



The Metropolitan Transportation Authority

**NEW YORK CITY TRANSIT
Materiel Department**

NEW FARE PAYMENT SYSTEM

CONTRACT A-34024

**AGREEMENT
(TERMS AND CONDITIONS)**



NEW FARE PAYMENT SYSTEM

CONTRACT A-34024

BETWEEN

METROPOLITAN TRANSPORTATION AUTHORITY

AND

CUBIC TRANSPORTATION SYSTEMS, INC.

AGREEMENT

1.	Definitions	20
2.	New Fare Payment System Overview; Provision of Work.	20
2.1.	Scope of Work.....	20
2.2.	Inherent Work.	20
2.3.	General Quality of Work.....	21
2.4.	Relationship Among the MTA, the SI, and the MTA Group.	21
2.4.1.	Intended Third-Party Beneficiaries.	21
2.4.2.	Contract Interpretation of References to the MTA Group and the NFPS Agencies.	21
2.4.3.	MTA Authority; Scope of MTA Rights.	22
2.4.4.	MTA Right to Delegate Authority.....	22
2.4.5.	Treatment of Liability for MTA Group Actions.....	23
3.	Open System Overview.	24
3.1.	Open System Requirements.	24
3.1.1.	MTA Approval of Certain Proposal Components.	24
3.1.2.	Baseline NFPS Component Architecture Deviations Following Notice of Award. ...	24
3.1.3.	Baseline NFPS Component Architecture Deviations Prior to Final Design Review. .	24
3.1.4.	Final Design NFPS Component Architecture Deviations Following Final Design Review.....	25
3.1.5.	Deviation Proposal Content.	25
3.1.6.	MTA Review of Deviation Proposal.....	25
3.2.	MTA Substitution Rights and Rights to Add.....	26
3.2.1.	Qualified MTA-Substituted Products.	26
3.2.2.	Process; Comment Procedures and Terms.	26
3.2.3.	Substitution Products.	27
3.2.4.	Verified Additional Products.....	28
3.2.5.	Change-Order Additional Products.....	29
4.	Expanded Use of NFPS.	29
5.	Performance Schedule.	29
5.1.	Commencement and Completion Dates.....	29
5.2.	Schedule for Performance.	30
5.2.1.	SI Proposed Master Program Schedule.....	30
5.2.2.	Review and Approval of the Proposed Master Program Schedule.	30
5.2.3.	Updates to the Master Program Schedule.	30
5.2.4.	Changes to the Master Program Schedule.	30
5.2.5.	Effect of Acceptance of the Proposed Master Program Schedule or Changes.	30
5.2.6.	Format for Submissions Relating to the Master Program Schedule.....	31
5.2.7.	MTA Right to Update the Master Program Schedule.	31
5.2.8.	Accelerating the Substantial Completion Date.	31
5.2.9.	Work Acceleration.	31
5.3.	Beneficial Use and Substantial Completion Determinations.	32
5.3.1.	Initiation of Beneficial Use Review.	32
5.3.2.	MTA Beneficial Use Review.	32
5.3.3.	Outcome of Beneficial Use Review; No Waiver.	32
5.3.4.	Initiation of Substantial Completion Review.	32
5.3.5.	MTA Substantial Completion Review.....	32
5.3.6.	Outcome of Substantial Completion Review; No Waiver.	33

5.4.	Resolution of Beneficial Use Remaining Work and Remaining Work; Final Completion.....	33
5.4.1.	Determination of BU Remaining Work; BU Remaining Work List.	33
5.4.2.	Schedule for Completing BU Remaining Work.	33
5.4.3.	SI Failure to Complete BU Remaining Work.	34
5.4.4.	Determination of Remaining Work; Remaining Work List.	34
5.4.5.	Schedule for Completing Remaining Work.	34
5.4.6.	SI Failure to Complete Remaining Work.	34
5.4.7.	SI Removal of Materials.	35
5.4.8.	Determination of Final Completion.	35
5.5.	MTA Damages for Delay by the SI.	35
5.5.1.	Liquidated Damages for LD Non-Excusable Delays.	35
5.5.2.	Clarifications Regarding the Scope of Liquidated Damages.....	37
5.5.3.	Right to Deduct or Offset Liquidated Damages Against Amounts Owing to SI.....	39
5.5.4.	Limit of Liability for LD Non-Excusable Delays; Exclusive Remedy.	39
5.6.	NFPS Agency Delay or Cancellation of NFPS Agency-Supplied Services.	39
5.7.	Delays Concerning MTA Review; Certain Excusable Delays.	39
5.7.1.	Initial Applicable Review Period for Recoverable Submissions.	39
5.7.2.	Orderly Submission Requirement.	41
5.7.3.	Submission Quality Requirement.	41
5.7.4.	Notice to MTA of Submission Deadline.	41
5.7.5.	Mandatory Compliance with Each Requirement.	41
5.7.6.	MTA Review Periods Following an Initial Review.	42
5.8.	Delays Concerning Work Site Access; Certain Excusable Delays.	42
5.8.1.	Additional Work Site Access.	42
5.8.2.	Clarification Regarding Certain MNR and LIRR Station Access.	43
5.9.	Delay or Cancellation of General Orders and Related Services; Recoverable Lost-Time Costs.....	43
5.9.1.	Determination Concerning Lost Time.	43
5.9.2.	Lost Time Increments.....	44
5.9.3.	Right to Cancel General Orders and Related Services.	44
5.9.4.	Exhaustion of General Orders and Related Services.....	44
5.10.	Requests for NFPS Agency-Supplied Services.	44
5.10.1.	Requests for General Orders and Related Services.	44
5.10.2.	Requests for Work Site Access; Other Applicable Requests.	44
5.11.	Required SI Support for Claim to Relief from Delay or Cancellation of NFPS Agency-Supplied Services.	45
5.12.	NFPS Agency Failure to Provide Scheduled Service; Shortening of Such Service.	45
5.12.1.	NFPS Agency Support Relating to Cancelled General Orders and Related Services.....	45
5.13.	MTA-Issued Stop Work Orders.	45
5.13.1.	Resumption of Work.	46
5.14.	Extension of Time Due to Excusable Delay.	46
5.14.1.	Excusable, Non-Excusable, and Concurrent Delays.	46
5.14.2.	Specific Delays: Injunction, Strike, Public MTA Action.....	46
5.14.3.	SI Request for Extension of Time Based on Excusable Delay.....	46
5.14.4.	MTA Determination of an Excusable Delay.	47
5.14.5.	MTA Right to Amend Granted Extension to the Substantial Completion Date; Later Acceleration of Extended Substantial Completion Date.....	47
5.14.6.	Differing Treatment for Concurrent Delays and Certain Excusable Delays.	48

5.14.7.	No Waiver Due to Issuance of Excusable Delay Extension.	48
5.14.8.	Persons Entitled to Relief for Excusable Delay.	48
5.15.	Excusable Delay Extensions Not Cumulative.	48
5.16.	Impact Costs for Certain Excusable Delays.	48
5.16.1.	Availability of Impact Costs.	48
5.16.2.	Criteria for Impact Costs.	49
5.16.3.	Determination of Excusable Delay Impact Costs.	49
5.16.4.	Memorialization of Excusable Delay Impact Costs.	49
5.17.	Additional Limitations on Delay-Related SI Remedies.	49
5.17.1.	No Consequential Damages.	49
5.17.2.	No Right to Terminate Contract.	49
5.17.3.	Exclusive Nature of Remedies for NFPS Agency Delays.	50
5.17.4.	Release of Claims Due to Delay.	50
5.17.5.	No Impact Costs for Concurrent Delays and Certain Excusable Delays.	50
5.17.6.	Delay-Related SI Remedies with Respect to Subcontractors.	50
5.18.	No Waiver to Substantial Completion.	50
5.19.	Additional Costs for Changes.	50
6.	MTA Group Assets and Provided Systems.	51
6.1.	Open Architecture and MTA-Provided Systems.	51
6.1.1.	Rights to MTA-Provided Systems; Maintenance.	51
6.1.2.	Substituting NFPS Software.	51
6.2.	Provision of NFPS Agency Assets.	53
6.3.	Access to Bus Depots, Subway Stations, and Railroad Facilities; Installation Work Scheduling.	53
6.4.	Modification of MTA-Provided Systems.	54
6.5.	Asset Protection.	54
6.6.	Differing Site Conditions.	54
6.6.1.	SI Notice of Differing Site Conditions.	54
6.6.2.	Investigation by the Engineer.	54
6.6.3.	Limitations.	54
6.6.4.	Equitable Adjustment.	54
6.7.	Preliminary Occupancy.	54
7.	NFPS Development.	55
7.1.	Mobile Ticketing Application.	55
7.2.	NFPS Demarcation Points; SI Responsibilities.	55
8.	Inspection, Testing, and Acceptance.	55
8.1.	Inspection.	55
8.1.1.	Facilities and Resources to Facilitate Inspection.	55
8.1.2.	Results of Inspections.	56
8.1.3.	No Unreasonable Interruption.	56
8.1.4.	Uncovering Finished Work.	56
8.2.	Tests.	56
8.2.1.	Test Plans.	56
8.2.2.	Testing Schedule.	57
8.2.3.	Test Tools and Test Documentation.	57
8.2.4.	Test Reports.	57
8.3.	Testing and Beneficial Use; Project Phases.	57

8.4.	No Implied Approval or Acceptance.	57
9.	Deployment and Installation Services.	57
10.	Training Services.	57
10.1.	SI General Training Obligations.	57
10.2.	MTA Group Personnel Shadowing Right.	58
11.	Call Center Services.	58
11.1.	SI Customer Call Center Services Obligations.	58
11.2.	SI Consideration for Customer Call Center Services.	58
11.2.1.	Monthly Call Center Fees.	58
11.2.2.	Monthly Call Center Invoice.	59
11.2.3.	Content of Monthly Call Center Invoice.	59
11.2.4.	MTA Call Center Audit Rights.	59
12.	Hosting Services.	60
12.1.	General Overview of Hosting Services.	60
12.2.	Hosting Services Period.	60
12.3.	Outsourcing Hosting Services; Required Approvals.	60
12.4.	Option to Purchase Hosting System Hardware.	60
12.5.	Fees for Hosting Services.	60
13.	General Warranty Obligations.	61
13.1.	Required Warranty Plan.	61
13.2.	Scope of Warranty and Support Obligations.	61
13.3.	Escalation to Subject-Matter Qualified Personnel.	61
13.4.	Security Requirements in Performing Warranty Services; No Warranty Repairs without Authorization.	61
13.5.	Effect of MTA-Provided Systems on NFPS Warranties and Support.	61
13.6.	Right to Self-Repair.	62
13.7.	Warranty Exceptions.	62
13.7.1.	Damage Outside of Normal Usage.	62
13.7.2.	Defective NFPS Agency Maintenance.	62
13.8.	Manufacturer's Warranties and Guarantees.	62
13.9.	Enforcement of Warranties; Rights Not Exclusive.	63
13.10.	Conflicts between Warranty Terms.	63
14.	General Warranty of Construction and Performance.	63
14.1.	General Warranty Obligations.	63
14.2.	Reinstatement of Warranty Period After Repair.	63
15.	NFPS Hardware Warranties.	63
15.1.	General Warranty Period.	64
15.2.	Inventory and Warranty Management Obligations.	64
15.3.	Warranty of Hardware Performance and Condition.	64
15.4.	Hardware Warranty Services.	65
15.5.	Hardware Warranty Response Times.	65
15.6.	NFPS Hardware Maintenance Obligations; Support Tiers.	65
15.6.1.	NFPS Agency First-Call Maintenance.	65
15.6.2.	NYCT Second-Call Maintenance.	66
15.7.	SI Second- and Third-Call Maintenance.	66
15.8.	SI First- and Second-Call Maintenance Obligations.	67

15.8.1.	Scope of NYCT-Specific SI First- and Second-Call Maintenance.	67
15.8.2.	Scope of MNR- and LIRR-Specific SI First-Call Maintenance.	68
15.8.3.	MTA Group Participation in SI First- and Second-Call Maintenance.	69
15.9.	NFPS Hardware Repair Costs; Return of Units to Service.	69
15.10.	NFPS Hardware Reoccurring Failure.	69
15.11.	Extended Warranty for Repaired NFPS Hardware.	69
15.12.	Documentation of Hardware Repairs; Notice of Acceptance of Warranty Work.	70
15.13.	SI Hardware Update Obligations.	70
15.13.1.	Sources of Proposed Hardware Updates.	70
15.13.2.	Notice to the MTA Regarding Hardware Updates.	70
15.13.3.	Required MTA Approvals for Hardware Updates.	70
15.13.4.	Installation of Approved Hardware Updates.	71
15.13.5.	Tracking Hardware Updates.	72
15.13.6.	SI Costs for Hardware Updates.	72
15.13.7.	Ongoing SI Hardware Update Obligations.	72
16.	NFPS Software Warranties.	72
16.1.	NFPS Software Warranty Period.	72
16.2.	Warranty of Software Performance.	72
16.3.	Software Warranty Services.	73
17.	Specific Guarantees.	73
17.1.	Specific Guarantees for Electrical Equipment.	73
17.2.	Specific Guarantees for Communications and FCALAN System.	73
17.3.	Specific Guarantee Periods and Amounts.	73
17.4.	Guarantee Services.	74
17.5.	Extension of Guarantee Period.	74
17.6.	Guarantee Bond.	74
18.	Systemic Defects.	74
18.1.	Definition of Systemic Defect.	74
18.2.	Determination of Systemic Defect; Notice to SI.	75
18.3.	Remedial Plan; Design Studies.	75
18.4.	Remediation of Systemic Defect.	75
18.5.	SI Costs of Analysis, Remediation, and Other Work Related to Systemic Defects.	75
18.6.	MTA Self-Help Remedies for SI Failures.	75
18.6.1.	Costs Associated with MTA Self-Repair and Associated Work.	76
18.6.2.	MTA Disposal of Items.	76
18.7.	Effect of Systemic Defect on Other Work.	76
19.	Technical and Software Support Services.	76
19.1.	Support Period.	76
19.2.	Support Related to Third Party Software; Third Party Maintenance Contracts.	76
19.3.	Support for Prior Software Versions.	77
19.4.	Technical Support.	77
19.4.1.	Qualifications of SI Technical Support Personnel.	77
19.4.2.	Helpdesk and Phone Support.	77
19.4.3.	Access Via Email.	77
19.5.	SI-Proposed Software Updates and Other Software Preventative Maintenance.	77
19.5.1.	Sources of Proposed Updates.	78
19.5.2.	Notice to the MTA Concerning Software Preventative Maintenance Updates.	78

19.6.	Updates for Software Errors and Other Software Corrective Maintenance.	79
19.6.1.	Reporting of Software Errors.	79
19.6.2.	Confirmation; Tracking.	79
19.6.3.	Assigning Severity Level and Chargeable/Non-Chargeable Status.	79
19.6.4.	Proposal Concerning Correction or Reasonable Workaround.	80
19.6.5.	Error Response and Resolution Times.	80
19.6.6.	Escalation.	80
19.7.	SI Obligations with Respect to Software Releases.	81
19.7.1.	SI Costs for Software Releases of Third Party Software.	81
19.7.2.	MTA Costs for Software Releases of Third Party Software.	81
19.7.3.	SI Provision of Software Releases of SI Software.	81
19.7.4.	Clarification Regarding the Treatment of Software Releases; Allocation of Costs. .	82
19.7.5.	Determination of Software Updates.	82
19.8.	Required MTA Approval for Updates.	82
19.9.	Installation of Approved Updates.	82
19.9.1.	Work Performed; Completion.	83
19.9.2.	Change Control; Testing of Updates.	83
19.9.3.	Integration; Other Affected Systems.	83
19.9.4.	Data Conversion.	83
19.9.5.	Installation Documentation; Updated Documentation.	83
19.9.6.	Training Related to Software Error Corrections and Updates.	83
19.9.7.	Status Updates; Reporting.	84
19.10.	Critical Security Updates.	84
19.10.1.	Notification to the MTA of Critical Security Updates.	84
19.10.2.	MTA Response to Critical Security Update Notice; SI Installation of Critical Security Updates.	84
19.10.3.	Other Obligations Regarding Critical Security Updates.	85
19.11.	Closure of Issues.	85
19.12.	SI Support for OSVD Hardware Root Cause Analyses.	85
20.	Equipment Removal Services.	85
20.1.	Overview of Equipment Removal Services.	85
20.2.	Additional Obligations Regarding Equipment Removal Services.	85
20.3.	Fees for Equipment Removal Services.	85
21.	Optional Services.	86
21.1.	Available Optional Services.	86
21.1.1.	NFPS Extended Backend Hosting Services.	86
21.1.2.	Extended Website Hosting Services.	86
21.1.3.	Retail Point of Sale Network.	86
21.1.4.	Additional NFPS Equipment Quantities, Integration Services, and Media.	86
21.1.5.	Optical Barcode Readers.	86
21.1.6.	Extended Technical and Software Support Services; Labor Bank Services.	86
21.1.7.	Extended Customer Service Support.	87
21.1.8.	Bus Antenna.	87
21.1.9.	Driver Control Unit.	87
21.1.10.	NFPS Onboard Systems Router.	87
21.1.11.	SBS Pilot.	87
21.1.12.	MNR and LIRR NFPS Equipment.	87
21.1.13.	MNR and LIRR Media.	87
21.1.14.	MNR and LIRR NFPS Equipment Spare Parts and Modules Service and Repair.	88

21.1.15.	MNR and LIRR Field Preventative, Remedial, and Lifecycle Maintenance Services.	88
21.2.	Timing for Exercising an Option.	88
21.3.	Method of Exercising an Option.	90
21.4.	Effect of Exercising an Option.	91
21.5.	Memorialization of MTA Option Exercising.	91
21.6.	Additional Requirements for SBS Pilot.	91
22.	Data.	91
22.1.	Data Security and Integrity.	91
22.2.	Data Migration.	92
22.3.	NFPS Data Access Rights.	92
22.4.	No Proprietary Formats for NFPS Data.	92
22.5.	Opt-In Requirement for Collection and Use of Personally Identifiable Information.	92
22.5.1.	Required Opt-In Consent.	92
22.5.2.	Opt-Out; Retention Policy.	92
22.5.3.	SI Obligation to Secure NFPS Data Rights.	92
23.	Security.	93
23.1.	Required Physical Security Measures.	93
23.2.	Required Technical Security Measures.	93
23.2.1.	User Authentication.	93
23.2.2.	Access Controls.	93
23.2.3.	Encryption.	94
23.2.4.	Firewalls; Virus Protections.	94
23.3.	SI Personnel Identification and Access Restrictions.	94
23.3.1.	Photo Identifications.	94
23.3.2.	SI Access.	94
23.3.3.	Subcontractor Compliance.	94
23.4.	Information Security Policies and Practices.	95
23.4.1.	Risk Assessments.	95
23.4.2.	Incident Response Plan.	95
23.4.3.	Monitoring and Continuous Improvement.	95
23.4.4.	Employee Practices.	95
23.4.5.	Subcontractor Security Obligations.	96
23.4.6.	Third Party Security Obligations.	96
23.4.7.	SI Responsibility for Subcontractor and Third Party Compliance with Security Obligations.	96
23.5.	Security Audits.	96
23.5.1.	Timing.	96
23.5.2.	Provision of Security Audit Reports to the MTA.	96
23.5.3.	SI Inability to Deliver Security Audit Report.	97
23.6.	Additional Requirements Concerning Sensitive Security Information.	97
23.7.	SI Designation as Data Controller or Data Processor.	97
23.8.	Security Incident; Response.	97
23.8.1.	Notification to the MTA.	97
23.8.2.	Content of Security Incident Notification.	97
23.8.3.	SI Remedial Action.	98
23.8.4.	Limitation on Disclosure.	98
23.8.5.	Full Cooperation.	98

23.9.	MTA Access Rights.	98
23.9.1.	General NFPS Access Rights.	98
23.9.2.	Compliance with Full Access Protocols.	98
23.9.3.	Limited MTA Liability for NFPS Access.	99
23.9.4.	Limited Access to Source Code.	99
23.10.	SI Access to NFPS Agency Resources.	99
24.	Payment Card Industry Standards.	99
24.1.	Compliance with Standards.	99
24.2.	Subcontractor and Vendor PCI Compliance.	99
24.3.	Validation.	99
24.4.	MTA-Requested Validation.	100
24.4.1.	Process.	100
24.4.2.	No Effect on SI Obligations.	100
24.4.3.	Costs of MTA-Requested Validation.	100
24.5.	Remediation.	100
24.6.	Notice to Payment Card Networks.	100
24.7.	Responsibility for Penalties.	100
24.8.	Relationship to Other Data Security Provisions.	101
25.	Disaster Recovery and Business Continuity.	101
25.1.	SI Responsibilities Regarding Disaster Recovery Services.	101
25.1.1.	Sole Responsibility.	101
25.1.2.	Ongoing Operations.	101
25.1.3.	Regular Testing.	101
25.1.4.	Support MTA Group Standards.	101
25.1.5.	Updates.	101
25.1.6.	Support for Future Expansion.	102
25.1.7.	Fire Suppression.	102
25.2.	SI Responsibilities Regarding Testing.	102
25.2.1.	Joint Testing.	102
25.2.2.	Test Scheduling.	102
25.2.3.	Continued Operation During Testing.	102
25.3.	SI Responsibilities Regarding Communications.	102
25.3.1.	Disaster Notification.	102
25.3.2.	Migration Efforts.	102
25.3.3.	Post-Incident Reinstallation.	102
25.3.4.	Post-Incident Analysis.	102
25.3.5.	Continued Compliance.	103
25.3.6.	Ongoing Testing.	103
26.	Service Levels and Service Credits.	103
26.1.	Service Level Period.	103
26.2.	Changes to the NFPS; Scaling.	103
26.3.	Monitoring of Service Level Requirements and KPIs.	103
26.3.1.	Types of Monitoring by SI.	103
26.3.2.	MTA Monitoring.	104
26.3.3.	Service Level Reports.	104
26.3.4.	Reporting Form.	104
26.4.	Root Cause Analyses; Resolution of Failures.	104

26.5.	Service Credits.	104
26.5.1.	Non-Exclusive Remedy.	105
26.5.2.	Alternatives to Service Credits.	105
27.	Quality Assurance; Quality Control.	105
27.1.	General Obligations.	105
27.2.	SI Quality Assurance Program and Staffing.	105
27.2.1.	Inspections.	105
27.2.2.	Third Party Analysis.	105
27.2.3.	Provision of Inspection System.	105
27.2.4.	Quality Manager Designation.	106
27.3.	Scope of SI Quality Assurance Program.	106
27.4.	Quality Control; Quality Control Process Manual.	106
27.5.	Quality Assurance.	106
27.5.1.	Quality Assurance Procedures.	106
27.5.2.	SI QA Responsibilities; QA Documentation.	106
27.5.3.	Quality Assurance Requirements.	107
27.5.4.	Quality Control Program.	107
27.5.5.	Record of Activities.	107
27.5.6.	MTA Review of SI Quality Assurance Obligations.	107
27.6.	Order of Precedence with Respect to Quality Assurance and Quality Control Obligations.	107
28.	Payment.	107
28.1.	Consideration.	107
28.1.1.	Sole Payment Recipients.	108
28.2.	Price to Include.	108
28.2.1.	Connecticut Tax Exemption; Exemption Certificate.	108
28.2.2.	New York Tax Exemption.	108
28.3.	Variable Quantities Clause.	108
28.4.	Detailed Cost Breakdown for Lump Sum Items.	109
28.5.	Prompt Payment.	109
28.5.1.	Payment Period.	109
28.5.2.	Audit of Progress Payment Invoice.	109
28.5.3.	Tolling of Payment Period.	110
28.5.4.	Late Payments.	110
28.5.5.	Designated Payment Office.	110
28.6.	Progress Payments.	110
28.6.1.	Materials Not Yet Incorporated in the Work.	110
28.6.2.	Supporting Documentation for Progress Payments.	111
28.7.	Payment Upon Substantial Completion.	111
28.7.1.	Substantial Completion Payment Estimate.	112
28.7.2.	Signature and Delivery of Substantial Completion Payment Estimate.	112
28.7.3.	Amount of Substantial Completion Payment Estimate; Disputes.	112
28.7.4.	Supporting Documentation for Payment on Substantial Completion.	112
28.8.	Final Payment.	112
28.8.1.	Final Payment Estimate.	113
28.8.2.	Signature and Delivery of Final Payment Estimate.	113

28.8.3.	Amount of Final Payment Estimate; Disputes.	113
28.8.4.	Supporting Documentation for Final Payment Estimate.	113
28.9.	Most Favored Customer.	113
28.10.	No Estoppel.....	113
28.11.	No Waiver.	114
28.12.	Limited Adjustments to Certain Base Line Item Pricing; Indexing.	114
28.12.1.	Relevant Definitions for Section 28.12 (Limited Adjustments to Certain Base Line Item Pricing; Indexing).	114
28.12.2.	Price-Adjustable Work and Relevant Indices.	115
28.12.3.	Determination of Adjusted Price.	117
28.12.4.	MTA Revisions to Relevant Indices.	117
28.12.5.	Effect of Adjusted Pricing; Temporal Limit on Price Adjustments.	117
28.12.6.	Exclusive Nature of Price Adjustments.	118
28.12.7.	Clarifying Example of Base Line Item Price Adjustment.	118
29.	Setoff, Retention, and Certain Security for Performance.	119
29.1.	MTA Right to Set Off, Deduct, or Withhold.	119
29.2.	Retained Percentage.....	119
29.3.	Withholding Based on Specific Guarantee Obligations.	120
29.3.1.	Right to Withhold for Specific Guarantees.	120
29.3.2.	Permitted Deductions.	120
29.3.3.	Notice of Defective Work.....	120
29.3.4.	Certification of Fulfillment of Guarantee Obligations.....	120
29.4.	Withholding Money Due to the SI; Adverse Claims.....	120
29.4.1.	Definition of Adverse Claim.	120
29.4.2.	Right to Withhold Payments Based on Adverse Claims.	120
29.4.3.	Additional Retainage from Substantial Completion Payment or Final Payment for Adverse Claims.	121
29.4.4.	Insufficiency of Amounts Retained as Security for Adverse Claims.	121
29.4.5.	Alternative Procedures for Adverse Claims by Third Parties.	121
29.4.6.	Withholding Based on Adverse Claims as Additional Security.....	121
29.5.	Substitution of Approved Securities.	121
29.5.1.	Identification of Approved Securities.	121
29.5.2.	Effect of Diminishment in Market Value; Further MTA Recourse.	122
29.5.3.	Returns on Approved Securities.	122
29.6.	Use of Monies Withheld.	122
30.	Payment by the SI to Subcontractors and Suppliers.	122
30.1.	Timing of Payment to Subcontractors.	122
30.2.	Subcontractor Downstream Payment Obligations.	122
30.3.	Interest on Overdue Payments.....	123
31.	Optimizing Third Party Software Licensing and Maintenance Contracts; MTA Third Party Agreements. ...	123
31.1.	SI Third Party Licensing Optimizing.....	123
31.1.1.	Proposal by SI.....	123
31.1.2.	Review and Approval by Engineer.	123
31.2.	Mandatory MTA Third Party Agreements.	123
31.2.1.	SI Disclosure of Mandatory MTA Third Party Agreements.	123
31.2.2.	SI Support for Mandatory MTA Third Party Agreements; Cooperation.	123
31.2.3.	MTA Right to Substitute MTA Third Party Agreements.	124

