete supporting Documentation, then the Contractor shall be deemed to have agreed that the proposed Extra Services shall not have any impact on the Schedule.
5. No Extra Services Without a Change Order; Disputed Service. Subject to Section Article XXXIIID (Extra Services Directives), the Contractor shall not perform Extra Services unless: (i) the Contract Manager directs the Contractor in writing to perform Extra Services, and expressly indicates in the written direction their intention that the ordered work is to be treated as Extra Services (each, an "**Extra Services Mandate**"); or (ii) the Authority and the Contractor have both executed

an applicable Change Order. If the Contract Manager directs the Contractor to perform services without issuing an Extra Services Mandate, and the Contractor believes in good faith that such work constitutes Extra Services (the "**Disputed Service**"), then the Contractor shall nevertheless perform the Disputed Service. Within fifteen (15) calendar days after commencing performance of the Disputed Service or incurring costs attributable to the Disputed Service, or such longer time as the Contract Manager agrees in writing, the Contractor shall submit to the Contract Manager a notice regarding its position (each, a "**Disputed Service Notice**"). The Disputed Service Notice shall include: (a) an explanation of why the Contractor considers the directed work to constitute Disputed Service; and (b) any Impact Costs or extensions to the applicable project schedule to which the Contractor believes that it is entitled due to the Disputed Service. The purpose of the Disputed Service Notice is to (1) provide the Contract Manager with an opportunity to (Y) promptly cancel the applicable order, direction, or requirement, and (Z) keep an accurate record of the materials, labor, and other items involved, and (2) provide the Authority with an opportunity to respond to the Disputed Service Notice.

6. Required Approvals for Extra Services Compensation. Any compensation for Extra Services pursuant to this Section Article XXXIIB (Change Order Procedures for Extra Services; Basis for Payment) shall be subject to subsequent audit and approval, disapproval, modification, or revision by representatives of the Authority, the State, and applicable Governmental Authorities.

C. Change Order Procedures for Deleted Services; Credits. Change Orders for Deleted Services shall be initiated and addressed pursuant to the same procedures set out in Section Article XXXIIB (Change Order Procedures for Extra Services; Basis for Payment), subject to the following:

1. Equitable Adjustments. Change Orders for Deleted Services shall result in equitable adjustments to the amount payable pursuant to a Task Order that are reflected as a credit to the Authority in the amount of the Deleted Services. Change Orders for Deleted Services may also result in equitable adjustments to the applicable project schedule to reflect the impact of the Deleted Services on such project schedule. In no event shall the Contractor be entitled to Impact Costs for Change Orders for Deleted Services.
2. Limitations of the Contractor Change Order Proposal. The Change Order Proposal submitted in response to a Notice of Proposed Change Order for Deleted Services shall include: (i) the credit to which the Contractor believes that the Authority is entitled based on the Deleted Services (the "**Deleted Services Credit**"); (ii) adjustments to the applicable project schedule resulting from the Deleted Services; and (iii) details regarding the specific steps that the Contractor took, and will take, to mitigate costs as required by Section 4 (Contractor Deleted Services Cost Mitigation Obligation). The Contractor shall provide detailed supporting

information explaining its basis for the Deleted Services Credit and project schedule adjustments.

3. Deleted Services Credit; Impact on the Total Contract Price. The Deleted Services Credit shall be based on the amounts included in the Price Schedule, and shall also include savings associated with adjustments to the applicable project schedule. If the Contract Manager determines that the Deleted Services is not subject to the amounts included in the Price Schedule (for example, if the Deleted Services was previously added as Extra Services), then the Deleted Services Credit shall be based on the amount included in the Change Order for Extra Services, and shall also include any savings associated with adjustments to the project schedule.
4. Contractor Deleted Services Cost Mitigation Obligation. The Contractor shall use its best efforts to mitigate all costs associated with Deleted Services, including returning pre-purchased material, cancelling orders for material not yet received, and reassigning labor to perform other Services.
5. Disputes Regarding Deleted Services Credits. Any disputes relating to a Change Order Proposal for Deleted Services shall be handled pursuant to Section Article XXXIIID (Extra Services Directives).

D. Extra Services Directives.

1. Authority Right to Direct Service. The Authority may direct the Contractor in writing to perform Extra Services or otherwise cease (or not commence) performing Service designated as Deleted Services (each, an "**Extra Services Directive**") if (i) the Authority and the Contractor fail to agree to the terms of any Change Order Proposal (either for Extra Services or Deleted Services), or (ii) the Authority determines that exigent circumstances warrant issuing an Extra Services Directive. Any modifications to the Extra Services or Deleted Services set forth in a Notice of Proposed Change Order must be previously reflected in a revised Notice of Proposed Change Order that is issued to the Contractor within a reasonable time of the Extra Services Directive. If a dispute over an Extra Services Directive relates to price or timing, then the Extra Services Directive shall also include, as applicable: (a) the amount that the Authority is willing to pay the Contractor for the Extra Services (including any Impact Costs); (b) the Authority's calculation of the amount of the Deleted Services Credit; and (c) the Authority's position regarding any modifications to the applicable project schedule. Immediately upon the Contractor's receipt of an Extra Services Directive, the Contractor shall commence performing the Extra Services or cease (or not commence) performing Service designated as Deleted Services, all as set forth in the Extra Services Directive.
2. Disputes Regarding Extra Services Directives.

- a. Contractor Dispute Submission. If the Contractor disputes the terms of an Extra Services Directive, then it must submit to the Contract Manager a written statement declaring its dispute (each, an "**Extra Services Directive Dispute Notice**"), and such Extra Services Directive Dispute Notice must include the information set out in Section 2.b (Content of the Extra Services Directive Dispute Notice). The Contractor must submit its Extra Services Directive Dispute Notice to the Contract Manager within ten (10) calendar days of the Contractor's receipt of an Extra Services Directive and, if the Contractor fails to submit an Extra Services Directive Dispute Notice within the ten (10) day period, then the Contractor shall be deemed to have waived any right to challenge the Extra Services Directive.
- b. Content of the Extra Services Directive Dispute Notice. The Contractor shall include in the Extra Services Directive Dispute Notice, at a minimum, the following information: (i) a detailed explanation of those aspects of the Extra Services Directive that the Contractor disputes, provided that such disputed aspects must only relate to specific matters raised by the Contractor in its Change Order Proposal that were not resolved prior to the issuance of the Extra Services Directive; (ii) an explanation of how the disputed Service was specified in the applicable scope of work; and (iii) if applicable, the manner in which the disputed item was specified in the applicable scope of work.
- c. Contractor Payment During Extra Services Directive Disputes; Impact of Contract Manager Decision. During the resolution of any dispute involving Extra Services Directives, the Contractor shall be paid for the Extra Services being performed in accordance with the estimate set out in the Authority's Extra Services Directive. Once the Contract Manager issues a decision regarding the applicable dispute, the Authority and the Contractor (as applicable) shall promptly reconcile any amounts due and owing between each other and the Authority shall update the Extra Services Directive to reflect the Contract Manager's decision (including any changes to the project schedule). Any payments made to the Contractor pursuant to this Section 2.c (Contractor Payment During Extra Services Directive Disputes; Impact of Contract Manager Decision) based on the Contract Manager's decision shall constitute the full satisfaction of the Contractor's claim for adjustments to the amount payable under the applicable Task Order or the applicable project schedule.
- d. Performance During Dispute. During the resolution of a dispute regarding Extra Services Directives, and unless otherwise directed by the Contract Manager's written instructions, the Contractor shall diligently and in good faith continue to perform the Extra Services or cease (or not commence) performing Service designated as Deleted Services, all as set forth in the

Extra Services Directive. By way of clarification, and not limitation, the Contractor's submission of an Extra Services Directive Dispute Notice shall in no way affect the Contractor's obligation to perform Extra Services during the resolution of an initiated dispute.

3. Required Approvals for Directed Service. Any compensation for Extra Services or Deleted Services Credits resulting from Extra Services Directives shall be subject to subsequent audit and approval, disapproval, modification, or revision by representatives of the Authority, the State, and applicable Governmental Authorities.

E. General Requirements for All Change Orders. The following provisions apply to all Change Orders for Extra Services and Deleted Services:

1. Change Order Negotiation; Approval and Execution. Upon receipt of a Change Order Proposal, the Authority may either: (i) accept the Change Order Proposal; or (ii) reject the Change Order Proposal and initiate negotiations with the Contractor regarding revisions to the Change Order Proposal, including the amount of time required for the Contractor to perform certain Services or the actual cost of materials. If the Authority accepts the Change Order Proposal, then it shall notify the Contractor and both the Authority and the Contractor shall execute a Change Order memorializing the terms of the Change Order Proposal. If the Authority rejects a Change Order Proposal, then the Authority and the Contractor shall negotiate in good faith any revisions that the Authority determines are necessary to the Change Order Proposal (including adjustments to costs and the Schedule) and the Contractor shall subsequently promptly revise the Change Order Proposal and resubmit it to the Authority for additional review(s). Notwithstanding anything to the contrary, the Contract Manager shall have the right to reject a Change Order Proposal for any reason, including if the Change Order Proposal does not include accurate or complete supporting Documentation. The Authority's authorized officer shall be the Authority's signatory for any Change Orders.
2. Change Order; Contractor Release. The Contractor's execution of a Change Order constitutes the Contractor's release of the Authority from all claims and liabilities that the Contractor has or may have relating to, or in connection with, the Extra Services or Deleted Services, including additional claims (besides those included in the executed Change Order and subject to the terms above) for modifications to the applicable project schedule, and further including any claims for any prior act, neglect, fault, or default of the Authority relating to the Extra Services or Deleted Services.

F. No Modifications. The only persons authorized on behalf of the Authority to agree to a change or modification to this Agreement are the Authority's Director of Procurement, the Deputy Directors of Procurement, and any designee in the MTA Law Department. No other person is authorized to change or modify this Agreement in writing or orally.

ARTICLE XXXIV – DISPUTES

A. Except as otherwise provided in this Agreement, a dispute concerning a question of fact arising under this Agreement which is not disposed of by agreement of the Parties shall be decided by the Authority’s Procurement Deputy Director or the duly authorized representative of the Director of Procurement, who shall reduce its decision to writing and mail or otherwise furnish a copy thereof to the Contractor. The decision of the Authority shall be final and conclusive unless, within 10 days from the date of receipt of such copy, the Contractor mails or otherwise furnishes to the Authority a written appeal addressed to the Director of Procurement. In connection with any appeal proceeding under this clause the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of the Contractor’s appeal. Pending final decision of a dispute hereunder, the Contractor shall proceed diligently with the performance of this Agreement and in accordance with the Authority’s decision. The decision of the Authority’s Director of Procurement for the determination of such appeals shall be final and conclusive.

B. Nothing set out herein, including in Article XXXIVA, shall preclude Contractor from challenging the decision of the Authority’s Director of Procurement on the basis of a claim that such decision is arbitrary in a New York State Court or administrative agency located within New York City.

ARTICLE XXXV– TERMINATION

A. The Authority may terminate this Agreement or any Task Order in whole or part at any time and for any reason (irrespective of whether the Contractor is in default) including the finding that the certification filed by the Contractor in accordance with New York State Finance Law, Section 139-k (the “Lobbying Law”) was intentionally false or intentionally incomplete. Promptly upon receipt of such notice and unless otherwise directed in writing by the Authority, the Contractor shall discontinue all terminated Services, shall halt the placing of further subcontracts and orders for services, materials, facilities or supplies related to such terminated Services and, insofar as possible, shall proceed to halt work under, and to cancel, all subcontracts and outstanding orders to the extent the same are reimbursable hereunder.

B. Termination for Default.

1. The term “Default Event” means the Contractor’s breach of this Agreement or any Task Order, including where: (i) performance of the Services are delayed; (ii) the Contractor is willfully violating any obligation of this Agreement or has abandoned the Services; (iii) the Contractor has become insolvent or has assigned the proceeds of this Agreement for the benefit of creditors; (iv) the Contractor has breached any representation, warranty, or covenant set out in this Agreement; (v) the Contractor has otherwise breached an obligation of this Agreement; or (vi) this Agreement otherwise defines an event as a Default Event.

2. The Authority shall notify the Contractor in writing if a Default Event occurs. If the Contractor fails to cure the Default Event to the Authority’s satisfaction within ten (10) days of such notice, then the Authority shall have the right to immediately terminate this Agreement or the applicable Task Order, in whole or in part, by providing the Contractor with

written notice of its intent to do so. The Authority's termination notice shall specify the date upon which Contractor is to discontinue the applicable Services, and Contractor shall discontinue the Services so specified on such date. The Contractor shall continue to perform all Services that are not the subject of the Authority's termination notice.

3. If a Default Event occurs, then the Authority shall have the right to procure the same or similar Services under such terms and in such manner as the Authority deems appropriate, and the Contractor shall be liable to the Authority for any excess costs of such Services, including the difference between the fees for such Services and the amount that the Authority expends to complete the Services. The Contractor shall also remain liable for all other liabilities and claims arising from this Agreement, and the Authority has the right to deduct from monies due to the Contractor all damages and other costs that the Authority incurs.

4. If the Authority terminates this Agreement pursuant to this Article XXXVB, and the Authority 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 Article XXXVA. The Contractor agrees that it shall be entitled to no damages, allowance, or expenses of any kind other than as provided for in Section Article XXXVC in connection with any such termination.

C. Upon termination without default of the Contractor, the Contractor shall be paid for Services performed up to the effective date of termination that have been Accepted, and the Authority shall have no further obligation to the Contractor. The Authority shall reimburse the Contractor for all reasonable cancellation charges incurred by it and should the Contractor be unable to arrange a cancellation under any such order or subcontract, it will follow the instructions of the Authority in the premises, in which event the Authority will hold the Contractor harmless from and against any loss or damages arising out of such order or subcontract and from the making of any further payments.

D. If the Authority determines that the nature of the Services and termination or expiration of this Agreement require the need for transition services a smooth transition to the Authority or an Authority-designee, then, at the Authority's request, the Contractor shall provide such transition services requested by the Authority to assure a smooth transition.

E. In addition to any other right or obligation that by its nature is intended to survive any termination or expiration of this Agreement, the following shall survive any such termination or expiration: (i) Article XI(New York Law/Choice of Law; Consent to Jurisdiction and Venue); (ii) Article XIII (Statute of Limitation on Right to Sue the Authority/No Claims Against Authority Officers, Agents or Employees; (iii) Article XIV (Authority May Avail Itself of All Remedies); (iv) Article XV (General Provisions); (v) Article XIX (Contractor's Representations and Warranties); (vi) Article XX (Contractor's Indemnification Obligations); (vii) Article XXII (Ownership and Grant of Rights) (other than Article XXIIB); (viii) Article XXVIII (Records, Accounts, Inspection and Audit); (ix) Article XXIX (Laws); (x) Article XXXI (Loss or Damage to Property of the Authority); (xi) Article XXXIV (Disputes); (xii) Article XXXVI (Non-Disclosure/Personal Privacy Law); and (xiii) Article XXXVIII (Data) through Article LII (MTA Vendor Code of Ethics).

ARTICLE XXXVI – NON-DISCLOSURE/PERSONAL PRIVACY LAW

A. The Contractor shall treat as confidential all information that is disclosed or provided to the Contractor (or to which the Contractor otherwise has access), whether oral or in writing, in connection with this Agreement (collectively, the “Confidential Information”). The term “Confidential Information” expressly includes Authority Data. The Contractor shall not use Confidential Information for any purpose not expressly permitted in this Agreement (and in all cases such Confidential Information shall only be used for the Authority’s benefit), and the Contractor 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 this Agreement; provided, however, that such recipients are under a duty of confidentiality no less restrictive than the Contractor’s duty hereunder and by applicable law. The Contractor shall protect the Confidential Information from unauthorized use, access, or disclosure in the same manner as the Contractor protects its own confidential or proprietary information, but shall in no event use less than a reasonable standard of care and diligence. Upon the Authority’s request, the Contractor shall promptly provide the Authority with copies of any requested Confidential Information in electronic form, all at Contractor’s sole cost and expense.

B. Except for information designated by the Authority as security sensitive and Personal Information, for which there shall be no exception, the Contractor’s obligations in Article XXXVIA with respect to Confidential Information shall not apply to Confidential Information that the Contractor can demonstrate in writing (to the Authority’s satisfaction): (i) was already known to the Contractor at the time of disclosure by the Authority; (ii) was or becomes available to Contractor on a non-confidential basis from a third party, provided that such third party is not bound by a confidentiality obligation to the Authority with respect to such Confidential Information; (iii) is or has become generally available to the public through no fault of Contractor; (iv) is independently developed by the Contractor 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 the Contractor notifies the Authority of such required disclosure promptly and in writing, and cooperates with the Authority, at the Authority’s reasonable request and expense, in any lawful action to contest or limit the scope of such disclosure.

C. Except upon prior written approval of the Authority, the Contractor shall not furnish or disclose or allow its employees or agents, or subcontractors or their employees or agents, to furnish or disclose to any person or organization, (a) any reports, studies, data, or other information provided by, or obtained from the Authority in connection with the Services performed under this Agreement, (b) any reports, studies, recommendations, data or other information relating to, or made or developed by the Contractor or its subcontractors in the course of the performance of such Services hereunder, or (c) the results of any of such Services performed. All reports, studies, recommendations, data, and other products of the performance of Services by the Contractor or its subcontractors hereunder shall become the property of the Authority.

D. The relevant provisions of the New York Personal Privacy Protection Law (Article 6-A of the Public Authorities Law, the “PPPL”) shall apply to this Agreement as if Contractor were an agency of the State of New York as defined therein. In addition to Contractor’s obligations

under Article XXXVIA, if, in connection with the performance of Services under this Agreement, Contractor receives or otherwise has possession or control of information which, because of any name, number, symbol, mark or other identifier, can be used to identify a person (“Personal Information”), such Personal Information shall be received, maintained and used by Contractor solely for the purpose of performing this Agreement and for no other purpose, in accordance with the Authority’s security standards and, at the request of the Authority, shall be encrypted in accordance with the Authority’s security standards. If Contractor receives a request for disclosure of Personal Information to any person or entity not expressly authorized under this Agreement, Contractor shall not comply with the request and shall instead promptly notify the Authority’s Contract Manager. If Contractor is required by law to comply with the request, to the extent lawful, Contractor shall delay complying with the request until Contractor notifies the Authority’s General Counsel in the most expeditious manner possible (e.g., telephone, email, fax) and affords the Authority with the opportunity to lawfully oppose such request.

ARTICLE XXXVII – QUALITY OF DELIVERABLES

Without limiting any additional requirements set out herein or in any Task Order, all computer programs, documentation, reports, studies, recommendations, data, and other products of the performance of the Services by the Contractor and its subcontractors shall be delivered to the Authority on such medium as requested by the Authority, with sufficient detail and clarity, and with sufficient explanations and information, to enable the Authority to understand, apply, modify and maintain such products without further assistance.

ARTICLE XXXVIII – DATA

A. Authority Data within Contractor’s possession or control shall at all times be accessible to the Authority, and copies shall be supplied promptly by the Contractor to the Authority at the Authority’s request and promptly upon termination or expiration of this Agreement. The Contractor’s obligation applies even if the Contractor is in dispute with the Authority or may otherwise claim or have the right to withhold data or drafts from the Authority.

B. The Contractor shall protect Authority Data in accordance with Appendix M (Cyber Security Requirements), and otherwise fully comply with all requirements included in Appendix M (Cyber Security Requirements).

ARTICLE XXXIX – COMPLIANCE WITH APPLICABLE LAWS, REGULATIONS/ ENVIRONMENTAL MATTERS

A. The Contractor (including its agents, officers, and employees) shall, and ensure that its subcontractors and suppliers comply, with all applicable laws, rules, and regulations, including all applicable requirements of governmental agencies and departments in the jurisdiction in which the Services are performed, and all safety regulations of the Authority.

B. The Contractor, its subcontractors and all suppliers, shall submit evidence that all standards, orders, and regulations issued pursuant to the Federal Clean Air Act will be met. If either the state or city air pollution control agency has more restrictive standards, such more

restrictive standards shall apply. All such evidence and related documents shall be retained by the Contractor and the Authority for on-site examination by appropriate enforcement agencies.

C. The Contractor, and all of its subcontractors and suppliers, shall comply with all local, state, and federal laws, rules, and regulations applicable to this Agreement and to the Services, including the Federal Occupational Safety and Health Act of 1970.