32.	Changes in Work; Change Orders.	124
32.1.	Change Order Overview.....	124
32.2.	Determination of Certain Compensation for Change Orders.	124
32.2.1.	Relevant Definitions for Section 32.2 (Determination of Certain Compensation for Change Orders).	124
32.2.2.	Determination of Labor and Material Rates.	125
32.2.3.	Application of the NTP Fully Loaded Labor Rate.....	126
32.2.4.	Regular Adjustments to the Labor and Material Rates.....	127
32.2.5.	Regular Adjustments to the Direct Labor Rate.	127
32.2.6.	Additional Considerations Regarding the Labor and Material Rates.	129
32.2.7.	Clarifying Example of Calculation Events During the Term.....	130
32.3.	Change Order Procedures for Extra Work; Basis for Payment.	131
32.3.1.	Equitable Adjustments to the Total Contract Price and Master Program Schedule.....	131
32.3.2.	MTA Initiation of a Change Order.	131
32.3.3.	SI Submission of a Change Order Proposal.	132
32.3.4.	Change Order Cost Information.....	132
32.3.5.	Change Order Master Program Schedule Impact.	132
32.3.6.	Impact Cost Requests for Change Orders.	132
32.3.7.	No Extra Work Without a Change Order; Disputed Work.	133
32.3.8.	Required Approvals for Extra Work Compensation.	133
32.4.	Change Order Procedures for Deleted Work; Credits.	133
32.4.1.	Equitable Adjustments.....	133
32.4.2.	Limitations of the SI Change Order Proposal.	133
32.4.3.	Deleted Work Credit; Impact on the Total Contract Price.	134
32.4.4.	SI Deleted Work Cost Mitigation Obligation.....	134
32.4.5.	Disputes Regarding Deleted Work Credits.....	134
32.5.	Extra Work Directives.	134
32.5.1.	MTA Right to Direct Work.....	134
32.5.2.	Disputes Regarding Extra Work Directives.	134
32.5.3.	Required Approvals for Directed Work.....	135
32.6.	General Requirements for All Change Orders.	135
32.6.1.	Change Order Cost Submissions; FAR Compliance.	135
32.6.2.	Change Order Negotiation; Approval and Execution.....	135
32.6.3.	Change Order; SI Release.....	136
32.7.	Clarifications to the Technical Specifications.....	136
33.	NFPS Changes Following Revenue Service Acceptance Testing.....	136
34.	Deliverables.....	136
34.1.	Approval Framework.	136
34.1.1.	MTA Review Process.....	136
34.1.2.	Contemporaneous SI Submission Requirements.....	137
34.1.3.	Serialization of All Submissions and MTA Group Correspondence.....	137
34.2.	CDRL List.	137
34.3.	Delivery of NFPS Software.	137
34.3.1.	Delivery of Interfaces.	137
34.3.2.	Delivery of Licenses.....	137
34.4.	Delivery of NFPS Hardware.....	138

34.5.	Delivery of NFPS Documentation.	138
34.6.	Deliveries to Work Sites.	138
34.7.	Availability of NFPS Components.	138
34.7.1.	Period of NFPS Hardware Availability.	138
34.7.2.	Manufacturer Discontinuation Tracking and Notification.	138
34.7.3.	SI Responsibility for Replacement NFPS Hardware.	139
34.8.	Risk of Loss to the Work.	140
34.8.1.	Transfer of Risk for NFPS SI-Sourced Equipment.	140
34.8.2.	Transfer of Risk on Substantial Completion.	141
34.8.3.	Transfer of Risk on Final Completion.	141
34.8.4.	Transfer of Risk on Beneficial Use.	142
34.8.5.	SI's Risk of Loss Obligations.	142
34.8.6.	Effect of MTA Holding Risk.	142
34.8.7.	Risk of Loss on MTA Special Equipment.	142
34.9.	Required Changes.	143
34.10.	Additional Requirements Regarding Certain NFPS Components.	143
34.10.1.	MTA Procurement of NFPS Components; No Interference.	143
34.10.2.	Price Lists and Certainty.	143
34.10.3.	Continuous Improvement Processes for Spare Parts and Product Units.	143
34.11.	Order Process for NFPS Hardware, Spare Parts and Product Units, and NFPS Media.	144
34.11.1.	MTA Notification of Intent to Purchase Material.	144
34.11.2.	SI Response to MTA Material Purchase Notice.	144
34.11.3.	Negotiation of SI Material Sale Offer.	144
34.11.4.	MTA Approval of SI Material Sale Offer.	144
34.11.5.	Acceptance Criteria for Purchased Material.	144
35.	Intellectual Property.	145
35.1.	Ownership.	145
35.1.1.	MTA Ownership of NFPS Data.	145
35.1.2.	SI Ownership of SI Software.	145
35.1.3.	SI Ownership of Certain Embedded Intellectual Property Rights.	145
35.2.	Grant of Rights to the MTA Group.	145
35.2.1.	SI Software.	145
35.2.2.	Third Party COTS Software.	145
35.2.3.	Third Party Software Interfaces.	146
35.2.4.	NFPS Documentation.	146
35.2.5.	Deliverables.	146
35.2.6.	Clarifying Examples Relating to the Grant of Rights.	147
35.3.	Grant of Rights to the SI.	149
35.3.1.	MTA-Provided Systems.	149
35.3.2.	MTA Group Trademark Assets.	149
35.3.3.	NFPS Data.	149
35.3.4.	No Implied Rights.	150
35.4.	Software Asset Management.	150
35.5.	Delivery of Certain Materials that Embody Intellectual Property Rights.	150
35.5.1.	SI Software Interfaces.	150
35.5.2.	Third Party Software Interfaces.	150
35.5.3.	NFPS Documentation.	150

35.6.	No Proprietary Formats; Media Encoding Format.....	150
35.7.	NFPS Software Escrow.	151
35.7.1.	Escrow Agent Selection.....	151
35.7.2.	Three-Party Software Escrow Agreement.	151
35.7.3.	Quality of Requisite Source Code.	151
35.7.4.	Delivery of Source Code to the Escrow Agent.	151
35.7.5.	Identification of Tangible Media.....	152
35.7.6.	Deposit Inspection.	152
35.7.7.	Deposit Verification.	152
35.7.8.	Use of Deposit Materials.....	152
35.7.9.	Right to Use Deposit Materials Following Release.	153
35.7.10.	Subcontractors.	153
35.7.11.	MTA Right to Obtain Support.	153
35.7.12.	Other Deposit Materials.	153
35.7.13.	No Source Code Escrow for SI Software Interfaces.	154
35.7.14.	Escrow Fees.....	154
35.7.15.	NFPS Software Escrow Material Designation.....	154
35.8.	Open Source Software Requirements.	154
35.8.1.	Documentation Requirements.	154
35.8.2.	Sufficiency of Rights.	154
36.	Confidentiality.....	154
36.1.	Confidential Information.	154
36.2.	Non-Disclosure; Standard.	155
36.3.	Exceptions.....	155
36.4.	Delivery of Confidential Information.	155
36.5.	Order of Priority for NFPS Data.	155
36.6.	Public Records.....	155
36.7.	No Transmission of MTA Group Confidential Information Outside of the United States; Exceptions.	156
37.	SI Representations and Warranties.	156
37.1.	Certain SI Representations and Warranties.....	156
37.1.1.	Quality of Work and Materials.....	156
37.1.2.	Books and Records.....	156
37.1.3.	Existence; Compliance with Law.	156
37.1.4.	Authority.	156
37.1.5.	No Legal Bar.	156
37.1.6.	No Litigation.....	157
37.1.7.	No Default.	157
37.1.8.	Permits and Approvals.	157
37.1.9.	No Commission.	157
37.1.10.	No Inducements.....	157
37.1.11.	Non-Infringement.	157
37.1.12.	Warranty of Design.	158
37.1.13.	No Damage to Property.	158
37.1.14.	Open Source.....	158
37.1.15.	No Viruses.	158
37.1.16.	Service Levels and Key Performance Indicators.....	158
37.1.17.	Fit for the Particular Purpose.....	158
37.1.18.	Legal Compliance.	159
37.1.19.	Reasonable Efforts.	159
37.1.20.	Uniform Commercial Code.	159

37.1.21.	Covenant of Good Faith and Fair Dealing.	159
37.2.	Remedies for Breach of Representations and Warranties.	159
37.3.	Warranty Disclaimers.....	159
38.	Indemnification.	159
38.1.	SI Indemnification.	159
38.2.	Procedure for Indemnification.	160
38.3.	Mitigation of an Injunction.	160
38.4.	Effect of Insurance on Indemnification.	160
38.5.	Limitations on SI Indemnification Obligations; Absence of Negligence Not a Defense.....	161
38.6.	SI's Responsibility for Subcontractor Actions.	161
39.	Limit of Liability.	161
39.1.	Excluded Categories.....	161
39.2.	Liability for Merchant Chargeback Fees.	161
39.3.	Consequential Damages Waiver.	161
39.3.1.	MTA Group Consequential Damages Waiver.	161
39.3.2.	Limited SI Consequential Damages Waiver.	162
39.4.	Limitation of Liability.	162
39.4.1.	MTA Group Limit of Liability.	162
39.4.2.	Limited SI Limit of Liability.	162
40.	Recordkeeping and Audit.....	162
40.1.	Scope of Records; General Audit Right.	162
40.1.1.	U.S. Secretary of Labor.	163
40.1.2.	Other Governmental Authorities.	163
40.2.	Location of Audits.	163
40.2.1.	Local Office.	163
40.2.2.	Production of Copies.....	163
40.3.	Record Preservation Obligations.	163
40.4.	MTA Holdback Right.	163
40.5.	Audit Right Extends to Work and Equipment.	164
41.	Accuracy of SI Submittals.	164
41.1.	Accuracy and Good Faith.	164
41.2.	Sufficiency of Supporting Documentation.	164
41.3.	Reduction Due to Inaccurate or Incomplete Submissions.	164
41.4.	Dispute Resolution and Remedies for Violations.	164
41.5.	Applicability to Subcontractors.....	165
42.	Insurance.....	165
42.1.	Insurance Required to be Carried.	165
42.2.	Subcontractor Insurance.....	165
42.3.	Sufficiency of Insurance Coverage.	165
43.	Performance Guarantees.	165
43.1.	Performance and Payment Bonds.	165
43.2.	Failure to Substitute Sureties; Default.....	165
43.3.	Deduction as Alternative to Default.	166
43.4.	Advance Payment Bond.....	166
43.5.	Letter of Credit; Ongoing Services.	166

	43.5.1.	SI Provision of Letter of Credit.	166
	43.5.2.	Calling on the Ongoing Services Letter of Credit.	166
	43.5.3.	Term for the Ongoing Services Letter of Credit.	166
	43.5.4.	Replacement Costs.	167
	43.5.5.	Ongoing Services Letter of Credit; Costs and Expenses.	167
	43.5.6.	Parent Company Guaranty.	167
44.		Force Majeure.	167
	44.1.	Force Majeure Event Definition.	167
		44.1.1. Natural Disasters.	167
		44.1.2. Nuclear and Biological Events.	167
		44.1.3. Great Acts of Violence or Insurrections (GAVIs).	168
		44.1.4. Quarantines.	168
		44.1.5. Embargos.	168
		44.1.6. Governmental Action.	168
		44.1.7. Other Events.	168
	44.2.	Conditions to Force Majeure Events.	168
		44.2.1. Lack of Control.	168
		44.2.2. Compliance with Obligations Generally.	169
		44.2.3. Compliance with Specific Obligations.	169
		44.2.4. No Avoidance.	169
		44.2.5. No Accepted Practices.	169
	44.3.	SI Request for Relief Based on Force Majeure Events.	169
	44.4.	Consequences of Force Majeure Events.	169
45.		Disputes; Dispute Resolution.	169
	45.1.	Authority of the Engineer.	170
		45.1.1. Engineer-Issued Orders; Requests for Justification.	170
		45.1.2. Engineer Approvals; No Liability.	170
	45.2.	Dispute Resolution Procedure.	170
		45.2.1. Technical Dispute Resolution Officer; Alternative Selection.	170
		45.2.2. Contractual Disputes Review Board as Dispute Resolution Officer.	171
		45.2.3. Written Submissions.	171
		45.2.4. Objections to Type of Dispute Resolution Officer.	172
		45.2.5. Additional Provision Relating to the Prosecution of Claims for Money Damages.	172
	45.3.	Negotiations or Settlement Offers Do Not Impair or Waive the Dispute Resolution Officer's Authority.	173
	45.4.	Dispute Resolution Officer's Ruling is Final and Binding.	173
	45.5.	Performance During the Pendency of Dispute Resolutions.	173
	45.6.	No Interference with NFPS During Disputes.	173
	45.7.	Limited SI Right to Seek Judicial Relief.	173
		45.7.1. SI Judicial Relief Claims.	173
		45.7.2. Requirements for SI Judicial Relief Claims.	173
		45.7.3. Treatment of Certain Disputes and Aggregated Financial Claims.	175
	45.8.	Limitations of Dispute Resolution Process.	177
	45.9.	Mutual Agreement Regarding Alternative Dispute Resolution.	177
46.		Term.	177
47.		Termination; Effect of Termination.	177
	47.1.	Contract Null and Void Due to Debarment.	177

47.2.	Termination for Convenience.	178
47.2.1.	Payment to SI in the Event of Termination for Convenience.	178
47.2.2.	Termination for Convenience; Integrity Matters.	178
47.3.	Default; Remedies.	178
47.3.1.	Event of Default.	179
47.3.2.	Adequate Assurance.	179
47.3.3.	Notice of Default and Opportunity to Cure.	179
47.3.4.	Event of Default Remedies.	180
47.3.5.	SI Liability for Damages Stemming from Default.	180
47.3.6.	Waiver of Default.	181
47.3.7.	Improper, Unwarranted, or Wrongful Determination of Default.	181
47.4.	Survival.	181
47.5.	General Effect of Termination.	181
48.	Transition Assistance.	181
48.1.	General Overview of Transition Assistance.	181
48.2.	Fees for Transition Services.	182
48.3.	Transition Services Process.	182
48.4.	Full Cooperation and Information.	182
48.5.	No Interruption or Adverse Impact.	182
48.6.	Third Party Authorizations.	182
48.7.	Transfer of Subcontracts, Leases, Licenses and Agreements.	183
48.8.	Delivery of Documentation and NFPS Software Interfaces.	183
48.9.	Preparation for Transition Services; Complete Documentation.	183
48.10.	New SI Confidentiality Obligations.	183
48.11.	All Necessary Cooperation and Actions.	183
48.12.	Transition of Third Party Software.	183
49.	Required SI Practices.	184
49.1.	New York State Labor Law.	184
49.1.1.	Hours and Wages.	184
49.1.2.	Workers' Compensation Law.	185
49.1.3.	Harmful Dust.	185
49.1.4.	Applicability to Subcontractors.	185
49.2.	Federal Equal Opportunity Act of 1972.	185
49.3.	Omnibus Procurement Act of 1992 and Related Matters.	185
49.3.1.	Condition of Applicability.	185
49.3.2.	General Requirements; Inclusion Efforts.	186
49.3.3.	Documentation.	186
49.3.4.	Notification of Employment Opportunities to New York State Residents.	186
49.3.5.	Offset Credits From Foreign Countries.	186
49.3.6.	Information on Availability of New York State Subcontractors and Suppliers.	186
49.4.	Equal Employment Opportunities for Minority Group Members and Women.	187
49.4.1.	Discrimination Prohibited.	187
49.4.2.	Written Statement of Non-Discrimination.	187
49.4.3.	Statement of Equal Employment Opportunities Without Discrimination.	188
49.4.4.	Workforce Utilization Report.	188
49.4.5.	Continued Compliance Throughout the Term.	188
49.4.6.	Subcontractors.	188
49.4.7.	Labor Force Availability Data.	188

49.5.	Antitrust Assignment.	188
49.6.	Compliance with Section 1269-g of the Public Authorities Law.	189
49.6.1.	Section 1269-g Certifications.	189
49.6.2.	Subcontractor Compliance.	189
49.7.	Asian Longhorned Beetle.	189
49.7.1.	Regulations Regarding the Asian Longhorned Beetle.	189
49.7.2.	Handling of Host Material.	190
49.8.	Permits.	190
49.8.1.	SI Obligation to Obtain Required Permits.	190
49.8.2.	Liability.	190
49.9.	SI Expertise and Personnel.	190
49.9.1.	SI's Expertise.	191
49.9.2.	SI's Personnel.	191
49.9.3.	Prior Approval of Key Personnel.	191
49.10.	Federal Requirements.	191
49.10.1.	Federal Drug and Alcohol Testing Requirements.	191
49.10.2.	Other Federal Requirements.	191
49.11.	Employee Record Cards; Payroll Information.	191
49.11.1.	Contents of Employee Record Card.	191
49.11.2.	Retention of Employee Record Cards; Inspection.	192
49.11.3.	Submission of Payroll Report.	192
50.	Subcontracting.	192
50.1.	Required Use of Subcontractors and Suppliers Identified in the Proposal.	192
50.2.	Request for Engagement of Subcontractors and Suppliers Following the Award Date.	192
50.3.	Other Requests for Changes to Subcontractors and Suppliers.	193
50.4.	SI Obligations Regarding Subcontractor and Supplier Compliance.	193
50.5.	No Waiver by the MTA.	193
50.6.	Downstream Subcontractor and Supplier Obligations.	193
50.7.	SI Full Liability; No Exceptions.	194
51.	Environmental Obligations.	194
52.	General.	194
52.1.	Notices.	194
52.2.	Governing Law; Venue.	195
52.2.1.	Challenges to Dispute Resolution Officer Decisions.	195
52.2.2.	Governing Law.	195
52.2.3.	Service of Process.	195
52.2.4.	Waiver of Forum Non Conveniens, Removal to Federal Court, Motion for Change of Venue.	195
52.2.5.	Waiver of Motion to Transfer to a Federal Court Outside of New York City.	196
52.2.6.	Consent to Transfer Action Upon Request of the MTA.	196
52.2.7.	Venue for SI Judicial Relief Claims.	196
52.3.	Severability.	196
52.4.	Local Office; Engineer's Office.	196
52.5.	Waiver.	196
52.6.	Headings.	196
52.7.	Remedies Not Exclusive.	196

52.8.	Independent Contractors.	197
52.9.	Entire Agreement; Integration.....	197
52.10.	Order of Precedence; Ambiguities.....	197
52.10.1.	Contract Documents.	197
52.10.2.	Exception to Order of Precedence.....	198
52.10.3.	Determination Regarding Ambiguities.....	199
52.10.4.	Treatment of Value Engineering Proposals and Alternative Proposals.	199
52.11.	Execution in Counterparts; Original Signatures.	200
52.12.	No Oral Modifications.....	200
52.13.	All Legal Provisions Included.....	200
52.14.	Interaction with Media and Public.....	201
52.15.	Assignment.	201
52.15.1.	General Prohibition on Assignment; Limited Exception.	201
52.15.2.	Change in Control Due to Common Stock Purchase.....	201
52.15.3.	Notice of Assignment.....	201
52.15.4.	Termination Rights Due to Assignment.	202
52.16.	Compliance with Law; Licenses and Permits.	202
52.17.	Grand Jury Testimony.	202
52.17.1.	Bidding Disqualification.	202
52.17.2.	Termination of Work.....	202
52.18.	Diesel Emission Reduction Act.....	203
52.19.	Prohibition on the Purchase of Tropical Wood.	203
52.19.1.	Relevant Definitions for Section 52.19 (Prohibition on the Purchase of Tropical Wood).	203
52.19.2.	Prohibitions on the Use of Tropical Hardwood; Exceptions.	203
52.20.	Freedom of Action.	203
52.21.	Employees of SI.....	203
52.22.	Further Assurances.	204
52.23.	Rules of Interpretation.	204
52.23.1.	Accepted.	204
52.23.2.	Amendments.....	204
52.23.3.	Days and Business Days.	204
52.23.4.	Directed.	204
52.23.5.	Furnish or Furnishing.	204
52.23.6.	Hereof.	204
52.23.7.	Include.	204
52.23.8.	Installation.	205
52.23.9.	Or.205	
52.23.10.	Section References.	205
52.23.11.	Singular and Gender.	205
52.23.12.	Use of Serial Comma.....	205
52.24.	Contract Deemed Jointly Drafted.	205
52.25.	Confirmation of Statements and Representations.	205

AGREEMENT

THIS AGREEMENT is made this day of November 1, 2017, between the METROPOLITAN TRANSPORTATION AUTHORITY and CUBIC TRANSPORTATION SYSTEMS, INC. (hereinafter the "**Systems Integrator**" or the "**SI**"), a corporation incorporated under the laws of California with offices at 5650 Kearny Mesa Road, San Diego, California, 92111.

RECITALS

WHEREAS, the Metropolitan Transportation Authority issued a Request for Proposals (the "**RFP**") for the New Fare Payment and Collection System (the "**Project**");

WHEREAS, the SI submitted a Proposal in response to the RFP and represents that it has the requisite knowledge, skill, and financial, technical, professional and personnel resources to fully and properly perform the Work for the Project;

WHEREAS, the SI's Proposal submitted in response to the RFP, as revised, was accepted by the MTA; and

WHEREAS, the SI's Best and Final Offer dated August 30, 2017, was accepted by the MTA and the MTA will issue a Notice of Award to the SI;

NOW, THEREFORE, in consideration of the mutual promises set forth below, and other good and valuable consideration, the receipt of which is hereby acknowledged, and based on the foregoing recitals, which form a part of this Agreement, it is agreed as follows:

AGREEMENT

1. Definitions.

A set of defined terms is included in Technical Specifications Appendix 1 (Definitions). Additional terms are defined in context.

2. New Fare Payment System Overview; Provision of Work.

2.1. Scope of Work.

The SI shall provide all Work set out in the Contract Documents, including the provision of all Services, Deliverables, materials, facilities, tools, supplies and other means necessary to complete the Project. The SI shall prosecute the Work continuously and diligently. The Project is to be implemented for actual use and operation as part of an intra-urban transit system according to Good Industry Practices for engineering, construction, hardware, software and transit system industries.

2.2. Inherent Work.

The scope of work described in Section 2.1 (Scope of Work) includes any service, function, task or responsibility that is not specifically described in these Contract Documents, but that is an essential, necessary, inherent or customary part of the Work (the "**Inherent Work**"). Such Inherent Work shall be provided by the SI without additional cost, as if such Inherent Work were specifically described in the Contract Documents. Subject to Section 2.4.5 (Treatment of Liability for MTA Group Actions), the MTA shall only be responsible for those obligations expressly assigned to the MTA in the Contract Documents, and shall not be responsible for

any obligations not expressly assigned to the MTA. The MTA acknowledges that those tasks that the SI is required to perform that are not described or contemplated in these Contract Documents or that do not otherwise constitute Inherent Work shall be handled as Change Orders pursuant to Section 32 (Changes in Work; Change Orders).

2.3. General Quality of Work.

The Contract Documents indicate the amount of Work, its nature and the method of installation, integration and construction. Where no specific requirements are given, the Work shall conform to the latest applicable standards of nationally recognized associations which sponsor the particular type of work, including the applicable standards set by the Institute of Electrical and Electronic Engineers, the Electronic Industries Association, American Society of Mechanical Engineers, American Society of Heating and Ventilating Engineers, American National Standards Institute, American Society for Testing and Materials and the National Board of Fire Underwriters.

2.4. Relationship Among the MTA, the SI, and the MTA Group.

Although the MTA and the SI are the sole contracting parties to the Contract Documents, the SI acknowledges that the MTA is procuring the NFPS on behalf of itself and on behalf of the other MTA Group entities. This Section 2.4 (Relationship Among the MTA, the SI, and the MTA Group) further clarifies this structure, including the relationship between the MTA, the SI, and the other MTA Group entities, as well as their respective rights and obligations.

2.4.1. Intended Third-Party Beneficiaries.

2.4.1.1. SI Acknowledgment of Intended Third-Party Beneficiaries.

The MTA and the SI agree that the MTA Group entities (other than the MTA) are intended third-party beneficiaries under these Contract Documents with respect to the SI's performance of each and every one of its obligations under these Contract Documents. It is the MTA's and the SI's expressed intent that the SI's performance of each and every one of its obligations under these Contract Documents is intended to give the MTA Group the full benefit of such performance. To this end, the SI acknowledges that: (i) the Contract Documents (including the SI's performance of all of its obligations herein) are intended for the benefit of the MTA Group; (ii) the benefits to the MTA Group are immediate, rather than incidental; (iii) the MTA's and the SI's intent is that the MTA Group is a beneficiary of every obligation of the SI herein, and not only certain obligations; and (iv) the MTA Group has standing to enforce every SI obligation established pursuant to these Contract Documents.

2.4.1.2. Express Disclaimer of Other Third-Party Beneficiaries.

Except as expressly set out in Section 2.4.1.1 (SI Acknowledgment of Intended Third-Party Beneficiaries), nothing in these Contract Documents creates, or is intended to create, any third-party beneficiaries under these Contract Documents. By way of example, nothing herein shall be deemed to give a Third Party any claim or cause of action against the MTA beyond such as may otherwise exist without regard to these Contract Documents.

2.4.2. Contract Interpretation of References to the MTA Group and the NFPS Agencies.

As set out above, the MTA is procuring the NFPS on behalf of itself and on behalf of the other MTA Group entities. The SI agrees that: (1) the term "NFPS Agencies" is a subgroup of the term "MTA Group," and accordingly, that all references to the MTA Group shall mean and be interpreted to include the NFPS Agencies;

(2) all references to the "MTA Group," an "MTA Group entity," and any other similar usages involving the MTA Group, shall mean and be interpreted as the MTA Group and any combination of entities within the MTA Group; (3) all references to the "NFPS Agencies," an "NFPS Agency," and any other similar usages involving the NFPS Agencies, shall mean and be interpreted as the NFPS Agencies and any combination of entities within the NFPS Agencies; and (4) all references to "NYCT" shall mean and be interpreted as any combination of NYCT, SIRTOA, MTA Bus Company, and MaBSTOA. By way of clarification, and not limitation, unless expressly stated otherwise, any reference to the MTA Group included in these Contract Documents shall mean and be interpreted as every possible combination of the following: (i) the MTA and its subsidiaries, including LIRR, MNR, SIRTOA, MTA Bus Company, MTACC, FMTAC, and all future subsidiaries of the MTA; (ii) NYCT and its subsidiary, MaBSTOA, and all future subsidiaries of NYCT; (iii) TBTA; and (iv) all other entities that may in the future be Affiliates of any entity identified in (i), (ii), or (iii) of this sentence.

2.4.3. MTA Authority; Scope of MTA Rights.

As further set out herein (including in Technical Specifications Section 4.2.4.8 (Project Management and Scope of Authority)), the SI acknowledges that the MTA is functioning as the agency project manager for the MTA Group with respect to the Project. Accordingly, the SI acknowledges that: (i) the MTA has the authority to act on behalf of the other MTA Group entities, and any MTA direction, response, or action by the MTA under these Contract Documents on behalf of any other MTA Group entity shall be binding on the SI; (ii) notwithstanding a Delegation Notice, in the event of a conflict between any direction, decision, or other instruction given to the SI by the MTA and one given by another MTA Group entity, the SI shall comply with the direction, decision, or other instruction of the MTA; (iii) the MTA's approval or rejection of any Deliverable herein shall mean and be interpreted as an approval or rejection by the MTA Group; and (iv) the MTA shall be entitled to exercise any of the rights granted to the MTA herein on behalf of itself and on behalf of any of the other MTA Group entities. By way of clarification, and not limitation, (1) the MTA's right to add, substitute, upgrade, and replace NFPS components pursuant to Section 3.2 (MTA Substitution Rights and Rights to Add) means and shall be interpreted as allowing the MTA to add, substitute, upgrade, and replace NFPS components in use by it or any other MTA Group entity, and (2) the MTA shall have the right to purchase additional NFPS Equipment for itself and for any other MTA Group entity.

2.4.4. MTA Right to Delegate Authority.

Notwithstanding Section 2.4.3 (MTA Authority; Scope of MTA Rights), and as further set out in Technical Specifications Section 4.2.4.8 (Project Management and Scope of Authority), the MTA shall have the right to delegate any of its authority set out in these Contract Documents to any specific MTA Group entity by providing written notice to the SI (each, a "**Delegation Notice**"). Each Delegation Notice shall, as reasonably determined by the MTA, include: (i) the specific decision-making authority that is being delegated (each, a "**Delegated Right**"); (ii) the specific MTA Group entity or entities to which the Delegated Right is being delegated (each, a "**Designated MTA Group Entity**") and, to the extent applicable, the order of authority among multiple MTA Group entities to which a Delegated Right is being delegated; and (iii) the duration for which the delegation shall remain in effect. Upon receipt of a Delegation Notice, the SI shall comply with the direction and decisions made by the Designated MTA Group Entity as if such decisions were made by the MTA, and the MTA shall be responsible for such decisions made by the Designated MTA Group Entity as if the MTA had made the decisions itself. Notwithstanding anything to the contrary, including the rights delegated to the Designated MTA Group Entities pursuant to this Section 2.4.4 (MTA Right to Delegate Authority), only the MTA (and no other MTA Group entity) shall have the right to rescind or modify any Delegated Rights (and any Delegation Notice) immediately by notifying the SI of the same.

2.4.4.1. SI Confirmation of Delegation of Authority and MTA Group Direction.

The parties acknowledge that the scope and complexity of the Project are such that there may be instances in which it is unclear whether an MTA Group entity (other than the MTA) has sufficient authority to direct the SI to perform Work. To this end, and as further set out in Technical Specifications Section 4.2.4.8 (Project Management and Scope of Authority), if either (i) the SI is uncertain as to whether an MTA Group entity is acting within the scope of a Delegated Right, or (ii) an MTA Group entity (other than the MTA) (a) exercises a right granted herein to the MTA that has not been expressly delegated pursuant to a Delegation Notice, (b) otherwise issues a direction or request to the SI, or (c) seeks to terminate the Contract Documents, then the SI shall seek clarification and approval from the MTA prior to complying with the other MTA Group entity's direction, request, or exercise of an MTA right. The SI waives all claims for relief due to the unauthorized action of an MTA Group entity if the SI fails to obtain such clarification and approval, and the SI shall also be solely responsible for correcting (at the SI's sole cost and expense) any non-compliance with its obligations herein due to the unauthorized action of an MTA Group entity. By way of clarifying example, if the SI installs a Hardware Update based on the direction of NYCT, and the MTA did not provide its own approval or otherwise delegate to NYCT the right to approve the installation of a Hardware Update via a Delegation Notice, then the SI shall be solely responsible and liable for its reliance on such invalid NYCT approval including, but not limited to, uninstalling the installed Hardware Update in order to correct the SI's failure to comply with its obligations set out in Section 15.13.4 (Installation of Approved Hardware Updates) and any other harm or liability resulting from the SI's installation of such Hardware Update.

2.4.4.2. Limitation on MTA Delegation Rights.

Notwithstanding anything to the contrary, including the MTA's right to delegate authority to other MTA Group entities pursuant to Section 2.4.4 (MTA Right to Delegate Authority), the MTA shall not have the right to delegate to any other MTA Group entity the right to terminate the Contract Documents for any reason, including for convenience or due to an Event of Default.

2.4.5. Treatment of Liability for MTA Group Actions.

2.4.5.1. MTA Assumption of Liability for MTA Group Actions.

The parties recognize that the SI does not have contractual recourse against MTA Group entities (other than the MTA) under these Contract Documents because such other MTA Group entities are not parties to these Contract Documents. To provide the SI sufficient recourse against the MTA Group entities' non-compliance with these Contract Documents, the MTA shall be liable to the SI for the acts or omissions of each MTA Group entity under the Contract Documents, where the MTA Group entity's acts or omissions are such that, if they had been the MTA's acts or omissions, they would have constituted a breach of the Contract Documents by the MTA. By way of clarifying example, if NYCT fails to furnish General Orders and Related Services as contemplated in Section 5.9 (Delay or Cancellation of General Orders and Related Services; Recoverable Lost-Time Costs) or LIRR breaches the grant of rights in SI Software provided pursuant to Section 35.2.1 (SI Software), then the MTA, and not NYCT or LIRR, shall be deemed to have failed to provide the General Orders and Related Services or breached the grant of rights to SI Software. Notwithstanding anything to the contrary, the SI agrees that the MTA Group shall have no responsibility or liability for any Linked NFPS Entity.

2.4.5.2. Limitations on SI Right to Bring Claims.

In light of the MTA's assumption of liability for the actions or inactions of the other MTA Group entities pursuant to Section 2.4.5.1 (MTA Assumption of Liability for MTA Group Actions) and the MTA Group's status as third-party beneficiaries, the SI agrees that: (i) any SI claim or cause of action of whatever nature (including contract, tort, equity, and specific performance) against any MTA Group entity arising out of or otherwise relating to these Contract Documents shall be brought solely against the MTA to the exclusion of all other MTA Group entities; (ii) the SI shall have no right to bring any claim or cause of action arising out of or otherwise

relating to these Contract Documents against any MTA Group entity other than the MTA; (iii) the MTA shall have the right to bring or raise against the SI any claims, counterclaims, and defenses available to any MTA Group entity; and (iv) the SI shall not institute actions against any MTA Group entity (other than the MTA) in connection with any dispute arising out of, or relating to, these Contract Documents. The SI further agrees that its rights and remedies against the MTA Group as set out in this Section 2.4.5.2 (Limitations on SI Right to Bring Claims) are further subject to the limitations and obligations set out herein, including those in Section 39 (Limit of Liability) and Section 45 (Disputes; Dispute Resolution). By way of clarification, and not limitation, if MNR and LIRR breach the grant of rights in SI Software provided pursuant to Section 35.2.1 (SI Software), then the SI's sole recourse shall be to proceed against the MTA for such breach in accordance with these Contract Documents, including the dispute resolution procedures set out in Section 45 (Disputes; Dispute Resolution) and subject to the limit of liability set out in Section 39 (Limit of Liability), and the SI shall have no right to bring a cause of action against either MNR or LIRR for such breach and shall have no other recourse against any MTA Group entity other than to proceed against the MTA as permitted pursuant to these Contract Documents.

3. Open System Overview.

3.1. Open System Requirements.

As further provided in the Contract Documents, the SI shall ensure that the NFPS system architecture: (i) allows adding, upgrading and swapping functionally equivalent components from multiple alternative vendors, without requiring custom development efforts for their integration; (ii) uses Open Source Software to the greatest extent reasonably possible and, where use of Open Source Software is not feasible, uses COTS Software to the greatest extent reasonably possible; (iii) uses COTS hardware to the greatest extent reasonably possible; (iv) relies on a data exchange and data format based on Open Standards and Open Payments in order to ensure interoperability among equipment, Software and systems from multiple alternative vendors; (v) implements well-defined and documented Software Interfaces; (vi) implements well-defined and documented Hardware Interfaces that utilize standard connectors or Third Party connectors commercially available through multiple alternative vendors; (vii) relies on, and otherwise supports, Modular Programming; (viii) relies on standards that are developed and adopted by industrially recognized standards bodies; and (ix) makes explicit provision for expansion or upgrading through the incorporation of additional or higher performance elements with minimal impact.

3.1.1. MTA Approval of Certain Proposal Components.

The MTA acknowledges that the use of the Open Source Software, COTS Software, and COTS hardware described in the Proposal (collectively, the "**Baseline NFPS Component Architecture**") complies with the requirements included in romanette two and romanette three of Section 3.1 (Open System Requirements) with respect to (i) the specific Open Source Software, COTS Software and COTS hardware proposed, and (ii) the proportionate use of the same relative to each other and to the NFPS as a whole.

3.1.2. Baseline NFPS Component Architecture Deviations Following Notice of Award.

The open system requirements included in Section 3.1 (Open System Requirements) are intended, among other things, to ensure that the MTA has the ability to maintain, repair, replace, and substitute NFPS components in the MTA's sole discretion, and to do so utilizing products and services from multiple alternative vendors. To ensure that such ability is not diminished throughout the Term, the SI shall not deviate from the Baseline NFPS Component Architecture, including any deviation from the amount and proportionate use of Open Source Software, COTS Software and COTS hardware included in the NFPS, except as permitted pursuant to this Section 3 (Open System Overview).

3.1.3. Baseline NFPS Component Architecture Deviations Prior to Final Design Review.

The MTA and the SI acknowledge that the design review process may identify the need to make certain changes to the Baseline NFPS Component Architecture that improve the performance, function, and efficiency with which the NFPS meets the MTA's objectives and requirements set out herein. To this end, between the MTA's issuance of the Notice of Award and its completion of the Final Design Review (the "**Baseline NFPS Component Deviation Period**"), the SI shall have the right to deviate from the Baseline NFPS Component Architecture, including in the amount and proportionate use of Open Source Software, COTS Software, and COTS hardware included in the NFPS; provided, however, that any such deviations shall be subject to all of the following conditions: (i) the SI must notify the MTA in writing during design review of any such deviations; (ii) the MTA shall have the right to approve, reject, or modify any such proposed deviations, and the SI shall comply with any such approval, rejection, or modification; and (iii) during the Final Design Review, the MTA shall compare the Baseline NFPS Component Architecture against the Baseline NFPS Component Architecture as modified pursuant to this Section 3.1.3 (Baseline NFPS Component Architecture Deviations Prior to Final Design Review) and, if the MTA determines that any previously-approved deviation impacts the MTA's ability to maintain, repair, replace, and substitute NFPS components in the MTA's sole discretion (and to do so utilizing products and services from multiple alternative vendors) or otherwise impacts the MTA's ability to utilize the NFPS as intended, then the MTA shall notify the SI of the same, and the SI shall make any MTA-identified corrections, all at the SI's sole cost and expense. The version of the Baseline NFPS Component Architecture that the MTA accepts as part of the Final Design Review is referred to herein as the "**Final Design NFPS Component Architecture**."

3.1.4. Final Design NFPS Component Architecture Deviations Following Final Design Review.

If, despite the SI's best efforts, the SI determines that it is necessary and reasonable to deviate from the Final Design NFPS Component Architecture (each, an "**Open System Deviation**"), then the SI shall promptly notify the Engineer in writing of the same (each, a "**Deviation Proposal**").

3.1.5. Deviation Proposal Content.

Each Deviation Proposal shall include at least: (i) the impacted Open Source Software, COTS Software, or COTS hardware; (ii) the proposed replacement for the impacted Open Source Software, COTS Software, or COTS hardware; (iii) an explanation of why the Open System Deviation is necessary and unavoidable; (iv) an explanation of the best efforts that the SI has taken to avoid the Open System Deviation; (v) the SI's proposal for minimizing the Open System Deviation; (vi) the SI's proposal for subsequently correcting or offsetting the Open System Deviation, which may include the replacement of other portions of the NFPS so as to re-establish the amount and proportionate use of Open Source Software, COTS Software, and COTS hardware set out in the Final Design NFPS Component Architecture; (vii) the SI's proposal for ensuring that the MTA Group's right to maintain, repair, replace, and substitute NFPS components utilizing products and services from multiple alternative vendors is not diminished due to the Open System Deviation; and (viii) any other information that the Engineer requests.

3.1.6. MTA Review of Deviation Proposal.

The Engineer shall review each submitted Deviation Proposal and either (i) approve the Deviation Proposal in writing, or (ii) reject the Deviation Proposal and provide the SI with an explanation of why such Deviation Proposal was rejected. Within fourteen (14) days of the SI's receipt of a rejection notice, the SI shall correct the Deviation Proposal and resubmit the corrected Deviation Proposal to the Engineer for further review pursuant to this Section 3.1.6 (MTA Review of Deviation Proposal).

3.1.6.1. General SI Responsibility for Deviation Proposal Costs.

The SI agrees that it shall be solely responsible for (i) all costs associated with any approved Deviation Proposal, including any increases in licensing, support and maintenance costs, and any other costs attributable to the Open System Deviation, and (ii) all costs that the MTA Group incurs that are attributable to the Open System Deviation.

3.1.6.2. MTA Right to Require Remedial Efforts; SI Responsibility for Certain Deviation Proposal Costs.

The SI acknowledges that the MTA shall have the right to direct the SI to correct Open System Deviations at any time following the MTA's approval of a Deviation Proposal pursuant to Section 3.1.6 (MTA Review of Deviation Proposal) in order to reestablish, in whole or in part, the Final Design NFPS Component Architecture, including the proportionate use of Open Source Software, COTS Software, and COTS hardware relative to each other and to the NFPS as a whole (each, a "**Deviation Remediation**"). The SI shall promptly implement each Deviation Remediation as directed by the MTA. The SI agrees that it shall be solely responsible for all costs associated with a Deviation Remediation if, in the MTA's reasonable determination, such Deviation Remediation replaces an SI-proprietary component introduced into the NFPS as an Open System Deviation with a functionally equivalent COTS component and such replacement reestablishes, in whole or part, the Final Design NFPS Component Architecture that the MTA approved pursuant to Section 3.1.3 (Baseline NFPS Component Architecture Deviations Prior to Final Design Review). By way of clarifying example, if the SI replaces existing COTS Software with SI-proprietary Software via a Deviation Proposal in a manner that changes the proportionate use of the Open Source Software, COTS Software, and COTS hardware relative to each other and to the NFPS as a whole established in the Final Design NFPS Component Architecture, and the MTA later directs the SI to replace such SI-proprietary Software with a COTS Software component, then the SI shall be responsible for all costs associated with such replacement. The MTA shall make all determinations, in its reasonable discretion, regarding the proportionality of Open Source Software, COTS Software, and COTS hardware relative to each other and to the NFPS as a whole.

3.1.6.3. Impact of MTA Approval of Deviation Proposals.

Notwithstanding anything to the contrary, in no event shall the Engineer's approval of a Deviation Proposal constitute a waiver or otherwise relieve the SI from fulfilling all of its obligations under the Contract Documents.

3.2. MTA Substitution Rights and Rights to Add.

The MTA shall have the right at any time to add, substitute, upgrade, and replace NFPS components with functionally equivalent components from alternative vendors in the manner set out in this Section 3.2 (MTA Substitution Rights and Rights to Add).

3.2.1. Qualified MTA-Substituted Products.

There are three (3) categories of additions, substitutions, upgrades, and replacements for NFPS Hardware and NFPS Software that the MTA is permitted to make under this Section 3.2 (MTA Substitution Rights and Rights to Add): (i) those that constitute Substitution Products; (ii) those that constitute Verified Additional Products; and (iii) those that constitute Change-Order Additional Products (collectively, the "**Qualified MTA-Substituted Products**"). The distinction between Substitution Products, Verified Additional Products and Change-Order Additional Products is determined by means of the Substitution Product Specifications and the Verification Process, as further described in this Section 3.2 (MTA Substitution Rights and Rights to Add).

3.2.2. Process; Comment Procedures and Terms.

3.2.2.1. Substitution Product Specifications.

During Design Review, and as further set out in the Technical Specifications, the SI shall prepare and submit to the Engineer for review and approval specifications for all NFPS Hardware and NFPS Software. These specifications shall be for the purpose of identifying products and Software that themselves will meet, and that whose inclusion in the NFPS will cause the NFPS to continue to meet, all KPIs, Service Levels and applicable Warranties upon the integration of such products or Software into the NFPS (collectively, the "**Substitution Product Specifications**"). The Substitution Product Specifications shall be designed such that, where a product or Software module complies with the Substitution Product Specifications, due to applicable APIs and other design features, no more than de minimis configuration shall be required in connection with the SI's Integration Services and in order to meet KPIs, Service Levels and applicable Warranties in the manner set out herein.

3.2.2.2. Verification Process.

The parties recognize that a product or Software module may not meet the Substitution Product Specifications, but nevertheless be suitable for integration into the NFPS without degrading applicable KPIs or Service Levels. Accordingly, during Design Review, and as further set out in the Technical Specifications, the SI shall prepare and submit to the Engineer for review and approval a set of tests, test protocols, scripts, and required test results for purposes of identifying and verifying such products and Software modules, and the impact (if any) of their inclusion on the performance of the NFPS (collectively, the "**Verification Process**"). If the SI is required to materially modify the Verification Process to address a New MTA-Provided System that the MTA seeks to include in the NFPS as either a Verified Additional Product or a Change-Order Additional Product, then the development of such modifications to the Verification Process shall be considered Extra Work pursuant to Section 32 (Changes in Work; Change Orders).

3.2.2.3. MTA-Substituted Product Warranties.

The SI acknowledges that there may be manufacturers' warranties or other warranties on Qualified MTA-Substituted Products. If the MTA transfers such a warranty to the SI, then this warranty shall be referred to as an "**MTA-Substituted Product Warranty**" with respect to the Qualified MTA-Substituted Product at issue. The SI's responsibilities (where applicable) as to MTA-Substituted Product Warranties are set out herein.

3.2.3. Substitution Products.

A product or Software module that meets applicable Substitution Product Specifications set out in Section 3.2.2.1 (Substitution Product Specifications), as determined by the Engineer in the exercise of reasonable technical judgment, is referred to herein as a "**Substitution Product**." The MTA shall be entitled to use Substitution Products to replace their NFPS counterparts for all purposes, and the MTA shall be entitled to purchase Substitution Products from alternative vendors and other sources of its choice, without obligation to the SI (including without royalty or other fee obligations to the SI arising from such purchases).

3.2.3.1. Integration Services for Substitution Products.

Except for the costs for installing physical components of NFPS Hardware (which shall be treated as Extra Work), the SI shall integrate Substitution Products into the NFPS during the Term, and perform all associated Integration Services, at no charge to the MTA Group.

3.2.3.2. Warranty, KPI and Service Level Obligations Concerning Substitution Products.

The SI shall be responsible for Substitution Products' compliance with all KPIs and Service Levels. During the Software Warranty Period, the SI shall be responsible for the Contract Documents' Warranties for all Substitution Products that do not constitute hardware. The SI shall not be responsible for the Contract Documents' Hardware Warranties for Substitution Products that constitute hardware. The SI shall also provide, at no cost to the MTA Group, warranty management, coordination and return services under the MTA-Substituted Product Warranties, as such may still be in effect as of the expiration of the Software Warranty Period and/or the MTA's provision of the applicable Substitution Product that constitutes hardware.

3.2.3.3. Support and Update Obligations for Substitution Products.

The SI shall provide Technical and Software Support Services for Substitution Products that constitute Software in the manner set out in Section 19 (Technical and Software Support Services), and the SI shall provide Updates for such Software similarly in accordance with Section 19 (Technical and Software Support Services). The SI shall provide Hardware Updates to relevant Substitution Products in the manner set out in Section 15.13 (SI Hardware Update Obligations).

3.2.4. Verified Additional Products.

A product or Software module that successfully completes the Verification Process set out in Section 3.2.2.2 (Verification Process), as determined by the Engineer in the exercise of reasonable technical judgment, is referred to herein as a "**Verified Additional Product**." The MTA shall be entitled to use Verified Additional Products to replace their NFPS counterparts or to supplement the functionality of NFPS components, and the MTA shall be entitled to purchase Verified Additional Products from alternative vendors and other sources of its choice, without obligation to the SI (including without royalty or other fee obligations to the SI arising from such purchases). The MTA shall be responsible for all costs associated with reviewing a product or Software module via the Verification Process (collectively, the "**Verification Costs**"). If the SI performs the Verification Process itself (the "**SI Verification Services**"), then such SI Verification Services shall be treated as Extra Work pursuant to Section 32 (Changes in Work; Change Orders); provided, however, that any Verification Costs shall be limited to the SI's reasonable costs that the SI actually incurs and that are documented to the MTA's satisfaction, and the SI shall not be entitled to any additional amounts (including Negotiated Profit) that the SI would otherwise be entitled to for Extra Work. If the MTA performs the Verification Process (either directly or through a Third Party), then the MTA shall provide the SI with copies of the results of such Verification Process.

3.2.4.1. Integration Services for Verified Additional Products.

Except for the costs for installing physical components of NFPS Hardware (which shall be treated as Extra Work), the SI shall integrate Verified Additional Products into the NFPS during the Term, and perform all associated Integration Services, at no charge to the MTA Group.

3.2.4.2. Warranty, KPI and Service Level Obligations Concerning Verified Additional Products.

The SI shall be responsible for Verified Additional Products' compliance with all applicable KPIs and Service Levels. The SI shall not be responsible for the Contract Documents' Warranties for Verified Additional Products. Instead, at no cost to the MTA Group, the SI shall provide warranty management, coordination and return services under the MTA-Substituted Product Warranties, as such may apply to the Verified Additional Product at issue.

3.2.4.3. Support and Update Obligations for Verified Additional Products.

To the extent required to maintain performance with applicable KPIs and Service Levels, the SI shall provide Technical and Software Support Services for Verified Additional Products that constitute Software in the manner set out in Section 19 (Technical and Software Support Services), and the SI shall provide Updates for such Software similarly in accordance with Section 19 (Technical and Software Support Services). To the extent required to maintain performance with applicable KPIs and Service Levels, the SI shall provide Hardware Updates to relevant Verified Additional Products in the manner set out in Section 15.13 (SI Hardware Update Obligations). The SI shall not otherwise be obligated to provide Updates or Technical and Software Support Services for Verified Additional Products.

3.2.5. Change-Order Additional Products.

Certain products and Software modules might not only (i) be inconsistent with the Substitution Product Specifications, but also (ii) fail the Verification Process. The SI acknowledges that the MTA might nevertheless wish to include such products and Software modules in the NFPS or otherwise within MTA-Provided Systems. In such event, the parties shall proceed in accordance with Section 32 (Changes in Work; Change Orders). Products and Software modules that the MTA includes in the NFPS or otherwise within MTA-Provided Systems under the Change Order process are referred to herein as "**Change-Order Additional Products.**" The SI's obligations concerning Integration Services, Warranties, KPIs, Service Level Requirements, Updates and support shall be as set out in the applicable Change Order.

4. Expanded Use of NFPS.

As further set out in the Technical Specifications, the NFPS shall apply to all systems and equipment of the NFPS Agencies, including without limitation all systems and equipment that permit the NFPS Agencies to collect funds from customers in exchange for riding the subways, buses, and commuter rail. In addition, the MTA may extend the NFPS to serve as a payment system for products and services in addition to those provided by or on behalf of the NFPS Agencies including, without limitation, Ancillary MTA Group Entities, Linked NFPS Entities, and other transportation providers (including MetroCard Affiliates). For example, the MTA Group has operating agreements in place with a number of other entities relating to the use of MetroCards for fare payment (collectively, the "**MetroCard Affiliates**"), as further identified in Technical Specifications Section 4.4 (NFPS Agencies and Linked NFPS Entities). The MTA shall be entitled to allow MetroCard Affiliates to participate in the NFPS, including using NFPS Media as a form of fare payment. The NFPS is to be designed to ensure that other entities can integrate into the NFPS based on Open Architecture, Open Standards and Open Payment approaches, including the use of common data formats and standardized APIs. SI compensation for such expanded use of the NFPS is further set out in Technical Specifications Section 4.4.3 (Integration Services for Linked NFPS Entities and Ancillary MTA Group Entities). By way of clarification, and not limitation, the SI agrees that the MTA shall have the right to expand the NFPS to Linked NFPS Entities pursuant to these Contract Documents and, if the MTA elects not to do so pursuant to these Contract Documents (either in whole or in part), then such expansion shall be subject to an agreement that is agreed upon between the SI and the applicable Linked NFPS Entity.