D. The Contractor, and all of its subcontractors and suppliers, shall comply with applicable environmental matters and related standards in its the performance of the Services, including, safety of operations, noise control, prevention and/or control of air pollution, removal of waste materials, storage of construction materials, protection against fire, minimum disturbance to pedestrian and vehicular traffic, maintaining use of public facilities, and protection against dust hazards. For the avoidance of doubt, these enumerated matters and related standards are not a complete list of environmental matters and related standards to be observed, and does not exclude other matters contained in this Agreement applicable by virtue of city, state, or federal law, rule, or regulation that are not specifically designated in this Paragraph. All environmental provisions will be strictly enforced.

E. If there are any inconsistent provisions among federal, state and local laws, the Contractor shall comply with the more stringent requirement, unless a federal law, rule or regulation requires that the affected federal provision be observed, notwithstanding the existence of a more stringent applicable state or local requirement.

F. Restrictions on the Purchase of Tropical Hardwoods

1. Except as hereinafter provided, New York State Finance Law Section 165, prohibits public benefit corporations (the Authority) from requiring or permitting the performance of Services that use tropical hardwood or tropical wood product. The Contractor shall comply with all terms of New York State Finance Law Section 165.

2. The provisions of this Article shall not apply where the Authority finds that:

- (a) no person or entity doing business in the state is capable of performing the Agreement using acceptable non-tropical hardwood species; or
- (b) the restriction would violate the terms of a grant to the Authority from the federal government; or
- (c) the use of tropical woods is deemed necessary for purposes of historical restoration and there exists no available acceptable non-tropical wood species.

3. The terms “non-tropical hardwood species,” “tropical hardwood,” and “tropical wood products” as used in this article are defined in New York State Finance Law Section 165, paragraph 1.

G. Asian Longhorned Beetle

1. The Contractor shall not perform any Services under this Agreement that involve the handling or removal of any “host material” originating from within the Asian Longhorned Beetle (“ALB”) quarantine zone, as defined by New York State Department of Agriculture and Markets (“NYSDAM”). Any such services required under this Agreement must be performed: (1) in accordance with federal, state and local Laws and regulations regarding the eradication of the ALB, including Part 139 of the New York State Agriculture and Markets Law (“NYS AML”); and (2) by a contractor (or subcontractor) that is certified by NYSDAM, to perform such services. Copies of such certification must be provided to the Authority before any work involving host material is commenced.

- (a) “Host material” generally includes all firewood (of hardwood species) and trees, logs, green lumber, stumps, roots, branches (whether living, cut or dead) that is one-half inch or more in diameter and one of the trees listed in NYS AML Part 139.3.

2. Prior to the handling or disposal of any host material within the quarantine zone, an NYSDAM-certified person must perform an inspection for the presence of ALB infestation.

- (a) If an ALB infestation is detected, then all work related to the handling or disposal of that host material must cease and the Contractor shall immediately contact the Contract Manager for further action. Services involving the infested host material may not restart until written notification to proceed is received from the Contract Manager.
- (b) If no ALB infestation is detected, then the host material, if living, may be left untouched. If the host material was discovered cut, dead or to be removed, it must be handled or disposed of pursuant to the regulations set forth by NYSDAM.

H. Omnibus Procurement Act of 1992 and Related Matters:

1. This Article applies to any contract with a value equal to or greater than one million dollars.

2. The Contractor shall make reasonable efforts to encourage the participation of New York State Business Enterprises as suppliers and subcontractors by showing that the Contractor has:

- (a) solicited bids, in a timely and adequate manner, from New York State Business Enterprises including certified minority and women-owned businesses;
- (b) contacted the New York State Department of Economic Development to obtain listings of New York State Business Enterprises;
- (c) placed notices for subcontractors and suppliers in newspapers, journals or other trade publications distributed in New York State; or

(d) participated in bidder outreach conferences.

3. The Contractor shall promptly provide documentation of such efforts to the Authority upon the Authority's request. If the Contractor reasonably determines that the New York State business enterprises are not available to provide Services as subcontractors or suppliers, then the Contractor shall provide a written statement to the Authority indicating the method by which such determination was made. If the Contractor does not intend to use subcontractors, then the Contractor shall provide a statement to the Authority verifying such.

4. The Contractor shall comply with the Federal Equal Opportunity Act of 1972 (P.L. 92-261), as amended.

5. The Contractor shall make reasonable efforts to provide notification to New York State residents of employment opportunities through listing any such positions with the Division of Employment and Workforce Solutions of the New York State Department of Labor, or providing such notification in such manner as is consistent with existing collective bargaining contracts or agreements. The Contractor shall document these efforts and shall promptly provide said documentation to the Authority or the State, upon request.

6. The Contractor acknowledges that New York State may seek to obtain offset credits from foreign countries as a result of this Agreement and agrees to cooperate with the Authority and the State in these efforts. Information on the availability of New York State subcontractors and suppliers is available online at <https://www.nyscr.ny.gov/register.cfm> and signing up for a free account with the New York State Contract Reporter; by telephoning the Empire State Development, Division of Small Business Services, at 800-782-8369.

7. A directory of New York State certified minority and women-owned business enterprises is available online at <https://ny.newnycontracts.com/FrontEnd/VendorSearchPublic.asp>; or by contacting the Empire State Development's Division of Minority and Women's Business Development at 625 Broadway, Albany, NY 12245 (518) 292-5100 or 633 Third Avenue, 37th Floor New York, NY 10017 (212) 803-3100; or 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 the Contractor's request, the Department of Diversity and Civil Rights will assist a firm in reviewing the directory.

8. Entities that want to be informed by e-mail of future contracting opportunities that may be of interest to them that are advertised in the New York State Contract Reporter, may sign up for a free account by visiting <https://www.nyscr.ny.gov/contracts.cfm>.

9. Entities 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 contractors who may contact the Contractor's business directly about subcontracting opportunities, may visit <https://www.nyscr.ny.gov/register.cfm>. Requests for listing in this registry may be made by (i) a New York State Business Enterprise 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 purchasing practices are identified within the Business Registry application.

ARTICLE XL – CONFLICT OF INTEREST

The Contractor represents that:

(a) No officer, director, employee, agent, or other contractor of the Metropolitan Transportation Authority, or its respective subsidiaries and affiliates (collectively the "Authorities") or a member of the immediate family or household of any of the aforesaid has directly or indirectly received or been promised any form of benefit, payment or compensation, whether tangible or intangible or in connection with the grant of this Agreement.

(b) There are no undisclosed persons or entities interested with the Contractor in this Agreement. This Agreement is entered into by the Contractor without any connection with any other entity or person making a proposal for the same purpose, and without collusion, fraud or conflict of interest. No elected or appointed officer or official, director, employee, agent or other contractor of the Authorities, or of the City or State of New York (including elected and appointed members of the legislative and executive branches of government), or a member of the immediate family or household of any of the aforesaid:

- i) is interested on behalf of or through the Contractor directly or indirectly in any manner whatsoever in the execution or the performance of this Agreement, or in the Services, supplies or work, to which this Agreement relates or in any portion of the revenues; or
- ii) is an employee, agent, advisor, or consultant to the Contractor or to the best of Contractor's knowledge any subcontractor or supplier to Contractor.

As an exception to the above, the Authorities, in their sole discretion, may consent in writing to waive this provision with respect to an individual or entity if the Contractor provides the Authorities 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.

(c) Neither the Contractor nor any officer, director, employee, agency, parent, subsidiary, or affiliate of the Contractor shall have an interest which is in conflict with the Contractor's faithful performance of Contractor's obligations under this Agreement; provided that the Authorities, in their sole discretions, may consent in writing to such a relationship, provided Contractor provides the Authorities with a written notice, in advance, which identifies all the individuals and entities involved

and sets forth in detail the nature of the relationship and why it is in the Authorities best interest to consent to such relationship.

(d) The provisions of this Article are supplemental to, not in lieu of, all applicable laws with respect to conflict of interest or professional standard. In the event there is a difference between the standards applicable under this Agreement and those provided by statute or professional standard, the stricter standard shall apply.

(e) In the event the Contractor has no prior knowledge of a conflict of interest as set forth above and acquires information which may indicate that there may be an actual or apparent violation of any of the above, the Contractor shall promptly bring such information to the attention of the Contract Manager. The Contractor shall thereafter cooperate with the Authorities' review and investigation of such information, and comply with the instructions Contractor receives from the Contract Manager in regard to remedying the situation.

ARTICLE XLI – RESERVED

ARTICLE XLII AUTHORITY'S USE OF CONSULTANTS AND CONTRACTORS

A. The Contractor acknowledges and agrees that no limitations shall be imposed on the Contract Manager's use of consultants or other contractors in any activity related to the Services. The consultants and contractors, at the direction of the Contract Manager, shall be afforded the same access to facilities and participation in project activities as any member of Contract Manager's project team. Involvement of consultants and contractors may include, but shall not be limited to, all project management functions such as progress and technical meetings, conference calls, document reviews, inspections and testing of the Services. The Contractor shall use best efforts to work with the Authority's other consultants and contractors.

B. The Contract Manager reserves the right of adding consultants and contractors to the distribution list to receive all correspondence initiated by the Contractor and to receive all or selected documents.

ARTICLE XLIII – AFFIRMATIVE ACTION/EQUAL EMPLOYMENT OPPORTUNITY PROVISIONS

This Agreement is subject to the Affirmative Action/EEO Requirements attached hereto as Appendix B. The Contractor is required to comply therewith.

ARTICLE XLIV – RESERVED

ARTICLE XLV – PROCUREMENT LOBBYING DISCLOSURE (THE “LOBBYING LAW”)

This Agreement is subject to the provisions of New York State Finance Law, Sections 139-j and 139-k (the “Lobbying Law”), which became effective on January 1, 2006. The Lobbying Law, which is designed to restrict lobbying by offerors and lobbyists on governmental procurements, is summarized

in Attachment F to the RFP that resulted in the award of this Agreement. Among other things, the Lobbying Law imposes fines and penalties against persons and organizations that engage in impermissible contacts about a governmental procurement and provides for the debarment of repeat violators. The Contractor agrees to the following:

A. The affirmation, certifications and disclosure of prior non-responsibility determinations submitted with the Contractor's Proposal are incorporated herein by reference.

B. If applicable for certain modifications that may be made in future to this contract, the Contractor will be required to submit new disclosure and certification forms (**Disclosure of Prior Non-responsibility Determinations** and the "**Affirmation and Certification**") with its proposal for the contract modification. The Contractor would be required to disclose findings of non-responsibility due to intentional provision of false or incomplete information to a covered agency or authority within the past four years with respect to the Lobbying Law.

C. Contractor may be in default in the event it is found that the Contractor's "Affirmation and Certifications" form and its "Disclosure of Prior Non-responsibility Determinations" form submitted with its proposal were intentionally false or intentionally incomplete. Upon such finding, the Authority may exercise its termination right by providing written notification to the Contractor in accordance with the terms of this Agreement.

ARTICLE XLVI – NEW YORK STATE COMPTROLLER REVIEW/APPROVAL

In accordance with Public Authorities Law §2879-a, this contract may be subject to review and/or approval of the Office of the State Comptroller (OSC), and shall not be valid, effective or binding until it has been approved by the OSC, if such review and/or approval is required.

ARTICLE XLVII – FEDERAL PROVISIONS

Reserved.

ARTICLE XLVIII – EMPLOYMENT ELIGIBILITY VERIFICATION (Form I-9)

The Contractor is responsible for complying in all respects with the Immigration Reform and Control Act of 1986, as amended ("IRCA"), with respect to all persons performing Services on its behalf in connection with this Agreement, including employees and agents of Contractor and any subcontractor. Specifically, for each such employee/agent, including a person who is a United States citizen, Contractor is responsible for completing and retaining and causing any subcontractor to complete and retain, an Employment Eligibility Verification Form (Form I-9), in accordance with the applicable laws and regulations. The Contractor will assume any and all liability, including the defense thereof, that may result from a claim or finding that the Contractor or any subcontractor violated the IRCA with respect to any person performing Services on its behalf in connection with this Agreement.

ARTICLE XLIX – RESERVED

ARTICLE L – CERTIFICATION OF COMPLIANCE WITH THE LOBBYING LAW

By signing this Agreement, the Contractor also certifies that all information provided to the Authority with respect to New York State Finance Law, Sections 139-j and 139-k (the “Lobbying Law”) is complete, true and accurate.

ARTICLE LI – IRAN DIVESTMENT ACT

This Agreement is subject to New York State Finance Law 165-a, Iran Divestment Act of 2012 which requires the Office of General Services to post on its web site (<http://www.ogs.ny.gov/about/regs/docs/ListofEntities.pdf>) a list of persons who have been determined to engage in investment activities in Iran. The Authority may not enter into or award a contract unless it obtains certification, Attachment H, from a proposer that they are not on the list. Certification must be returned with, and the Contractor represents and warrants that it has returned such certification, its Proposal documents.

ARTICLE LII – MTA VENDOR CODE OF ETHICS

By signing this Agreement, the Contractor agrees to: (a) continue complying with the terms of the MTA Vendor Code of Ethics, which has been made available for viewing on the MTA website at www.mta.info/mta/procurement/vendor-code.htm; and (b) continue reporting to the Authority, during the term of this contract, any change in circumstance, including but not limited to conflicts of interest, that materially affects the previously submitted “Bidder’s Certification of Compliance with the Vendor Code of Ethics” or subsequent update(s) submitted to the Authority under this Agreement.

[Remainder of Page Intentionally Left Blank – Signature Page to Follow]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed on the day and year first above written.

METROPOLITAN TRANSPORTATION AUTHORITY

BY _____
Authorized Officer

[NAME OF CONTRACTOR]

BY _____ Authorized Officer E-mail Address: _____

Federal Tax Identification No.

Boiler/Agreements/Personal SvcLF.doc
Rev. 10/2013

Attachment D
OMNIBUS PROCUREMENT ACT PROVISIONS

**IMPORTANT NOTICE TO BIDDERS/PROPOSERS,
INCLUDING QUESTION AND INCORPORATED CONTRACT PROVISIONS,
NEW YORK OMNIBUS PROCUREMENT ACT (CHAPTER 844 of 1992)
ENCOURAGING THE USE OF NEW YORK STATE BUSINESS
ENTERPRISES IN CONTRACT PERFORMANCE**

1. Definition: For purposes of this notice, a “New York State Business Enterprise” means a business enterprise consisting of a person acting as a sole proprietorship, or a legal entity such as but not limited to a corporation, limited liability company, or partnership, which offers for sale or lease or other form of exchange, goods which are sought by a New York State public authority or public benefit corporation, which are substantially manufactured, produced or assembled in New York state, or services which are sought by the public authority or public benefit corporation and which are substantially performed within New York State.

2. It is the policy of New York State to maximize opportunities for the participation of New York State Business Enterprises, including minority and women-owned business enterprises, as bidders/proposers, subcontractors, and suppliers. New York State Business Enterprises that participate as contractors, subcontractors and suppliers in the contracts of the Metropolitan Transportation Authority and its affiliated and subsidiary agencies (collectively, “MTA”) strongly contribute to the economies of the State and the nation. In recognition of this contribution, bidders/proposers for this contract are strongly encouraged and expected to consider New York State Business Enterprises in the fulfillment of the requirements of this contract. Such participation may be as subcontractors, suppliers, or other supporting roles. MTA, to the maximum extent practicable and consistent with legal requirements, desires to achieve participation of qualified and responsible New York State Business Enterprises in purchasing commodities and services including technology. Furthermore, bidders/proposers are reminded that they must continue to utilize small, minority and women-owned businesses, consistent with current State law. Utilizing New York State Business Enterprises in MTA contracts will help create more private sector jobs, rebuild New York’s infrastructure and maximize economic activity to the mutual benefit of contractors, participating New York State Business Enterprises, the public sector and the people of the State of New York. Public procurements can drive and improve the State’s economic engine through promotion of the participation of New York State Business Enterprises by MTA contractors. MTA, therefore, strongly encourages bidders/proposers to use New York State Business Enterprises in MTA contracts. The potential participation by all kinds of New York State Business Enterprises in MTA contracts will deliver great value to the MTA, the State and its taxpayers.

3. A bidder/proposer responding to this solicitation may answer the question below in its bid or proposal to demonstrate its voluntary commitment to the use of New York State Business Enterprises¹:

Does bidder/proposer anticipate that one or more New York State Business Enterprises will be used in the performance of this contract?

Yes:

No:

Page 1 of 3

¹ While support of New York State Business Enterprises is encouraged, how a bidder/proposer responds to this question will have no impact on the award of the subject procurement (except for certain rolling stock procurements where the law expressly permits New York State content to be part of the evaluation criteria for award).

If the answer is yes, please identify in the bid/proposal the New York State Business Enterprises that the bidder/proposer anticipates will be used, to the extent known, and attach identifying information about each such New York State Business Enterprise.

4. The bidder/proposer that is awarded and enters into the contract (the “Contract”) that is the subject of this solicitation (“Contractor”) agrees by so entering into such contract to the following, which is incorporated into and made a part of the Contract:

A. Contractor agrees to furnish to MTA information regarding its use of New York State Business Enterprises in the performance of this Contract, including by reporting to MTA, in response to MTA’s request, whether New York State Business Enterprises are being, have been or are anticipated to be, used in the performance of the Contract, and, if so, by providing identifying information about each such New York State Business Enterprise.

5. If the Contract is in an amount of \$1 million or more (a “Large Contract”) the following additional provisions are incorporated into and are made a part of the Large Contract:

A. Contractor shall (i) upon entering into the Large Contract provide to MTA documentation of its effort to encourage use of New York State Business Enterprises and (ii) thereafter also report the extent of such use for each such New York State Business Enterprise (a) in response to a request of the MTA project manager and (b) at the time of Contract close-out.

B. Contractor is required to make reasonable efforts to encourage the participation of New York State Business Enterprises and suppliers and subcontractors on such Large Contract. Contractor will be required to document its efforts to encourage the participation of New York State Business Enterprises as suppliers and subcontractors by showing it has (i) solicited bids/proposals, in a timely and adequate manner from New York State Business Enterprises including certified minority-owned business, (ii) contacted the New York State Dept. of Economic Development to obtain listings of New York State Business Enterprises, (iii) placed notices for subcontractors and suppliers in newspapers, journals or other trade publications distributed in New York State, or (iv) participated in bidder/proposer outreach conferences. Documentation of such efforts of the Contractor must be produced to the MTA upon MTA’s request. If the Contractor determines that New York State Business Enterprises are not available to participate on the contract as subcontractors or suppliers, the Contractor shall provide a statement to the MTA indicating the method by which such determination was made. If the Contractor does not intend to use subcontractors, the Contractor shall provide a statement to MTA verifying such.

C. Contractor must comply with the Federal Equal Opportunity Act of 1972 (P.L. 92-261), as amended.

D. Contractor agrees to make reasonable efforts to provide notification to New York State residents of employment opportunities on this contract through listing any such positions with the Division of Employment and Workforce Solutions of the New York State Department of Labor, or providing such notification in such manner as is consistent with existing collective bargaining contracts or agreements. Contractor agrees to document these efforts and to provide said documentation to the MTA or the State, upon request.

E. Contractor acknowledges that New York State may seek to obtain offset credits from foreign counties as a result of this contract and agrees to cooperate with the State in these efforts.

5. Information on the availability of New York State subcontractors and suppliers is available:

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/nysBusinessReg.cfm>.

By telephoning the New York State Department of Economic Development, Division of Small Business at 518-292-5266.

6. A directory of New York State certified minority and women-owned business enterprises is available:

Online at <http://esd.ny.gov/MWBE/directorySearch.html>

By contacting the Empire State Development's Division of Minority and Women's Business Development:

Albany, NY 12245
(518) 292-5250

or

633 Third Avenue, 33rd Floor
New York, NY 10017
(212) 803-2414

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 your request, the Department of Diversity and Civil Rights will assist a firm in reviewing the directory.

7. Contractors that want to be informed by e-mail of future contracting opportunities that may be of interest to them that are advertised in the New York State Contract Reporter, may sign up for a free account by going to <https://www.nyscr.ny.gov/contracts.cfm>

8. Contractors 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 contractors who may contact the Contractor's business directly about subcontracting opportunities, may go to <https://www.nyscr.ny.gov/nysBusinessReg.cfm>. Requests for listing in this registry may be made by:

i) a New York State Business Enterprise 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.

Rev.
6/2/2014

METROPOLITAN TRANSPORTATION AUTHORITY
STATEMENT OF RULES AND REGULATIONS
WITH RESPECT TO PROMPT PAYMENT
[Effective April 30, 1988]

PART 1091

(Statutory Authority: Public Authorities Law §2880)

Section 1002.1 Policy. This statement is intended to establish rules and regulations as required under Section 2880 of the Public Authorities Law regarding prompt payment. Subject to the conditions and exceptions set forth in Section 2880 and this Part, in the event any proper invoice is not paid promptly, the applicable authority shall be liable for the payment of interest on late payments. This policy shall apply to all contracts entered into on or after April 30, 1988.