5. Performance Schedule.

5.1. Commencement and Completion Dates.

The Contract shall come into full force and effect upon the MTA's issuance of the Notice of Award. All timelines and milestones for the SI's completion of Work (including dates for Beneficial Use Certifications, Substantial Completion, Final Completion and all other milestones) shall be computed beginning on the date of the Notice to Proceed. The SI shall begin performing the Work upon its receipt of the Notice to Proceed and, subject to Section 32 (Changes in Work; Change Orders), the SI shall ensure that the NFPS has met all the criteria for

Substantial Completion within sixty-nine (69) months following the date on which the NTP is issued (the "**Substantial Completion Date**").

5.2. Schedule for Performance.

5.2.1. SI Proposed Master Program Schedule.

The SI shall prepare a proposed schedule for the Project that includes all associated timelines and milestones, all in accordance with the Contract Documents (the "**Proposed Master Program Schedule**"). The SI shall have broad discretion when determining the logic, durations, staffing and quantities reflected in the Proposed Master Program Schedule, provided that the Proposed Master Program Schedule complies with the Substantial Completion Date, Beneficial Use Dates, and other requirements set out in the Contract Documents, including those requirements set out in Section 5.7.2 (Orderly Submission Requirement) and Technical Specifications Section 4.9 (Project Schedule). The SI shall submit the Proposed Master Program Schedule to the Engineer for review within thirty (30) calendar days of the NTP.

5.2.2. Review and Approval of the Proposed Master Program Schedule.

Upon receipt of the Proposed Master Program Schedule, the Engineer shall review the same within the Applicable Review Period. The Engineer is entitled to reject some or all elements of the Proposed Master Program Schedule if the Engineer determines that the Proposed Master Program Schedule: (i) lacks logic; (ii) is unreasonable or unrealistic; (iii) is incomplete; (iv) may create unsafe working conditions; or (v) is inconsistent with any other requirement (including milestone dates) set out in the Contract Documents, such as a phasing plan or the availability of MTA Group resources. The Engineer shall notify the SI of its acceptance or rejection of the Proposed Master Program Schedule. If the Engineer rejects any element of the Proposed Master Program Schedule, she or he will provide a description of the basis for the rejection of such element. Upon receipt of a rejection notice, the SI shall promptly revise the Proposed Master Program Schedule and resubmit the same to the Engineer for further review within five (5) days. If the Engineer accepts the Proposed Master Program Schedule, it shall be deemed the "**Master Program Schedule**" for all purposes herein.

5.2.3. Updates to the Master Program Schedule.

The SI shall submit for review and approval by the Engineer (i) updates to the Master Program Schedule to reflect outstanding Work and the best time estimate for completing outstanding Work, and (ii) the reports specified in the Technical Specifications (including Earned Value Management reports) (each, an "**MPS Update**"). The SI shall submit MPS Updates on a monthly basis, or a more frequent basis as determined by the Engineer, and the Engineer shall review each MPS Update within the Applicable Review Period.

5.2.4. Changes to the Master Program Schedule.

The SI shall submit to the Engineer for review any proposed changes to the Master Program Schedule (each, a "**Proposed MPS Change**"). Proposed MPS Changes shall be limited to keeping the Master Program Schedule up-to-date with respect to outstanding Work and time estimates for completing such outstanding Work. The Engineer shall review and accept or reject each Proposed MPS Change using the same process set out in Section 5.2.2 (Review and Approval of the Proposed Master Program Schedule), and any acceptance shall be subject to Section 5.2.5 (Effect of Acceptance of the Proposed Master Program Schedule or Changes).

5.2.5. Effect of Acceptance of the Proposed Master Program Schedule or Changes.

The Engineer's acceptance of the Proposed Master Program Schedule pursuant to Section 5.2.2 (Review and Approval of the Proposed Master Program Schedule) or any changes to the Master Program Schedule pursuant

to Section 5.2.4 (Changes to the Master Program Schedule) or Section 5.2.3 (Updates to the Master Program Schedule) does not relieve the SI of any obligation: (i) to ensure the accuracy and feasibility of the Master Program Schedule; (ii) to meet the Substantial Completion Date or the Beneficial Use Dates; or (iii) to fulfill any other obligation under the Contract Documents. Furthermore, the Engineer's acceptance does not constitute the MTA's agreement regarding the sufficiency of the logic, durations, staffing, quantities or costs reflected in the Master Program Schedule.

5.2.6. Format for Submissions Relating to the Master Program Schedule.

The Proposed Master Program Schedule, the Master Program Schedule, Proposed MPS Changes, MPS Updates and all other submissions related to the same must be submitted to the Engineer in a timely manner, in the format that he or she prescribes, and as otherwise required pursuant to the Contract Documents. The Engineer's receipt of such documents, in conformance with all contractual requirements, shall be a condition precedent to the SI's entitlement to any payment which may otherwise be due.

5.2.7. MTA Right to Update the Master Program Schedule.

If the SI does not timely submit an MPS Update or the Engineer determines that a submitted MPS Update is inadequate, then the MTA may, in its sole discretion and for its own internal use, update the Master Program Schedule with its own personnel (and personnel of other MTA Group entities) or by engaging Third Parties (each, an **"MTA-Prepared MPS Update"**). The SI shall be solely responsible for all costs incurred by the MTA in preparing an MTA-Prepared MPS Update. The preparation of an MTA-Prepared MPS Update shall not relieve the SI's obligation to prepare and submit all required MPS Updates as required pursuant to the Contract Documents, including those that trigger the preparation of MTA-Prepared MPS Updates.

5.2.8. Accelerating the Substantial Completion Date.

If the SI submits a Proposed MPS Change or other scheduling document calling for (i) one or more accelerated intermediate milestone dates set out in the Master Program Schedule (each, an **"Intermediate Milestone Date"**), or (ii) an accelerated Substantial Completion Date, and if the Engineer accepts such accelerated date, the accepted accelerated Substantial Completion Date or Intermediate Milestone Date shall be used for scheduling purposes in the Master Program Schedule; however, the accelerated dates shall not change the contractual Substantial Completion Date or the contractual Intermediate Milestone Date. The time period between (a) the shortened date for Substantial Completion (or for the Intermediate Milestone) and (b) the contractual date for Substantial Completion (or for the Intermediate Milestone) shall be considered project float available to offset delays by either the SI or the MTA Group. The entitlement to Impact Costs or the assessment of Liquidated Damages shall continue to be measured by the contractual Substantial Completion Date and/or contractual Intermediate Milestone Date.

5.2.9. Work Acceleration.

The parties acknowledge that there are mutual benefits to accelerating certain portions of the Work, including the introduction of a subset of the NFPS for general use by MTA customers earlier than the date included in the Master Program Schedule for BU #1. In addition to the SI's rights set out in Section 5.2.8 (Accelerating the Substantial Completion Date), either party may notify the other party of its desire to accelerate portions of the Work. If such a request is made, then both parties shall work together in good faith to determine whether to accelerate the applicable portion of the Work, and memorialize any such agreement in writing. Any such written agreement shall include: (i) those portions of the Work to be accelerated; (ii) key milestone dates for the accelerated Work (collectively, the **"Acceleration Milestone Dates"**); provided, however, that any agreed upon Acceleration Milestone Dates shall also be reflected in applicable MPS Updates; (iii) deviations to MTA-

specific obligations under these Contract Documents that are necessary to ensure that the Acceleration Milestone Dates are met; and (iv) the SI's compensation (if any) for its provision of accelerated Work.

5.3. Beneficial Use and Substantial Completion Determinations.

5.3.1. Initiation of Beneficial Use Review.

The process for determining whether applicable Work for each Beneficial Use is complete may be initiated by either the MTA or the SI. The SI may initiate a Beneficial Use review by notifying the Engineer in writing when the SI believes in good faith that the applicable Work meets the requirements set out in the Contract Documents, including Section 5.3 (Beneficial Use and Substantial Completion Determinations) (each, a "**Beneficial Use Notice**"). The Engineer may initiate a Beneficial Use review at any time by providing written notice to the SI.

5.3.2. MTA Beneficial Use Review.

The Engineer shall have twenty-five (25) calendar days, from his or her receipt of a Beneficial Use Notice or his or her determination that a Beneficial Use review is appropriate, to review the applicable Work to determine whether: (i) the applicable Work is complete, is fit for its intended purpose and otherwise meets the criteria set out in the Contract Documents; (ii) all applicable final operation and maintenance manuals have been approved by the Engineer; (iii) applicable final as-built drawings for the NFPS have been approved by the Engineer; (iv) all other applicable Deliverables have been approved by the Engineer, except for those not required for the particular Beneficial Use; and (v) the SI has successfully completed all applicable training of MTA Group personnel and submitted all applicable Training Documentation.

5.3.3. Outcome of Beneficial Use Review; No Waiver.

Upon the completion of the review set out in Section 5.3.2 (MTA Beneficial Use Review), the Engineer shall issue to the SI either (i) a Beneficial Use Certificate, which indicates that the Engineer has determined that the Beneficial Use has been achieved, or (ii) a rejection notice, which shall include (a) an explanation of why the Beneficial Use has not been achieved, and (b) a list of open items necessary to achieve Beneficial Use. Upon receipt of a rejection notice, the SI shall promptly resolve all identified open items and then reinitiate the process set out in this Section 5.3 (Beneficial Use and Substantial Completion Determinations) by submitting a new Beneficial Use Notice to the Engineer. Upon receipt of a Beneficial Use Certificate, the MTA and the SI shall proceed according to the Contract Documents. Notwithstanding anything to the contrary, in no event shall the Engineer's issuance of a Beneficial Use Certificate constitute a waiver or otherwise relieve the SI from fulfilling all of its obligations under the Contract Documents, including the completion of all Work.

5.3.4. Initiation of Substantial Completion Review.

The process for determining whether the NFPS is Substantially Complete may be initiated by either the MTA or the SI. The SI may initiate a Substantial Completion review by notifying the Engineer in writing when the SI believes in good faith that the NFPS meets the requirements for Substantial Completion set out in the Technical Specifications, including Section 30.6 (Substantial Completion) (each, a "**Substantial Completion Notice**"). The Engineer may initiate a Substantial Completion review at any time by providing written notice to the SI.

5.3.5. MTA Substantial Completion Review.

The Engineer shall have twenty-five (25) calendar days, from his or her receipt of a Substantial Completion Notice or his or her determination that a Substantial Completion review is appropriate, to review the NFPS and

other Work completed to date to determine whether: (i) except for Remaining Work, the NFPS (including all mechanical and electrical systems and their component parts) is complete, is fit for its intended purpose and otherwise meets the criteria set out in the Contract Documents, including Technical Specifications Section 30.6 (Substantial Completion); (ii) all final operation and maintenance manuals have been approved by the Engineer; (iii) final as-built drawings for the NFPS have been approved by the Engineer; (iv) all other remaining Deliverables have been approved by the Engineer, except for those not required to be approved prior to Substantial Completion; and (v) the SI has successfully completed all required training of MTA Group personnel and submitted all required Training Documentation.

5.3.6. Outcome of Substantial Completion Review; No Waiver.

Upon the completion of the review set out in Section 5.3.5 (MTA Substantial Completion Review), the Engineer shall issue to the SI either (i) a Certificate of Substantial Completion, which indicates that the Engineer has determined that Substantial Completion has been achieved, or (ii) a rejection notice, which shall include (a) an explanation of why Substantial Completion has not been achieved, and (b) a list of open items necessary to achieve Substantial Completion. Upon receipt of a rejection notice, the SI shall promptly resolve all identified open items and then reinitiate the process set out in this Section 5.3 (Beneficial Use and Substantial Completion Determinations) by submitting a new Substantial Completion Notice to the Engineer. Upon receipt of a Certificate of Substantial Completion, the MTA and the SI shall proceed according to the Contract Documents. Notwithstanding anything to the contrary, in no event shall the Engineer's issuance of a Certificate of Substantial Completion constitute a waiver or otherwise relieve the SI from fulfilling all of its obligations under the Contract Documents, including the completion of all Work.

5.4. Resolution of Beneficial Use Remaining Work and Remaining Work; Final Completion.

5.4.1. Determination of BU Remaining Work; BU Remaining Work List.

The term "**BU Remaining Work**" means all Work associated with a particular Beneficial Use that the Engineer determines remains outstanding after the issuance of a Beneficial Use Certificate, including: (i) street restoration and permanent pavement Work that cannot be done because of seasonal factors such as cold weather (provided sufficient temporary pavement is complete); (ii) Work that cannot be done until an NFPS Agency or a Third Party performs other work that is not the SI's responsibility under the Contract Documents; and (iii) Work necessary to correct any omission or defect attributable to the SI whether or not discovered or disclosed after a Beneficial Use Certificate has been declared. The term BU Remaining Work (a) expressly includes all applicable Punch List Work, and (b) expressly excludes the Work and Services that by their nature are intended to continue past the applicable Beneficial Use (including all Work related to subsequent Beneficial Uses). The Engineer shall provide the SI with an initial list of BU Remaining Work within ten (10) calendar days of the issuance of a Beneficial Use Certificate (the "**BU Remaining Work List**"), and the Engineer shall have the right to update the same should he or she identify other BU Remaining Work that is not included on the initial BU Remaining Work List.

5.4.2. Schedule for Completing BU Remaining Work.

Within ten (10) calendar days of the SI's receipt of an initial BU Remaining Work List and updates to the same provided by the Engineer, the SI shall submit to the Engineer a schedule for completing all BU Remaining Work identified on the BU Remaining Work List (each, a "**BU Remaining Work Completion Schedule**"). The Engineer shall then review the BU Remaining Work Completion Schedule within the Applicable Review Period and notify the SI whether the BU Remaining Work Completion Schedule has been (i) accepted, or (ii) rejected, and such rejection notice shall include an explanation of the basis for the rejection and a list of modifications that must be made to the proposed BU Remaining Work Completion Schedule. Upon receipt of a rejection notice, the SI shall promptly update the BU Remaining Work Completion Schedule pursuant to the Engineer's direction and

resubmit the same to the Engineer for additional review(s). Upon the Engineer's acceptance of the BU Remaining Work Completion Schedule, the SI shall immediately commence completing all BU Remaining Work. In no event shall the SI have more than ninety (90) calendar days from the issuance of the Beneficial Use Certificate to satisfactorily complete all BU Remaining Work.

5.4.3. SI Failure to Complete BU Remaining Work.

If the MTA determines, in its reasonable discretion, that the SI is failing to diligently complete BU Remaining Work or that emergency circumstances warrant the expedited completion of BU Remaining Work, then the MTA shall have the right to complete such BU Remaining Work, either using its own personnel (and those of other MTA Group entities) or by engaging Third Parties (the "**MTA-Completed BU Remaining Work**"). In no event shall the SI be entitled to any compensation for BU Remaining Work that is covered by MTA-Completed BU Remaining Work. Unless the MTA-Completed BU Remaining Work was performed due to emergency circumstances that the MTA determines were not attributable to the SI's actions or inactions, the MTA shall also deduct all costs it or any other MTA Group entity incurs in connection with performing the MTA-Completed BU Remaining Work from any applicable payments and, if such costs exceed the applicable payments, either (i) the MTA shall deduct the costs from future payments or the Retained Percentage, or (ii) the SI shall immediately pay the excess amount to the MTA upon demand.

5.4.4. Determination of Remaining Work; Remaining Work List.

The term "**Remaining Work**" means all Work that the Engineer determines remains outstanding after Substantial Completion, including: (i) street restoration and permanent pavement Work that cannot be done because of seasonal factors such as cold weather (provided sufficient temporary pavement is complete); (ii) Work that cannot be done until an NFPS Agency or a Third Party performs other work that is not the SI's responsibility under the Contract Documents; and (iii) Work necessary to correct any omission or defect attributable to the SI whether or not discovered or disclosed after Substantial Completion has been declared. The term Remaining Work (a) expressly includes all Punch List Work, and (b) expressly excludes those Services that by their nature are intended to continue past Substantial Completion (including Technical and Software Support Services and Hosting Services). The Engineer shall provide the SI with an initial list of Remaining Work within ten (10) calendar days of the issuance of the Certificate of Substantial Completion (the "**Remaining Work List**"), and the Engineer shall have the right to update the same should he or she identify other Remaining Work that is not included on the initial Remaining Work List.

5.4.5. Schedule for Completing Remaining Work.

Within ten (10) calendar days of the SI's receipt of the initial Remaining Work List and updates to the same provided by the Engineer, the SI shall submit to the Engineer a schedule for completing all Remaining Work identified on the Remaining Work List (the "**Remaining Work Completion Schedule**"). The Engineer shall then review the Remaining Work Completion Schedule within the Applicable Review Period and notify the SI whether the Remaining Work Completion Schedule has been (i) accepted, or (ii) rejected, and such rejection notice shall include an explanation of the basis for the rejection and a list of modifications that must be made to the proposed Remaining Work Completion Schedule. Upon receipt of a rejection notice, the SI shall promptly update the Remaining Work Completion Schedule pursuant to the Engineer's direction and resubmit the same to the Engineer for additional review(s). Upon the Engineer's acceptance of the Remaining Work Completion Schedule, the SI shall immediately commence completing all Remaining Work. In no event shall the SI have more than ninety (90) calendar days from the issuance of the Certificate of Substantial Completion to satisfactorily complete all Remaining Work.

5.4.6. SI Failure to Complete Remaining Work.

If the MTA determines, in its reasonable discretion, that the SI is failing to diligently complete the Remaining Work or that emergency circumstances warrant the expedited completion of Remaining Work, the MTA shall have the right to complete such Remaining Work, either using its own personnel (and those of other MTA Group entities) or by engaging Third Parties (the "**MTA-Completed Remaining Work**"). In no event shall the SI be entitled to any compensation for Remaining Work that is covered by MTA-Completed Remaining Work. Unless the MTA-Completed Remaining Work was performed due to emergency circumstances that the MTA determines were not attributable to the SI's actions or inactions, the MTA shall also deduct all costs it or any other MTA Group entity incurs in connection with the MTA-Completed Remaining Work from any applicable payments and, if such costs exceed the applicable payments, either (i) the MTA shall deduct the costs from future payments or the Retained Percentage, or (ii) the SI shall immediately pay the excess amount to the MTA upon demand.

5.4.7. SI Removal of Materials.

Upon Substantial Completion, the SI shall remove its tools, materials and equipment from applicable Work Sites, except for those tools, materials and equipment needed to complete Remaining Work. Upon determination that all Remaining Work has been completed, the SI shall promptly remove all remaining tools, materials and equipment from applicable Work Sites, unless the Engineer grants an exception in writing.

5.4.8. Determination of Final Completion.

The Engineer shall issue a Final Completion Certificate upon his or her reasonable determination that all Work required to be performed through the last Warranty Period has been satisfactorily provided.

5.5. MTA Damages for Delay by the SI.

Time is of the essence for this Contract. The SI is firmly obligated and guarantees to meet the Substantial Completion Date and Intermediate Milestone Dates. If certain Non-Excusable Delays (each, an "**LD Non-Excusable Delay**") occur, then the SI shall pay to the MTA damages incurred by the MTA Group for such LD Non-Excusable Delays. Inasmuch as the amount of such damages to the MTA Group arising from LD Non-Excusable Delays will be extremely difficult to ascertain, it is hereby expressly agreed that such damages will be liquidated and paid as follows: for each and every liquidated damages period of an LD Non-Excusable Delay set forth below, except Saturdays, Sundays, and legal holidays, the SI shall pay to the MTA the amounts set out in Section 5.5.1 (Liquidated Damages for LD Non-Excusable Delays), which amounts the MTA and the SI hereby agree are not a penalty but instead represent proper liquidated damages for the harm incurred by the MTA Group. Descriptions of every LD Non-Excusable Delay are included in Section 5.5.1 (Liquidated Damages for LD Non-Excusable Delays).

5.5.1. Liquidated Damages for LD Non-Excusable Delays.

The SI shall pay to the MTA the amounts set out below as liquidated damages for each of the following LD Non-Excusable Delays:

No.	LD Non-Excusable Delay Description	Liquidated Damages Period	Liquidated Damage Amount
1.	Failure to provide the applicable NFPS Software and NFPS Backend Hardware for BU #1.	Two-hundred and forty (240) days	\$100,000.00 / Day

No.	LD Non-Excusable Delay Description	Liquidated Damages Period	Liquidated Damage Amount
2.	Failure to complete the physical installations of Bus Validators at applicable Bus Depots for BU #1.	Three-hundred and sixty-five (365) days	\$3,500.00 / Day / Depot
3.	Failure to complete physical installations of Subway Validators and to physically install the Fare Control Area Local Area Network within the Fare Control Area at each Subway Station for BU #1.	Three-hundred and sixty-five (365) days	\$2,350.00 / Day / Fare Control Area
4.	Failure to physically replace coin fare collectors with Wayside Validator Machines for BU #2.	Three-hundred and sixty-five (365) days	\$1,219.00 / Day / Un-Replaced Coin Fare Collectors
5.	Failure to physically install Consolidated Revenue Facility Workstations for BU #2.	Three-hundred and sixty-five (365) days	\$1,219.00 / Day / Un-Replaced Coin Fare Collectors
6.	Failure to complete physical installations of Bus Validators at the applicable Bus Depot for BU #2.	Three-hundred and sixty-five (365) days	\$3,500.00 / Day / Depot
7.	Failure to complete physical installations of Subway Validators and to physically install the Fare Control Area Local Area Network within the Fare Control Area at each Subway Station for BU #2.	Three-hundred and sixty-five (365) days	\$2,350.00 / Day / Fare Control Area
8.	Failure to provide the applicable NFPS Software and NFPS Backend Hardware for BU #2.	Two-hundred and forty (240) days	\$116,667.00 / Day
9.	Failure to provide the applicable NFPS Software and NFPS Backend Hardware, and failure to implement and deploy Extended-Use and Limited-Use Media for BU #3.	Two-hundred and forty (240) days	\$133,333.00 / Day
10.	Failure to provide the applicable NFPS Software and NFPS Backend Hardware for BU #4.	Two-hundred and forty (240) days	\$150,000.00 / Day
		Two-hundred and forty (240) days	\$15,987.00 / Day* *This amount is in addition to the \$150,000.00 associated with this LD Non-Excusable Delay Description No. 10, and only applies if the MTA has exercised the Option set out in Technical Specifications Section

No.	LD Non-Excusable Delay Description	Liquidated Damages Period	Liquidated Damage Amount
			35.12 (MNR and LIRR NFPS Equipment).
11.	Failure to complete physical installations of CVMs at Subway Stations, MNR stations, and LIRR stations for BU #4.	Three-hundred and sixty-five (365) days	\$3,350.00 / Day / Subway Station
		Three-hundred and sixty-five (365) days	\$3,350.00 / Day / MNR and LIRR Station* *This amount is in addition to the \$3,350.00 associated with this LD Non-Excusable Delay Description No. 11 for Subway Stations, and only applies if the MTA has exercised the Option set out in Technical Specifications Section 35.12 (MNR and LIRR NFPS Equipment).
12.	Failure to Complete BU #5.	Two-hundred and forty (240) days	\$4,920,000.00 / Thirty (30) Day Increment
		Two-hundred and forty (240) days	\$479,600.00 / Thirty (30) Day Increment* *This amount is in addition to the \$4,920,000.00 associated with this LD Non-Excusable Delay Description No. 12, and only applies if the MTA has exercised the Option set out in Technical Specifications Section 35.12 (MNR and LIRR NFPS Equipment).

5.5.2. Clarifications Regarding the Scope of Liquidated Damages.

5.5.2.1. Clarification Regarding LD Non-Excusable Delay Descriptions.

The descriptions of the LD Non-Excusable Delays included in Section 5.5.1 (Liquidated Damages for LD Non-Excusable Delays) summarize various tasks that the SI is required to complete in the applicable Beneficial Use

phase. Detailed descriptions of the SI's obligations are further set out in the Technical Specifications, including in Technical Specifications Section 4.9 (Project Schedule).

5.5.2.2. Temporal Limitation on Liquidated Damages; MTA Available Remedies.

The "**Liquidated Damages Period**" identified in Section 5.5.1 (Liquidated Damages for LD Non-Excusable Delays) is the period of time during which the SI shall be liable for liquidated damages, with such time period commencing upon the Intermediate Milestone Date or Substantial Completion Date for the applicable Beneficial Use phase, as such Intermediate Milestone Date or Substantial Completion Date may be amended pursuant to Section 5.14 (Extension of Time Due to Excusable Delay). The SI acknowledges that (i) the identified liquidated damages for the associated LD Non-Excusable Delays were calculated such that they only address harm to the MTA Group during the Liquidated Damages Period, and do not take into account harm to the MTA Group following the conclusion of the applicable Liquidated Damages Period, and (ii) the MTA shall have the right to seek actual damages incurred by, and any other remedies available to, the MTA Group under this Contract or by law following the conclusion of the applicable Liquidated Damages Period. By way of clarification, and not limitation, if an LD Non-Excusable Delay occurs after the conclusion of the applicable Liquidated Damages Period, then the MTA shall have the right to declare an Event of Default and to otherwise take any actions against the SI that are available to the MTA Group, including those established pursuant to this Contract and those available by law.

5.5.2.3. Effect of Substantial Completion on Liquidated Damages.

Unless liquidated damages cease to accrue pursuant to Section 5.5.2.2 (Temporal Limitation on Liquidated Damages; MTA Available Remedies), the accrual of liquidated damages shall cease upon the MTA's issuance of a Certificate of Substantial Completion. The SI acknowledges that it shall be liable to the MTA (i) for liquidated damages that accrued prior to the issuance of a Certificate of Substantial Completion, and (ii) for all other damages that the MTA Group incurs following the MTA's issuance of a Certificate of Substantial Completion, including those amounts incurred due to the SI's failure to complete Remaining Work.