Section 1002.2 Definitions. As used in this Part, the following terms shall have the following meanings unless otherwise specified:

- (a) Corporation means the Metropolitan Transportation Authority, the New York City Transit Authority, the Manhattan and Bronx Surface Transit Operating Authority, the Staten Island Rapid Transit Operating Authority, the Long Island Rail Road Company, the Metro-North Commuter Railroad Company, the Metropolitan Suburban Bus Authority, the Triborough Bridge and Tunnel Authority, or the Metropolitan Transportation Authority Card Company, as the case may be.
- (b) Contract means an enforceable agreement entered into by a contractor and the Corporation, including but not limited to written contracts and purchase orders, written or oral requests for goods or services, including public utility services and lease agreements.
- (c) Contractor means any person, partnership, firm, corporation or association, including public utilities and not-for-profit organizations:
- (1) selling materials, equipment, or supplies or leasing property or equipment to the corporation; or
 - (2) constructing, reconstructing, rehabilitating or repairing buildings, highways or other improvements for, or on behalf of, the corporation; or
 - (3) rendering or providing services to the corporation pursuant to a contract;
- (d) Designated payment office means the office designated by the corporation to which a proper invoice is to be submitted by a contractor.
- (e) Payment date means the date on which a check for payment pursuant to a contract is dated.
- (f) Proper invoice means a written request for a contract payment that is submitted by a contractor to the designated payment office setting forth the description, price, and quantity of goods, property or services delivered or rendered, in such form and supported by such other substantiating documentation as the Corporation may require.
- (g) Receipt of an invoice ("ROI") means:
- (1) the date on which a proper invoice is actually received in the designated payment office; or
 - (2) the date on which the corporation receives the purchased goods, property or services covered by the proper invoice, whichever is later; or
 - (3) in regard to progress payments on capital construction projects, the date on which there is concurrence between the contractor and the project manager or chief engineer or their designee with respect to the preliminary estimate of the value of work performed during the billing period; or

- (4) in regard to final payments on capital construction projects, the date on which the contract work has been accepted as completed by the project manager or chief engineer of the corporation or their designee; or
 - (5) in regard to the deposit or submission by a contractor of bonds, notes, securities or other collateral in substitution for contract amounts retained by the corporation, as permitted by statute or contract, the date the proper bonds, notes, securities or other collateral are deposited or submitted.
- (h) Setoff means the reduction by the corporation of a payment due to a contractor by an amount equal to the amount of an unpaid legally enforceable debt owed by the contractor to the corporation, and shall include, but not be limited to, unused credit advices received from the contractor, liquidated damages under the contract, contractor liability for personal injury, property damage or other loss, damages for default regarding a proposal, or for breach of contract, as well as for any extra contractual claim for liability or damages of any nature.

INTEREST ELIGIBILITY

1002. Eligible Payments.

- (a) With the exception of the payments described in sub-division (b) of this section, every payment of funds to a contractor pursuant to a contract, and every payment of interest pursuant to this Part, is eligible for interest whenever the payment is not made by the required payment date, unless failure to make such payment is the result of a lien, attachment or other legal process against the money due the contractor. Notwithstanding the foregoing, interest shall not be paid that amounts to less than \$10.00.
- (b) Payments are not eligible for interest under this Part when they are due and owing by the corporation;
 - (1) under the Eminent Domain Procedure Law;
 - (2) as interest allowed on judgments rendered by a court, except to the extent that interest is incurred under this Part prior to the date of the notice of intent to file a claim, the date of a notice of claim, or the date on which a legal action for the payment of such interest is commenced, whichever occurs first;
 - (3) to the Federal government; to any State agency or its related instrumentalities; to any duly constituted unit of local government, including but not limited to counties, cities, towns, villages, school districts, special districts or any of their related instrumentalities; to any public authority or public benefit corporation; or to employees of the corporation when acting in, or incidental to, their public employment capacity; and
 - (4) in situations where the corporation exercises a legally authorized setoff against all or part of the payment due the contractor.

INTEREST CALCULATION

1002. Required Payment Date. (a) Effective through June 30, 1989, the required payment date shall be 45 calendar days after the ROI date.

1002.4 (b) Effective July 1, 1989, the required payment date shall be 30 calendar days, excluding legal holidays, after the ROI date.

1002.5 Receipt of Invoice Date:

- (a) Effective through June 30, 1989. Except where adjusted pursuant to sections 1002.8, 1002.9, 1002.10, 1002.11, 1002.12 or 1002.13 of this Part, the ROI date shall be:

- (1) in the case of final payments on capital construction contracts, 30 calendar days after the date on which the contract work has been accepted by the project manager or chief engineer of the corporation or their designee;
 - (2) in the case of contracts which require that the contractor be paid at predetermined intervals, other than leases, licenses or permits relating to the use of real property, the 45th calendar day prior to each payment date specified in the contract, or the date upon which a proper invoice, if required, is submitted, whichever date is later; or
 - (3) in the case of periodic payments pursuant to leases, licenses or permits relating to the use of real property for which an invoice is not required by the instrument, the 45th day prior to the last day under the instrument on which payment may be made without penalty, or the 45th day prior to the 20th day after the payment due date where the instrument does not provide for a penalty upon late payment.
 - (4) in the case of interest payments required to be paid pursuant to this Part, the payment date for the late payment as to which interest is due.
 - (5) in all other cases, the date of the receipt of a proper invoice as defined in section 1002.2(g) of this Part.
- (b) The ROI date determined in accordance with subdivision (a) of this section shall be adjusted in the situations described in sections 1002.8, 1002.9, 1002.10, 1002.11, 1002.12 and 1002.13 of this Part, in accordance with the procedures outlined in those sections.
- (c) Effective July 1, 1989. Except where adjusted pursuant to sections 1002.8, 1002.9, 1002.10, 1002.11, 1002.12 or 1002.13 of this Part, the ROI date shall be:
- (1) in the case of final payments on capital construction contracts, 30 calendar days after the date on which the contract work has been accepted by the project manager or chief engineer of the corporation or their designee;
 - (2) in the case of contracts which require that the contractor be paid at predetermined intervals, other than leases, licenses or permits relating to the use of real property, the 30th calendar day prior to each payment date specified in the contract, or the date upon which a proper invoice, if required, is submitted, whichever date is later; or
 - (3) in the case of periodic payments pursuant to leases, licenses or permits relating to the use of real property for which an invoice is not required by the instrument, the 30th day prior to the last day under the instrument on which payment may be made without penalty, or the 30th day prior to the 20th day after the payment due date where the instrument does not provide for a penalty upon late payment;
 - (4) in the case of interest payments required to be paid pursuant to this Part, the payment date for the late payment as to which interest is due;
 - (5) in all other cases, the date of the receipt of a proper invoice as defined in section 1002.2(g) of this Part.
- (b) The ROI date determined in accordance with subdivision (a) of this section shall be adjusted in the situations described in sections 1002.8, 1002.9, 1002.10, 1002.11, 1002.12 and 1002.13 of this Part, in accordance with the procedures outlined in those sections.

1002.6 Interest Eligibility. (a) Effective through June 30, 1989, interest shall be calculated and paid at the daily rate pursuant to section 1002.7 of this Part on all interest-eligible payments, as determined in accordance with section 1002.3 of this Part, when the payment date is more than 45 calendar days after the ROI date.

(b) Effective July 1989, interest shall be calculated and paid at the daily rate pursuant to section 1002.7 of this Part on all interest-eligible payments, as determined in accordance with section 1002.3 of this Part, when the payment date is more than 30 calendar days, excluding legal holidays, after the ROI date.

1002.7 Computation of Interest Payment.

- (a) Interest under this Part shall be computed at the daily rate in effect on the date the interest is paid, as set by the State Tax Commission for corporate taxes pursuant to section 1096(e)(1) of the Tax Law.
- (b) Interest payments on amounts due to a contractor pursuant to this Part shall be paid to the contractor for the period beginning on the day after the required payment date and ending on the payment date.
- (c) In the case of interest payments on amounts due to a contractor pursuant to this part under a lease, license or permit in relation to the use of real property, where the instrument provides for a penalty for late payment, the corporation shall pay the contractor the greater of the interest the contractor would be entitled to pursuant to this Part, or the penalty provided for under the instrument, but not both.
- (d) In no event shall interest accrue beyond the date of a notice of intention to file a claim, the date of a notice of a claim, or the date commencing a legal action for the payment of such interest, whichever occurs first.

ADJUSTMENT OF ROI DATE

1002.8 Inspection or Audit.

- (a) The ROI date shall be adjusted in accordance with subdivision (b) or (c) of this section whenever, in accordance with specific provisions of statute, regulation or the contract, payment must be preceded by an inspection period or by an audit to determine the resources applied or used by a contractor in fulfilling the terms of the contract or otherwise to verify the work, goods or services billed for were provided in accordance with the contract.
- (b) Except as provided in subdivision (c) of this section, where a contract provides for an inspection or audit period, the ROI date shall be the original ROI date increased by the lesser of:
 - (1) the number of days provided for the inspection or audit; or
 - (2) the number of days actually utilized for the inspection or audit; provided, however, that where the audit or inspection period began prior to the date of receipt of an invoice, the ROI date shall be the date that the required inspection or audit has been completed, or the date that the statutory, regulatory or contractual inspection or audit period ends, whichever date is earlier, but in no event shall the ROI date be earlier than the date of the receipt of an invoice as defined in section 1002.2(g) of this Part.
- (c) Whenever in the course of an audit or inspection as described in subdivision (a) of this section, the corporation determines that there is a defect in the delivered goods, property or service, or defects in the invoice, or suspected improprieties of any kind, the Corporation shall, no later than the expiration of the statutory or contractual audit or inspection period, notify the contractor of the defect or impropriety. In such case, the ROI date shall be the date that the corrected invoice, or goods or services, are delivered or provided, or the date that the impropriety is resolved, except where the corporation has failed to notify the contractor of such defect or suspected impropriety prior to the expiration of the audit or inspection period. In such case, the ROI date shall be the ROI date as determined in accordance with the preceding sentence, reduced by the number of days after the expiration of the audit or inspection period which the agency took to notify the contractor of the defect or suspected impropriety.

1002.9 Lack of Appropriation or Funds.

- (a) The ROI date shall be determined in accordance with subdivision (b) of this section whenever the necessary Federal, State, or local government appropriation or action required to authorize payment has yet to be enacted or taken or the funds have not been released.

- (b) (1) Except in the situations covered by paragraph (2) of this subdivision, the ROI date shall be the effective date of the required appropriation, action or release of funds.
- (2) Where the ROI date would otherwise be determined in accordance with section 1002.5(a)(2) of this Part and the appropriation or action to authorize payment is not in effect on the payment date specified in the contract or the funds have not been released, the ROI date shall be the ROI date determined in accordance with section 1002.5(c)(2) of this Part increased by the number of days between the payment date specified in the contract and the date the appropriation or action is effective or the funds are released.

1002.10 Government Review of Invoice.

- (a) The ROI date shall be determined in accordance with subdivision (b) of this section whenever a proper invoice must be examined by the Federal, State or a local government prior to payment or whenever payment of an invoice must be processed by an entity, including but not limited to a government agency or public authority that is not under the corporation's control.
- (b) The ROI date shall be the original ROI date increased by a number of days equal to the number of days between the date that the corporation transmits the invoice to the Federal, State or local government for examination and the date that the corporation receives the approved invoice from the government entity following its review or the number of days between the date that the corporation submits the invoice for payment to an entity not under its control and the date on which that entity pays the invoice.

1002.11 Noncompliance with Contract.

- (a) The ROI date shall be determined in accordance with subdivision (c) of this section whenever the goods or property have not been delivered or the services have not been rendered by the contractor in compliance with the terms or conditions of the contract, including but not limited to over or undershipment of goods.
- (b) The corporation shall notify the contractor in what respect the delivered goods or the rendered services are not in compliance with the contract. The notice shall further inform the contractor of what action the corporation requires by the contractor in order to rectify the areas of noncompliance.
- (c) The ROI date shall be the original ROI date increased by a number of days equal to the number of days between the date that the agency sends a written notice to the contractor that the delivered goods or the rendered services are not in compliance with the contract and the date that the areas of noncompliance are resolved to the corporation's satisfaction.

1002.12 Capital Construction Contracts.

- (a) The ROI date shall be adjusted whenever, in the case of any payments on capital construction contracts, the corporation's project manager or chief engineer or their designee determines that the contractor has failed to properly submit the necessary documents and other materials prescribed by or provided for in the contract specifications, terms and conditions, or requirements, or by any applicable local, State and Federal law or regulation, in order to enable the Corporation to process the payment properly and expeditiously.
- (b) The corporation's project manager or chief engineer or their designee shall send written notice to the contractor of his failure to submit the necessary documents and materials. The notice shall indicate all documents and materials required.
- (c) The ROI date shall be the original ROI date increased by the number of days beginning on the date that the corporation's project manager or chief engineer or their designee sends written notice to the contractor of his failure to submit the necessary documents and materials and ending on the date that the corporation receives the necessary documents and materials.

1002.13 Notice of Defects.

- (a) The corporation shall have 15 calendar days after receipt of an invoice at its designated payment office to notify the contractor of (1) defects in the delivered goods, property or services, (2) defects in the invoice, or (3) suspected improprieties of any kind.
- (b) Except as provided in subdivision (c) of this section, when the corporation notifies a contractor of such defects or suspected improprieties and the contractor thereafter submits a corrected invoice or delivers corrected goods or services, the ROI date shall be the date upon which the corrected invoice or corrected goods or services are received by the corporation. If a corrected invoice or corrected goods or services are not required, the ROI date shall be the date upon which the corporation determines that the suspected improprieties have been resolved.
- (c) If the corporation fails to notify a contractor of such defects or suspected improprieties within 15 calendar days of receipt of an invoice, the ROI date, as determined by subdivision (b) of this section, shall be adjusted to an earlier date by the number of days equal to the days in excess of 15 that the corporation took after receipt of an invoice to notify the contractor of the defects or suspected improprieties.

MISCELLANEOUS

1002.1 Sources of Funds. For interest payments required by this Part covering invoices on purchased goods, property or services which are other than capital in nature, the corporation may use operating revenues, State and local operating assistance funds, State and local tax subsidies, investment income, and any other sources of operating funds which are or may become available for such purpose. For interest payments required by this Part covering invoices on purchased goods, property or services which are of a capital nature, the corporation may use any available governmental capital appropriations, Triborough Bridge and Tunnel Authority Investment Income, MTA Investment Income, and any other sources of capital funds which are or may become available for such purpose.

1002.15 No Waiver or Estoppel.

- (a) No acceptance or other certificate given by the corporation under this Part or the payment of interest, shall be construed to waive or estop the corporation from asserting any claim or right relating to any defect or nonconformity in any goods, work or services, whether patent or latent, regardless of when discovered.
- (b) No obligation or liability for interest, nor the actual payment of any such interest under this Part, shall be construed as indicating or implying that the contractor's performance relating to such payment was in all respects satisfactory, acceptable, proper or in conformance with the contract documents, and the fact that the corporation may have paid or be obligated to pay such interest, shall not preclude the corporation from later determining that the work performed or goods delivered, as the case may be, was not satisfactory or acceptable or proper or in conformance with the contract.

1002.16 Review.

- (a) Any determination made by the corporation pursuant to this Part that prevents the commencement of or interrupts the time in which interest will be paid shall be subject to administrative review. A contractor aggrieved by any such determination of the corporation shall, within 30 calendar days of the date of the determination or the payment of the invoice, whichever is later, submit a notice of intention to make a claim for interest in writing to the comptroller of the corporation. The notice of intention to make a claim for interest shall include an identification of the contract, by date and number, under which the claim is made, the date on which a proper invoice was submitted, or on which the goods or services were delivered, or on which payment was otherwise due, the reason given by the corporation, if any, for why commencement of the time in which interest was to be paid was prevented or interrupted, and the facts and circumstances which, in the contractor's opinion, show that the commencement of the time in which interest was to be paid should not have been prevented or interrupted.

- (b) A notice of intention to make a claim for interest under this section must be received by the comptroller of the corporation no later than thirty days from the determination of the corporation being challenged or the payment of the invoice, whichever is later. Within 30 calendar days of timely receipt of a proper and complete notice of intention to submit a claim for interest, the comptroller of the corporation shall either deny the claim or grant the claim in whole or in part. If the comptroller grants the claim in whole or in part, the corporation shall, within 7 calendar days, excluding legal holidays, pay the contractor the additional interest to which he is entitled. A failure by the comptroller to rule on a claim within this section within 30 calendar days shall be deemed a denial of such claim.

- (c) A determination by the comptroller of the corporation adverse to the contractor either in whole or in part shall be subject to judicial review in a proceeding pursuant to article 78 of the Civil Practice Law and Rules. No determination by the corporation under this Part which has not first been reviewed by the comptroller of the corporation pursuant to this section shall be subject to judicial review.

Section statutory authority: Civil Practice Law & Rules, § A78

1002.1 Recovery of Interest. In any case where the corporation has paid interest under this Part and later determines that the interest was wrongly or incorrectly paid, whether because of a mistaken calculation of delay in payment or of interest due, or because the payment made, or any part of it, was not properly due to the contractor for any reason, or because of any other circumstance or state of facts, the corporation may recover the interest wrongly or incorrectly paid by means of a demand to the contractor for the repayment of the interest or a setoff against future payments to the contractor or by any other lawful means including a court action or proceeding.

ATTACHMENT F

**COMPLIANCE WITH NEW YORK STATE
FINANCE LAW SECTIONS 139-j AND 139-k
(THE “LOBBYING LAW”)**

All procurements by the Authority in excess of \$15,000 annually, are subject to New York State’s State Finance Law Sections 139-j and 139-k, effective January 1, 2006 (“Lobbying Law”).

Pursuant to the Lobbying Law, all “contacts” (defined as oral, written or electronic communications with the Authority intended to influence a procurement) during a procurement must be made with the designated Point of Contact only. Exceptions to this rule include written questions during the bid process, communications with regard to protests, contract negotiations and RFP conference participants. Nothing in the Lobbying Law inhibits any rights to make an appeal, protest or complaint under existing administrative or judicial procedures.

Violations of the policy regarding permissible contacts must be reported to the appropriate Authority officer and investigated accordingly. First violation may result in a determination of non-responsibility and ineligibility for award to the violator and its subsidiaries, affiliates and related entities. The penalty for a second violation within four (4) years is ineligibility for bidding/proposing on a procurement and/or ineligibility from being awarded any contract for a period of four (4) years. The Authority will notify the New York State Office of General Services (“OGS”) of any determinations of non-responsibility or debarments due to violations of the Lobbying Law. Violations found to be “knowing and willful” must be reported to the Authority’s Executive Director and OGS.

Moreover, the statutes require the Authority to obtain certain affirmation and certifications from bidders and proposers. This Attachment F contains the forms to comply, with additional information and instructions. The forms, which are attached hereto, must be completed by the Bidder/Proposer in order to comply with the Lobbying Law:

- Form 1 - Disclosure of Prior Non-Responsibility Determinations
- Form 2 - Bidder’s/Proposer’s Affirmation and Certification

Note: Failure to complete and return the forms with your Bid/Proposal may cause the Bidder/Proposer to be deemed non-responsible.

**COMPLIANCE WITH NEW YORK STATE
FINANCE LAW, SECTIONS 139-j AND 139-k
(THE "LOBBYING LAW")**

Form 1

DISCLOSURE OF PRIOR NON-RESPONSIBILITY DETERMINATIONS

Additional Information and Instructions:

New York State Finance Law §139-k(2) obligates the Authority to obtain specific information regarding prior non-responsibility determinations. This information must be collected in addition to the information that is separately obtained pursuant to State Finance Law §163(9). In accordance with State Finance Law §139-k, an offerer must be asked to disclose whether there has been a finding of non-responsibility made within the previous four (4) years by any Governmental Entity due to: (a) a violation of State Finance Law §139-j or (b) the intentional provision of false or incomplete information to a Governmental Entity.

As part of its responsibility determination, State Finance Law §139-k(3) mandates consideration of whether an offerer fails to timely disclose accurate or complete information regarding the above non-responsibility determination. In accordance with law, no procurement contract shall be awarded to any offerer that fails to timely disclose accurate or complete information under this section, unless the factual elements of the limited waiver provision can be satisfied on the written record.

Name of Bidder/Proposer: _____	
Address: _____ _____	
Name and Title of Person Submitting this Form: _____	
1. Has any governmental entity* made a finding of non-responsibility regarding the Bidder/Proposer in the previous four years?	No <input type="checkbox"/> Yes <input type="checkbox"/>
If yes, please answer the following questions:	
2. Was the basis for the finding of the Bidder's/Proposer's non-responsibility due to a violation of State Finance Law §139-j?	No <input type="checkbox"/> Yes <input type="checkbox"/>
3. Was the basis for the finding of Bidder's/Proposer/s non-responsibility due to the intentional provision of false or incomplete information to a governmental entity?	No <input type="checkbox"/> Yes <input type="checkbox"/>
4. If you answered yes to any of the above questions, please provide details below regarding the finding of non-responsibility:	

- Governmental Entity: _____
- Year of Finding of Non-responsibility: _____
- Basis of Finding of Non-responsibility: _____

(Add additional pages as necessary)

5. Has any governmental entity terminated or withheld award of a procurement contract with the Bidder/Proposer due to the intentional provision of false or incomplete information? No Yes

6. If you answered yes to Question 5, please provide details below:

- Governmental Entity: _____
- Year of Finding of Non-responsibility: _____
- Basis of Finding of Non-responsibility: _____

(Add additional pages as necessary)

Offeror certifies that all information provided to the Authority with respect to State Finance Law Section 139-k is complete, true and accurate.

By: _____ **Date:** _____

Signature

Name: _____ **Title:** _____

*A "governmental entity" is: (1) any department, board, bureau, commission, division, office, council, committee or officer of New York State, whether permanent or temporary; (2) each house of the New York State Legislature; (3) the unified court system; (4) any public authority, public benefit corporation or commission created by or existing pursuant to the public authorities law; (5) any public authority or public benefit corporation, at least one of whose members is appointed by the governor or who serves as a member by virtue of holding a civil office of the state; (6) a municipal agency, as that term is defined in paragraph (ii) of subdivision (s) of section one-c of the Legislative Law; or (7) a subsidiary or affiliate of such a public authority. (SFL §139-j, paragraph 1.a.)

**COMPLIANCE WITH NEW YORK STATE
FINANCE LAW, SECTIONS 139-j AND 139-k
(THE "LOBBYING LAW")**

Form 2

BIDDER'S/PROPOSER'S AFFIRMATION AND CERTIFICATION

By signing below, the Bidder/Proposer:

- a) Affirms that the Bidder/Proposer understands and agrees to comply with the policy regarding permissible contacts as required by New York State Finance Law § 139- j and §139-k.
- b) Certified that all information provided to the Authority with respect to State Finance Law §139-j and §139-k is complete, true and accurate.

By: _____
(Signature of Person Certifying)

Date: _____

Print Name: _____

Print Title: _____

Bidder/Proposer or
Contractor/Consultant: _____
(Full Legal Name)

Address: _____

Business
Telephone Number: _____

THE AUTHORITY'S RIGHT TO TERMINATE

The Authority reserves the right to terminate a Contract in the event it is found that the certification filed by the Contractor/Consultant, as Bidder/Proposer, in accordance with New York State Finance Law §139-k was intentionally false or intentionally incomplete. Upon such finding, the Authority may exercise its termination right by providing written notification to the Contractor/Consultant in accordance with the written notification terms of the Contract.

ATTACHMENT G

CERTIFICATION OF COMPLIANCE WITH THE MTA VENDOR CODE OF ETHICS

The Metropolitan Transportation Authority has adopted a Vendor Code of Ethics (the “Code”), which is applicable to all Vendors, as defined by the Code, involved in the procurement process for the award and performance of this Contract. Additional information concerning the Code is contained in the Contract Documents, and the Code is available for prospective Vendors’ immediate review at www.mta.info/mta/procurement/vendor-code.htm.

All prospective Vendors who plan to submit materials in response to this Solicitation are subject to the Code, both during the procurement process and during the performance of any resultant contract. All prospective Vendors must certify compliance with the Code as a condition of their response to this Solicitation, and failure to do so may result in a non-responsive determination. **Failure of prospective Vendor to submit this certification as required by the MTA and to abide by the Code during the term of the resultant Contract may result in a Default Event.**

PROSPECTIVE VENDOR’S CERTIFICATION OF COMPLIANCE WITH THE CODE

Consistent with the terms of the MTA Code of Ethics, which are incorporated herein by reference, the undersigned prospective Vendor hereby certifies that during the course of this procurement process and any resultant Contract:

1. The prospective Vendors has notice of all of the terms of the Code;
2. No gift, as defined by the Code, has been or will be offered to the MTA in connection with this Solicitation or any resultant contract;
3. No conflicts of interest exist or will exist;
4. All officers and personnel of the prospective Vendor who have interacted or will interact with the MTA have been or will be provided a copy of the Code; and
5. The prospective Vendor will obtain certifications similar to those made herein from all of its lower tier subcontractors, subconsultants and suppliers that the prospective Vendor engaged or are being solicited for Work under any Contract resulting from this Solicitation. Receipt and retention of these lower tier certifications shall be subject to audit by the MTA.

Vendor Name: [Click here to enter Vendor name](#)

Vendor Signature:

Date: [Click or tap to enter a date](#)

Print name of signatory: [Click here to enter name of signatory.](#)

Print title of signatory: [Click here to enter title of signatory.](#)

Business address of signatory: [Click here to enter business address.](#)

Business phone number: [Click here to enter phone number.](#)

ATTACHMENT H

IRAN DIVESTMENT ACT - CERTIFICATION

Pursuant to New York State Finance Law §165-a, Iran Divestment Act of 2012, the Office of General Services is required to post on its web site <http://www.ogs.ny.gov/about/regs/docs/ListofEntities.pdf> a list of persons who have been determined to engage in investment activities in Iran (“the List”), as defined in that Act. Under Public Authorities Law § 2879-c, Iranian Energy Sector Divestment, the Authority, may not enter into or award a Contract unless it obtains a certification from a Bidder, who shall check the box and make the certification in Subparagraph a, below, that they are not on the List. If that certification cannot be made, the Authority may consider entering into a Contract, on a case by case basis if the Bidder checks the box and makes the certification in Subparagraph b, below, that their Iran investment is ceasing.

For purposes of this provision, a person engages in investment activities in Iran if: (A) the person provides goods or services of twenty million dollars or more in the energy sector of Iran, including a person that provides oil or liquefied natural gas tankers, or products used to construct or maintain pipelines used to transport oil or liquefied natural gas, for the energy sector of Iran; or (B) the person is a financial institution that extends twenty million dollars or more in credit to another person, for forty-five days or more, if that person will use the credit to provide goods or services in the energy sector in Iran.

The Certification is as follows:

- a. Certification that the Bidder is not on the List:** Each person, where person means natural person, corporation, company, limited liability company, business association, partnership society, trust, or any other nongovernmental entity, organization, or group, and each person signing on behalf of any other party, certifies, and in the case of a joint bid or proposal or partnership each party thereto certifies as to its own organization, under penalty of perjury, that to the best of its knowledge and belief that each person is not on the list created pursuant to paragraph (b) of subdivision 3 of section 165-a of the State Finance Law, or,

- b. Certification that the Bidder’s investment in Iran is ceasing:** The person cannot make the certification in Subparagraph a, above, but asks the Authority to consider them for award of the Contract by certifying, under penalty of perjury, that the person’s investment activities in Iran were made before April 12, 2012; the person’s investment activities in Iran have not been expanded or renewed after April 12, 2012; and the person has adopted, publicized and is implementing a formal plan to cease its investment activities in Iran and to refrain from engaging in any new investments in Iran.

Signature/Date

Printed Name and Position

ATTACHMENT I
DIVERSITY PRACTICES QUESTIONNAIRE

I, _____, as _____ (title) of _____ firm or company (hereafter referred to as the company), swear and/or affirm under penalty of perjury that the answers submitted to the following questions are complete and accurate to the best of my knowledge:

1. Does your company have a Chief Diversity Officer or other individual who is tasked with supplier diversity initiatives? Yes or No

If Yes, provide the name, title, description of duties, and evidence of initiatives performed by this individual or individuals.

2. What percentage of your company's gross revenues (from your prior fiscal year) was paid to New York State certified minority and/or women-owned business enterprises as subcontractors, suppliers, joint-venturers, partners or other similar arrangement for the provision of goods or services to your company's clients or customers?

3. What percentage of your company's overhead (i.e. those expenditures that are not directly related to the provision of goods or services to your company's clients or customers) or non-contract-related expenses (from your prior fiscal year) was paid to New York State certified minority- and women-owned business enterprises as suppliers/contractors?¹

4. Does your company provide technical training² to minority- and women-owned business enterprises? Yes or No

If Yes, provide a description of such training which should include, but not be limited to, the date the program was initiated, the names and the number of minority- and women-owned business enterprises participating in such training, the number of years such training has been offered and the number of hours per year for which such training occurs.

5. Is your company participating in a government approved minority- and women-owned business enterprise mentor-protégé program?

If Yes, identify the governmental mentoring program in which your company participates and provide evidence demonstrating the extent of your company's commitment to the governmental mentoring program.

6. Does your company include specific quantitative goals for the utilization of minority- and women-owned business enterprises in its non-government procurements? Yes or No

If Yes, provide a description of such non-government procurements (including time period, goal, scope and dollar amount) and indicate the percentage of the goals that were attained.

7. Does your company have a formal minority- and women-owned business enterprise supplier diversity program? Yes or No

If Yes, provide documentation of program activities and a copy of policy or program materials.

8. Does your company plan to enter into partnering or subcontracting agreements with New York State certified minority- and women-owned business enterprises if selected as the successful respondent? Yes or No

If Yes, you will need to complete a Utilization Plan.

All information provided in connection with the questionnaire is subject to audit and any fraudulent statements are subject to criminal prosecution and debarment.

¹ Do not include onsite project overhead.

² Technical training is the process of teaching employees how to more accurately and thoroughly perform the technical components of their jobs. Training can include technology applications, products, sales and service tactics, and more. Technical skills are job-specific as opposed to soft skills, which are transferable.

Signature of Owner/Official _____

Printed Name of Signatory _____

Title _____

Name of Business _____

Address _____

City, State, Zip _____

STATE OF _____

COUNTY OF _____) ss:

On the _____ day of _____, 201_, before me, the undersigned, a Notary Public in and for the State of _____, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to this certification and said person executed this instrument.

Notary Public

APPENDIX B

AFFIRMATIVE ACTION/EEO REQUIREMENTS

The Proposer agrees to the terms and conditions of non-discrimination as set forth within. The Proposer, as a precondition to entering into a valid and binding contract, shall during the performance of this contract, agree to the following:

- (a) The consultant will not discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, age, disability or marital status. The consultant will undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status. The consultant shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force on this contract. For these purposes, affirmative action shall apply in the areas of recruitment, employment, job assignment, promotion, upgradings, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation.
- (b) The consultant shall state in all solicitations or advertisements for employees that, in the performance of this contract, all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status.
- (c) At the request of the Authority, the consultant shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, labor union, or representative will not discriminate on the basis of race, creed, color, national origin, sex, age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of the consultant's obligations herein.
- (d) After an award of this contract, the consultant shall submit to the Authority a workforce utilization report, in a form and manner required by the Authority, of the work force actually utilized on this contract, broken down by specified ethnic background, gender, and Federal Occupational Categories or other appropriate categories specified by the Authority.
- (e) Prior to the award of this contract, the consultant shall submit an Equal Employment Opportunity (EEO) Policy Statement and an EEO-1 form to the Authority within the time frame established by the Authority. The consultant's EEO Policy Statement shall contain, but not necessarily be limited to, and the consultant, as a precondition to entering into this contract shall, during the performance of the contract, agree to the provisions set forth in paragraphs (a)-(c) above. The EEO-1 Form shall reflect consultant information on the ethnic background, gender, and Federal Occupational Categories of the employees to be

Page 1 of 2

utilized on this contract.

- (f) Within sixty (60) days of the execution of this Contract, the Consultant shall submit a Staffing Plan (Form Staffpln), in a form and manner required by the Authority, which shall contain information on employees projected to work on activities related to the contract. This information must be broken down by specified ethnic background, gender and related job titles.
- (g) For construction contracts, after the award of the contract, the contractor and all subcontractors shall submit on a monthly basis, in a form and manner required by the Authority, throughout the life of the contract, a Workforce Utilization Report. The report must detail the number of employee's that worked on activities related to this contract. The information must be broken down by hours worked, specified ethnic background, gender, related job titles and gross wages.
- (h) Except for construction contracts, after the award of the contract, the consultant and all subcontractors shall submit on a quarterly basis, in a form and manner required by the Authority, throughout the life of the contract, a Workforce Utilization Report. The report must detail the number of employees that worked on activities related to this contract. The information must be broken down by specified ethnic background, gender, related job titles and gross wages.
- (i) The provisions of this Appendix shall not apply to the extent the consultant or a subconsultant has obtained a waiver from the Authority based on duplication or conflict with federal laws.
- (j) The consultant agrees to include the language of the provisions of paragraphs (a)-(i) above in every subconsultant agreement in such manner that the requirements of the provisions will be binding upon each subconsultant and each party to this contract as to work in connection with this contract, including the requirement that subconsultants and parties to this contract shall undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination and, when requested, provide to the consultant information on the ethnic background, gender, and Federal Occupational Categories of the employees to be utilized on this contract.

Attachments: Forms: - EEO-1; Staffing Plan; WF/Construction, incl. Instructions; WF/Commodities, Service and/or Consultant Firms, incl. Instructions.

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**METROPOLITAN TRANSPORTATION AUTHORITY
Office of Civil Rights**

**EQUAL EMPLOYMENT OPPORTUNITY
EMPLOYER INFORMATION REPORT EEO-1**

Section A – TYPE OF REPORT

1. Indicate by marking in the appropriate box the type of reporting unit for which this copy of the form is submitted (MARK ONLY ONE BOX):

(1) Single-establishment Employer Report

Multi-establishment Employer:

(2) Consolidated Report (Required)

(3) Headquarters Unit Report (Required)

(4) Individual Establishment Report (submit one for each establishment with 50 or more employees)

(5) Special Report

2. Total number of reports being filed by this Company: (Answer on Consolidated Report only) _____

Section B – COMPANY IDENTIFICATION (To be answered by all employers)

**OFFICE
USE
ONLY**

1. Parent Company:

a. Name of parent company (owns or controls establishment in Item 2 below). (Omit if same as above)

a.

Address (Number and Street)

b.

City or Town

State

ZIP code

c.

2. Establishment for which this report is filed: (Omit if same as above)

a. Name of establishment:

d.

Address (Number and street)

City or Town

County

State

ZIP code

e.

b. Employer Identification No. (IRS 9-DIGIT TAX NUMBER): _____

f.

c. Was an EEO-1 report filed for this establishment last year? (6) Yes (7) No

**METROPOLITAN TRANSPORTATION AUTHORITY
Office of Civil Rights**

**EQUAL EMPLOYMENT OPPORTUNITY
EMPLOYMENT INFORMATION REPORT EEO-1**

Section C – EMPLOYMENT DATA

Employment at this establishment - Report all permanent full-time and part-time employees including apprentices and on-the-job trainees unless specifically excluded as set forth in the instructions. Enter the appropriate figures on all lines and in all columns. Blank spaces will be considered as zeros.

Job Categories	NUMBER OF EMPLOYEES										
	Overall Totals (Sum of Col. B thru K) A	MALE					FEMALE				
		White (Not of Hispanic Origin) B	Black (Not of Hispanic Origin) C	Hispanic D	Asian or Pacific Islander E	American Indian or Alaskan Native F	White (Not of Hispanic Origin) G	Black (Not of Hispanic Origin) H	Hispanic I	Asian or Pacific Islander J	American Indian or Alaskan Native K
Officials and Managers 1											
Professionals 2											
Technicians 3											
Sales Workers 4											
Office & Clerical 5											
Craft Workers (Skilled) 6											
Operatives (Semi-Skilled) 7											
Laborers (Unskilled) 8											
Service Workers 9											
TOTAL 10											
Total employment reported in previous EEO-1 report 11											

NOTE: Omit Questions 1 and 2 on the Consolidated Report.

1. Date(s) of payroll period used: _____

2. Does this establishment employ apprentices? (8) Yes (9) No

**METROPOLITAN TRANSPORTATION AUTHORITY
Office of Civil Rights**

**EQUAL EMPLOYMENT OPPORTUNITY
EMPLOYER INFORMATION REPORT EEO-1**

Section D – ESTABLISHMENT INFORMATION (Omit on the Consolidated Report)

1. What is the major activity of this establishment? (Be specific, i.e., manufacturing steel castings, retail grocer, wholesale plumbing supplies, title insurance, etc. Include the specific type of product or type of service provided, as well as the principal business or industrial activity.)	OFFICE USE ONLY
	g.

Section E – REMARKS

1. Use this item to give any identification data appearing on last report which differs from that given above, explain major changes in composition or reporting units and other pertinent information.

Section F – CERTIFICATION

- Check (10) All reports are accurate and were prepared in accordance with the instructions (check on Consolidated only)
 One: (11) This report is accurate and was prepared in accordance with the instructions.

Name of Certifying Official	Title	Signature	Date
Name of person to contact regarding this report (type or print)	Address (Number and Street)		
Title	City and State	ZIP Code	Telephone Number (Including Area Code)

All reports and information obtained from individual reports will be kept confidential as required by Section 709(e) of Title VII. WILLFULLY FALSE STATEMENTS ON THIS REPORT ARE PUNISHABLE BY LAW, U.S. CODE, TITLE 18, SECTION 1001.

STAFFING PLAN

Project/RFP Title: _____ Location of Contract: _____

County

ZIP

Contractor/Firm Name: _____ Address: _____

City

State

ZIP

Check applicable categories: (1) Staff Estimates include: Contrt/Project Staff Total Work Force Subcntractors
 (2) Type of Contract: Construction Consulants Commodities Servic/Consultants

Total Anticipated Work Force											Total Percent Minority Employees	Total Percent Female Employees	
Federal Occupational Category	Total Number of Employees		Black (Not of Hispanic Origin)		Hispanic		Asian or Pacific Islander		Native American/ Alaskan Native				
	Male	Female	Male	Female	Male	Female	Male	Female	Male	Female			
Officials/Admin.													
Professionals													
Technicians													
Sales Workers													
Office & Clerical													
Craft Workers													
Operatives													
Laborers													
Service Workers													
TOTALS													

Company Official's Name: _____

Title: _____

Company Official's Signature: _____

Date: _____

Telephone Number: () _____

DMWB/PAIS (CC) 12/93

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Boiler/AA-EEO/Forms/Staffing Plan.doc

**MTA MASTER UNIFORM INSURANCE REQUIREMENTS
NON-CONSTRUCTION AGREEMENTS - MTAHQ**

Contract Number:	RFP No.#
Description:	SPEAR to HEXAGON EAM

The term “Contractor” as used in this document shall refer to any third party entering into a contract (“Contract”) with the Metropolitan Transportation Authority (“Authority”). As such, the term may encompass Contractors, Consultants, and Design Build Contractors. The term “Work” as used in this document shall refer to all work or services of the Contractor in connection with such Contract.

SECTION A. INSURANCE SCHEDULE:

The Contractor shall procure, at its sole cost and expense, and shall maintain at all times during the term of this Contract, through Final Completion, including any warranty period if applicable, and for such longer period of time if specified, the following classes of insurance in the form and limits indicated by the checked box (s) set forth below and as outlined in **Section B Insurance Requirements**.

[Note: The Procurement Representative must check all that apply and insert appropriate amounts.]

INSURANCE		MINIMUM AMOUNTS	
<input checked="" type="checkbox"/>	Workers’ Compensation	\$	Statutory Limits
<input checked="" type="checkbox"/>	- Employer’s Liability	\$	1,000,000 – NYS; 2,000,000 CT
<input type="checkbox"/>	- Longshore & Harbor Workers’ Endorsement	\$	
<input type="checkbox"/>	- Maritime Coverage Endorsement (Jones Act)	\$	
<input checked="" type="checkbox"/>	Commercial General Liability (per occurrence)	\$	1,000,000
<input checked="" type="checkbox"/>	- General Aggregate	\$	2,000,000
<input checked="" type="checkbox"/>	- Products and Completed Operation	\$	2,000,000
<input checked="" type="checkbox"/>	Business Automobile Liability (each accident)	\$	1,000,000
<input checked="" type="checkbox"/>	Umbrella/Excess Liability	\$	5,000,000
<input checked="" type="checkbox"/>	- Aggregate	\$	5,000,000
<input type="checkbox"/>	Professional Liability	\$	
<input checked="" type="checkbox"/>	Cyber and Privacy	\$	10,000,000
<input checked="" type="checkbox"/>	Technology Error & Omission	\$	10,000,000
<input type="checkbox"/>	Contractor’s Pollution Liability	\$	
<input type="checkbox"/>	Valuable Papers	\$	
<input type="checkbox"/>	Property Insurance	\$	
<input type="checkbox"/>	Crime	\$	
<input type="checkbox"/>	Railroad Protective Liability (per occurrence/aggregate)	\$	
<input type="checkbox"/>	Garage Liability/ Garage Keepers Legal Liability	\$	
<input type="checkbox"/>	Other:	\$	

**MTA MASTER UNIFORM INSURANCE REQUIREMENTS
NON-CONSTRUCTION AGREEMENTS - MTAHQ**

SECTION B. INSURANCE REQUIREMENTS

i. **Workers' Compensation Insurance** as required by statute in the State in which the Work will be performed. Employer's Liability Insurance with limits of not less than \$1,000,000 bodily injury per accident; \$1,000,000 bodily injury per disease; and \$1,000,000 annual aggregate. For work conducted outside the State of New York, Employer's Liability Insurance requires limits of not less than \$2,000,000 bodily injury per accident; \$2,000,000 bodily injury per disease; and \$2,000,000 annual aggregate and must provide proof that its Workers' Compensation Insurance policy has been endorsed to include "Other States Coverage."