5.5.2.4. Effect of Event of Default on Liquidated Damages.

Unless liquidated damages cease to accrue pursuant to this Section 5.5 (MTA Damages for Delay by the SI), liquidated damages shall continue to accrue following an Event of Default and the SI shall pay accrued liquidated damages. The SI agrees that the MTA's right to liquidated damages is in addition to those amounts to which the MTA Group is entitled pursuant to Section 47.3.5 (SI Liability for Damages Stemming from Default), including the difference between the Total Contract Price and the amount actually expended by the MTA Group to complete the Work.

5.5.2.5. Calculation of LD Non-Excusable Delay with Thirty Day Liquidated Damages Payment Increment.

The LD Non-Excusable Delay titled "Failure to Complete BU #5" includes a Liquidated Damages Period measured in thirty (30) day increments. The SI acknowledges that the thirty (30) day increment structure is intended to address, in part, harm that the MTA Group will incur even after the SI provides the Deliverable(s) associated with the LD Non-Excusable Delay. Accordingly, the MTA shall be entitled to the associated liquidated damages amount in thirty (30) day increments, and such liquidated damages shall not be eligible for proration. By way of clarifying example, and not limitation, if the LD Non-Excusable Delay described as "Failure to Complete BU #5" occurs on DAY 1, then the MTA shall be entitled to the entire associated liquidated damages to address the harm to the MTA Group for the thirty (30) day period commencing on DAY 1, and if

the SI resolves the LD Non-Excusable Delay on DAY 5, then the SI shall not be entitled to recover, by proration or otherwise, any portion of the liquidated damages attributable to the remaining thirty (30) day increment.

5.5.3. Right to Deduct or Offset Liquidated Damages Against Amounts Owing to SI.

The MTA shall have the right to deduct liquidated damages assessments from any monies due or which may thereafter become due to the SI under this Contract, and in case the amount which may become due hereunder shall be less than the amount of liquidated damages due to the MTA, the SI shall pay the difference upon demand by the MTA.

5.5.4. Limit of Liability for LD Non-Excusable Delays; Exclusive Remedy.

Notwithstanding the limitation of liability included in Section 39.4.2 (Limited SI Limit of Liability), the MTA agrees that the SI's total liability to the MTA Group for liquidated damages pursuant to Section 5.5.1 (Liquidated Damages for LD Non-Excusable Delays) shall not, in the aggregate, exceed ten percent (10%) of the Base Contract Price. Subject to the temporal limitation set out in Section 5.5.2.2 (Temporal Limitation on Liquidated Damages; MTA Available Remedies), the MTA further agrees that the liquidated damages included in Section 5.5.1 (Liquidated Damages for LD Non-Excusable Delays) constitute the MTA Group's exclusive remedy solely with respect to any harm it incurs associated with the LD Non-Excusable Delays.

5.6. NFPS Agency Delay or Cancellation of NFPS Agency-Supplied Services.

The SI shall reasonably expect due to factors inherent in operating railroads and transit systems (e.g., unanticipated congestion, adverse weather conditions and emergency track repairs) that the SI may at times not be allowed onto applicable Work Sites and/or be delayed in such access during the period of performance of this Contract. In addition, the SI shall similarly reasonably expect delays in the MTA's review and approval processes, given competing demands on the MTA Group's resources and other factors. The MTA recognizes that certain delays may impact the SI's performance under the Contract Documents. Accordingly, the parties agree that the SI may be entitled to the following remedies in the event of delays caused by an NFPS Agency: (i) for delays in the MTA's Review and Approval process, the SI may be entitled to Excusable Delay Extensions if the conditions set out in Section 5.7 (Delays Concerning MTA Review; Certain Excusable Delays) are met; (ii) for delays in Work Site Access, the SI may be entitled to Excusable Delay Extensions if the conditions set out in Section 5.8 (Delays Concerning Work Site Access; Certain Excusable Delays) are met; (iii) for delays in General Orders and Related Services, the SI is entitled to Recoverable Lost-Time Costs if the conditions set out in Section 5.9 (Delay or Cancellation of General Orders and Related Services; Recoverable Lost-Time Costs) are met; (iv) for other Excusable Delays, the SI may be entitled to Excusable Delay Extensions if the conditions set out in Section 5.14 (Extension of Time Due to Excusable Delay) are met; and (v) for certain Excusable Delays, the SI may be entitled to Impact Costs if the conditions set out in Section 5.16 (Impact Costs for Certain Excusable Delays) are met (collectively, the "**Delay-Related SI Remedies**").

5.7. Delays Concerning MTA Review; Certain Excusable Delays.

If the MTA fails to review and approve or reject a Submission that is expressly identified in the table included in Section 5.7.1 (Initial Applicable Review Period for Recoverable Submissions) (each, a "**Recoverable Submission**") within the Applicable Review Period or a Resubmitted Recoverable Submission within the Subsequent Applicable Review Period, then the SI may be entitled to an Excusable Delay Extension for the specific Recoverable Submission, subject to the additional limitations set out herein.

5.7.1. Initial Applicable Review Period for Recoverable Submissions.

The table included in this Section 5.7.1 (Initial Applicable Review Period for Recoverable Submissions) identifies the amount of time (excluding any time during which a Stop Work Order is in effect) in which the MTA shall undertake and complete its initial Review and Approval of Recoverable Submissions that the SI submits in a form ready for the MTA's review (each, an "**Initial Applicable Review Period**"). The MTA shall have seven (7) days from its receipt of each Recoverable Submission to determine whether such Recoverable Submission is in a form ready for review (the "**Quality Confirmation Period**"). If the MTA fails to notify the SI in writing during the Quality Confirmation Period that the applicable Recoverable Submission is not in a form ready for review, then the Initial Applicable Review Period shall be deemed to have commenced upon the MTA's receipt of the applicable Recoverable Submission. If the MTA determines that the applicable Recoverable Submission is not in a form ready for review, and notifies the SI of the same during the Quality Confirmation Period, then the SI shall correct the Recoverable Submission and resubmit it to the MTA for further review pursuant to this Section 5.7.1 (Initial Applicable Review Period for Recoverable Submissions), and such resubmission shall be treated as an initial submission and shall not be considered, or treated, as a Resubmitted Recoverable Submission. If the MTA fails to complete its Review and Approval process within the Initial Applicable Review Period, then the SI may be entitled to an Excusable Delay Extension for such failure, subject to Section 5.7.2 (Orderly Submission Requirement), Section 5.7.3 (Submission Quality Requirement), Section 5.7.4 (Notice to MTA of Submission Deadline) and Section 5.17 (Additional Limitations on Delay-Related SI Remedies):

No.	Recoverable Submission	Section Reference	Initial Review Period
1.	Proposed Master Program Schedule	Section 5.2.2 (Review and Approval of the Proposed Master Program Schedule)	Thirty (30) days
2.	MPS Updates	Section 5.2.3 (Updates to the Master Program Schedule)	Five (5) days
3.	BU Remaining Work Completion Schedule	Section 5.4.2 (Schedule for Completing BU Remaining Work)	Ten (10) days
4.	Remaining Work Completion Schedule	Section 5.4.5 (Schedule for Completing Remaining Work)	Ten (10) days
5.	Requests for General Orders and Related Services	Section 5.10 (Requests for NFPS Agency-Supplied Services)	Ten (10) days
6.	Access Requests	Section 5.10 (Requests for NFPS Agency-Supplied Services)	Ten (10) days
7.	Proposed Scheduling for Installation Work	Section 6.3 (Access to Bus Depots, Subway Stations, and Railroad Facilities; Installation Work Scheduling)	Fifteen (15) days
8.	Review of Documentation prior to Substantial Completion (e.g., station drawings, Test Plans, Full Access Protocols, Incident Response Plan, Equipment Review Notices and other	Multiple	Up to thirty (30) days

No.	Recoverable Submission	Section Reference	Initial Review Period
	Deliverables for which the MTA's review and approval is required)		

5.7.2. Orderly Submission Requirement.

The SI shall provide Submissions (including Recoverable Submissions) to the Engineer in the order and sequence specified by the Engineer (the "**Orderly Submission Requirement**"), and on the date designated by the Engineer or as designated in the Contract Documents (each, a "**Submission Date**"). If the SI presents a Recoverable Submission before the Submission Date, then the Initial Applicable Review Period shall commence on the Submission Date. If the SI presents a Recoverable Submission after the Submission Date or in violation of the Orderly Submission Requirement, then the SI shall be deemed to have waived the Initial Applicable Review Period, and no Excusable Delay Extension shall be available with respect to the non-compliant Recoverable Submission, irrespective of when the MTA completes its Review and Approval process.

5.7.3. Submission Quality Requirement.

The SI shall: (i) research, draft, assemble, and present each Submission (including Recoverable Submissions) in accordance with Good Industry Practices; (ii) use Quality Assurance best practices with respect to such research, drafting, assembly, and presentation; and (iii) provide each Submission (including Recoverable Submissions) in a manner that is verifiable, documented, and in a form and format approved by the Engineer or her representative (collectively, the "**Submission Quality Requirement**"). If the SI presents a Recoverable Submission that, in the Engineer's reasonable judgment, does not meet the Submission Quality Requirement, then the SI shall be deemed to have waived the Initial Applicable Review Period, and no Excusable Delay Extension shall be available with respect to the non-compliant Recoverable Submission, irrespective of when the MTA completes its Review and Approval process.

5.7.4. Notice to MTA of Submission Deadline.

The SI shall notify the MTA in writing at least forty-eight (48) hours before the conclusion of an Applicable Review Period (either Initial Applicable Review Period or Subsequent Applicable Review Period) that such Applicable Review Period is set to expire (each, a "**Deadline Notice**"). The Deadline Notice shall include at least the following: (i) the specific Recoverable Submission at issue; (ii) the date on which the SI provided the Recoverable Submission to the MTA for review; (iii) to whom within the MTA the SI provided the Recoverable Submission; (iv) the length of the Applicable Review Period; (v) the date upon which such Applicable Review Period is set to expire; (vi) a copy of the Recoverable Submission at issue; and (vii) any other information that the MTA subsequently requests. If the SI fails to provide a written Deadline Notice, then the SI shall be deemed to have waived the Applicable Review Period, and no Excusable Delay Extension shall be available with respect to the non-compliant Recoverable Submission, irrespective of when the MTA completes its Review and Approval process.

5.7.5. Mandatory Compliance with Each Requirement.

The SI shall not be entitled to an Excusable Delay Extension associated with a Recoverable Submission unless both (i) the SI has met each of the requirements set out in Section 5.7.2 (Orderly Submission Requirement), Section 5.7.3 (Submission Quality Requirement), and Section 5.7.4 (Notice to MTA of Submission Deadline)

with respect to the Submission at issue, and (ii) the MTA's delay in reviewing the applicable Recoverable Submission did not occur during any time in which a Stop Work Order was in effect.

5.7.6. MTA Review Periods Following an Initial Review.

The MTA and the SI acknowledge that the review and approval of Submissions (including Recoverable Submissions) may involve an iterative process in which the SI revises Recoverable Submissions based on MTA feedback and resubmits updated Recoverable Submissions to the MTA for further reviews and approvals. Recoverable Submissions subject to such an iterative process are each referred to herein as a "**Resubmitted Recoverable Submission**." The MTA shall review each Resubmitted Recoverable Submission within fourteen (14) days of its receipt of the Resubmitted Recoverable Submission (each, a "**Subsequent Applicable Review Period**"). Initial Applicable Review Periods and Subsequent Applicable Review Periods are collectively referred to herein as "**Applicable Review Periods**." If the MTA fails to complete a Review and Approval process for a Resubmitted Recoverable Submission within the Subsequent Applicable Review Period, then the SI may be entitled to an Excusable Delay Extension for such failure; provided, however, that the MTA's delay in reviewing a Resubmitted Recoverable Submission did not occur during any time in which a Stop Work Order was in effect. The SI shall also not be entitled to an Excusable Delay Extension associated with a Resubmitted Recoverable Submission unless the SI has met the requirements set out in Section 5.7.4 (Notice to MTA of Submission Deadline) with respect to the Resubmitted Recoverable Submission at issue.

5.8. Delays Concerning Work Site Access; Certain Excusable Delays.

If an NFPS Agency fails to provide Work Site Access within the parameters set out below (excluding any time during which a Stop Work Order is in effect) (the "**Access Parameters**") with respect to installation Work scheduled in accordance with Section 6.3 (Access to Bus Depots, Subway Stations, and Railroad Facilities; Installation Work Scheduling) (the "**Scheduled Installation Work**"), then the SI may be entitled to an Excusable Delay Extension, provided that the SI (a) meets the requirements of Section 5.10 (Requests for NFPS Agency-Supplied Services), and (b) uses good faith efforts to utilize additional access provided by an NFPS Agency pursuant to Section 5.8.1 (Additional Work Site Access). The parties agree that there shall be two Access Parameters: (i) an incremental Access Parameter (for example, "five buses per night") (the "**Incremental Access Parameter**"), and (ii) an aggregate Access Parameter (for example, "twenty buses per week") (the "**Aggregate Access Parameter**"). If the applicable NFPS Agency meets either the Incremental Access Parameter or the Aggregate Access Parameter, then no Excusable Delay Extension shall be available for the Scheduled Installation Work at issue.

No.	Scheduled Installation Work	Incremental Access Parameter	Aggregate Access Parameter
1.	Buses	Twenty (20) per night	One hundred (100) per week
2.	Bus Depots	Five (5) per night	Twenty-five (25) per week
3.	Subway Fare Control Areas	Three (3) per night	Fifteen (15) per week
4.	MNR Stations	One (1) per day	Five (5) per week
5.	LIRR Stations	One (1) per day	Five (5) per week

5.8.1. Additional Work Site Access.

Each NFPS Agency shall have the right to provide Work Site Access in addition to the Incremental Access Parameter and Aggregate Access Parameter totals described in Section 5.8 (Delays Concerning Work Site Access; Certain Excusable Delays) (the "**Additional Work Site Access**"). Any Additional Work Site Access provided by an NFPS Agency shall count toward the Aggregate Access Parameter totals described in Section 5.8 (Delays Concerning Work Site Access; Certain Excusable Delays) during the time period applicable to said Aggregate Access Parameter if, after exercising its good faith efforts, the SI is able to utilize such Additional Work Site Access in order to complete the Scheduled Installation Work within the Aggregate Access Parameter. By way of clarifying example, if NYCT fails to meet the Incremental Access Parameter in a particular week, but provides Additional Work Site Access during an otherwise unavailable time (e.g., Sunday morning), and the SI is able to utilize such Additional Work Site Access so that the Aggregate Access Parameter is met, then the SI shall not be entitled to request an Excusable Delay Extension.

5.8.2. Clarification Regarding Certain MNR and LIRR Station Access.

For purposes of determining whether the applicable NFPS Agency has met the Incremental Access Parameters and the Aggregate Access Parameters for MNR and LIRR stations, (i) the SI agrees that each of Grand Central Terminal and Penn Station shall be considered as equal to ten (10) stations, and (ii) access to MNR and LIRR stations (a) includes access necessary for the SI to install the required TOMs at the applicable MNR and LIRR station, and (b) includes access to those platforms located within the applicable MNR and LIRR station. By way of clarifying example, if LIRR provides the SI with access to only Penn Station for two (2) weeks, then LIRR shall be deemed to have met the Aggregate Access Parameter for those two (2) weeks.

5.9. Delay or Cancellation of General Orders and Related Services; Recoverable Lost-Time Costs.

If the SI incurs a verifiable and unavoidable financial loss as a result of the NFPS Agencies' delay in furnishing, or a cancellation of, General Orders and Related Services (as such term is defined immediately below), then the SI will be compensated for the resulting idle time of its traders, persons and/or laborers on the Work Site at the time of the delay/cancellation (the "**Work Site Laborers**" and the "**Lost Time**," respectively), subject to the limitations set forth in this Section 5.9 (Delay or Cancellation of General Orders and Related Services; Recoverable Lost-Time Costs), Section 5.9.1 (Determination Concerning Lost Time), Section 5.9.2 (Lost Time Increments) and as otherwise set out herein. The NFPS Agency-supplied services to which this Section 5.9 (Delay or Cancellation of General Orders and Related Services; Recoverable Lost-Time Costs) shall apply are only flagging occasions as further set out in Division 1D (the "**General Orders and Related Services**"). This Section 5.9 (Delay or Cancellation of General Orders and Related Services; Recoverable Lost-Time Costs) shall only apply to General Orders and Related Services, and shall not apply to any other types of MTA Group-supplied services. This compensation shall be made in accordance with the hourly prevailing wage rate applicable to the affected trade as reflected in the "Schedule of Prevailing Wages" in effect at the time of the delay or cancellation, and in addition, overhead (at the flat rate of 10%) but not profit.

5.9.1. Determination Concerning Lost Time.

In determining the extent of Lost Time to the SI, the following criteria shall be used for each incident, such that the MTA shall be responsible to compensate the SI for each instance that a delay in the NFPS Agencies' furnishing of General Orders and Related Services extends one-half hour beyond the corresponding grace period that the affected service starts or arrives (as applicable), or in the case of a cancelled service within the General Orders and Related Services, the minimum required by prevailing union contract for each verified idled worker at the Work Site at the time when the cancelled service was scheduled to start or arrive (as applicable). In the event of a cancelled service within the General Orders and Related Services, the SI is required to exercise its best effort to redeploy its affected workers to other productive Work. The various grace periods are as follows: (i) work trains that are scheduled and arrive on-site up to thirty (30) minutes later than the scheduled arrival time or are canceled within the notice period specified in Section 5.9.3 (Right to

Cancel General Orders and Related Services); (ii) General Orders with power off that are issued and start up to forty-five (45) minutes, or General Orders with power on that are issued and start up to thirty (30) minutes, later than the scheduled start time or are canceled within the notice period specified in Section 5.9.3 (Right to Cancel General Orders and Related Services); and (iii) flagging personnel that are ordered and set up to thirty (30) minutes after the scheduled start time or are canceled within the notice period specified in Section 5.9.3 (Right to Cancel General Orders and Related Services). However, in the event that the SI requests a particular set-up that is approved, but the SI changes its plan, and as a result the Engineer determines that additional flaggers are required, the SI will not be entitled to any payment under this Section 5.9 (Delay or Cancellation of General Orders and Related Services; Recoverable Lost-Time Costs) should the applicable NFPS Agency not be able to accommodate Work other than as originally planned. In addition, disputes over work zones and normal set-up time shall not be allowed as a basis for delay.

5.9.2. Lost Time Increments.

All incidents of delay in the provision of General Orders and Related Services: (i) shall be compensated for in increments not smaller than one-half (1/2) hour; (ii) shall not include those grace periods set out in Section 5.9.1 (Determination Concerning Lost Time); and (iii) shall be limited, in the case of delay, to actual idle time spent by Work Site Laborers that have reported for work on-site, and in the case of cancellation, to the minimum compensation required by prevailing union contract. Moreover, the SI shall be entitled to be paid for a one-half hour increment only if the lateness applicable to that increment equals at least twenty (20) minutes.

5.9.3. Right to Cancel General Orders and Related Services.

In addition to its general rights to cancel services as set forth in these Contract Documents, the MTA expressly reserves the right to cancel any service within the General Orders and Related Services without incurring any liability for payment under this or any other provision upon eight (8) hours' notice prior to the time that the cancelled General Order and Related Service was scheduled to commence.

5.9.4. Exhaustion of General Orders and Related Services.

If the SI exhausts the allocation of General Orders and Related Services included in Division 1D1.4 during the Term, and such exhaustion is not due to the SI's failure to efficiently use such allocation, then the SI shall have the right to request that the MTA provide additional General Orders and Related Services to the SI at the MTA's sole cost. The MTA shall have the right, in its sole discretion, to reject or accept the SI's request for additional General Orders and Related Services beyond those allocated pursuant to Division 1D1.4.

5.10. Requests for NFPS Agency-Supplied Services.

5.10.1. Requests for General Orders and Related Services.

All requests for General Orders and Related Services shall be in accordance with Division 1D and shall be submitted to and approved by the Engineer. The Engineer shall determine whether to grant or modify the request, and the Engineer shall make a final determination in this regard within the Applicable Review Period.

5.10.2. Requests for Work Site Access; Other Applicable Requests.

The SI shall make: (i) requests for Work Site Access; (ii) requests for Review and Approval of its Submissions; and (iii) other requests, all in accordance with the applicable Contract Documents, including Section 6.3 (Access to Bus Depots, Subway Stations, and Railroad Facilities; Installation Work Scheduling), or as otherwise directed by the Engineer. The Engineer shall determine whether to grant or modify each such request, and the Engineer will make a final determination in this regard within the Applicable Review Period.

5.11. Required SI Support for Claim to Relief from Delay or Cancellation of NFPS Agency-Supplied Services.

All claims by the SI under Section 5.6 (NFPS Agency Delay or Cancellation of NFPS Agency-Supplied Services) shall be verifiable, documented and approved by the Engineer or her representative to be valid. Delays shall be reported to the Engineer immediately by telephone to the Engineer's field office. Written claims for the idle Work Site Laborer-hours resulting from a delay or cancellation shall be submitted to the Engineer no later than five (5) calendar days after the occurrence of each incident. The incident report form shall be developed and submitted to the Engineer for approval and, at a minimum, shall contain the following information: (i) a copy of the original request for the applicable General Order and Related Service; (ii) the names and classifications of the SI's employees idled at the Work Site; (iii) the time, date, place, line, contract and related identifiers; (iv) the number of hours delayed for each covered SI hourly employee; (v) the reason for or explanation of the delay or cancellation; (vi) the signature of the Engineer or his or her authorized representative; and (vii) the signature of the SI's deputy project manager.

5.12. NFPS Agency Failure to Provide Scheduled Service; Shortening of Such Service.

In the event that an NFPS Agency cancels General Orders and Related Services that have been duly scheduled in accordance with Division 1D1.4 (the "**Scheduled Service**"), or provides such Scheduled Service for a shorter duration than scheduled, and the SI is ready and able to fully avail itself thereof, the MTA agrees to make up for such missing or shortened Scheduled Service by supplying, at no cost to the SI, equivalent additional services in accordance with the following procedures:

5.12.1. NFPS Agency Support Relating to Cancelled General Orders and Related Services.

If an NFPS Agency either fails to provide or shortens the duration of a Scheduled Service, then the Engineer shall record such event in a log designated for this purpose, listed by type of service, the number of occasions or amount of time (as the case may be) that is so creditable to the SI, such services hereinafter being referred to as the "**Service Bank**." For purposes of calculating the amount of time to be so credited to the Service Bank, all incidents shall be credited in increments not smaller than one-half (1/2) hour and shall not include the amount of time accorded to such NFPS Agency by way of the applicable grace periods set out in Section 5.9.1 (Determination Concerning Lost Time). The SI shall be entitled to be credited for a one-half hour increment only if the lateness applicable to that increment equals at least twenty (20) minutes. In the event that the SI exhausts its contractual allocation, as set forth in Division 1D1.4, of an NFPS Agency-supplied service covered hereunder, it will be entitled to receive, in occasion/hour increments, additional services of the same type available from the Service Bank. Once no additional services remain in the Service Bank, the SI's responsibility to pay for additional services shall be as set forth in said Division 1D1.4. The scheduling of all General Orders and Related Services, including those to be drawn from the Service Bank, must be done in accordance with said Division 1D1.4. The NFPS Agencies will not be deemed late or to have failed with respect to the provision of a given service within the General Orders and Related Services until the passage of any grace period provided for in Section 5.9.1 (Determination Concerning Lost Time).

5.13. MTA-Issued Stop Work Orders.

The MTA may, at any time, by written order to the SI, require the SI to stop all, or any part, of the Work for a period of up to ninety (90) calendar days, commencing no sooner than the date the order is delivered to the SI, and for any further period to which the MTA and the SI may agree. Any such order shall be specifically identified as a "**Stop Work Order**" issued pursuant to this Section 5.13 (MTA-Issued Stop Work Orders). Within the period of ninety (90) calendar days (or the lesser period specified) after a Stop Work Order is delivered to the SI, or within any extension of that period to which the parties have agreed, the MTA shall: (i) cancel the Stop Work Order; (ii) terminate the Contract as provided in Section 47.2 (Termination For Convenience) or in

Section 47.2.2 (Termination For Convenience; Integrity Matters); or (iii) delete the Work covered by such Stop Work Order as provided in Section 32.4 (Change Order Procedures for Deleted Work; Credits).

5.13.1. Resumption of Work.

If a Stop Work Order is cancelled or the period of the Stop Work Order or any extension thereof expires, then the SI shall resume Work without compensation or other consideration for such suspension (including Delay Costs) other than: (i) extending any impacted Intermediate Milestone Dates or the Substantial Completion Date to the extent that, in the reasonable opinion of the Engineer, any Intermediate Milestone Dates or the Substantial Completion Date have been impacted by the Stop Work Order, and (ii) Impact Costs as described in Section 5.16 (Impact Costs for Certain Excusable Delays). Notwithstanding anything to the contrary, if the Engineer reasonably determines that the suspension of Work was necessary due to the SI's defective or incorrect work, unsafe work conditions caused by the SI or any other reason caused by the SI's fault or omission, then the SI shall not be entitled to Impact Costs or an extension of time.