- If Contractor leases one or more employees through the use of a payroll, employee management, or other similar company, then Contractor must procure worker's compensation insurance written on an "if any" policy form, including an endorsement providing coverage for alternate employer/leased employee liability.
- If the Work will involve, in whole or in part, work or operations on the navigable waters of the United States or on a flagged vessel, then Contractor shall obtain coverage pursuant to the Jones Act and/or the Longshoremen's and Harbor Worker's Compensation Act as applicable.

ii. **Commercial General Liability ("CGL") Insurance** covering claims for personal and advertising injury, bodily injury and property damage arising out of the Work and in a form providing coverage no less broad than that of ISO Commercial General Liability Insurance policy (Occurrence Form, number CG 00 01). Such insurance shall provide coverage for all operations including the products-completed operations hazard subject to the limitation of any applicable statute. The limits of such insurance shall renew annually and not be less than:

- a) \$1,000,000 each occurrence;
- b) \$2,000,000 aggregate for products-completed operations,
- c) \$2,000,000 general aggregate limit, and
- d) Additionally:
 - Primary General Liability limits may not be satisfied by Umbrella / Excess insurance;
 - The policy shall not contain any contractual exclusion relative to Labor Laws or any other exclusions or limitations directed toward any types of projects, materials or processes involved in the Work.
 - The policy shall not contain any of the following exclusions: subcontractor's exclusion; construction defect exclusion; leased worker exclusion; cross liability exclusion; crane exclusion; and demolition exclusion or "explosion, collapse and underground" exclusion.
 - The policy shall include independent contractor and contractual liability coverages.
 - Coverage for claims for bodily injury asserted by a railroad employee of an additional insured and any Employer's Liability Exclusion which may otherwise operate to exclude such coverage shall be removed (**applicable to LIRR/MNR contracts**).

**MTA MASTER UNIFORM INSURANCE REQUIREMENTS
NON-CONSTRUCTION AGREEMENTS - MTAHQ**

- iii. **Business Automobile Liability Insurance** covering any owned, non-owned, and hired vehicles on and off-site for claims arising out of the ownership, maintenance or use of any such vehicle. Such insurance shall provide coverage as broad as the standard ISO Comprehensive Automobile Liability policy (CA 00 01, CA 00 05, CA 00 12, CA 0020), with limits not less than the amount set forth in Section A Insurance Requirements. If the Work involves transportation of hazardous or regulated substances, hazardous or regulated wastes and/or hazardous or regulated materials, Contractor shall provide pollution auto coverage equivalent to that provided under the ISO pollution liability-broadened coverage for covered autos endorsement (CA 99 48), and the Motor Carrier Act endorsement (MCS 90). Any statutorily required “No-Fault” benefits and uninsured/underinsured motorist coverage shall be included.
- iv. **Umbrella/Excess Liability Insurance** with limits not less than the amount set forth in Section A Insurance Schedule written on an occurrence basis in excess of the limits indicated for Commercial General Liability, Employer’s Liability, and Business Automobile Liability Insurance identified above, *and which is at least as broad as each and every one of the underlying policies*. The umbrella/excess liability policies shall be written on a “drop-down” and “follow form” basis, with only such exceptions expressly approved in writing by the Authority.
- v. **Professional Liability Insurance** covering damage for liability arising out of any negligent act, error, or omission in the rendering of or failure to render professional services required by this contract by the Contractor and by any partner, subcontractor or consultant of the Contractor including but not limited to construction / project management, architectural, engineering, specifications, installation, modification, abatement, replacement or approval of products, materials or processes containing pollutants, and the failure to advise of or detect the existence or the proportions of pollutants and/or surveying services, and/or any party whose work involves the preparation of plans or drawings, with limits not less than the amount set forth in **Section A Insurance Schedule** per claim and annual aggregate. Such policy shall not contain any exclusions directed toward any types of projects, materials, services, or processes involved in the work. The retroactive date for coverage will be no later than the commencement of professional services on the project and be maintained for a period of at least three (3) years after completion of the professional services, subject to the limitation of any applicable statute. In the event of cancellation or non-renewal, the discovery period for insurance claims will be at least three (3) years or otherwise as by agreement with the Authority.
- vi. **Cyber and Privacy Insurance** When Contractor’s work includes access to the Authority’s proprietary information or the personally identifiable information of the Authority employees, customers or other third parties in an electronic format, or impacts systems where such information is stored, processed, analyzed, or transmitted, Contractor shall maintain coverage for costs, expenses, lost revenues, and/or losses associated with a payment card industry or regulatory investigation, fine, or consent decree, if applicable, related to the following:
- Liability resulting from the actual or suspected disclosure, unauthorized access, destruction, loss, alteration, misappropriation, or unlawful acquisition of commercial and/or personally identifiable information that is deemed confidential by the Authority or is otherwise considered to be confidential or protected from disclosure by law or agreement, and shall extend to include indemnification of the Authority’s investigation, notification, regulatory response, and remedial action costs, including attorneys’ fees, in the event of an actual or alleged security or data breach, whether or not required by statute; including alleged theft of data in any form;
 - System failure or interruption and related costs, liabilities, and lost revenues, with a waiting period of no more than 8 hours;

MTA MASTER UNIFORM INSURANCE REQUIREMENTS NON-CONSTRUCTION AGREEMENTS - MTAHQ

- Information security incidents, including but not limited to, social engineering, phishing, fraudulent transfer, ransomware, denial of service attacks, or transmission of malicious code;
- Liability resulting from actual or suspected disclosure, unauthorized access, destruction, loss, alteration, misappropriation, or unlawful acquisition of electronic information and electronic assets or liability for economic harm suffered by others from an actual, suspected, or alleged failure of Contractor's computer or network security, whether the attack originated internally or externally;
- Defense of any regulatory action, litigation, or other actual or anticipated adversarial proceeding involving an alleged breach of privacy, confidentiality, integrity or availability of information and shall extend to include investigation expenses, including legal counsel, a crisis communications firm and computer forensic/cybersecurity experts, and indemnification for fines, penalties, liability, and any other resulting costs;
- Retaining a computer forensic/cybersecurity incident response firm;
- Retaining a crisis communications firm;
- Hardware replacement;
- Software replacement;
- Data asset protection and the costs to recollect, restore, or recreate electronic data, software or other applications that have been altered, corrupted, destroyed, deleted, or damaged by a computer attack;
- The cost of notifying individuals, government agencies, credit reporting agencies, and other entities of a security or data breach;
- The cost of credit monitoring services, call center services, and any other causally related crisis management services and expenses for up to two (2) years to support those affected;
- Cyber extortion threats or extortion relating to an actual or alleged breach of computer security and or actual or alleged release of confidential information;
- Coverage shall contain no provision that would prevent, preclude or exclude a claim triggered by or connected with an actual or suspected act of cyber terrorism, cyberwar, or hostilities between/among nations. Coverage shall contain no provision that would prevent coverage based upon the reasonableness of information security efforts;
- Coverage shall contain no provision that would prevent, preclude or exclude any claim or loss triggered by or connected with an alleged breach of any privacy policy or of any contractual obligation with the Authority;
- Coverage shall contain no provision that would prevent, preclude or exclude any claim or loss involving employee-owned computer or mobile devices used in furtherance of the Contractor's or the Authority's business;
- Coverage shall contain no provision that would prevent, preclude or exclude loss for physical or bodily injury if such physical or bodily injury arises out of mental anguish, mental injury, shock, humiliation, or emotional distress;
- Coverage under the policy shall extend to actual or alleged acts, errors or omissions committed by Contractor or its agents, subcontractors, independent contractors or employees;
- Coverage shall contain language specifying that any consent required from the insurer shall not be unreasonably withheld;
- Coverage shall contain severability for the insured organization for any intentional act exclusions and shall include consequential or vicarious liabilities and direct losses for the wrongful acts or failures of Contractor and of the Authority. Additionally, such policy shall cover consequential or vicarious liabilities and direct losses; and
- This coverage shall have the "Insured v. Insured" exclusion amended to allow an "Additional Insured" to bring a claim against the Named Insured.

The policy shall be on a per occurrence basis with limits not less than the amount set forth in **Section A. Insurance Schedule**. If the policy is subject to an aggregate limit, replacement insurance will be required if the aggregate is exhausted. Contractor shall be responsible for all claim expenses and loss payments.

MTA MASTER UNIFORM INSURANCE REQUIREMENTS NON-CONSTRUCTION AGREEMENTS - MTAHQ

If any insurance coverage part is provided on a claims-made basis, Contractor must maintain continuous coverage during the term of the Contract and include the following:

- Policy retroactive date coincides with or precedes Contractor’s start of services under the Contract and shall continue until the termination of the Contract (including subsequent policies purchased as renewals or replacements);
 - Policy allows for reporting of circumstances or incidents that might give rise to future claims;
 - No bar to coverage due to untimely notice unless the insurer has suffered actual prejudice due to such untimely notice; and
 - If insurance is terminated for any reason, Contractor agrees to purchase an extended reporting provision of at least two (2) years to report claims arising from services performed in connection with the Contract.
- vii. **Technology Errors and Omissions Insurance** coverage for liability from errors, omissions or negligent acts in rendering or failing to render computer or information technology services and technology products including bodily injury.

Coverage for violation of software copyright shall be included and shall cover the failure of products to perform the intended function or serve the intended purpose. Services insured shall include, as applicable:

- Systems analysis
- Systems programming
- Data processing
- Systems integration
- Outsourcing including outsourcing of development and design work
- Systems design, consulting, development and modification
- Training services relating to computer software or hardware
- Management, repair and maintenance of computer products, networks and systems
- Marketing, selling, servicing, distributing, installing and maintaining computer hardware or software
- Data entry, modification, verification, maintenance, storage, retrieval or preparation of data output.

The policy shall not contain a provision that would prevent, preclude or exclude liability triggered by or connected to a network failure, system failure or the disclosure of private information. Coverage under the policy shall extend to actual or alleged acts, errors or omissions committed by Contractor or its agents, subcontractors, independent contractors or employees.

The policy shall be on a per occurrence basis with limits not less than the amount set forth in **Section A. Insurance Schedule**. If the policy is subject to an aggregate limit, replacement insurance will be required if the aggregate is exhausted. Contractor shall be responsible for all claim expenses and loss payments. If insurance is provided on a claims-made basis, Contractor must maintain continuous coverage during the term of the Agreement and include the following:

- Policy retroactive date coincides with or precedes Contractor’s start of provision of services under the Agreement and shall continue until the termination of the Agreement (including subsequent policies purchased as renewals or replacements);
- Policy allows for reporting of circumstances or incidents that might give rise to future claims; and
- If insurance is terminated for any reason, Contractor agrees to purchase an extended reporting provision of at least two (2) years to report claims arising from services performed in connection with the Agreement.

**MTA MASTER UNIFORM INSURANCE REQUIREMENTS
NON-CONSTRUCTION AGREEMENTS - MTAHQ**

- ix. **Valuable Papers and Records** covering the cost to repair or replace with like kind and quality including the cost of gathering and/or assembling information, subject to a minimum limit of liability of not less than the amount set forth in Section A Insurance Schedule. The Authority shall be named as loss payees as their interests may appear and all rights of subrogation against the Authority, their agents or assigns shall be waived.
- x. **Contractor’s Pollution Liability Insurance** with limits not less than the amount set forth in **Section A Insurance Schedule** per occurrence and general aggregate on a per project basis including completed operations coverage to be maintained for at least three (3) years after final completion of the work. Policy shall cover environmental damage resulting from pollution conditions that arise from the operations of the contractor or subcontractor, as applicable, and described under the scope of services of this contract. Coverage must apply to sudden and non-sudden pollution conditions including the discharge, dispersal, release or escape of smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, liquids or gases, waste materials or other irritants, contaminants or pollutants, silt or sediment into or upon land, the atmosphere or any watercourse or body of water, provided such conditions are not naturally present in the environment in the concentration or amounts discovered, unless such natural condition(s) are released or dispersed as a result of the performance of Covered Operations. Such insurance shall include but not be limited to:
- Bodily injury, sickness, disease, mental anguish or shock sustained by any person, including death; medical monitoring
 - Physical injury to or destruction of tangible property of parties other than the Insured including the resulting loss of use and diminution in value thereof; Loss of use, but not diminution in value, of tangible property of parties other than the Insured that has not been physically injured or destroyed
 - Natural Resource Damages;
 - Cleanup Costs
 - Transportation and Non-Owned Disposal Site coverage (with no sunset clause/restricted coverage term) if Contractor or subcontractor is disposing of contaminated material (s)
 - No exclusions for asbestos, lead paint, silica or mold/fungus/legionella
 - Defense including costs, charges and expenses incurred in the investigation, adjustment or defense of claims for such compensatory damages
- viii. **Railroad Protective Liability Insurance** (ISO-RIMA or equivalent form) if any Work will be taking place within 50 feet of a railroad, subway or similar tracked conveyance or requires flag or protective measures by the Authority or its affiliates or their respective employees, covering the work to be performed at the designated job site and affording protection for damages arising out of bodily injury or death, physical damage to or destruction of property, including damage to the Insured’s own property and conforming to the following:
- The policy shall be issued to the “Named Insureds” listed under Section D.
 - The limit of liability shall be not less than \$2,000,000 per occurrence, subject to a \$6,000,000 annual aggregate;
 - Policy must be endorsed to provide coverage for claims arising from injury to employees covered by Federal Employer’s Liability Act (FELA), when applicable.
 - Indicate the Name and address of the designated Contractor, location of the Work the Contract description and Contract Number, if applicable.

MTA MASTER UNIFORM INSURANCE REQUIREMENTS NON-CONSTRUCTION AGREEMENTS - MTAHQ

Section C. GENERAL INSURANCE REQUIREMENTS.

The following requirements are applicable to all insurance coverages required under this Contract, except to the extent otherwise indicated.

- i. **Insurer Requirements.** All policies of insurance shall be placed with insurers acceptable to the Authority. The insurance underwriter(s) must be duly licensed or approved Surplus Lines insurer to do business in the state where the Work is to be performed and must have a financial ratings of A-/VII or better in the most recent edition of Best's Key Rating Guide or otherwise satisfactory to the Authority.
- ii. **Right to Request Additional Insurance.** Contractor shall increase required insurance amounts upon direction by the Authority.
- iii. **Insurance Policies.** The Contractor shall furnish certified copies of all insurance policies required to be maintained under this Agreement within ten (10) business days after receiving the Authority's request.
- iv. **Additional Insureds.** All insurance required (*except for Workers' Compensation, Professional liability or otherwise noted*), shall name the parties listed in Section D as Additional Insureds and shall include their respective subsidiary and affiliated companies, and their Boards of Directors, officers, employees, representatives, and agents (hereinafter, collectively the "Additional Insureds"). For the Commercial General Liability insurance, additional insured status must be provided on ISO forms or their equivalent at least as broad as CG 20 10 and CG 20 37 – alternatively CG 20 38 and CG 20 37. No other General Liability Additional Insured endorsement will be accepted unless approved by the Authority.
- v. **Primary and Non-Contributory.** Each policy required, including primary, excess, and/or umbrella, shall provide that the insurance provided to the Additional Insureds is primary and non-contributory, such that no other insurance or self-insured retention carried or held by the Authority shall be called upon to contribute to a loss covered by insurance for the named insured.
- vi. **Waiver of Subrogation.** To the fullest extent permitted by law, Contractor will require all insurance policies required to include clauses stating each insurer will waive all rights of recovery. All waivers provided herein shall be effective as to any individual or entity even if such individual or entity (a) would otherwise have a duty of indemnification, contractual or otherwise, or (b) did not pay the insurance premium directly or indirectly, and whether or not such individual or entity has an insurable interest in any property damaged.
- vii. **Self-Insured Retentions.** None of the insurance required shall be subject to any self-insured retention greater than \$500,000 without the Authority's written approval.
- viii. **Subcontract Agreements.** Contractor shall by appropriate written agreements flow down the requirements for i) the waiver of subrogation for all required insurance, and ii) additional insured coverage for all required insurance and iii) other requirements to all tiers of subcontractors, for all insurance required of such subcontractors by Contractor for the Work.
- ix. **No Limitation.** Nothing in this Section shall be construed as limiting in any way the extent to which Contractor may be held responsible for payment of damages resulting from their operations. Contractor's obligations to procure insurance are separate and independent of and shall not limit

MTA MASTER UNIFORM INSURANCE REQUIREMENTS NON-CONSTRUCTION AGREEMENTS - MTAHQ

Contractor's contractual indemnity and defense obligations. The Authority does not represent that coverages and limits required in this Contract will necessarily be adequate to protect Contractor.

- x. **Notice of Cancellation or Non-Renewal.** The Contractor agrees to notify the Authority thirty days prior to any cancellation, non-renewal or material change to any insurance policies required. Notice shall be sent electronically to the *contract-specific email address* provided to Contractor via MTA Certificate of Insurance Management System (CIMS), Complianz™.
 - xi. **Notice of Occurrence.** The Contractor shall immediately file with the MTA Legal Department (with a copy to the Project Manager), 2 Broadway -4th Floor, New York, 10004, a notice of any occurrence likely to result in a claim against the MTA, and shall also file with the law Department detailed sworn proof of interest and loss with the claim. This paragraph shall survive the expiration or earlier termination of the Contract.
 - xii. **Insurance Not in Effect:** If, at any time during the period of this Agreement, insurance as required is not in effect, or proof thereof is not provided to the Agency, the Agency shall have the options to: (i) direct the Contractor to suspend work or operation with no additional cost or extension of time due on account thereof; or (ii) treat such failure as an Event of Default.
 - xiii. **Conformance to Law.** If applicable law limits the enforceability of any of the foregoing requirements, then Contractor shall be required to comply with the foregoing requirements to the fullest extent of coverage and limits allowed by applicable law and the provisions of insurance shall be limited only to the extent required to conform to applicable law.
 - xiv. **Certificates of Insurance.**
1. Contractor shall furnish the Authority with Certificates of Insurance ("COI") utilizing ACORD 25 & 101 and ACORD 855 (for NY Construction Projects Only) completed by a duly authorized representative evidencing the required coverage. Such Certificates of Insurance shall be delivered to the Authority before any Work hereunder is commenced by Contractor and annually thereafter on or before the policy effective dates of the Contractor's policies based on the instructions stated herein

Evidence of Railroad Protective Liability and/or Builder's Risk Insurance requires submission of a policy and is not acceptable on a certificate of insurance. A binder is acceptable pending issuance of the policy. The binder must indicate the contract number, description and location of Work and the designated Contractor and must be signed by the authorization producer or insurance carrier.
 2. Insurance Confirmation. In addition to the foregoing certificates of insurance, the Contractor or its authorized insurance broker shall submit coverage endorsements as outlined below. Each endorsement must indicate the contract number, description and location of the operation/work.
 - a. Additional Insured endorsements specifically naming the Authority per requirements of this Contract shall be provided as indicated in Section C (iv) – General Insurance Requirements.
 - b. Primary and non-contributory endorsement(s) CG 2001 or equivalent naming the Authority.
 - c. Waiver of Subrogation endorsements (most recent NCCI/ISO or equivalent as applicable) in favor of the Authority.

MTA MASTER UNIFORM INSURANCE REQUIREMENTS NON-CONSTRUCTION AGREEMENTS - MTAHQ

- d. Other coverage endorsements may be requested depending on the scope of Work to be performed by the Contractor.

The Contractor shall submit evidence of compliance of all insurance requirements before any Work is started to the Authority as follows:

1. Initial Evidence of Insurance

Agency Name: _____

Agency Address: _____

Attention: *Procurement Representative's Name*

Email Address: _____

- 2. **Renewal Insurance:** After the Contractor's insurance has been approved, a "compliant message" verifying insurance compliance will be sent to the Contractor via the MTA Certificate of Insurance Management System (CIMS), Complianz™. It will also provide the email address for all insurance renewals, specific to this Contract. Do not bundle certificates as each contract is assigned a specific email address.

At least two (2) weeks prior to the expiration of the policies, Contractor shall endeavor to provide evidence of renewal or replacement policies of insurance, with terms and limits no less favorable than the expiring policies.

- 3. Failure of the Authority to demand such COIs or other evidence of full compliance with these insurance requirements, or failure of the Authority to identify a deficiency from evidence provided, will not be construed as a waiver of the Contractor's obligation to maintain such insurance. The Authority acceptance of any COI evidencing the required coverages and limits does not constitute approval or agreement by the Authority that the insurance requirements have been met or that the insurance policies shown in the COI are in compliance with the requirements.
- 4. The Authority has the right, but not the obligation, of prohibiting Contractor from entering the Project Site until the Authority receives all COIs or other evidence that insurance has been placed in complete compliance with these requirements.

**MTA MASTER UNIFORM INSURANCE REQUIREMENTS
NON-CONSTRUCTION AGREEMENTS - MTAHQ**

SECTION D. REQUIRED ADDITIONAL INSUREDS / INDEMNITEES (by Agency)

MTA HQ

Metropolitan Transportation Authority (“MTA”) and the respective affiliates and subsidiaries existing currently or in the future of and successors.

MTA C&D

MTA Construction & Development (“MTA C&D”), New York City Transit Authority (“NYCT”), Metro North Commuter Railroad Company (“MNRR”), Long Island Railroad (“LIRR”), MTA Bus Company (“MTA Bus”), Triborough Bridge and Tunnel Authority (“TBTA”), MTA Grand Central Madison Concourse Operating Company (“GCMCOC”), Metropolitan Transportation Authority (“MTA”) and its subsidiaries and affiliates, and the City of New York (“City” as owner) and the State of New York and the respective affiliates and subsidiaries existing currently or in the future of and successors to each Indemnified Party listed herein.

NYCT

New York City Transit Authority (“NYCT”), Manhattan and Bronx Surface Transit Operating Authority (“MaBSTOA”), Staten Island Rapid Transit Operating Authority (“SIRTOA”), Metropolitan Transportation Authority (“MTA”) including its subsidiaries and affiliates, MTA Construction & Development Company (“MTA C&D”), MTA Bus Company (“MTA Bus”), MTA Grand Central Madison Concourse Operating Company (“GCMCOC”), and the City of New York (“City” as Owner) and the respective affiliates and subsidiaries existing currently or in the future of and successors to each Indemnified Parties listed herein.

MTA BUS

MTA Bus Company (“MTA Bus”), MTA Construction & Development Company (“MTA C&D”), Metropolitan Transportation Authority (“MTA”), including its subsidiaries and affiliates, State of New York, City of New York, PBS Capital LLC, MIU Realty, LLC, JLK Capital, LLC, Green Bus Holding Corp., Jamaica Bus Holding Corp., Triboro Coach Holding Corp. and New York Bus Services and its affiliates and the respective affiliates and subsidiaries existing currently or in the future of and successors to each Indemnified Parties listed herein.

TBTA

Triborough Bridge and Tunnel Authority (“TBTA”), MTA Construction & Development Company (“MTA C&D”), Metropolitan Transportation Authority (“MTA”) and its subsidiaries and affiliates and the State of New York and the respective affiliates and subsidiaries existing currently or in the future of and successors.

LIRR

Long Island Rail Road (“LIRR”), MTA Construction & Development Company (“MTA C&D”), MTA Grand Central Madison Concourse Operating Company (“GCMCOC”), Metropolitan Transportation Authority (“MTA”) and its subsidiaries and affiliates and New York & Atlantic Railway Company (when applicable) Anacostia Rail Holdings and the respective affiliates and subsidiaries existing currently or in the future of and successors to each Indemnified Parties listed herein.

Additional Indemnitees Parties based on location of work:

Penn Station

National Railroad Passenger Corp. (“Amtrak”), NJ Transit Corporation, and NJ Transit Rail Operations, Inc.

West Side Yard

National Railroad Passenger Corp. (“Amtrak”), NJ Transit Corporation, NJ Transit Rail Operations, Inc., Consolidated Rail Corporation and CSX Transportation Inc., and Triborough Bridge and Tunnel Authority (“TBTA”).

**MTA MASTER UNIFORM INSURANCE REQUIREMENTS
NON-CONSTRUCTION AGREEMENTS - MTAHQ**

Sunnyside Yard

National Railroad Passenger Corp., (“Amtrak”), NJ Transit Corporation, NJ Transit Rail Operations, Inc. and New York & Atlantic Railway Company (when applicable).

Jamaica

Port Authority of NY & NJ.

MNRR

Metro-North Railroad (“MNRR”), MTA Construction & Development Company (“MTA C&D”), MTA Grand Central Madison Concourse Operating Company (“GCMCOC”), and Metropolitan Transportation Authority (“MTA”) and the respective affiliates and subsidiaries existing currently or in the future of and successors to each Indemnified Parties listed herein.

Additional Insureds / Indemnitees based on location of work:

Grand Central Terminal

Midtown Trackage Ventures LLC, the State of Connecticut, Connecticut Department of Transportation (“CDOT”), Jones Lang LaSalle Americas, Inc./LPI (when applicable), and the respective affiliates and subsidiaries existing currently or in the future of and successors to each Indemnified Parties listed herein.

Hudson Line

Midtown Trackage Ventures LLC, State of Connecticut and Connecticut Department of Transportation (“CDOT”), National Railroad Passenger Corp (“AMTRAK”), CSX Transportation, Inc. & New York Central Lines, LLC, and Delaware & Hudson Railway Company Inc. (“D&H”), LAZ Parking New York/New Jersey, LLC (where applicable) and the respective affiliates and subsidiaries existing currently or in the future of and successors to each Indemnified Parties listed herein.

Harlem Line

Midtown Trackage Ventures LLC, State of Connecticut and Connecticut Department of Transportation (“CDOT”), CSX Transportation Inc. and New York Central Lines, LLC, LAZ Parking New York/New Jersey, LLC (where applicable) and the respective affiliates and subsidiaries existing currently or in the future of and successors to each Indemnified Parties listed herein.

Beacon Line

Danbury Terminal Railroad Company, Maybrook Railroad Company and Housatonic Railroad Company, LAZ Parking New York/New Jersey, LLC. (where applicable) and the respective affiliates and subsidiaries existing currently or in the future of and successors to each Indemnified Parties listed herein.

New Haven Line Including All Branches

State of Connecticut and Connecticut Department of Transportation (“CDOT”) National Railroad Passenger Corporation (“AMTRAK”), CSX Transportation, Inc. & New York Central Lines, LLC, and Providence & Worcester Railroad Company (“P&W”), LAZ Parking New York/New Jersey, LLC. (where applicable) and the respective affiliates and subsidiaries existing currently or in the future of and successors to each Indemnified Parties listed herein.

West of Hudson Lines (including Port Jervis Line, Pascack Valley Line and Piermont Branch):

MTA MASTER UNIFORM INSURANCE REQUIREMENTS NON-CONSTRUCTION AGREEMENTS - MTAHQ

New Jersey Transit Rail Operations, Inc. (“NJT”), New Jersey Transit Corporation and Norfolk Southern Railway Company & Pennsylvania Lines LLC and the respective affiliates and subsidiaries existing currently or in the future of and successors to each Indemnified Parties listed herein.

Other:

GENERAL GUIDELINES FOR SUBMISSION OF INSURANCE

1. INSURANCE REQUIREMENTS:

Refer to your agreement for required insurance coverages, limits, and endorsements and review with your authorized insurance broker for compliance

2. ACCEPTABLE FORMS OF INSURANCE:

- ACORD 25: Certificate of Insurance
- ACORD 855: NY Construction Certificate of Liability Addendum
- ACORD 28: Certificate of Commercial Property Insurance
- ACORD Binder or Insurance Policy
- Workers’ Compensation (*Other Options*):
 - C-105.2 – Certificate of Workers’ Compensation Insurance; or
 - U-26.3 – Certificate of Workers’ Compensation from the State Insurance Fund; or
 - GSI-105/SI-12 – Certificate of Workers’ Compensation Self Insurance; or
 - CE-200 – Attestation of Exemption when Contractor meets the requirements (e.g.) Sole Proprietor

3. CERTIFICATE OF INSURANCE MUST INCLUDE AT A MINIMUM:

- Policy coverage details (e.g.) policy term, per occurrence/per project; limits/sub-limits, aggregate limits, deductibles, self-insured retentions, and insurance carrier name and corresponding NAIC #
- Contract Identifier (e.g.) Contract #, RFP #, or Entry Permit #
- Location and Description of Work
- Authority Indemnified parties as an additional insured including primary and noncontributory coverage and waiver of subrogation in favor of the MTA Agency
- Certificate Holder must list the MTA Agency’s name and address
- Certificate of Insurance must be signed by an authorized insurance representative

4. INSURANCE BINDER / POLICY MUST INCLUDE AT A MINIMUM:

(Applicable for Railroad Protective Liability and Builder’s Risk/Installation Floater)

- Policy coverages and details (e.g.) policy term, limits/sub-limits, aggregate limits, deductibles, self-insured retentions, insurance carrier name and applicable NAIC #
- Contract Number or Entry Permit Number; Designated Contractor; Location and Description of Work
- List all required parties as a named insured or additional named insured
- Binder must be issued and signed by the authorized insurance company or their authorized insurance agent

5. SUBMISSION OF INSURANCE:

(Evidence of all required insurance must be sent to your Agency or Procurement Representative)

- ACORD Certificate of Insurance
- Additional Insured Endorsements (e.g.) CG 20 10 and CG 20 37 or CG 20 38 and CG 20 37
- Primary and Non-Contributory Endorsements
- Waiver of Subrogation Endorsements
- Environmental Endorsements (e.g.) MCS 90 and CA 99 48, and or NODS, when applicable
- Insurance Policy - A Binder may be accepted pending issuance of the policy. Policy must be submitted within 30 days from binder effective date.

**MTA MASTER UNIFORM INSURANCE REQUIREMENTS
NON-CONSTRUCTION AGREEMENTS - MTAHQ**

- Joint Venture – If the Contractor/Consultant is a Joint Venture, General Liability Insurance must be provided in the name of the Joint Venture. Alternatively, a Named Insured Endorsement listing the Joint Venture may be accepted.

6. INSURANCE COMPLIANCE:

The Contractor will be notified when insurance is compliant through the assigned “**contract specific**” email address.

APPENDIX E

REPORT OF FINANCIAL INTERESTS

FOR THE YEAR ENDING _____

1. Aside from the contract(s) for which you are completing this form and regardless of amount, to the best of your knowledge, did you or your spouse have any holding, business interest, or other connection with an individual or firm which has ever had a business relationship with the Metropolitan Transportation Authority, Long Island Rail Road, Manhattan and Bronx Surface Transit Operating Authority, Metro-North Commuter Railroad, Metropolitan Suburban Bus Authority, New York City Transit Authority, Staten Island Rapid Transit Operating Authority, or Triborough Bridge and Tunnel Authority?

YES NO

2. If not specifically reported in response to paragraph 1, is there any matter which may constitute a conflict of interest in connection with the work you or your firm is performing for MTA which is not fully covered by the above?

YES NO

If all the answers to the above questions are NO, then please sign below. If any answer to the above questions is YES, please be sure to fill out the appropriate schedule before signing below.

Intentionally false, incomplete or misleading statements made on this financial disclosure form may subject the maker to criminal prosecution and penalties.

I swear (or affirm) that all information given herein is true, complete, and accurate to the best of my knowledge.

Signature

Date

Sworn to before me this _____ day of _____ 20 _____

Notary Public

Notary Stamp

APPENDIX E

REPORT OF FINANCIAL INTERESTS

FOR THE YEAR ENDING _____

Interest in Firms and Individuals Which Have Ever Done Business With an Authority

SCHEDULE 1

<p>(a)</p> <hr/> <p>Name of firm or individual</p> <hr/> <p>Name of Authority</p> <p>Interest applies to - Check: <input type="checkbox"/> person reporting <input type="checkbox"/> spouse</p> <p>Nature of the relationship between person reporting or spouse and the firm or individual</p> <hr/>	
<p>(b)</p> <hr/> <p>Name of firm or individual</p> <hr/> <p>Name of Authority</p> <p>Interest applies to - Check: <input type="checkbox"/> person reporting <input type="checkbox"/> spouse</p> <p>Nature of the relationship between person reporting or spouse and the firm or individual</p> <hr/>	
<p>(c)</p> <hr/> <p>Name of firm or individual</p> <hr/> <p>Name of Authority</p> <p>Interest applies to - Check: <input type="checkbox"/> person reporting <input type="checkbox"/> spouse</p> <p>Nature of the relationship between person reporting or spouse and the firm or individual</p> <hr/>	
<p>(d)</p> <hr/> <p>Name of firm or individual</p> <hr/> <p>Name of Authority</p> <p>Interest applies to - Check: <input type="checkbox"/> person reporting <input type="checkbox"/> spouse</p> <p>Nature of the relationship between person reporting or spouse and the firm or individual</p> <hr/>	

If needed attach additional information on appropriately labeled continuation sheets. Additional items should be designated by letters in sequence, "e", "f", "g" and so on.

APPENDIX E

**REPORT OF FINANCIAL INTERESTS
FOR THE YEAR ENDING _____**

Potential Conflicts of Interest.

SCHEDULE 2

In your own words, describe in detail the circumstances which may constitute a conflict of interest.

APPENDIX K
EXECUTIVE ORDER 177 COMPLIANCE AND CERTIFICATION

BIDDERS ARE HEREBY NOTIFIED THAT THIS SOLICITATION IS SUBJECT TO EXECUTIVE ORDER 177 WHICH PROHIBITS NEW YORK STATE AGENCIES, INCLUDING THE METROPOLITAN TRANSPORTATION AUTHORITY (“MTA”), FROM ENTERING INTO CONTRACTS WITH ENTITIES THAT SUPPORT DISCRIMINATION. THIS CERTIFICATION MUST BE SUBMITTED PRIOR TO CONTRACT AWARD ON ALL CONTRACTS FOR GOODS, SERVICES, TECHNOLOGY AND CONSTRUCTION, AND CONTRACT RENEWALS.

The New York State Human Rights Law, Article 15 of the Executive Law, prohibits discrimination and harassment based on age, race, creed, color, national origin, sex, pregnancy or pregnancy-related conditions, sexual orientation, gender identity, disability, marital status, familial status, domestic violence victim status, prior arrest or conviction record, military status or predisposing genetic characteristics.

The Human Rights Law may also require reasonable accommodation for persons with disabilities and pregnancy-related conditions. A reasonable accommodation is an adjustment to a job or work environment that enables a person with a disability to perform the essential functions of a job in a reasonable manner. The Human Rights Law may also require reasonable accommodation in employment on the basis of Sabbath observance or religious practices.

Generally, the Human Rights Law applies to:

- all employers of four or more people, employment agencies, labor organizations and apprenticeship training programs in all instances of discrimination or harassment;
- employers with fewer than four employees in all cases involving sexual harassment; and,
- any employer of domestic workers in cases involving sexual harassment or harassment based on gender, race, religion or national origin.

REQUIRED BIDDER CERTIFICATION OF COMPLIANCE WITH EO 177

In accordance with Executive Order No. 177 (“EO 177”), the Bidder hereby certifies that it does not have institutional policies or practices that fail to address the harassment and discrimination of individuals on the basis of their age, race, creed, color, national origin, sex, sexual orientation, gender identity, disability, marital status, military status, or other protected status under the Human Rights Law.

Executive Order No. 177 and this certification do not affect institutional policies or practices that are protected by existing law, including but not limited to the First Amendment of the United States Constitution, Article 1, Section 3 of the New York State Constitution, and Section 296(11) of the New York State Human Rights Law.

By signing below, Bidder certifies that the statements made above are complete, true, and accurate.

Bidder Name: Click here to enter Bidder name

Bidder Signature: _____ Date: Click or tap to enter a date

Print name of signatory: Click here to enter name of signatory. _____ Print title of signatory: Click here to enter title of signatory.

APPENDIX L

STATEMENT ON SEXUAL HARASSMENT POLICY AND TRAINING

BIDDERS ARE HEREBY NOTIFIED THAT THIS SOLICITATION IS SUBJECT TO NEW YORK STATE FINANCE LAW SECTION 139-L (EFFECTIVE JANUARY 1, 2019), WHICH REQUIRES BIDDERS BIDDING ON COMPETITIVE SOLICITATIONS FOR WORK OR SERVICES PERFORMED OR TO BE PERFORMED, OR GOODS SOLD OR TO BE SOLD, TO CERTIFY IMPLEMENTATION OF A WRITTEN SEXUAL HARASSMENT PREVENTION POLICY AND CORRESPONDING ANNUAL TRAINING. THE MTA IS IMPLEMENTING THIS CERTIFICATION IN ADVANCE OF ITS EFFECTIVE DATE.

By submitting a Bid for this Solicitation, Bidder hereby acknowledges its understanding that:

1. Bidder shall have, and shall have implemented, a sexual harassment prevention policy for its employees, with related training to be offered annually; and
2. Bidder’s sexual harassment prevention policy shall, at a minimum, meet the requirements of New York State Labor Law, Section 201-G (Prevention of Sexual Harassment), effective October 9, 2018; and
3. A Bid shall not be considered for award nor shall any award be made to a Bidder who has not complied with this certification, provided, however, that if the Bidder cannot make the certification required by this Appendix L, as required by New York State Finance Law, Section 139-L, must furnish a statement with its Bid setting forth in detail the reasons for non-compliance, and which shall be evaluated by the MTA in its sole and absolute discretion; and
4. Any Bid made to the MTA by a corporate Bidder for work or services performed, or to be performed, or goods sold or to be sold, where such Bid requires certification of compliance with New York State Finance Law, Section 139-L, such certification shall be deemed to have been authorized by the Bidder’s board of directors, and such authorization shall be deemed to include the signing and submission of such Bid and the inclusion of such certification therein as the act and deed of the corporation; and
5. Bidder’s failure to adhere to this certification during the Term of the Contract shall be considered a Default Event pursuant to the MTA Purchase Order Terms and Conditions.

REQUIRED BIDDER CERTIFICATION OF COMPLIANCE WITH NYS FINANCE LAW SECTION 139-L

By submission of this Bid, each Bidder and each person signing on behalf any Bidder certifies, and in the case of a joint Bid each party thereto certifies as to its own organization, under penalty of perjury, that the Bidder has and has implemented a written policy addressing sexual harassment prevention in the workplace and provides annual sexual harassment prevention training to all of its employees. Such policy shall, at a minimum, meet the requirements of New York State Labor Law, Section 201-G.

By signing below, Bidder certifies that the statements made above are complete, true, and accurate.

Bidder Name: [Click here to enter Bidder name](#) _____

Bidder Signature: _____ **Date:** [Click or tap to enter a date](#) _____

Print name of signatory: [Click here to enter name of signatory.](#) _____ **Print title of signatory:** [Click here to enter title of signatory.](#) _____

APPENDIX M

**PROPOSER CERTIFICATION OF COMPLIANCE
WITH THE METROPOLITAN TRANSPORTATION AUTHORITY (“MTA”)
CYBERSECURITY PROVISIONS**

PROPOSERS ARE HEREBY NOTIFIED THAT THIS SOLICITATION IS SUBJECT TO THIS CERTIFICATION OF COMPLIANCE, WHICH REQUIRES PROPOSERS TO ACKNOWLEDGE AND CERTIFY COMPLIANCE WITH THE MTA CYBERSECURITY REQUIREMENTS AND THE MTA CYBERSECURITY TERMS AND CONDITIONS (COLLECTIVELY, THE “CYBERSECURITY PROVISIONS”). THIS CERTIFICATION SHALL BE INCORPORATED HEREIN BY REFERENCE INTO THE CONTRACT AWARDED FROM THIS SOLICITATION (THE “CONTRACT”).