5.14. Extension of Time Due to Excusable Delay.

5.14.1. Excusable, Non-Excusable, and Concurrent Delays.

The term "**Excusable Delay**" means a delay where all of the following conditions are met: (i) the delay is caused (a) by the MTA's failure to review a qualifying Recoverable Submission or a Resubmitted Recoverable Submission within the Applicable Review Period, as further set out in Section 5.7 (Delays Concerning MTA Review; Certain Excusable Delays); (b) by an NFPS Agency's failure to provide Work Site Access within the Access Parameters, as further set out in Section 5.8 (Delays Concerning Work Site Access; Certain Excusable Delay); (c) by the act, neglect, or failure of an NFPS Agency, an NFPS Agency contractor, a utility, or a governmental entity (which act, neglect, or failure occurs for reasons outside of the SI's control) other than those addressed by clause (a) or (b) of this Section 5.14.1 (Excusable, Non-Excusable, and Concurrent Delays); (d) by a differing site condition within the meaning of Section 6.6 (Differing Site Conditions); (e) by a Force Majeure Event; or (f) by the MTA's exercise of its rights set out in Section 3.2 (MTA Substitution Rights and Rights to Add); (ii) the delay actually and necessarily delays the SI in the progress of the Work; (iii) the cause of the delay arises after the SI's receipt of the Notice of Award, and neither was nor could have been anticipated by the SI before such Notice of Award was received; (iv) the delay is affecting an item(s) on the critical path as indicated in a current updated Master Program Schedule; (v) the SI cannot avoid or mitigate the cause or effect of the delay by the exercise of all reasonable precautions, efforts, and measures, including changes to the sequencing of the Work, whether before or after the occurrence of the cause of delay; and (vi) the SI makes a written request and provides other information to the MTA as described in Section 5.14.3 (SI Request for Extension of Time Based on Excusable Delay). Any other delay shall be deemed a "**Non-Excusable Delay**." A "**Concurrent Delay**" shall be the period of delay during which an Excusable Delay overlaps with a Non-Excusable Delay.

5.14.2. Specific Delays: Injunction, Strike, Public MTA Action.

In regard to an injunction, strike, or interference of public authority which may delay the Project, the SI shall promptly give the MTA a copy of the injunction or other order(s) and copies of the papers upon which the same shall have been granted. The MTA shall be accorded the right to intervene or become a party to any suit or proceeding in which any such injunction shall be obtained and to move to dissolve the same or otherwise, all as the MTA may deem proper.

5.14.3. SI Request for Extension of Time Based on Excusable Delay.

If the SI believes that an Excusable Delay has occurred that requires an extension of the Substantial Completion Date or an Intermediate Milestone Date, then the SI shall notify the MTA in writing. The SI shall provide such notice within ten (10) calendar days of the time when the SI knows or should have known of the grounds for requesting an Excusable Delay. In such notice, the SI shall: (i) provide any actual or potential basis for an extension of the Substantial Completion Date or (where applicable) an Intermediate Milestone Date; (ii) identify the cause of the delay; (iii) describe the nature and expected duration of the delay and its effect on the completion of the Work identified in the request; (iv) specify the SI's actual and proposed efforts and precautions to mitigate the cause or effect of the delay; (v) demonstrate the manner in which its request otherwise complies with the requirements set forth in the Contract Documents regarding the Master Program Schedule; and (vi) identify any Impact Costs to which the SI believes that it is entitled as further set out in Section 5.16 (Impact Costs for Certain Excusable Delays), and provide sufficient detail to support its determination of the proposed Impact Costs. Within fifteen (15) calendar days of a request by the MTA, the SI shall furnish such further information and Documentation as the MTA deems necessary or helpful in considering the SI's requested extension. The SI's original request, and its later provision of additional information requested by the MTA, are referred to collectively as an SI "**Extension Request.**"

5.14.4. MTA Determination of an Excusable Delay.

The MTA shall review each received Extension Request and shall advise the SI of its decision on such Extension Request within a reasonable period, except that, where it is not reasonably practicable for the MTA to render such decision within a reasonable period, it shall advise the SI that it will require additional time and the approximate date upon which it expects to render a decision. If the MTA determines that an Excusable Delay has occurred, and that such Excusable Delay will extend the Substantial Completion Date or an Intermediate Milestone Date, then the MTA will extend the Substantial Completion Date (or applicable Intermediate Milestone Date), and the Engineer shall establish the scope and extent of the extension in light of the Excusable Delay's causes and effects, available mitigation, and other considerations determined by the Engineer (each, an "**Excusable Delay Extension**"). If applicable, the Engineer shall also issue a Change Order for Impact Costs pursuant to Section 5.16.4 (Memorialization of Excusable Delay Impact Costs). The SI shall not be entitled to an Excusable Delay Extension or Impact Costs unless the SI affirmatively demonstrates to the satisfaction of the Engineer that it is entitled to such an extension or Impact Costs.

5.14.5. MTA Right to Amend Granted Extension to the Substantial Completion Date; Later Acceleration of Extended Substantial Completion Date.

5.14.5.1. Erroneous Extension Request; No Additional Compensation.

The MTA reserves the right to direct the SI to accelerate its performance of Work that is subject to an Excusable Delay Extension in order to complete the applicable portion of the Work within an MTA-determined time frame if the MTA later determines that (i) information provided by the SI in support of its Extension Request was erroneous, and (ii) if the MTA had known that such information was erroneous when reviewing the Extension Request, then the MTA would have denied or modified the Extension Request. Unless the SI can demonstrate to the MTA's satisfaction that the SI both (a) submitted such erroneous information in good faith, and (b) acted in reliance upon the MTA's granting of the applicable Excusable Delay Extension, then the SI shall, at its sole cost and expense, accelerate its Work as directed by the MTA pursuant to this Section 5.14.5.1 (Erroneous Extension Request; No Additional Compensation), and the SI acknowledges that such accelerated Work shall not constitute Extra Work or otherwise entitle the SI to a Change Order.

5.14.5.2. Excusable Delay Acceleration.

In the event of an Excusable Delay to an Intermediate Milestone Date or the Substantial Completion Date, the MTA reserves the right, at any time, to direct the SI to accelerate the performance of the Work so as to

eliminate or reduce the projected delay. Any revision to the projected completion date that may result from such an acceleration directive shall become the new Intermediate Milestone Date or Substantial Completion Date (as applicable), and the SI shall be compensated for such acceleration pursuant to Section 5.19 (Additional Costs for Changes).

5.14.6. Differing Treatment for Concurrent Delays and Certain Excusable Delays.

Notwithstanding anything to the contrary, in the case of (i) a Concurrent Delay, or (ii) an Excusable Delay that arises because of the act, neglect or failure of another NFPS Agency contractor or of a utility or a Governmental Authority for reasons outside of the SI's control, the SI shall be entitled to an Excusable Delay Extension, but it shall not be entitled to seek Impact Costs associated with such Concurrent or Excusable Delay; provided, however, that the SI shall be entitled to seek Other Recoverable Costs associated with such Excusable Delay. By way of clarification, and not limitation, in no event shall the SI be entitled to Impact Costs attributable to a Concurrent Delay.

5.14.7. No Waiver Due to Issuance of Excusable Delay Extension.

In granting an Excusable Delay Extension, making payments to the SI in connection with an Excusable Delay Extension, or issuing a Change Order, the MTA does not waive, and expressly reserves, all rights under this Contract available to the MTA Group other than those rights directly related to the Excusable Delay Extension and the MTA expressly reserves, for example, the right to assess liquidated damages or declare the SI in default with respect to delays other than those determined to be Excusable Delays in accordance with Section 5.14.4 (MTA Determination of an Excusable Delay).

5.14.8. Persons Entitled to Relief for Excusable Delay.

Any reference to the SI in this Section 5.14 (Extension of Time Due to Excusable Delay) shall be deemed to include materialmen, suppliers, and permitted Subcontractors, whether or not in privity of contract with the SI. The provisions of this Section 5.14 (Extension of Time Due to Excusable Delay) shall be included in all material, supply, and subcontractor agreements entered into by the SI.

5.15. Excusable Delay Extensions Not Cumulative.

If the SI demonstrates that two (2) or more causes during substantially the same period of time each justify the granting of an Excusable Delay Extension, the SI nevertheless shall be entitled to only one (1) Excusable Delay during the period in question, and it shall not be entitled to a separate Excusable Delay Extension for each one of the causes.

5.16. Impact Costs for Certain Excusable Delays.

5.16.1. Availability of Impact Costs.

If (i) there exists an Excusable Delay (as defined in Section 5.14.1 (Excusable, Non-Excusable, and Concurrent Delays)) associated with (a) an NFPS Agency's failure to provide access to the Work Site pursuant to Section 5.8 (Delays Concerning Work Site Access; Certain Excusable Delays), (b) the MTA's issuance of a Change Order, (c) a Stop Work Order, or (d) the MTA's failure to comply with the Applicable Review Periods for Recoverable Submissions or Resubmitted Recoverable Submissions, as further set out in Section 5.7 (Delays Concerning MTA Review; Certain Excusable Delays), and (ii) as a result of any of the foregoing, the SI demonstrates that it will be actually and necessarily delayed in meeting the scheduled Substantial Completion Date or an Intermediate Milestone Date, then the SI shall be entitled to Impact Costs to the extent, if any, set forth in this Section 5.16.1 (Availability of Impact Costs) and Section 5.16.2 (Criteria for Impact Costs). The SI agrees that

any failure or delay (whether with respect to the number, duration, timing, availability, or other aspect of NFPS Agency-supplied services) by an NFPS Agency in providing General Orders and Related Services shall not constitute a failure to provide access to the Work Site and therefore is not subject to an assessment of Impact Costs.

5.16.2. Criteria for Impact Costs.

Impact Costs shall consist of only the following: (i) increased wages attributable to Work being performed by trades in a higher wage period; (ii) increased field office expenses; (iii) increased cost to purchase materials; (iv) increased cost to store materials, to the extent that the SI can demonstrate that such storage is specific to this Project; (v) cost incurred to keep the Work Site open, such as temporary power and sanitary facilities; (vi) extended insurance and bonding; (vii) with respect to rented equipment, the lesser of the actual rental cost or the reasonable rental value (as reflected in the latest edition of the "Rental Rate Blue Book" published by K-III Directory Corp.) for idled equipment on the Work Site, and with respect to owned heavy construction equipment, the additional cost of maintaining the equipment consistent with (and in an amount not to exceed) the price schedule set forth in the latest edition of the "Contractor's Equipment Cost Guide" as published by Dataquest/Dun & Bradstreet; and (viii) Other Recoverable Costs (collectively, the "**Impact Costs**"). Impact Costs shall also include any other direct costs (without markup) that the SI incurs that are directly attributable to the Excusable Delay and that do not otherwise constitute Impact Costs (i.e., romanettes one through seven of the immediately preceding sentence) (collectively, the "**Other Recoverable Costs**"); provided, however, that in no event shall the amount of Other Recoverable Costs to which the SI may be entitled exceed, in the aggregate, nine (9) million dollars (\$9,000,000.00).

5.16.3. Determination of Excusable Delay Impact Costs.

As further set out in Section 5.14.3 (SI Request for Extension of Time Based on Excusable Delay), the SI shall include its calculation of available Impact Costs with any submitted Extension Request (the "**Proposed Impact Costs**"). The MTA shall review the Proposed Impact Costs and determine the amount of Impact Costs to which the SI is entitled based on the criteria for Impact Costs set out in Section 5.16.2 (Criteria for Impact Costs), and the MTA shall notify the SI of such determination. Such MTA-determined amount is referred to herein as the "**Excusable Delay Impact Costs**." The SI shall have the right to challenge the Excusable Delay Impact Costs pursuant to Section 45 (Disputes; Dispute Resolution).

5.16.4. Memorialization of Excusable Delay Impact Costs.

The Excusable Delay Impact Costs shall be memorialized by the MTA and the SI in the form of a Change Order. The SI acknowledges that (i) such memorialization is solely for the MTA's administrative purposes, and (ii) none of the rights, remedies, or obligations associated with Change Orders, including those set out in Section 32 (Changes in Work; Change Orders), shall apply to Change Orders for Impact Costs based on Extension Requests.

5.17. Additional Limitations on Delay-Related SI Remedies.

5.17.1. No Consequential Damages.

In no event shall the MTA be required to pay Recoverable Lost-Time Costs or Impact Costs, nor is the MTA Group liable under this Contract or otherwise, for sums that are in the nature of consequential damages, decreased productivity or efficiency, profits or indirect costs (such as the SI's home office overhead and general and administrative expenses including claims preparation).

5.17.2. No Right to Terminate Contract.

The SI shall have no right to rescind or terminate this Contract, and the SI shall have no cause of action under any theory of quasi-contract or quantum meruit by reason of any delay, obstruction, or interference of any kind or duration whatsoever, and whether or not compensable hereunder.

5.17.3. Exclusive Nature of Remedies for NFPS Agency Delays.

The SI agrees not to make any claim for compensation or damages for delay of any kind in the performance of this Contract on behalf of itself, Subcontractors, or suppliers whether occasioned by any act or omission of the MTA Group or any of their representatives (whether it is an Excusable Delay or otherwise), and the SI agrees that the Delay-Related SI Remedies shall constitute the sole and exclusive remedies available to the SI for such delays. In this regard, apart from its rights to seek applicable Delay-Related SI Remedies, the SI alone hereby specifically assumes the risk of any and all delays caused by any MTA Group entity, its Authorized Vendors, or others acting on behalf of any MTA Group entity or its Authorized Vendors, including: (i) delays in processing or approving any Submissions (including Recoverable Submissions); (ii) delays in providing NFPS Agency-supplied services; and (iii) any other delays.

5.17.4. Release of Claims Due to Delay.

The SI's acceptance of either (i) the MTA's payment of applicable Recoverable Lost-Time Costs or Impact Costs (less any amounts that the MTA is entitled to withhold, retain or offset pursuant to these Contract Documents), or (ii) an Excusable Delay Extension, shall serve as a release of the MTA Group from all claims and liability to the SI arising out of the associated Delay-Related SI Remedy. The SI shall have no right to rescind or terminate this Contract, and the SI shall have no cause of action under any theory of quasi-contract or quantum meruit by reason of any delay, obstruction, or interference of any kind or duration whatsoever, and whether or not compensable hereunder.

5.17.5. No Impact Costs for Concurrent Delays and Certain Excusable Delays.

Impact Costs shall only be allowed for periods of Excusable Delays that meet the criteria set out in Section 5.16.1 (Availability of Impact Costs) and that (i) are not concurrent with either Non-Excusable Delays or other Excusable Delays that do not give rise to Impact Costs, and (ii) are actually, reasonably, and necessarily incurred and verifiable by appropriate Documentation.

5.17.6. Delay-Related SI Remedies with Respect to Subcontractors.

If the SI claims Impact Costs for delays affecting a Subcontractor, then the SI shall provide proof of a pre-existing liability to that Subcontractor for the Impact Costs claimed. Without limiting or waiving the preceding sentence, the parties agree that the SI shall be entitled to seek Impact Costs and/or Recoverable Lost-Time Costs, as applicable.

5.18. No Waiver to Substantial Completion.

In no event shall the MTA's review or acceptance of any Work (either on behalf of itself or on behalf of any other entity within the MTA Group) release the SI from any of its obligations to fully and properly complete all Work as required by the Contract Documents, or otherwise relieve the SI from any duty, responsibility or liability imposed on it under this Contract, including the obligation to complete the Work within the deadlines set out in the Master Program Schedule.

5.19. Additional Costs for Changes.

Except when the SI is liable for all additional costs that it incurs as a result of an acceleration pursuant to Section 5.14.5.1 (Erroneous Extension Request; No Additional Compensation), the SI may be compensated for additional costs incurred as a result of acceleration in accordance with Section 32 (Changes in Work; Change Orders). In no event shall the SI be entitled to any additional compensation, beyond that provided for in Section 32 (Changes in Work; Change Orders), for any acceleration efforts. Nothing in this Section 5.19 (Additional Costs for Changes) shall be construed to modify the SI's obligation to mitigate delays pursuant to Section 5.14.1 (Excusable, Non-Excusable, and Concurrent Delays), or otherwise create a basis for compensation for reasonable mitigation efforts.

6. MTA Group Assets and Provided Systems.

6.1. Open Architecture and MTA-Provided Systems.

Consistent with the Open Architecture requirements for the NFPS, the MTA shall be entitled to designate MTA-Provided Systems for use and inclusion in the NFPS in the manner specified in Section 3.2 (MTA Substitution Rights and Rights to Add), and the SI shall implement NFPS Interfaces to permit interoperability with and integration of such MTA-Provided Systems similarly in the manner specified in Section 3.2 (MTA Substitution Rights and Rights to Add). The SI shall ensure that the NFPS, including Qualified MTA-Substituted Products, meets the Service Level Requirements, KPIs and other performance and functionality requirements under this Contract.

6.1.1. Rights to MTA-Provided Systems; Maintenance.

The SI accepts (i) those MTA-Provided Systems identified in the Technical Specifications on an as-is and as available basis, and (ii) that the MTA makes no representations or warranties regarding such MTA-Provided Systems, including their condition, functionality or suitability. The SI's rights in MTA-Provided Systems are set out in Section 35.3.1 (MTA-Provided Systems). Where MTA-Provided Systems are in the SI's possession or under its control (including physical possession by the SI, a Subcontractor, or supplier), the SI shall be responsible for maintaining such MTA-Provided Systems in a state of good repair.

6.1.2. Substituting NFPS Software.

Consistent with the Open Architecture requirements, the NFPS will incorporate COTS Software and Open Source Software components. The SI acknowledges that licenses to these COTS and Open Source Software components will be commercially available to the MTA, and that the MTA may obtain favorable pricing for such licenses, due to its buying power and for other reasons. The SI agrees, accordingly, that the MTA shall be entitled, as further set out in this Section 6.1.2 (Substituting NFPS Software), to substitute (i) the substantially similar licenses it acquires to such COTS and Open Source Software components for (ii) the licenses the SI has or plans to acquire for such COTS and Open Source Software components, and to reduce payments to the SI accordingly (each, a "**Substitute License**").

6.1.2.1. SI Disclosure of Proposal Software.

The SI represents that (i) it has disclosed in its Proposal all COTS Software and Open Source Software that it proposes to include in the NFPS, including COTS Software and Open Source Software that it plans on acquiring or for which it has pre-existing rights that comply with the requirements set out in the Contract Documents (collectively, the "**Proposal Software**"), and (ii) such disclosure includes at least the following information: (a) the name of the COTS Software or Open Source Software, the applicable licensor, and the proposed Software Version and Software Release; (b) the fees for the COTS Software and Open Source Software, including license fees and maintenance and support fees; (c) the type of license secured (e.g., per-seat or enterprise); and (d) copies of the applicable license agreements, and related support and maintenance agreements (collectively,

the "**Licensing Information**"). The term "**Proposal License Notice**" means the disclosure required pursuant to this Section 6.1.2.1 (SI Disclosure of Proposal Software). The SI shall be responsible for providing, at its sole cost and expense, all Software (including Proposal Software) that the SI did not disclose to the MTA in the Proposal.

6.1.2.2. SI Disclosure of New Software Licenses.

The SI shall notify the MTA in writing (a) at least one-hundred and eighty (180) days prior to the SI purchasing, renewing, incurring costs for, or otherwise obtaining any COTS Software or Open Source Software licenses after the Notice of Award is issued by the MTA with respect to COTS Software or Open Source Software that was identified in the Final Design NFPS Component Architecture, and (b) at least ninety (90) days prior to the SI purchasing, incurring costs for, or otherwise obtaining any COTS Software or Open Source Software licenses after the Notice of Award is issued by the MTA with respect to COTS Software or Open Source Software that was not identified in the Final Design NFPS Component Architecture (each, a "**New License Notice**"). Such written notification shall include, at least, the Licensing Information and any additional information that the MTA reasonably requests. If, during the applicable notice period, the MTA instructs the SI to use Software made available via a Substitute License, then the SI shall do so. If, during the applicable notice period either (i) the MTA authorizes the SI, in writing, that the SI may procure the Software identified in the New License Notice under the terms previously disclosed to the MTA, or (ii) the MTA fails to provide such authorization or a Substitute License, then the SI shall procure the Software identified in the New License Notice.

6.1.2.3. MTA Review of License Notices; Notification to the SI Regarding Substitution.

The MTA shall review the Proposal License Notice and each New License Notice (collectively, the "**License Notices**") to determine whether: (i) a Substitute License provides more favorable terms than those included in the applicable License Notice; (ii) the MTA can secure the Substitute License prior to the Notice of Award with respect to the Proposal Software, and within one-hundred and eighty (180) days of the MTA's receipt of a New License Notice with respect to all other COTS Software and Open Source Software; and (iii) the SI can exercise the necessary rights under the Substitute License in order to meet its obligations under the Contract Documents. If the MTA determines that a Substitute License provides more favorable terms than those included in the applicable License Notice, then the MTA shall notify the SI of the same (a) prior to the Notice of Award with respect to the Proposal License Notice, and (b) within sixty (60) days of its receipt of a New License Notice (each, a "**Substitute License Option Notice**"). The MTA shall include in the Substitute License Option Notice its determination of the financial impact of the Substitute License on amounts payable to the SI, and such impact shall be based on the difference between (1) the fees to be incurred by the SI for its provision of the applicable COTS Software or Open Source Software, and (2) the fees incurred by the MTA to procure the Substitute License (the "**Substitution Costs**").

6.1.2.4. Effect of Substitute License Option Notice.

Upon receipt of the Substitute License Option Notice, the SI (i) shall not purchase or otherwise incur costs for the applicable COTS Software or Open Source Software, and (ii) shall provide, at its sole cost and expense, all support that the MTA reasonably requests in connection with securing the necessary rights in the Substitute License. By way of clarification, such reasonable support shall include executing documents required by the COTS Software provider and providing information and documentation that the MTA reasonably requests. Other than the Substitution Costs, the MTA shall have no payment or other obligations to the SI for the COTS Software or Open Source Software that was replaced by a Substitute License.

6.1.2.5. MTA Right to Provide Substitute Licenses for Current COTS Software and Open Source Software.

The MTA shall have the right during the Term to direct the SI to use Software subject to a Substitute License in lieu of COTS Software or Open Source Software for which the SI has an existing, current license (each, a "**Current License**"). The MTA shall determine the financial impact of such substitute on the amounts payable to the SI, and such impact shall be based on (i) the savings that the MTA will receive based on its costs for procuring the Substitute License, less (ii) any early termination fees that are expressly included in the Current License and that would be incurred by the SI if the MTA were to provide the Substitute License (the "**Current License Substitution Costs**"). The Current License Substitution Costs shall result in a credit to the MTA or the SI based on whether the fees incurred by the MTA to secure the Substitute License are less than any early termination fees that are expressly included in the Current License and that are incurred by the SI if the MTA were to provide the Substitute License.

6.1.2.6. Limitations on SI Liability for Substitute Licenses; No Waiver.

The SI shall not be liable for delays in its performance of its obligations under the Contract Documents to the extent that such delays are attributable to the MTA's failure to provide a Substitute License within the time period set out in the Substitute License Option Notice, and such exclusion of liability shall immediately cease upon the MTA's provision of the applicable Substitute License. Subject to the preceding sentence, the MTA's provision of a Substitute License shall not constitute a waiver or otherwise relieve the SI from fulfilling all of its obligations under the Contract Documents, including its provision of Technical and Software Support Services.

6.1.2.7. Memorialization of Substitute License Costs.

The payment or credit of Current License Substitution Costs or Substitution Costs shall be memorialized by the MTA and the SI in the form of a Change Order. The SI acknowledges that (i) such memorialization is solely for the MTA's administrative purposes, and (ii) none of the rights, remedies or obligations associated with Change Orders, including those set out in Section 32 (Changes in Work; Change Orders), shall apply to Change Orders for Current License Substitution Costs or Substitution Costs.

6.2. Provision of NFPS Agency Assets.

At its option, any NFPS Agency may provide the SI with front-end devices such as Bus Validators, Subway Validators, Wayside Validator Machines, Configurable Vending Machines, Customer Service POS Terminals, RF Workstations, Smart Card Certification Workstations, TOMs, OSVDs or other components. These assets are the applicable NFPS Agency's property, and the SI shall keep them resident in the SI's facility or facilities pursuant to the applicable NFPS Agency's permission. The SI shall use these assets only for the benefit of the MTA Group, unless the Engineer grants written permission for another specific use. Upon the applicable NFPS Agency's request, the SI shall ship any or all of the assets, updated to the latest configuration, to such NFPS Agency at the SI's expense.

6.3. Access to Bus Depots, Subway Stations, and Railroad Facilities; Installation Work Scheduling.

The applicable NFPS Agency will provide the SI with certain bus depot, subway station, and railroad facility access for installation Work, as outlined in the Delivery Schedule. Due to operating requirements such access may be limited, as further specified in the Delivery Schedule. The SI shall submit proposed scheduling for installation Work to the MTA for review and approval, within the Applicable Review Period, and all Work and coordination shall be governed by the requirements contained in Division 1. The SI shall on a daily basis provide the MTA's designated project manager with a schedule for the Work to be performed during the following two (2) calendar days. The daily schedule shall show the location of Work, the type of Work, the number of people to be used (including the assigned safety competent person at each location), and the amount of NFPS Agency-supplied services required. In addition, the SI shall on a weekly basis provide the Engineer with a three-week look-ahead schedule containing the same scheduling details described herein.

6.4. Modification of MTA-Provided Systems.

The SI shall not modify Software or other components included in MTA-Provided Systems without the Engineer's prior approval.

6.5. Asset Protection.

The SI shall protect, support and maintain all MTA-Provided Systems and other assets, including all structures (including the Transit System), and any other real property whether owned by the MTA Group or any other person or entity, with their appurtenances and connections as the same may be affected by the SI's performance of the Work. The SI shall promptly reconstruct and restore all structures that are damaged thereby to at least as good a condition as existed before the construction was begun. All such work shall be known as "**Miscellaneous and Incidental Work.**"

6.6. Differing Site Conditions.

6.6.1. SI Notice of Differing Site Conditions.

The SI shall promptly, and before such conditions are disturbed, notify the Engineer in writing of: (i) latent physical conditions at a Work Site that differ materially from those indicated in the Contract Documents; or (ii) physical conditions at a Work Site, of an unusual nature, differing materially from those ordinarily encountered and generally recognized as occurring in work of the character provided for in this Contract but unknown to the SI until encountered during prosecution of the Work.

6.6.2. Investigation by the Engineer.

The Engineer shall promptly investigate such condition(s) to determine whether the condition(s) constitute a differing site condition as described in Section 6.6.1 (SI Notice of Differing Site Conditions). The Engineer shall notify the SI if the Engineer determines that a differing site condition exists that causes an increase or decrease in the SI's cost of, or the time required for, performance of any part of the Work. Within a reasonable time thereafter, not to exceed fifteen (15) calendar days, the SI shall provide a detailed Change Order Proposal in accordance with Section 32.3 (Change Order Procedures for Extra Work; Basis for Payment). The Engineer's determination shall be subject to review by the Contractual Disputes Review Board as set forth in Section 45 (Disputes; Dispute Resolution).