By submitting a Proposal, the Proposer hereby acknowledges and agrees as follows:

1. The Proposer has read, understands, and shall comply with the Cybersecurity Provisions in the performance of the work under the Contract (including, but not limited to, the performance of services and the provision of equipment, parts, commodities, or other goods sold); and
2. A Proposal may not be considered for award, nor shall any award be made to a Proposer who has not submitted the Certification of Compliance below. Notwithstanding the foregoing, if the Proposer cannot make the Certification of Compliance required by this Appendix/Schedule, the Proposer shall acknowledge its inability to comply, or partially comply, with the Cybersecurity Provisions by making the Certification of Compliance with Deviations below. In the event of a Certification of Compliance with Deviations, the Proposer shall (a) complete the attached MTA Cybersecurity Provisions Compliance Worksheet indicating any exceptions to the Cybersecurity Provisions and detailing any compensating controls the Proposer has in place (the “Deviations”); and (b) provide both the Certification of Compliance with Deviations and the completed MTA Cybersecurity Provisions Compliance Worksheet with its Proposal. The Certification of Compliance with Deviations and the MTA Cybersecurity Provisions Compliance Worksheet shall be evaluated by the MTA in its sole and absolute discretion in connection with the Proposal; and
3. The MTA reserves the right to reject any Deviations to the Cybersecurity Provisions in the Certification of Compliance with Deviations. The Proposer acknowledges that the MTA has no obligation to accept any Deviations and that the MTA’s rejection of any Deviations, in whole or in part, may result in a Proposer’s disqualification or non-award of the Contract; and
4. Where the Proposal is submitted by a corporate Proposer, such Certification of Compliance shall be deemed to have been authorized by the Proposer and such authorization shall be deemed to include the signing and submission of such Proposal; and
5. The successful Proposer’s failure to adhere to the Cybersecurity Provisions during the term of the Contract shall be considered an event of default pursuant to the terms and conditions of the Contract.

NO FURTHER TEXT ON THIS PAGE; REQUIRED CERTIFICATION PAGE FOLLOWS

MTA CYBERSECURITY TERMS AND CONDITIONS
(Long Form)

A. Definitions.

1. Authority: shall mean the Metropolitan Transportation Authority (“MTA”) and its subsidiaries and affiliates.
2. Authority Data: shall mean the following regardless of whether it is contained in existing or newly created in the future physical or electronic media at rest or in motion, any and all
 - a. Personal Information as such term is defined herein;
 - b. all other data, information and documentation of the Authority including current and revised technology assets and systems, procedures and methodologies for designing implementing or maintaining in general and specifically, with information technology and physical and electronic security;
 - c. the Authority’s owned, licensed, or subscribed inventions, ideas and designs, design documents, equipment technology and software;
 - d. reports and studies whether prepared by Authority, the Contractor or a third-party and whether in development or completed; and
 - e. data, information, documentation and material prepared by or for the Contractor, any subcontractor, or by their respective consultants, agents, officers or employees in connection with performance of the Work;
 - f. Confidential Information;
 - g. Security Sensitive Information, and
 - h. the results of the Work; notwithstanding the foregoing, the Contractor’s intellectual property shall not be deemed Authority Data.
3. Personal Information or Personal Identifiable Information: shall mean
 - a. any representation of information that permits the identity of an individual to whom the information applies to be reasonably inferred by either direct or indirect means;
 - b. information: (i) that directly identifies an individual (e.g., name, address, social security number or other identifying number or code, telephone number, email address, code, symbol, mark or other identifier) or (ii) by which the Authority or other agency intends to identify specific individuals in conjunction with other data elements, i.e., indirect identification. These data elements may include a combination of gender, race, birth date, geographic indicator, and other descriptors; and
 - c. information permitting the physical or online contacting of a specific individual shall be deemed Personally Identifiable Information. Such Personal Information can be maintained in either paper, electronic or other media.
4. Confidential Information: as used in this Article shall mean any and all data, information and any other content, contained in any media including, but not limited to electronic, paper, or verbal interactions by either party or their Representatives regarding the Purpose that: (i) concerns Authority Data, SSI, employee information, pricing information, pricing

models, assessments, information APPENDIX IV concerning the Authority's present and/or future business operations and processes, methods, research, procedures, operations, computer systems, technology, studies, information concerning current and/or former Authority employees, contractors and/or vendors, or other information of or about the Authority; (ii) is contained within notes, analyses, compilations, studies, interpretations, memoranda or other documents prepared by the Authority or the Contractor (disclosing party or receiving party, as the case may be) containing, in whole or in part, any such information furnished by the disclosing party, and all reproductions of such information; (iii) results from any discussions between the disclosing party and the receiving party relating to the Work; (iv) is marked confidential, restricted, or proprietary at the time of disclosure or a reasonable period thereafter; or (v) by the nature of the information itself, or the circumstances surrounding its disclosure, should in good faith be treated as confidential.

5. Contractor: as used in this Article shall mean the vendor, contractor, individual or organization that enters into the Contract or Agreement to perform the Work pursuant to the Contract Documents.
6. Covered Contractor Information System: shall mean an information system that is owned or operated by a contractor that processes, stores, or transmits Authority Data.
7. Work: as used in this Article shall mean as all the required obligations of the Contractor under the Contract or Agreement including but not limited to, the performance of any labor or services, the supplying of any goods, materials or personnel, the furnishing of any equipment, supplies or any other resources or requirements or deliverables necessary for the performance of the work and/or required by the Contract Documents including any scope of work and any modifications to the Contract or Agreement, if any.
8. Security Incident: shall mean (i) an occurrence that actually or imminently jeopardizes, without lawful authority, the confidentiality, integrity, or availability of a Covered Contractor Information System or any Contractor system that connects to or otherwise impacts a Covered Contractor Information System; or (ii) constitutes a violation or imminent threat of violation of law, security policies, security procedures, or acceptable use policies that impact a Covered Contractor Information System or any Contractor system that connects to or otherwise impacts a Covered Contractor Information System.
9. Security Sensitive Information (SSI): as used in this Article shall mean any documents and other materials designated as such that contain data that is capable of compromising the security or integrity of the disclosing party's security systems (e.g., IT servers, train signal and communication systems, physical security systems, supervisory control and data acquisition systems, communications rooms, etc.) including information that would allow an individual to duplicate, skim, counterfeit, or otherwise hack the disclosing party's systems or individual accounts within the disclosing party's systems; and that are confidential or sensitive in nature and must not be disclosed to the public, whatever the form or storage medium, disclosed prior to, or subsequent to, the date hereof. The SSI that is covered by this Agreement is any information including, but not limited to, the disclosing party's email communications systems; MTA IT security operating procedures and

emergency services plans; and IT ~~APPENDIX~~ system locations, and other materials related to MTA security systems that is provided by, or on behalf of, the MTA.

B. Compliance with Applicable Laws, and Authority Security Policies and Procedures.

1. The Contractor shall have in place during the term of the Contract a documented information security program with necessary controls, protocols and related policies that align with the applicable standards and policies set forth in the New York State Office of Information Technology Services Security Policies, which are located at https://its.ny.gov/policies?f%5B0%5D=filter_term%3A106.

In the event Contractor's own policies conflict with the applicable standards and policies set forth in the New York State Office of Information Technology Services Security Policies, Contractor shall promptly provide written notice to (i) the Project Manager and (ii) the Authority by email to ThreatIntel@mtahq.org.

2. In accordance with the National Defense Authorization Act and the Secure and Trusted Communications Networks Act of 2019 (the "Act"), the Contractor shall not provide telecommunications, video conference equipment and/or other equipment and services covered under the Act (the "Equipment"), under the Contract, that is included on the Covered List as defined therein and as may be amended from time to time. (<https://www.fcc.gov/supplychain/coveredlist>).
3. The Contractor shall deploy a system security plan (SSP) for ensuring the security of the Authority's systems and data. The SSP and associated technical, organizational and security measures shall align with the information security management system (ISMS) family of standards as published by the International Organization for Standardization (ISO) and the International Electrotechnical Commission (IEC), also known as the ISO/IEC 27000 series, the NIST cybersecurity framework, or the CIS Critical Security Controls version 8 security framework, as each may be modified or replaced from time to time. Notwithstanding the generality of the foregoing obligations, if applicable to the Work, the Contractor shall comply with SAE International applicable standards, as the same may be modified or replaced from time to time.
4. The Contractor shall implement and maintain security measures that meet or exceed the MTA Cybersecurity Requirements (Long Form), which are attached as Exhibit A, incorporated herein by reference ("Baseline Cybersecurity Requirements") and made a part hereof. At a minimum, the Contractor shall comply with the Baseline Cybersecurity Requirements.

C. Data Privacy and Information Security.

1. The Contractor's existing methods and procedures shall be in compliance with these terms and conditions and the Baseline Cybersecurity Requirements. Should the Authority require the Contractor to make changes to its cybersecurity compliance during the term of the Contract or Agreement, the Contractor shall work with the Authority to agree on the

changes to the cybersecurity compliance. Any agreed upon changes to the Baseline Cybersecurity Requirements shall be memorialized in a change order to the Contract.

2. The Contractor shall provide the Authority, upon request, with information regarding the Contractor's compliance and implementation of the Baseline Cybersecurity Requirements.

D. Protection of Data; Notice.

1. The Contractor shall appoint a team of dedicated personnel to work with the Authority during any Security Incident Response (the "Cyber Incident Response Team"). The Cyber Incident Response Team shall be maintained by the Contractor for the duration of the Contract or Agreement. The Contractor shall, within twenty-four hours (24) hours of the Authority's Notice of Award (or execution of the Contract or Agreement if no Notice of Award has been issued), provide, in writing, a Contractor email address and/or phone number that will enable the Authority to reach the Cyber Incident Response Team. In the event of any changes to the above email address and/or phone number during the term of the Contract, the Contractor shall promptly provide such new information to the Authority, to the attention of the Project Manager, in writing.
2. As applicable to the Work, the Contractor shall comply with the New York Stop Hacks and Improve Electronic Data Security Act (also known as the SHIELD Act) in the performance of the Work, which, among other things, imposes on entities identified in the SHIELD Act:
 - a. particular data breach notification requirements; and
 - b. data security safeguards.
3. As applicable to the Work, the Contractor shall comply with Health Insurance Portability and Accountability Act of 1996 (HIPAA) Privacy, Security and Breach Notification Rules.
4. Unless otherwise provided by law or as further detailed in the Contract or Agreement, in the event of an any act, error or omission, negligence, misconduct, or breach that compromises or is suspected to compromise the security, confidentiality, or integrity of Authority Data or the physical, technical, administrative, or organizational safeguards put in place by the Vendor that relate to the protection of the security, confidentiality, or integrity of Authority Data, the Contractor shall, as applicable:
 - a. promptly notify (i) the Project Manager and (ii) the Authority by email to ThreatIntel@mtahq.org, as well as verbally by phone at (646) 252-7300 as soon as practicable but no later than twenty-four (24) to seventy-two (72) hours after initially becoming aware of such occurrence;
 - b. perform or take any other actions required to comply with applicable law as a result of the occurrence;
 - c. cooperate with the Authority in investigating the occurrence, including making available all relevant information reasonably required to assess risks to Authority

Data from a Security Incident ~~APPENDIX~~ comply with applicable law, in referring the occurrence to appropriate law enforcement agencies, and in issuing appropriate press releases and responding to the media;

- d. in the case of Personally Identifiable Information (PII), (i) notify the Authority, to the attention of: (1) the Project Manager, within twenty-four (24) to seventy-two (72) hours of a confirmed breach and (2) by email to ThreatIntel@mtahq.org, as well as verbally by phone at (646) 252-7300; and (ii) at the Authority's sole election, notify the affected individuals who comprise the PII as soon as practicable but no later than is required to comply with applicable law, or, in the absence of any legally required notification period, within seventy-two (72) hours of the Authority providing written notification to the Contractor requiring the Contractor to notify the affected individuals; and
- e. provide to the Authority a detailed corrective action plan as soon as possible, but no later than within ten (10) business days of the occurrence, describing the measures the Contractor will undertake and the implementation schedule for such measures, to both resolve the breach and prevent a future occurrence. If the Contractor is unable complete the corrective action within the required timeframe, in addition to the remedies provided herein, the Authority may contract with a third party to provide the required product, service or system until (i) corrective actions have been taken, (ii) the Authority is able to procure from the Contractor the product, service or system in a manner acceptable to the Authority, and/or (iii) until the Authority has completed a new procurement for a replacement product, service or system (the "Mitigation Efforts"). In such case, the Contractor shall reimburse the Authority for the reasonable, direct out of pocket costs related to the Mitigation Efforts following notice and demand for payment by the Authority.
- f. The Contractor shall be responsible for recreating lost Authority Data pertinent to the Work as a result of a Security Incident, if any, in the manner and on the schedule set by the Authority without charge to the Authority.

E. Supply Chain Risk.

1. Upon commencement of the term of the Contract or Agreement, the Contractor shall establish, document, and implement risk management practices for supply chain delivery of the Work consisting of (a) electronic components or any firmware and software, and/or (b) cloud services and host services that process and/or host Authority Data, provided under this Contract or Agreement, if any. The Contractor shall maintain documentation on its: chain-of-custody practices, information protection practices, and integrity management program for electronic components, firmware, software, cloud services, and host services provided by sub-suppliers. Upon request, the Contractor shall provide the Authority with summary documentation of the foregoing.
2. The Contractor shall identify the countries where the development, production and maintenance for the electronic components, firmware, software, and software as a service which form a part of the Work, cloud services and host services that process and/or host

Authority Data provided under this ~~APPENDIX M~~ Agreement are performed (“List of Supplier Countries”). The Contractor shall notify the Authority of changes to the List of Supplier Countries promptly but no less than seven (7) days after the Contractor knows or has reason to know that the list has changed.

F. Prohibition Against Offshore Work

1. The Contractor shall not access, transmit, transfer, or otherwise store Authority Data, Personal Information, or any MTA-provided information that is labeled “confidential” or “sensitive”, outside of the United States without the Authority’s prior written approval, which may be withheld for any reason. Notwithstanding the foregoing, if the Contractor is currently performing any work outside the United States (by its employees and/or third parties), the Authority shall permit the Contractor to perform the Work offshore, provided:
 - a. Within ten (10) days of Contract award or execution of a Change Order, as applicable, the Contractor submits written notification to the Authority where the Authority Data is stored outside the United States (“Offshore Work Request”). Such notification shall be submitted, in writing, to: (1) the Project Manager and (2) the Authority by email to ThreatIntel@mtahq.org; and
 - b. Any individual providing Work offshore is subject to the same information security protocols, training, and confidentiality requirements (including requirements relating to access and storage of data on devices) as the Contractor; and
 - c. The Contractor flows down the provisions of these MTA Cybersecurity Terms and Conditions and the requirements in Attachment A to its subcontractors.
2. The Contractor represents that it will not perform Work or store Authority Data, in any of the countries listed in the US Dept. of the Treasury OFAC Sanctions Programs and Country Information List (“Sanctions List”), which Sanctions List may be updated from time to time: <https://ofac.treasury.gov/sanctions-programs-and-country-information>, or any other country identified by the Authority at <https://new.mta.info/doing-business-with-us/procurement/guide-for-contractors-and-suppliers>. The Authority will not approve the storage of Authority Data in any country on the Sanctions List.
3. The Authority reserves the right to request additional information from the Contractor regarding the Work performed offshore.

G. Cybersecurity Insurance.

APPENDIX M

In addition to the insurance requirements described in the Agreement, the Authority may require the Contractor, at its own expense, to procure and maintain in full force and effect during the term of this Contract or Agreement, a cybersecurity-related policy of insurance, if so required by the Authority in Schedule A – Insurance Requirements; such policy shall have the minimum coverage set forth therein.

H. Patching Governance.

1. The Contractor shall maintain documentation regarding its patch management program (including third-party hardware, software, and firmware) for the Covered Contractor Information System.
2. The Contractor shall provide documentation regarding its patch management program in the event any electronic device, asset, or equipment is required to be connected to the assets of the Authority during the provision of Work and Services under this Contract or Agreement. This documentation shall be provided to the Authority, to the attention of the (1) Project Manager, and (2) the Authority by email to ThreatIntel@mtahq.org, and shall include information regarding:
 - (a) the resources and technical capabilities to sustain this program and process such as the Contractor's method or recommendation for how the integrity of a patch is validated by the Authority and
 - (b) the Contractor's approach and capability to remediate newly reported zero-day vulnerabilities.
3. Unless otherwise approved by the Authority in writing, current or supported versions of the Contractor's work, products, services and systems ("Items") shall not require the use of out-of-date, unsupported, or end-of-life version of third-party components.
4. The Contractor shall verify and provide documentation to the Authority to the attention of the Project Manager that procured Items (including third-party hardware, software, firmware, and services) have appropriate updates and patches installed prior to delivery to the Authority.

I. Updates.

1. To the extent the Contractor's Services include the design, delivery, integration, and/or provision of its proprietary software and firmware, on-premise software solution, or the Services involve changes to the Authority's systems, the Contractor shall provide appropriate security software and firmware updates on such software and firmware, solution, and Authority systems to remediate or mitigate newly discovered vulnerabilities or weaknesses every thirty (30) calendar days, and within every fourteen (14) calendar days to the Authority, to the attention of the Project Manager, if an update is required to remediate critical vulnerabilities. If updates cannot be made available by the Contractor

within these time periods, the Contractor shall provide mitigations and/or workarounds every forty-five (45) calendar days.

2. The Contractor shall maintain a vulnerability management program and shall remediate newly discovered vulnerabilities or weaknesses in accordance with such program.

J. Cooperation with Authority Cybersecurity Reviews.

1. The Contractor acknowledges that the Authority has a significant interest in protecting and securing Authority Data and that maintaining cybersecurity is an essential element of the Work. The Contractor shall cooperate with the Authority's compliance and cybersecurity reviews during the term of the Contract or Agreement, not to exceed one time per year, except in the event of a Security Incident, which may trigger an unplanned additional cybersecurity review in a given year, and shall provide (1) information; (2) responses to inquiries and questionnaires in written form, when requested, and (3) supporting documentation to facilitate the Authority's review(s). Such reviews will be coordinated by the Authority's Project Manager.
2. The Contractor shall submit to the Authority, to the attention of the Project Manager, the following: a SOC 2 Type 2 Report, or the most recent Independent Service Auditor Report (each, a "Report"), which validate the Contractor is in compliance with security, processing integrity, confidentiality, and privacy controls for the systems the Contractor uses to perform the Work, within seven (7) days of Notice of Award or, if no Notice of Award is issued by the Authority, within seven (7) days of execution of the Contract or Agreement. When the Contractor's Report has expired, the Contractor shall submit an updated Report or, if a new Report is not immediately available, a bridge letter from the Contractor's senior management, attesting that the Contractor is in the process of arranging the annual Report and that there have been no material changes to the Contractor's system of internal controls that would adversely affect said renewal(s), within seven (7) days after expiration of the preceding Report. The obligations set forth herein shall be ongoing throughout the term of the Contract or Agreement.

K. Destruction of Authority Data.

1. All Authority Data including, but not limited to, all copies and reproductions thereof and all documents and materials derived from such Authority Data including any data in electronic form (i.e. cloud hosted Authority Data, etc.) provided to, prepared by or for the Contractor or any of its employees, subcontractors, agents and representatives (collectively, the "Contractor Personnel") shall, irrespective of whether such is in writing or stored electronically, be returned to the Authority or irrevocably destroyed by the Contractor and the Contractor Personnel, at the Authority's election, promptly upon the earlier of: (i) the termination or expiration of the Contract or Agreement; or (ii) the Authority's request.
2. Pursuant to paragraph 1, the Contractor shall destroy the Authority Data as described herein. The Contractor shall, and shall cause its Contractor Personnel to, irrevocably

destroy the Authority Data by: (i) ~~APPENDING~~ physical documents; (ii) wiping clean the device memory on all equipment, machines, databases, servers, cloud storage or other electronic media on which the Authority Data is located; and (iii) sanitize storage media, as well as temporary files and backup files on which the Authority Data is stored. The Authority may request certification that destruction has been irrevocably completed for all primary, backup and any other applicable systems or mediums from the Contractor which shall be promptly provided by the Contractor for itself and for the Contractor Personnel; but in no event, not later than fourteen (14) days following the Authority's request.

3. Notwithstanding the foregoing, Contractor may, in accordance with legal, disaster recovery and records retention requirements, retain one copy of data that are stored in tape backups and may retain one copy of work product developed in connection with the Services, provided that all such retained data and work product shall (i) remain subject to the confidentiality obligations contained herein and Contractor will not access any Authority Data retained in tape backups except pursuant to legal and/or disaster recovery requirements, and (ii) be destroyed in the manner described in Paragraph 2 hereinabove at the end of the retention period pursuant to the Contractor's record retention policy.

L. Subcontractor Compliance.

1. The Contractor shall flow down these MTA Cybersecurity Terms and Conditions to its subcontractors, agents and representatives who perform any Work pursuant to the Contract or Agreement.
2. The Contractor shall ensure that each of its subcontractors, agents and representatives comply with these MTA Cybersecurity Terms and Conditions.

M. Cybersecurity Training.

The Contractor shall ensure that any individual or individuals who have access to Authority Data under this Contract or Agreement undergo cybersecurity awareness training from a reputable training source, including IT professionals, at the Contractor's cost. The Authority shall not be required to pay any costs related to such training. The Contractor shall maintain detailed cybersecurity training records during the term of the Contract or Agreement and shall, upon request of the Authority, either make such documents available to the Authority for inspection or provide the Authority with written confirmation that the Contractor's employees completed such training.

N. Conflict.

If there is a conflict between these MTA Cybersecurity Terms and Conditions (Long Form) and the Contract Terms and Conditions, the most stringent provision shall apply.

APPENDIX M
EXHIBIT A

MTA Cybersecurity Requirements (Long Form)

MTA CYBERSECURITY REQUIREMENTS

(Long Form, except for on-premises development and/or delivery of systems to the Authority)

1. Applicability:

These MTA Cybersecurity Requirements (“Requirements”) apply to all Contractors, which have access to or manage Authority Data and/or Authority systems. These Requirements apply to (a) all Contractor’s operating and back office systems (in the cloud, offsite or on-premises), automated and manual, including systems managed or hosted by third parties on behalf of the Authority, and (b) all Authority Data, regardless of the form or format, which is created or used in support of business and operational activities of the Authority.

2. Defined Terms:

Defined terms used herein shall have the same meaning as set forth in the Cybersecurity Terms and Conditions.

3. Data Hosting Requirements, contractor shall:

- a. with respect to the Contractor’s hosting services proposed for housing Authority Data shall be compliant with one of the following standards: ISO 27001, or SOC2 Type 2.
- b. cause its hosting and storage of Confidential Information to be compliant with ISO27017 or ISO 27018.
- c. cause its hosting and storage of Security Sensitive Information to be compliant with FedRAMP Moderate.
- d. Ensure that Authority Data and processing is isolated from other customers.
- e. Ensure that Authority Data remain within the continental United States at all times.

4. General Requirements, contractor shall:

- a. PCI DSS (Payment Card Industry Data Security Standards) compliance shall be required when accepting or processing payment cards or handling Personally Identifiable Information.
- b. When the Work involves Industrial Controls Systems/SCADA environments, such as building management, HVAC, security, and fire alarm systems, cause such systems to be designed and configured in accordance to NIST SP 800-82 R2.
- c. Securely destroy Authority Data in all formats (e.g. Server, Disk, CD/DVD, backup tape, and paper) when requested by the Authority. Data shall be permanently deleted and be unrecoverable. Certificates of destruction must be retained by the Contractor and made available to the Authority upon request. The foregoing shall be pursuant to the Cybersecurity Terms and Conditions.
- d. In the absence of a Confidentiality provision in the Agreement, and if the Contractor will receive Security Sensitive Information, sign and submit an Authority non-disclosure agreement (NDA) to the Authority procurement.
- e. MTA IT Security logging standard, or industry standard equivalent, must be used for the Contractor’s operating system, networking equipment, and application used to perform the Work. For Contractor’s systems which are accessed by MTA employees, the Contractor shall submit all logs real time to the Authority’s Security and Event Monitoring System.

5. Operating Systems, contractor shall:

- a. Use only commercially supported Operating Systems and maintain timely security patching.
- b. Configure Operating Systems based on the CIS Hardening Standard, (<https://www.cisecurity.org/cisbenchmarks>) with non-essential services disabled. Exceptions to the Hardening standard must be documented and approved through the Contractor's Change Control process.
- c. Configure the Operating System with NIST or equivalent standards for local and network password management (Password Aging, Password Expiration, Password Length, Multifactor, etc.).
- d. Ensure that Operating System protection tools are installed and centrally managed to mitigate exploits, malware, malicious code, or viruses.
- e. Ensure that Clear-text and weak cipher protocols are disabled and not used for data transfer.
- f. Ensure that Network Interface Cards are not multi-homed or used for routing.
- g. Ensure that Inbound internet sourced traffic to systems is terminated at a DMZ or behind a next-generation firewall.
- h. Ensure that Internet-bound traffic from system utilizes a proxy or other form of security inspection.
- i. In the event that the Contractor connects to MTA's network, the Contractor shall ensure that split tunneling is not enabled (access to non- Authority internet while connected to Authority resources).
- j. Ensure that the Contractor maintains appropriate records in IP Address Management, and DNS for all systems.

6. Authentication, contractor shall:

- a. Maintain a plan for identity management consisting of role-based user accounts which isolate access to Authority Data. All account activities, including role changes, must be logged.
- b. Ensure that all credentials are not passed over the network in clear-text or with weak encryption ciphers.
- c. Use secure, dedicated, and privileged-access workstation (PAW) , or dedicated administrative accounts, to administer systems hosting and processing Authority Data.
- d. Use Multifactor Authentication for administrative users on cloud/internet-facing Contractor systems.
- e. In the event that MTA employees, its consultants, and/or representatives, access the Contractor's systems, the Contractor shall integrate application authentication into MTA Identity Management Solution (IDMS) via SAML 2.0.
- f. In the event that the Contractor's systems are not integrated with the Authority's identity management system, the Contractor shall ensure that Authority users, its consultants, and/or representatives utilize Multifactor Authentication to access the Contractor's system(s) and application(s) via the Internet.
- g. Ensure accounts not accessed within 90 days are either automatically disabled or have their passwords expired.
- h. Perform annual role reviews of active accounts (applicable to non-Authority managed environments).

7. Encryption, contractor shall:

APPENDIX M

- a. Ensure that all encryption methods for data-in-motion and data-at-rest meet or exceed Encryption standards (FIPS-140/NIST).
- b. Ensure that data transfers between hosts are encrypted.
- c. Ensure that OS/data volumes in the cloud are encrypted.
- d. Ensure that data files that contain PII are encrypted.
- e. Ensure that PII data residing in databases are encrypted.
- f. Ensure data backups are encrypted.
- g. Ensure that encryption key management system is on a separate platform from the data and its application (keys are not stored with data).
- h. To the extent the Work includes development of a system, application, and/or software solution for the Authority, provide exclusive ownership of encryption keys to the Authority.

8. Networking, contractor shall:

- a. Ensure that Intrusion Prevention Systems are implemented on networks with connectivity to the Internet and networks with sensitivity zones and/or trust boundaries.
- b. In the event that the Work delivered to the Authority requires cellular connectivity, the Contractor shall ensure that public cellular-based solutions employ a private cellular cloud meeting segregation requirements outlined in this document.
- c. Ensure that systems are deployed in a multi-tier firewall segmented network architecture, or cloud gateway (e.g., Microsoft Azure):
 - User Workstations
 - Operational application/system servers
 - Backup and Storage
 - Development
 - QA and Testing
 - Programmable Logic Controllers
 - Sensors
 - Wireless Systems
 - Internet of Things (IOT).
- d. Ensure that listening ports/services are protected by firewalls and filters to inspect traffic between segments and hosts.
- e. Ensure that management of systems are restricted through firewall or access control lists over secure protocols and that they are managed over a secure network or VPN.
 - i. Perform annual firewall rule audits (applicable to non-Authority managed environments).
- f. Disable unused functions on network devices.
- g. Implement a tiered firewalled architecture that is restricted to communications where all traffic is monitored and filtered.
- h. Implement appropriate security controls to ensure the integrity and confidentiality of data flowing across the network.

9. In the event Contractor maintains Control System End Devices, Contractor shall:

- a. Provide physical and cyber security for ~~APPENDIX M~~ ~~including~~, but not limited to, authentication, encryption, access control, event and communication logging, monitoring, and alarming to protect the device and configuration computer from unauthorized modification or use.
- b. Clearly identify the physical and cyber security features and provide the methodologies for maintaining the features, including the methods to change settings from the Contractor-configured or manufacturer default conditions.
- c. Shall verify that the addition of security features does not adversely affect connectivity, latency, bandwidth, response time, and throughput, including during the SAT when connected to existing equipment.
- d. Remove or disable all software components that are not required for the operation and maintenance of the device.
- e. Provide, within a pre-negotiated period, appropriate software and service updates and/or workarounds to mitigate all vulnerabilities associated with the product and to maintain the established level of system security.

10. Vulnerability Management, contractor shall:

- a. Ensure that all system components (Hardware, Software, Hypervisor, Operating System, Database, Network/Firewall Equipment, etc.) are managed within a vulnerability management and patching program. Documentation and reporting on program activities and gaps must be made available to MTA IT Security upon request.
- b. Ensure that third-party security assessments are conducted on an annual basis for the system and provided to the Authority.
- c. Ensure that periodic penetration tests are performed to assess system configuration and security vulnerabilities for remediation.
- d. Submit annual security reports to the Authority detailing vulnerability management, penetration tests, security incidents, and enhancements and changes to the infrastructure.
- e. Keep all system components updated to vendor supported releases and maintain current security updates. To the extent possible, critical patches should be installed within one week of patch release. Deviations must be documented and a "plan to cure" developed to bring the patch level current.
- f. In the event Contractor manages a cloud-hosted or on-premises system on behalf of the Authority, Contractor shall allow the Authority to conduct an independent penetration test upon request.

11. Incident Management, contractor shall:

- a. Comply with the incident management requirements in Section D (Protection of Data; Notice) of the MTA Cybersecurity Terms and Conditions.

12. In the event Contractor is using mobile devices to manage systems that process and store Authority Data, contractor shall:

- a. Deploy a centralized mobile device management solution to manage all mobile devices permitted to store, transmit or process Authority Data.
- b. Ensure the use of encryption for devices permitted to store, transmit or process sensitive Authority Data.

- c. Ensure that password policies, applicable to mobile devices are documented and enforced.

APPENDIX M

13. Application Security, contractor shall:

- a. Ensure that any software (i) that is delivered to the Authority or (ii) that processes and/or stores Authority Data adheres to industry standards and best practices for architectural standardization, secure coding standards, and security testing procedures.
- b. Employ threat modeling techniques in the design and assessment phases of the Software Development Life Cycle (SDLC) for systems (i) that are delivered to the Authority or (ii) that processes and/or stores Authority Data, and incorporate realistic security scenarios during application security assessment.
- c. Perform static analysis scans as part of security-focused reviews and validation of the use of secure coding standards.
- d. Perform dynamic scans as part of applications testing, production deployment, regular health checks, change management requests and audits.
- e. Conduct overall software and systems cybersecurity assessment, which may include penetration testing, evaluating external infrastructure, perimeter assessment, web application testing, internal network assessments, wireless security testing and red teaming.
- f. Have a notification and alert process for vulnerabilities, as well as a documented response plan for addressing newly identified vulnerabilities. Remediation may include patches, updates, security fixes, component replacements, or other steps as dictated by the situation.
- g. Ensure that any open-source, third party, commercial components used (i) as part of Authority deliverables, and (ii) in software and/or systems that process and/or stores Authority Data have been validated through security assessments and remain as such during their operational use at the Authority.
- h. Ensure that application APIs have been validated through security assessments and security measures are in place to protect both data and application. Such measures may include gateways, secure protocol, authentication, and keys.
- i. Use, at minimum, NIST or equivalent security logging standard for the applications, and ensure that logging profiles are available and configurable to log events at various levels for various purposes (debugging, verbose, illegal requests, failed access, etc.).

14. Privacy and Security Plan, contractor shall:

- a. Only upon receiving prior written authorization from the Authority, share Authority Data with Contractor employees, its agents, distributors, resellers, subcontractors, officers, or other third parties who have a need-to-know in order to perform the Work.

15. Exceptions

- a. Any exceptions to these MTA Cybersecurity Requirements must be approved in writing by MTA IT Cybersecurity.

TERMS& ABBREVIATIONS	DEFINITIONS
CIS	Center for Internet Security
FedRAMP	The Federal Risk and Authorization Management Program. Governmentwide program that provides a standardized approach to security.
Government Compliant	Cloud services that are compliant for hosting U.S. Federal, State and local agencies and are isolated from commercial, public and other cloud services. (e.g., AWS GovCloud; Azure Government).
ISO 271001	Specification for information security management system (ISMS). ISMS is a framework of policies and procedures that includes all legal, physical and technical controls involved in an organization's information risk management program.
ISO 271017	Provides guidance on the information security aspects of cloud computing, recommending the implementation of cloud-specific information security controls that supplement the guidance of the ISO 27002 and ISO 27001 standards.
ISO 271018	Code of practice that focuses on protection of personal data in the cloud. This provides implementation guidance on ISO 27002 controls applicable to public cloud Personally Identifiable Information (PII).
SIEM	Security information and event management
SOC 2 Type II	Service Organization Controls. SOC 2 concerns the internal controls in place at the third-party service organization. Type II reports, concern policies and procedures over a period of time – systems must be evaluated for a minimum of six months.
API	Application Programming Interface

APPENDIX M

APPENDIX/SCHEDULE [Click to insert number/letter]

**PROPOSER CERTIFICATION OF COMPLIANCE
WITH THE METROPOLITAN TRANSPORTATION AUTHORITY (“MTA”)
CYBERSECURITY PROVISIONS**

PROPOSERS ARE HEREBY NOTIFIED THAT THIS SOLICITATION IS SUBJECT TO THIS CERTIFICATION OF COMPLIANCE, WHICH REQUIRES PROPOSERS TO ACKNOWLEDGE AND CERTIFY COMPLIANCE WITH THE MTA CYBERSECURITY REQUIREMENTS AND THE MTA CYBERSECURITY TERMS AND CONDITIONS (COLLECTIVELY, THE “CYBERSECURITY PROVISIONS”). THIS CERTIFICATION SHALL BE INCORPORATED HEREIN BY REFERENCE INTO THE CONTRACT AWARDED FROM THIS SOLICITATION (THE “CONTRACT”).

By submitting a Proposal, the Proposer hereby acknowledges and agrees as follows:

1. The Proposer has read, understands, and shall comply with the Cybersecurity Provisions in the performance of the work under the Contract (including, but not limited to, the performance of services and the provision of equipment, parts, commodities, or other goods sold); and
2. A Proposal may not be considered for award, nor shall any award be made to a Proposer who has not submitted the Certification of Compliance below. Notwithstanding the foregoing, if the Proposer cannot make the Certification of Compliance required by this Appendix/Schedule, the Proposer shall acknowledge its inability to comply, or partially comply, with the Cybersecurity Provisions by making the Certification of Compliance with Deviations below. In the event of a Certification of Compliance with Deviations, the Proposer shall (a) complete the attached MTA Cybersecurity Provisions Compliance Worksheet indicating any exceptions to the Cybersecurity Provisions and detailing any compensating controls the Proposer has in place (the “Deviations”); and (b) provide both the Certification of Compliance with Deviations and the completed MTA Cybersecurity Provisions Compliance Worksheet with its Proposal. The Certification of Compliance with Deviations and the MTA Cybersecurity Provisions Compliance Worksheet shall be evaluated by the MTA in its sole and absolute discretion in connection with the Proposal; and
3. The MTA reserves the right to reject any Deviations to the Cybersecurity Provisions in the Certification of Compliance with Deviations. The Proposer acknowledges that the MTA has no obligation to accept any Deviations and that the MTA’s rejection of any Deviations, in whole or in part, may result in a Proposer’s disqualification or non-award of the Contract; and
4. Where the Proposal is submitted by a corporate Proposer, such Certification of Compliance shall be deemed to have been authorized by the Proposer and such authorization shall be deemed to include the signing and submission of such Proposal; and
5. The successful Proposer’s failure to adhere to the Cybersecurity Provisions during the term of the Contract shall be considered an event of default pursuant to the terms and conditions of the Contract.

NO FURTHER TEXT ON THIS PAGE; REQUIRED CERTIFICATION PAGE FOLLOWS

APPENDIX M

REQUIRED PROPOSER CERTIFICATION OF COMPLIANCE WITH THE CYBERSECURITY PROVISIONS

By submission of this Proposal, the Proposer and each person signing on behalf of any Proposer certifies, and in the case of a joint Proposal each party thereto certifies, as to its own organization, under penalty of perjury, that the Proposer has read, understood, and shall comply with all Cybersecurity Provisions.

1. **CERTIFICATION OF COMPLIANCE:** By signing below, the Proposer certifies that the individual signing on its behalf is authorized to sign this certification and that statements made above are complete, true, and accurate.

Proposer Name: [Click here to enter Proposer name](#)

Proposer Signature:

Date: [Click or tap to enter a date](#)

Print name of signatory: [Click here to enter name of signatory.](#)

Print title of signatory: [Click here to enter title of signatory.](#)

OR

REQUIRED PROPOSER CERTIFICATION OF COMPLIANCE WITH THE CYBERSECURITY PROVISIONS

By submission of this Proposal, the Proposer and each person signing on behalf of any Proposer certifies, and in the case of a joint Proposal each party thereto certifies, as to its own organization, under penalty of perjury, that the Proposer has read, understood, and shall comply with the Cybersecurity Provisions as certified below. The Proposer acknowledges by signing this certification that, in the event of a proposed contract award, the Proposer will be required to provide an updated certification of compliance with MTA's Cybersecurity Provisions prior to award.

2. **CERTIFICATION OF COMPLIANCE WITH DEVIATIONS:** By signing below, the Proposer certifies that it is unable to fully comply with the Cybersecurity Provisions as set forth in this Proposer Certification of Compliance with the MTA Cybersecurity Provisions and has provided with its Proposal the MTA Cybersecurity Provisions Compliance Worksheet required by paragraph 2 hereof. The Proposer further certifies its understanding that the Proposer's submission of the Certification of Compliance with Deviations, and the MTA's acceptance of such Certification for evaluation, does not constitute the MTA's acceptance of any Deviations.

Proposer Name: [Click here to enter Proposer name](#)

Proposer Signature:

Date: [Click or tap to enter a date](#)

Print name of signatory: [Click here to enter name of signatory.](#)

Print title of signatory: [Click here to enter title of signatory.](#)

**APPENDIX M
MTA CYBERSECURITY PROVISIONS COMPLIANCE WORKSHEET**

If the Proposer is submitting a Certification of Compliance with Deviations with the MTA Cybersecurity Provisions, the Proposer must complete the table below and submit this Worksheet with its Proposal.

Instructions: If the Proposer is *not* compliant, or is *partially* compliant, with a particular Cybersecurity Provision, please explain the Proposer’s Deviation(s) with any qualifications or pertinent details; and provide information on compensatory controls that the Proposer has implemented. The MTA will evaluate the Proposer’s submission and conduct a risk assessment of the Deviations. The Proposer must be prepared to discuss the Deviations with the MTA as part of the Solicitation process.

<i>Please copy and paste all Deviations to the Cybersecurity Provisions</i>	NON or PARTIALLY COMPLIANT	PLEASE EXPLAIN & DETAIL ANY COMPENSATING CONTROLS
[PROVISIONS].		

Certification Under Executive Order No. 16 Prohibiting State Agencies and ^{APPENDIX M} Authorities from Contracting with Businesses Conducting Business in Russia

Executive Order No. 16 provides that “all Affected State Entities are directed to refrain from entering into any new contract or renewing any existing contract with an entity conducting business operations in Russia.” The complete text of Executive Order No. 16 can be found [here](#).

The Executive Order remains in effect while sanctions imposed by the federal government are in effect. Accordingly, vendors who may be excluded from award because of current business operations in Russia are nevertheless encouraged to respond to solicitations to preserve their contracting opportunities in case the sanctions are lifted during a solicitation or even after award in the case of some solicitations.

As defined in Executive Order No. 16, an “entity conducting business operations in Russia” means an institution or company, wherever located, conducting any commercial activity in Russia or transacting business with the Russian Government or with commercial entities headquartered in Russia or with their principal place of business in Russia in the form of contracting, sales, purchasing, investment, or any business partnership.

Is Vendor an entity conducting business operations in Russia, as defined above? Please answer by checking one of the following boxes:

- 1. No, Vendor does not conduct business operations in Russia within the meaning of Executive Order No. 16.
- 2.a. Yes, Vendor conducts business operations in Russia within the meaning of Executive Order No. 16 but has taken steps to wind down business operations in Russia or is in the process of winding down business operations in Russia. (Please provide a detailed description of the wind down process and a schedule for completion.)
- 2.b. Yes, Vendor conducts business operations in Russia within the meaning of Executive Order No. 16 but only to the extent necessary to provide vital health and safety services within Russia or to comply with federal law, regulations, executive orders, or directives. (Please provide a detailed description of the services being provided or the relevant laws, regulations, etc.)
- 3. Yes, Vendor conducts business operations in Russia within the meaning of Executive Order No. 16.

The undersigned certifies under penalties of perjury that they are knowledgeable about the Vendor’s business and operations and that the answer provided herein is true to the best of their knowledge and belief.

Vendor Name: _____
(legal entity)

By: _____
(signature)

Name: _____

Title: _____

Date: _____