6.6.3. Limitations.

No claim for an extension of time and/or an equitable adjustment by the SI due to a differing site condition under this Section 6.6 (Differing Site Conditions) shall be allowed unless (i) the condition giving rise to such claim could not have been discovered during a reasonable site inspection prior to award (whether or not the same was actually conducted), and (ii) the SI has given the notice required in Section 6.6.1 (SI Notice of Differing Site Conditions) and met all requirements in Section 5.14 (Extension of Time Due to Excusable Delay).

6.6.4. Equitable Adjustment.

The requirements of Section 32.3 (Change Order Procedures for Extra Work; Basis for Payment), and Section 32.5 (Extra Work Directives) concerning equitable adjustments for compensation for Extra Work shall apply to any change for differing site conditions under this Section 6.6 (Differing Site Conditions). No claim by the SI for an equitable adjustment hereunder shall be allowed if asserted after Final Payment under this Contract.

6.7. Preliminary Occupancy.

The MTA reserves the right at all times to deliver, place and install furnishings and equipment in those areas of MTA Group property where the SI is performing Work, as long as there is no materially detrimental interference with the SI's performance of its obligations under these Contract Documents. The exercise of such right at any time shall in no event be construed as Substantial Completion or Beneficial Use; however, where the MTA Group is occupying a portion of such property (which had not been contemplated by the SI and the MTA to be co-occupied during the performance of the Work), the MTA shall be responsible for damage or loss to that portion of the Work caused by the MTA in connection with such occupancy.

7. NFPS Development.

The SI shall develop those components of the NFPS Backend Software and NFPS Back Office Software, as well as other Software and hardware components required in connection with the NFPS, as further specified in the Technical Specifications, and resulting from the design review process set out in Technical Specifications Section 26 (Design Reviews). In providing such Development Services, the SI shall employ Modular Programming methods and Open Architecture design. The SI shall perform all Development Services in accordance with Good Industry Practice.

7.1. Mobile Ticketing Application.

LIRR and MNR have deployed a mobile ticketing application that allows customers to use their smartphones to purchase and display fare products. To advance interoperability of the NFPS Agencies, the SI shall interact with the mobile ticketing provider to develop a cohesive solution for NFPS mobile requirements. As the NFPS Backend System is envisioned as the system of record for accounts, this shall include the SI providing the interface (i.e., API) and related capability to integrate with the existing application, including receiving data (e.g., transaction usages) for processing. In addition to supporting this initial integration, the SI shall support and enable a customer-friendly phasing out of this existing application through a transition to the new SI-provided NFPS Mobile Applications.

7.2. NFPS Demarcation Points; SI Responsibilities.

The Technical Specifications define the NFPS Demarcation Points, specifying the transition points between the MTA Group's enterprise network and the SI-provided network connections. Unless otherwise provided in the Contract Documents (either by way of expanding or contracting the SI's obligations and responsibilities), the SI's obligations and responsibilities include and apply to all discrete network connections and all systems and components between the NFPS Demarcation Points and the Hosted Systems.

8. Inspection, Testing, and Acceptance.

8.1. Inspection.

At all times during the Term, the Engineer shall have the right to inspect the Work, and such right includes the right (i) to make the most thorough and minute inspection of the Work, including materials and their manufacture or preparation, and (ii) to draw the SI's attention to all Deliverable Failures (including defects in workmanship or materials), Services Failures and other errors or variations from the Contract requirements. The right of inspection by the MTA is intended solely for the benefit of the MTA Group. The MTA's right of inspection does not, and the MTA's failure to draw the SI's attention to a Failure does not, give the SI any right or claim against the MTA Group, and does not in any way relieve the SI from its obligations under this Contract.

8.1.1. Facilities and Resources to Facilitate Inspection.

The SI shall at all times provide the Engineer and her designated representatives all facilities necessary, convenient or desirable for inspecting the Work. The Engineer and any of his or her designated representatives shall be admitted at any time without delay to any part of the Project and shall be permitted to inspect materials at any place or stage of their manufacture, preparation, shipment or delivery.

8.1.2. Results of Inspections.

If the Work or any part thereof is found defective, the SI shall without cost to the MTA Group promptly remedy such defect in order to achieve compliance with the Contract.

8.1.3. No Unreasonable Interruption.

Any inspection hereunder shall not unreasonably disrupt the SI's performance of the Work.

8.1.4. Uncovering Finished Work.

The Engineer's right to inspect all Work shall include the right to order the SI to uncover or take down physical portions of Work that have been formally accepted as completed by the Engineer pursuant to these Contract Documents (collectively, the "**Uncovered Work**"). If the Engineer determines that the Uncovered Work materially complies with the applicable requirements set out in these Contract Documents, then the SI's efforts associated with uncovering, taking down, replacing and restoring the Uncovered Work shall be treated as Extra Work for purpose of computing additional compensation and an extension of time. If the Engineer determines that the Uncovered Work does not meet the applicable material requirements set out in these Contract Documents, then the SI shall immediately correct the Uncovered Work so that it conforms with applicable Contract Documents requirements and the SI shall be solely responsible for all costs incurred by (i) the SI in connection with uncovering, taking down, replacing, restoring and otherwise correcting the Uncovered Work so that it conforms with the applicable Contract Documents requirements, and (ii) the MTA Group (including their employees' salaries and otherwise) in connection with such uncovering, taking down, replacing, restoring and inspection.

8.2. Tests.

The SI shall plan for, perform, monitor and document all Tests required to prove the design and acceptability of the NFPS, including all elements, subsystems and the NFPS as a whole. The SI shall conduct all Tests in accordance with the Technical Specifications, including Technical Specifications Section 27 (Factory Testing and Inspection) and Technical Specifications Section 30 (Post-Installation Testing and System Acceptance), and in accordance with Good Industry Practices. Such Tests shall include: (i) First Article Inspection (FAI); (ii) Factory Acceptance Testing (FAT); (iii) Factory Integration Testing (FIT); (iv) Production Inspection & Testing; (v) Post-Production Testing; (vi) Systems Integration Lab Testing; (vii) Systems Integration Field Testing; (viii) Pilot Testing; and (ix) Revenue Service Acceptance Testing.

8.2.1. Test Plans.

The SI shall prepare Test Plans for all Tests set out in the Technical Specifications, including Technical Specifications Section 27 (Factory Testing and Inspection) and Technical Specifications Section 30 (Post-Installation Testing and System Acceptance). The Test Plans shall, at a minimum, detail: (i) the number and range of tests; (ii) the number and type of Failures allowed for acceptance for each phase of testing; (iii) performance measurement procedures; (iv) acceptance criteria; and (v) related requirements and conditions. The SI shall submit all Test Plans to the MTA for its review and approval on the schedule set by the Technical Specifications.

8.2.2. Testing Schedule.

The SI shall not commence Testing until it has received the Engineer's approval of (i) all designs affecting the respective NFPS components under Test, and (ii) all related Testing procedures. The SI shall give the Engineer advance notice of all Tests (with supporting details as reasonably requested), and shall permit the Engineer and his or her representatives to witness any such Tests.

8.2.3. Test Tools and Test Documentation.

The SI shall furnish all Test Tools, NFPS components, Media and other materials and information required for the conduct of the Test at issue. The SI shall similarly prepare and furnish to the MTA all Test Documentation called for under the applicable Test Plan. All Tests required to be performed by the SI shall be done as set forth in the Technical Specifications and shall be made and conducted at the SI's sole expense.

8.2.4. Test Reports.

The SI shall submit a written report for each Test and inspection, including copies of all inspection/test data for the MTA's review and acceptance (each, a "**Test Report**"). All Test Reports shall be provided in the format, and with the content and identifiers, as specified in the Technical Specifications.

8.3. Testing and Beneficial Use; Project Phases.

The Technical Specifications adopt a phased approach for the Project and identify a set of implementation phases or "Beneficial Uses" for the Project, as further defined in Technical Specifications Section 4.9 (Project Schedule) and Technical Specifications Section 26 (Design Reviews). Beneficial Uses are keyed to successful Testing of the NFPS components subject to the Beneficial Use at issue, and approval of such Testing and Test results by the Engineer. The Engineer will issue a separate Beneficial Use Certificate for each such Beneficial Use phase when all applicable Work required by the Contract Documents has been completed, tested and approved by the Engineer and the other requirements set out herein have been met.

8.4. No Implied Approval or Acceptance.

In no event shall the failure by the MTA to reject a Deliverable be deemed to be, or otherwise imply, an approval of such Deliverable for any purpose.

9. Deployment and Installation Services.

The SI shall provide all Deployment and Installation Services required pursuant to these Contract Documents, including those set out in Technical Specifications Section 29 (Deployment and Installation Services). Such Deployment and Installation Services shall be consistent with Good Industry Practices and shall ensure the timely and proper deployment and installation of the NFPS with minimal negative impact on the operation of the MTA Group transit system.

10. Training Services.

10.1. SI General Training Obligations.

The SI shall provide all Training Services required pursuant to the Contract Documents, including those set out in Technical Specifications Section 33 (Training Services). Such Training Services shall be consistent with Good Industry Practices and sufficient for MTA Group staff to operate, maintain, support, repair and otherwise use the NFPS as contemplated under these Contract Documents.

10.2. MTA Group Personnel Shadowing Right.

The MTA shall have the right during all periods of System Integration Field Testing to have MTA Group personnel shadow SI personnel during such testing so that MTA Group staff can achieve on-the-job training in addition to the other Training Services that the SI is obligated to provide pursuant to the Contract Documents. The SI shall notify the MTA in advance of all System Integration Field Testing and shall coordinate schedules with the MTA to ensure that the shadowing set out in this Section 10.2 (MTA Group Personnel Shadowing Right) takes place.

11. Call Center Services.

11.1. SI Customer Call Center Services Obligations.

The SI shall provide all Customer Call Center Services set out in these Contract Documents, including those set out in Technical Specifications Section 9.1.4 (Customer Call Center and Customer Service Centers). As further set out herein, the Customer Call Center Services shall include a backup to support NYCT's established call center (and the MNR Customer Information Center and the LIRR Public Information Center if requested by the MTA) during the transition period, which is defined as the time period between issuance of the applicable Beneficial Use Certificate and Substantial Completion. By way of clarification, and not limitation, the Customer Call Center Services shall include SI staff to support the same functions as the NYCT-staffed call center (and the MNR-staffed Customer Information Center and the LIRR-staffed Public Information Center, if requested by the MTA), with the exception of Tier 2 customer claims, which will be investigated and managed by NYCT staff (or MNR or LIRR staff, as applicable). The SI shall be responsible for obtaining, maintaining and otherwise supporting all facilities, equipment, Software, personnel, and other materials necessary to provide the Customer Call Center Services.

11.2. SI Consideration for Customer Call Center Services.

In consideration of the SI's provision of the Customer Call Center Services (including any extensions to the same pursuant to Section 21.1.7 (Extended Customer Service Support)), the SI shall be paid on a monthly basis the Monthly Call Center Fixed Fee and the Monthly Customer Interaction Fee (collectively, the "**Monthly Call Center Fees**") as further set out in this Section 11.2 (SI Consideration for Customer Call Center Services).

11.2.1. Monthly Call Center Fees.

11.2.1.1. Monthly Call Center Fixed Fee.

The "**Monthly Call Center Fixed Fee**" shall consist of the SI's monthly fixed costs for providing the Customer Call Center Services, as the same are set out in the Price Schedule. The Monthly Call Center Fixed Fee includes, for example, all monthly costs for the Customer Call Center infrastructure regardless of the volume of monthly Customer Interactions.

11.2.1.2. Monthly Customer Interaction Fee.

The "**Monthly Customer Interaction Fee**" shall consist of the per-Customer Interaction Fee included in the Price Schedule, calculated based on the number of Customer Interactions that take place in an applicable calendar month. Subject to Section 11.2.1.3 (Clarifications Regarding Customer Interactions), a "**Customer Interaction**" includes: (i) each inbound business telephone call (a) that the Customer Call Center receives from an NFPS Agency customer, and (b) in which an SI representative speaks to such customer for more than thirty (30) seconds about an issue involving the NFPS (each, an "**Inbound Call Interaction**"); (ii) each outbound business telephone call (1) that an SI representative initiates to an NFPS Agency customer in response to such

customer's inquiry about the NFPS, and (2) in which such SI representative speaks to such customer for more than thirty (30) seconds about an issue involving the NFPS (each, an "**Outbound Call Interaction**"); (iii) each substantive email prepared and sent by an SI representative to an NFPS Agency customer in response to such customer's inquiry concerning the NFPS (each, an "**Email Interaction**"); and (iv) any other type of interaction that the MTA determines, in its reasonable discretion, warrants a per-Customer Interaction Fee, with such MTA determination taking into consideration changes in technology, business practices and other market factors.

11.2.1.3. Clarifications Regarding Customer Interactions.

The SI acknowledges that: (i) each Customer Interaction is based on the specific issue raised by the applicable NFPS Agency customer and not on the number of SI representative interactions that are needed to resolve each issue; (ii) the duration of each Inbound and Outbound Call Interaction shall be measured based only on the time that an SI representative speaks to the customer and shall not include any time during which the customer is interacting with the IVR or placed on hold by the SI representative; (iii) Inbound and Outbound Call Interactions shall not include personal calls; and (iv) Email Interactions shall only include unique responses to specific NFPS Agency customer inquiries concerning the NFPS, and shall not include surveys, email subscriptions or notices sent to multiple email addresses. By way of clarifying example, if an SI representative fails to resolve a customer issue during an Inbound Call Interaction, has a subsequent Outbound Call Interaction with the same customer and resolves the issue with an Email Interaction, then the SI shall only be entitled to the Customer Interaction Fee for the Inbound Call Interaction, and the SI shall not be entitled to any fees for the subsequent Outbound Call Interaction or Email Interaction.

11.2.2. Monthly Call Center Invoice.

The SI shall submit monthly invoices to the MTA no later than ten (10) days following the conclusion of the applicable calendar month for which the SI is seeking Monthly Call Center Fees (each, a "**Monthly Call Center Invoice**"). By way of clarifying example, a November Monthly Call Center Invoice shall be submitted to the MTA no later than December tenth (10th).

11.2.3. Content of Monthly Call Center Invoice.

Each Monthly Call Center Invoice shall include at least: (i) the applicable Monthly Customer Interaction Fee that the SI believes to be due and owing for the applicable month; (ii) the number of Customer Interactions that took place in the applicable month, broken down by type of Customer Interaction; (iii) the date, time and duration of each Inbound and Outbound Call Interaction; (iv) the date, time and email address for each Email Interaction, including metrics for both the customer inbound email and the SI representative outbound email; (v) a detailed, itemized breakdown of the Monthly Call Center Fixed Fee; (vi) any other information that the MTA identifies during Design Review; (vii) any information that the MTA identifies as being necessary or desirable due to additions in what constitutes a Customer Interaction made pursuant to Section 11.2.1.2 (Monthly Customer Interaction Fee); and (viii) any other information that the MTA reasonably requests.

11.2.4. MTA Call Center Audit Rights.

The SI shall maintain full and accurate records of all Customer Call Center Service activities that are sufficient for the MTA or its authorized representative to audit the Monthly Call Center Fees and the Monthly Call Center Invoices pursuant to Section 40 (Recordkeeping and Audit) (each, a "**Call Center Services Audit**"). If a Call Center Services Audit reveals that the actual number of Customer Interactions that occurred in an applicable month is less than the number of Customer Interactions reported in the applicable Monthly Call Center Invoice, then (i) the SI shall immediately refund to the MTA any overpayments made by the MTA based on

such inaccuracies, and (ii) the SI shall immediately reimburse the MTA for all costs that the MTA incurred in connection with the applicable Call Center Services Audit.

12. Hosting Services.

12.1. General Overview of Hosting Services.

The SI shall provide the Hosting Services as set out in these Contract Documents, including those set out in Technical Specifications Section 24 (Hosting). The Hosting Services shall include comprehensive, redundant, secure, highly-available and geographically distributed Hosting Systems to ensure that the NFPS fully satisfies all applicable performance requirements. The SI shall provide a minimum of two (2) geographically separated discrete Hosting System locations to ensure the uninterrupted operation of the NFPS with high availability and no single point of failure. By way of clarification, and not limitation, the Hosted Systems shall include the NFPS Websites and the NFPS Mobile Applications. Fees for the extended Hosting Services shall include those migration services set out in Technical Specifications Section 35.1 (NFPS Extended Hosting Services) if such migration services are requested by the MTA.

12.2. Hosting Services Period.

The SI shall be obligated to provide the Hosting Services (and to have completed all related Work, such as the provision of the Disaster Recovery Plan) prior to the commencement of the first System Integration Lab Testing and continuing for a period of seven (7) years following the MTA's issuance of a Certificate of Substantial Completion (the "**Hosting Services Period**"). As further set out in Section 21 (Optional Services), the MTA shall have the right to extend the Hosting Services Period via two (2) five-year optional extensions.

12.3. Outsourcing Hosting Services; Required Approvals.

Subject to the MTA's approval, and in lieu of using SI-owned Data Centers and hardware, the SI may engage a Subcontractor to provide some or all of the Hosting Services required pursuant to these Contract Documents (the "**Third Party Hosting Vendor**"). If the MTA approves of the SI's request to engage a Third Party Hosting Vendor, the SI shall (i) ensure that the Third Party Hosting Vendor complies with all of the relevant obligations set out in these Contract Documents relating to the Hosting Services, and (ii) except for Section 12.4 (Option to Purchase Hosting System Hardware), the SI shall remain fully liable for any breach of its obligations under these Contract Documents, even if the cause of the breach is attributable to the Third Party Hosting Vendor. By way of clarification, and not limitation, if a Security Incident occurs as a result of the acts (or omissions) of the Third Party Hosting Vendor, the SI shall nevertheless be fully liable and responsible for such Security Incident, including responding to the Security Incident as required by the Contract Documents.

12.4. Option to Purchase Hosting System Hardware.

If the SI does not elect to engage a Third Party Hosting Vendor or the MTA does not approve the SI's request to engage a Third Party Hosting Vendor, the MTA shall have the right to purchase, for one dollar (\$1.00), the hardware used by the SI to provide the Hosting Services at the conclusion of the Hosting Services Period.

12.5. Fees for Hosting Services.

The framework for the MTA's payment of satisfactorily delivered Hosting Services is structured in two phases: (i) during testing and initial implementation through Revenue Service Acceptance Testing (BU #5), fees for Hosting Services shall be a lump sum amount contained in Form A of the Price Schedule, and (ii) upon the successful completion of Revenue Service Acceptance Testing, fees for Hosting Services for the base period of seven (7) years shall be paid by the MTA at the monthly rate contained in Form C of the Price Schedule.

13. General Warranty Obligations.

The SI's Warranty obligations, and Warranty services obligations, are set out in the Contract Documents, including in: (i) the Technical Specifications; (ii) Section 13 (General Warranty Obligations), Section 14 (General Warranty of Construction and Performance), Section 15 (NFPS Hardware Warranties), Section 16 (NFPS Software Warranties), and Section 17 (Specific Guarantees) (collectively, the "**System Warranties**"); and (iii) Section 37 (SI Representations and Warranties).

13.1. Required Warranty Plan.

The SI shall submit a draft warranty plan for the NFPS, including all NFPS Hardware and NFPS Software, at the Final Design Review (FDR). The draft warranty plan shall be consistent with the SI's Warranty obligations under the Contract Documents, and shall be subject to the MTA's review and approval (as approved, a "**Warranty Plan**"). No fewer than 90 calendar days prior to the start of any Warranty Period, including any Warranty Period commencing upon the issuance of a Beneficial Use Certificate, the SI shall submit a revised and updated, final version of a Warranty Plan (i) for each NFPS component subject to the Beneficial Use Certificate or other Warranty Period trigger, and (ii) for the NFPS itself with respect to Revenue Service Acceptance Testing and any resulting Certificate of Substantial Completion. No Warranty Period shall commence prior to the MTA's approval of the associated Warranty Plan.

13.2. Scope of Warranty and Support Obligations.

The Warranties set out in Section 13 (General Warranty Obligations), Section 14 (General Warranty of Construction and Performance), Section 15 (NFPS Hardware Warranties) and Section 16 (NFPS Software Warranties), and the support obligations set out in Section 19 (Technical and Software Support Services), apply both to NFPS components and to the NFPS as a whole. For the avoidance of doubt, the SI agrees that such warranty and support obligations shall apply to the NFPS' interoperation with MTA-Provided Systems, as further set out in Section 13.5 (Effect of MTA-Provided Systems on NFPS Warranties and Support).

13.3. Escalation to Subject-Matter Qualified Personnel.

If the MTA determines that SI personnel specifically qualified in the subject matter area(s) relevant to the Failure at issue are needed to resolve a Failure, the SI shall dispatch such qualified personnel (or, for repairs that can be completed remotely, commit such qualified personnel) regardless of whether or not an NFPS Agency has performed First-Call Maintenance on the NFPS component subject to the Failure.

13.4. Security Requirements in Performing Warranty Services; No Warranty Repairs without Authorization.

The SI (a) shall follow proper and applicable MTA Group security procedures for gaining access to (i) field equipment and locations and (ii) network and Software assets, and (b) shall not undertake such procedures without having received applicable MTA Group-provided training. The SI shall not modify or repair any NFPS Hardware or NFPS Software in revenue service without the approval of the MTA's designated project manager or an MTA authorized representative.

13.5. Effect of MTA-Provided Systems on NFPS Warranties and Support.

The SI acknowledges that, where provided in the Technical Specifications, elements of the NFPS will interface with MTA Residual Systems. In addition to these Interfaces, the SI acknowledges that the Open Architecture requirements for the NFPS shall permit the MTA, in the manner specified in Section 3.2 (MTA Substitution Rights and Rights to Add), to include Qualified MTA-Substituted Products in the NFPS or otherwise in New

MTA-Provided Systems. The SI hereby agrees that use of Qualified MTA-Substituted Products shall not void or alter the SI's System Warranty and Support Obligations, under the conditions set out in Section 3.2 (MTA Substitution Rights and Rights to Add), and shall not degrade or detract from the KPIs or Service Levels, again, under the conditions set out in Section 3.2 (MTA Substitution Rights and Rights to Add). The SI further acknowledges that the use of MTA-Provided Systems, including their interoperation with the NFPS, shall not provide the SI with a basis for relief with respect to the SI's failure to comply with any obligation included in the Contract Documents. Subject to the SI's obligations herein regarding MTA Residual Systems, the MTA acknowledges that the SI shall have no Warranty services obligations with respect to MTA Residual Systems.

13.6. Right to Self-Repair.

If the SI fails to timely repair, replace or re-perform defective Work when required and in accordance with the terms of applicable Warranties, then the MTA shall have the right to cause such repair, re-performance or replacement to be made at the expense of the SI (the "**Self-Repair Work**"). The MTA shall similarly have the right to conduct or commission Self-Repair Work for any damage that occurs to any part of the Transit System (except only for the removal of such parts thereof as the SI is specifically required by this Contract to remove) on account of the Work. Where such Self-Repair Work is performed by MTA employees (or employees of other MTA Group entities), the SI shall be charged in accordance with the MTA's "Schedule of Rates For Services Rendered To Outside Parties" in effect at the time the repair or replacement is made. Where such Self-Repair Work is performed by Third Parties, the SI shall be charged at the MTA's cost. The MTA shall be entitled to deduct the amount of such cost and expense from any monies due or to become due to the SI under this Contract or any other agreement between the SI and the MTA. At the MTA's option, such cost will be deducted from the total allocation of NFPS Agency-supplied services. Up to the date of Final Completion, if the account is depleted the SI shall be required to reimburse the MTA for the services in accordance with the "Schedule of Rates for Services Rendered to Outside Parties" in effect at the time that the Self-Repair Work is performed.

13.7. Warranty Exceptions.

13.7.1. Damage Outside of Normal Usage.

The SI's System Warranty and Support Obligations shall not apply to NFPS components that have been damaged outside of normal usage by any person other than the SI or Third Parties under its direction or control. Environmental conditions described in the Contract Documents shall be considered normal operating conditions for the NFPS and shall not qualify for exclusion.

13.7.2. Defective NFPS Agency Maintenance.

As further provided in Section 34 (Deliverables) and Section 10 (Training Services), the SI shall provide to the NFPS Agencies (i) full, adequate and correct training, and (ii) complete operating manuals, maintenance manuals, electrical and electronic schematics, mechanical diagrams, Software Documentation and other Documentation related to maintenance of the NFPS (collectively, "**SI Maintenance Instructions**"). The NFPS Agencies will operate and maintain those components of the NFPS Hardware and NFPS Software under their control in accordance with the SI Maintenance Instructions. The SI's System Warranty and Support Obligations shall not apply to the extent the Failure at issue was caused by an NFPS Agency's material failure to materially comply with the SI Maintenance Instructions.

13.8. Manufacturer's Warranties and Guarantees.

The SI shall obtain all manufacturers' warranties and guarantees for all NFPS components in the name of the MTA and shall timely deliver the same to the MTA, provided that the delivery of such manufacturers'

warranties and guarantees shall in no respect relieve the SI of its System Warranty and Support Obligations and any other obligations under these Contract Documents.

13.9. Enforcement of Warranties; Rights Not Exclusive.

All Warranties under this Contract shall be fully enforceable by the MTA acting in its own name. The MTA's repair and replacement rights for Deliverable Failures, and re-performance rights for Services Failures, are not exclusive and, subject to the SI's limit of liability set out in Section 39.4.2 (Limited SI Limit of Liability), the MTA reserves all other rights and remedies available to the MTA Group arising out of or otherwise related to Deliverable Failures and Software Failures.

13.10. Conflicts between Warranty Terms.

In the event of a conflict between the terms of any Warranty, those terms that are most favorable to the MTA Group shall govern, unless otherwise specified in this Contract.

14. General Warranty of Construction and Performance.

Unless otherwise governed by the Hardware Warranty Period or the Software Warranty Period, for a period of one (1) year from the date of Substantial Completion (the "**General Warranty Period**"), the SI warrants that the Work conforms to the Contract requirements (including those requirements set out in the Technical Specifications) and is free of any patent or latent defect of the material or workmanship.

14.1. General Warranty Obligations.

Subject to the SI's limit of liability set out in Section 39.4.2 (Limited SI Limit of Liability), the warranty set out in this Section 14 (General Warranty of Construction and Performance) (the "**General Warranty**") shall be in addition to whatever rights the MTA Group may have pursuant to the Contract Documents and shall be in place regardless of the MTA's acceptance or approval of any portion of the Work. The SI's obligations under this General Warranty shall be, at its own cost and expense, to promptly (i) repair, re-perform or replace (including cost of removal and installation) that item or service (or part or component thereof) that proves defective or fails to comply with the Contract Documents within the General Warranty Period, and (ii) effect such repair, re-performance or replacement in such a manner that the item or service complies in all material respects with the Contract Documents. By way of clarifying example, as part of the General Warranty, the SI shall correct, at its sole cost and expense, any portion of the NFPS that fails to meet the Contract requirements so that such portion conforms to the Contract requirements.

14.2. Reinstatement of Warranty Period After Repair.

Except as otherwise provided in Section 15.11 (Extended Warranty for Repaired NFPS Hardware), the General Warranty covering any defective Work shall be reinstated for a period of one (1) year effective as of the date when the defect is remedied in accordance with this Section 14 (General Warranty of Construction and Performance). If the defect is found to have a significant effect on any other part, component or item, the reinstatement of the General Warranty shall then be extended to cover the part, component or item so affected as well, and shall start as of the date the interrelated parts, components and items function properly. The General Warranty reinstatement provided for in this Section 14.2 (Reinstatement of Warranty Period After Repair) shall apply to the first and all subsequent replacements or repairs of any such item, part or component and, in the case of a Failure which has a significant effect on another part, component or item, to the first and all subsequent extensions of said General Warranty to such affected items, parts and components.

15. NFPS Hardware Warranties.

This Section 15 (NFPS Hardware Warranties) sets out the SI's Warranty obligations for the NFPS Hardware (the "**Hardware Warranties**"). These Hardware Warranties are in addition to the other Warranties set out in the Contract Documents, including the General Warranty and the Specific Guarantees.

15.1. General Warranty Period.

For each NFPS Hardware component subject to a Beneficial Use Certificate (excluding only Wayside Vending Machines), the Hardware Warranties shall commence on the earlier of (i) the Engineer's issuance of the Beneficial Use Certificate covering such NFPS Hardware component, and (ii) the Engineer's issuance of an applicable Equipment Acceptance Notice pursuant to Section 34.8.1 (Transfer of Risk for NFPS SI-Sourced Equipment), and shall expire one (1) year after issuance of the applicable Beneficial Use Certificate (the "**BU Hardware Warranty Period**"). For any NFPS Hardware component that is not the subject of a Beneficial Use Certificate (excluding only Wayside Vending Machines), the Hardware Warranties shall commence on the Engineer's issuance of an Equipment Acceptance Notice for the applicable NFPS Hardware component and expire one (1) year after the applicable date of such issuance (the "**Non-BU Hardware Warranty Period**"). For Wayside Validator Machines, the Hardware Warranties shall (a) with respect to Wayside Validator Machines installed prior to the Engineer's issuance of the Beneficial Use Certificate for BU #4, commence upon the Engineer's issuance of an Equipment Acceptance Notice for the applicable Wayside Validator Machine and expire one (1) year after the Engineer's issuance of the Beneficial Use Certificate for BU #4, and (b) with respect to Wayside Validator Machines installed following the Engineer's issuance of the Beneficial Use Certificate for BU #4, commence upon the Engineer's issuance of an Equipment Acceptance Notice for the applicable Wayside Validator Machine and expire one (1) year after the applicable date of such issuance (collectively, the "**WVM Warranty Period**"). The BU Hardware Warranty Period, the Non-BU Hardware Warranty Period, and the WVM Warranty Period are referred to collectively as the "**Hardware Warranty Period**." By way of clarifying example, if the Engineer issues an Equipment Acceptance Notice for a Bus Validator that is within the scope of BU #2, and such Equipment Acceptance Notice is issued ten (10) months before the Engineer issues the Beneficial Use Certificate for BU #2, then the Hardware Warranty Period for such Bus Validator shall be twenty-two (22) months.

15.2. Inventory and Warranty Management Obligations.

Throughout the Term the SI shall be solely responsible for (i) inventorying and tracking all NFPS components subject to a Warranty Period or Optional Support Term, including NFPS Hardware components (collectively, the "**Tracked Components**"), and (ii) creating reports that include, at least: (a) the unique component ID or inventory number for each Tracked Component; (b) a description of the Tracked Component; (c) when the applicable Warranty Period first commenced; (d) the original conclusion date for the Warranty Period; (e) whether the original Warranty Period has been extended for any reason, including based on repairs pursuant to Section 14.2 (Reinstatement of Warranty Period After Repair); and (f) the revised Warranty Period conclusion date (each, a "**Warranty Report**"). The SI shall provide the MTA with updated Warranty Reports on a monthly basis and at such other times that the MTA reasonably requests. At least ninety (90) calendar days prior to the commencement of the first Warranty Period, the SI shall submit to the MTA for review and approval a draft warranty tracking and management plan (the "**Warranty Management Plan**"). The Warranty Management Plan shall, at a minimum, detail the SI's processes and procedures for complying with its warranty obligations set out in these Contract Documents, including the provision of Warranty Reports and the underlying tasks reflected in the Warranty Reports.

15.3. Warranty of Hardware Performance and Condition.

The SI represents and warrants that any NFPS SI-Sourced Equipment: (i) shall be new and unused; (ii) shall perform accurately and reliably during the Warranty Period and any Optional Support Term; (iii) shall perform at least the functions described in and in accordance with the Warranties, the Technical Specifications and any

representation or warranty made in literature, drawings, descriptions or specifications accompanying the NFPS SI-Sourced Equipment or referred to in the Contract Documents; and (iv) shall be free of latent or patent defects.

15.4. Hardware Warranty Services.

As part of the Hardware Warranty and during any Optional Support Term, the SI shall, at no additional expense to the MTA Group, repair or replace defective units of the NFPS Hardware.

15.5. Hardware Warranty Response Times.

The SI shall complete all Hardware Warranty services and Optional Support Services promptly, and within the following two (2) "**Hardware Warranty Response Times**," as applicable: (i) with respect to First- and Second-Call Maintenance, not later than four (4) hours after the earlier of (a) the SI discovering or being informed of the applicable Failure, and (b) the SI's receipt of a notice pursuant to Section 15.6.1 (NFPS Agency First-Call Maintenance), and (ii) with respect to Third-Call Maintenance, no later than five (5) days after the occurrence of the issue that requires the provision of Third-Call Maintenance. If the SI, in any single attempt, is unable to repair the defective Hardware component at issue within the Hardware Warranty Response Time, then it shall immediately replace the non-conforming or defective component with a new component. The provided Hardware Warranty Response Times include dispatching fully-qualified service personnel to the Work Site as required. Armed personnel provided by the MTA (at its sole cost) will accompany the SI during servicing of CVMs and WVMs in use by NYCT because of the bill and coin boxes (by way of clarifying example, armed personnel shall not accompany the SI during servicing of CVMs or TOMs in use by either MNR or LIRR). Prior to dispatch, the SI shall contact the responsible MTA representative to schedule any field Work.

15.6. NFPS Hardware Maintenance Obligations; Support Tiers.

During the Hardware Warranty Period, and except as set out in Section 15.8 (SI First- and Second-Call Maintenance Obligations), the applicable NFPS Agency shall perform all First-Call Maintenance on installed Field Devices, and NYCT shall perform all Second-Call Maintenance on installed Field Devices in use by NYCT. If the applicable NFPS Agency's performance of First-Call Maintenance or NYCT's performance of Second-Call Maintenance (with respect to Field Devices in use by NYCT) does not resolve the issue or the MTA (or any other applicable NFPS Agency) determines that First-Call Maintenance would not resolve the issue, then (a) with respect to Field Devices in use by NYCT, NYCT shall perform Second-Call Maintenance in the field, and (b) with respect to all Field Devices in use by an MTA Group entity other than NYCT, the SI shall perform Second-Call Maintenance in the field. The SI shall perform all Third-Call Maintenance in its backshop. "**First-Call Maintenance**" means maintenance on NFPS Hardware that meets all of the following criteria: the maintenance (i) is performed on-site; (ii) does not require workshop facilities, specialized tools or specialized equipment; (iii) requires only basic technical knowledge to perform; (iv) does not require the disassembly of any component within the applicable NFPS Hardware other than opening the NFPS Hardware chassis and swapping out a Line Replaceable Unit; and (v) is completed within thirty (30) minutes of the personnel's arrival to the applicable site. "**Second-Call Maintenance**" means any action necessary to diagnose and restore any out of service NFPS Hardware in the field where First-Call Maintenance was not appropriate (including when the performance of such First-Call Maintenance would exceed thirty (30) minutes) or was unsuccessful in resolving the problem. "**Third-Call Maintenance**" means repairs that cannot be performed, or issues that cannot be diagnosed, in the field, and that require the NFPS Hardware (or applicable components) at issue to be addressed in the backshop. Third-Call Maintenance requires a degree of technical knowledge and may require the use of specialized tools, value judgment and decisions as to the usability and serviceability of equipment.

15.6.1. NFPS Agency First-Call Maintenance.

Except for First-Call Maintenance that the SI is obligated to perform in connection with its provision of Warranty Work, and except as set out in Section 15.8 (SI First- and Second-Call Maintenance Obligations), the applicable NFPS Agency will perform all First-Call Maintenance according to the SI-supplied procedures as reviewed and approved by the MTA. If the applicable NFPS Agency fails to resolve an issue using First-Call Maintenance or otherwise determines that First-Call Maintenance would not resolve the issue, then the MTA (or any other applicable NFPS Agency) shall notify the SI of the same and the SI shall provide the required maintenance (e.g., Second- or Third-Call Maintenance). The SI's provision of any First-Call Maintenance, other than as contemplated pursuant to this Section 15.6.1 (NFPS Agency First-Call Maintenance) or Section 15.8 (SI First- and Second-Call Maintenance Obligations), shall be treated as Extra Work pursuant to Section 32 (Changes in Work; Change Orders).

15.6.2. NYCT Second-Call Maintenance.

Except for Second-Call Maintenance that the SI is obligated to perform pursuant to Section 15.8 (SI First- and Second-Call Maintenance Obligations), NYCT shall perform all Second-Call Maintenance for Field Devices in use by NYCT according to the SI-supplied procedures as reviewed and approved by the MTA. If NYCT fails to resolve an issue using Second-Call Maintenance or otherwise determines that Second-Call Maintenance would not resolve the issue, then the MTA (or NYCT) shall notify the SI of the same, and the SI shall provide the required maintenance (e.g., Third-Call Maintenance). The SI shall, at its sole cost and expense, collect and return (from and to MTA-designated facilities) Field Devices in use by NYCT that require Third-Call Maintenance; provided, however, that if the MTA determines that Third-Call Maintenance is necessary before the MTA's performance of First- or Second-Call Maintenance, then the MTA shall notify the SI of the same and the SI shall, at its sole cost and expense, remove and collect the defective Field Device (or applicable components) in use by NYCT at the applicable Field Device location (in lieu of an MTA-designated facility), and return the same to either the applicable Field Device location or an MTA-designated location, as directed by the MTA. The SI's provision of any Second-Call Maintenance for NYCT, other than as contemplated pursuant to Section 15.8 (SI First- and Second-Call Maintenance Obligations), shall be treated as Extra Work pursuant to Section 32 (Changes in Work; Change Orders). By way of clarification, and not limitation, the SI agrees it is responsible for all Second-Call Maintenance for NFPS Hardware in use by any MTA Group entity other than NYCT as further set out in Section 15.7 (SI Second- and Third-Call Maintenance).

15.7. SI Second- and Third-Call Maintenance.

15.7.1.1. Base Period of SI Second- and Third-Call Maintenance.

In addition to the SI's obligation to provide Second- and Third-Call Maintenance during any Optional Support Term, the SI shall provide (i) all Second- and Third-Call Maintenance for all NFPS Hardware in use by or designated for use by MNR and LIRR during each Hardware Warranty Period for the applicable NFPS Hardware, and (ii) all Third-Call Maintenance for NFPS Hardware in use by or designated for use by NYCT during each Hardware Warranty Period for the applicable NFPS Hardware. Among other obligations, the SI's provision of Second- and Third-Call Maintenance shall include the swapping of faulty on-board and off-board NFPS Validators and other NFPS components. The SI shall only perform Second-Call Maintenance in the field with an MTA or other NFPS Agency representative present. The SI shall perform all Third-Call Maintenance in its backshop (unless otherwise agreed by the MTA), excluding those activities performed on revenue-containing modules and cashboxes, which shall be done at the applicable Revenue Facility.

15.7.1.2. Extended SI Second- and Third-Call Maintenance Obligations.

The SI acknowledges that, as further set out in Technical Specifications Section 35.14 (MNR and LIRR NFPS Equipment Spare Parts and Modules Service and Repair) and Technical Specifications Section 35.15 (MNR and LIRR Field Preventative, Remedial, and Lifecycle Maintenance Services), the MTA has the Option of requiring

the SI to continue to provide, among other services, Second- and Third-Call Maintenance for CVMs and TOMs in use by or designated for use by MNR and LIRR. In addition to the SI's obligations set out in Technical Specifications Section 35.14 (MNR and LIRR NFPS Equipment Spare Parts and Modules Service and Repair) and Technical Specifications Section 35.15 (MNR and LIRR Field Preventative, Remedial, and Lifecycle Maintenance Services) and its provision of Second- and Third-Call Maintenance, the SI acknowledges that it shall comply with all of the requirements set out in the following Sections in connection with the SI's provision of Optional Support Services: (i) Section 15.2 (Inventory and Warranty Management Obligations); (ii) Section 15.3 (Warranty of Hardware Performance and Conditions); (iii) Section 15.4 (Hardware Warranty Services); (iv) Section 15.5 (Hardware Warranty Response Times); (v) Section 15.9 (NFPS Hardware Repair Costs; Return of Units to Service); (vi) Section 15.10 (NFPS Hardware Reoccurring Failure); and (vii) Section 15.12 (Documentation of Hardware Repairs; Notice of Acceptance of Warranty Work).

15.8. SI First- and Second-Call Maintenance Obligations.

The MTA and the SI acknowledge that the complexity of Configurable Vending Machines, Wayside Validator Machines, and Ticket Office Machines warrants additional SI training and support with respect to First- and Second-Call Maintenance, all as further set out herein.

15.8.1. Scope of NYCT-Specific SI First- and Second-Call Maintenance.

15.8.1.1. Scope of SI First- and Second-Call Maintenance for NYCT-Specific Configurable Vending Machines.

The SI shall provide all First- and Second-Call Maintenance for the first five hundred (500) Configurable Vending Machines in use by or designated for use by NYCT and for which the MTA provides an Equipment Acceptance Notice (collectively, the "**Covered NYCT CVMs**"). The SI's provision of First- and Second-Call Maintenance for the Covered NYCT CVMs shall commence on the MTA's provision of the first Equipment Acceptance Notice for the first Configurable Vending Machine in use by NYCT (the "**Covered NYCT CVM Support Commencement Notice**") and shall continue until the later of (i) six (6) months from the MTA's provision of the Covered NYCT CVM Support Commencement Notice, and (ii) the MTA's provision of an Equipment Acceptance Notice for the five-hundredth (500th) Configurable Vending Machine in use by NYCT (the "**SI NYCT CVM Maintenance Period**").

15.8.1.2. Scope of SI First- and Second-Call Maintenance for NYCT-Specific Wayside Validator Machines.

The SI shall provide all First- and Second-Call Maintenance for the first three hundred (300) Wayside Validator Machines in use by or designated for use by NYCT and for which the MTA provides an Equipment Acceptance Notice (collectively, the "**Covered NYCT WVMs**"). The SI's provision of First- and Second-Call Maintenance for the Covered NYCT WVMs shall commence on the MTA's provision of the first Equipment Acceptance Notice for the first Wayside Validator Machine in use by NYCT (the "**Covered NYCT WVM Support Commencement Notice**") and shall continue until the later of (i) six (6) months from the MTA's provision of the Covered NYCT WVM Support Commencement Notice, and (ii) the MTA's provision of an Equipment Acceptance Notice for the three-hundredth (300th) Wayside Validator Machine (the "**SI NYCT WVM Maintenance Period**").

15.8.1.1. MTA Assumption of NYCT-Specific SI First- and Second-Call Maintenance.

Upon the conclusion of the SI NYCT CVM Maintenance Period and the SI NYCT WVM Maintenance Period, the MTA shall be responsible for First- and Second-Call Maintenance for all Covered NYCT CVMs and Covered NYCT WVMs (as applicable). Except as otherwise set out herein, including in Section 15.7 (SI Second- and Third-Call

Maintenance) and Section 15.8.2 (Scope of MNR- and LIRR-Specific SI First-Call Maintenance), the MTA acknowledges that it is responsible for (i) all First-Call Maintenance for Configurable Vending Machines and Wayside Validator Machines that do not constitute Covered NYCT CVMs or Covered NYCT WVMs, and (ii) all Second-Call Maintenance for NFPS Hardware except for NFPS Hardware in use by or designated for use by MNR and LIRR.

15.8.2. Scope of MNR- and LIRR-Specific SI First-Call Maintenance.

15.8.2.1. Scope of SI First-Call Maintenance for MNR-Specific Configurable Vending Machines.

The SI shall provide all First-Call Maintenance for the first one hundred (100) Configurable Vending Machines in use by or designated for use by MNR and for which the MTA provides an Equipment Acceptance Notice (collectively, the "**Covered MNR CVMs**"). The SI's provision of First-Call Maintenance for the Covered MNR CVMs shall commence on the MTA's provision of the first Equipment Acceptance Notice for the first Configurable Vending Machine in use by MNR (the "**Covered MNR CVM Support Commencement Notice**") and shall continue until the later of (i) six (6) months from the MTA's provision of the Covered MNR CVM Support Commencement Notice, and (ii) the MTA's provision of an Equipment Acceptance Notice for the one-hundredth (100th) Configurable Vending Machine in use by MNR (the "**SI MNR CVM First-Call Maintenance Period**").

15.8.2.2. Scope of SI First-Call Maintenance for MNR-Specific Ticket Office Machines.

The SI shall provide all First-Call Maintenance for the first twenty (20) Ticket Office Machines in use by or designated for use by MNR and for which the MTA provides an Equipment Acceptance Notice (collectively, the "**Covered MNR TOMs**"). The SI's provision of First-Call Maintenance for the Covered MNR TOMs shall commence on the MTA's provision of the first Equipment Acceptance Notice for the first Ticket Office Machine in use by MNR (the "**Covered MNR TOM Support Commencement Notice**") and shall continue until the later of (i) six (6) months from the MTA's provision of the Covered MNR TOM Support Commencement Notice, and (ii) the MTA's provision of an Equipment Acceptance Notice for the twentieth (20th) Ticket Office Machine in use by MNR (the "**SI MNR TOM First-Call Maintenance Period**").

15.8.2.3. Scope of SI First-Call Maintenance for LIRR-Specific Configurable Vending Machines.

The SI shall provide all First-Call Maintenance for the first one hundred (100) Configurable Vending Machines in use by or designated for use by LIRR and for which the MTA provides an Equipment Acceptance Notice (collectively, the "**Covered LIRR CVMs**"). The SI's provision of First-Call Maintenance for the Covered LIRR CVMs shall commence on the MTA's provision of the first Equipment Acceptance Notice for the first Configurable Vending Machine in use by LIRR (the "**Covered LIRR CVM Support Commencement Notice**") and shall continue until the later of (i) six (6) months from the MTA's provision of the Covered LIRR CVM Support Commencement Notice, and (ii) the MTA's provision of an Equipment Acceptance Notice for the one-hundredth (100th) Configurable Vending Machine in use by LIRR (the "**SI LIRR CVM First-Call Maintenance Period**").

15.8.2.4. Scope of SI First-Call Maintenance for LIRR-Specific Ticket Office Machines.

The SI shall provide all First-Call Maintenance for the first twenty (20) Ticket Office Machines in use by or designated for use by LIRR and for which the MTA provides an Equipment Acceptance Notice (collectively, the

"**Covered LIRR TOMs**"). The SI's provision of First-Call Maintenance for the Covered LIRR TOMs shall commence on the MTA's provision of the first Equipment Acceptance Notice for the first Ticket Office Machine in use by LIRR (the "**Covered LIRR TOM Support Commencement Notice**") and shall continue until the later of (i) six (6) months from the MTA's provision of the Covered LIRR TOM Support Commencement Notice, and (ii) the MTA's provision of an Equipment Acceptance Notice for the twentieth (20th) Ticket Office Machine in use by LIRR (the "**SI LIRR TOM First-Call Maintenance Period**").

15.8.2.5. MTA Assumption of MNR- and LIRR-Specific SI First-Call Maintenance.

Upon the conclusion of the applicable SI MNR and SI LIRR CVM First-Call Maintenance Period and the SI MNR and SI LIRR TOM First-Call Maintenance Period, the MTA shall be responsible for First-Call Maintenance for all Covered MNR and Covered LIRR CVMs and Covered MNR and Covered LIRR TOMs (as applicable), including the MTA's continued provision of First-Call Maintenance during any Optional Spares Term or Optional Maintenance Term.

15.8.3. MTA Group Participation in SI First- and Second-Call Maintenance.

As further set out in Section 15.5 (Hardware Warranty Response Times), armed personnel provided by the MTA (at its sole cost) must accompany the SI during any SI First-, and Second-Call Maintenance of CVMs and WVMS in use by NYCT. For training purposes, additional MTA Group personnel shall shadow all SI personnel providing SI First- and Second-Call Maintenance. Prior to the SI dispatching any SI personnel to provide First- or Second-Call Maintenance, the SI shall contact the responsible MTA representative to coordinate the scheduling of all SI First- and Second-Call Maintenance to ensure that the SI is accompanied by such armed personnel and shadowed by such MTA Group personnel.

15.9. NFPS Hardware Repair Costs; Return of Units to Service.

During the Hardware Warranty Period, and without limiting its other cost-related obligations under the Contract Documents, the SI shall pay (i) all costs to collect and ship defective components, including spares and parts, from an MTA-designated facility to the SI's facility, and (ii) all costs to return repaired or replacement components to an MTA-designated facility. After fulfilling its Hardware Warranty Response Time obligations, the SI shall either repair or replace defective NFPS Hardware units it has removed from service in connection with fulfilling its Hardware Warranty obligations. The SI shall return a functioning unit to an MTA-designated facility within five (5) calendar days of the SI's removal or receipt of the defective NFPS Hardware unit.

15.10. NFPS Hardware Reoccurring Failure.

Without limiting or waiving the SI's obligations under Section 18 (Systemic Defects), the SI shall provide the MTA with a new NFPS Hardware component if that particular NFPS Hardware component was repaired or replaced on three (3) or more occasions for the same Failure.

15.11. Extended Warranty for Repaired NFPS Hardware.

Notwithstanding anything to the contrary in Section 14.2 (Reinstatement of Warranty Period After Repair), any NFPS Hardware component repaired or replaced under the terms of this Hardware Warranty shall be warranted for an additional one hundred and eighty (180) calendar days from the MTA's written acceptance of the Warranty Work under Section 15.12 (Documentation of Hardware Repairs; Notice of Acceptance of Warranty Work), or the remaining duration of the Warranty Period for the failed NFPS Hardware component, whichever is longer.

15.12. Documentation of Hardware Repairs; Notice of Acceptance of Warranty Work.

During the Hardware Warranty Period and any Optional Support Term, any and all repairs and/or adjustments of NFPS Hardware by the SI, including Hardware Updates, shall be documented by the SI on an MTA-approved form at the completion of every repair (each, a "**Completed Repair Report**"). A repair maintenance report shall be completed and a copy provided to the MTA representative on site. A repair report summary shall be sent weekly via email to an MTA-specified distribution list. The MTA will deliver written acceptance of Warranty Work or notification that the work is not acceptable within ninety (90) calendar days of its receipt of the applicable Completed Repair Report.

15.13. SI Hardware Update Obligations.

As part of the Hardware Warranty services, and except as otherwise set out in Section 15.13.7 (Ongoing SI Hardware Update Obligations), the SI shall propose and provide all Hardware Updates for the NFPS Hardware throughout the Hardware Warranty Period in accordance with this Section 15.13 (SI Hardware Update Obligations). Such Hardware Updates shall comply with the Technical Specifications (including Technical Specifications Section 25.5.2 (Hardware Versions)) and Good Industry Practices. The MTA and the SI acknowledge that Hardware Updates consist of both (i) those Hardware Updates that relate to error corrections, recalls and other, similar issues (each, a "**Mandatory Update**"), and (ii) those Hardware Updates that relate to enhancements, new functionality, or upgrades (each, a "**Discretionary Update**").

15.13.1. Sources of Proposed Hardware Updates.

The SI shall monitor all NFPS Hardware for Preventative Maintenance and Corrective Maintenance purposes consistent with Good Industry Practices. Such monitoring obligations shall include affirmatively proposing and providing all Hardware Updates to the NFPS Hardware, including Hardware Updates necessary to address: (a) Mandatory Updates, such as: (i) manufacturer-provided corrections to defective NFPS Hardware components, including manufacturing recalls; (ii) compliance with Applicable Law; and (iii) a Security Incident or other identified vulnerability to the NFPS; (b) Discretionary Updates, such as improvements in engineering and other relevant developments; and (c) any other events or occurrences that warrant the provision of a Hardware Update.

15.13.2. Notice to the MTA Regarding Hardware Updates.

The SI shall notify the MTA whenever there is a Hardware Update that is available or advisable, and the SI shall provide a proposal for each such Hardware Update. The SI must give all such notices in a timely manner commensurate with the sensitivity and importance of the Hardware Update at issue. The SI shall describe in its proposal: (i) the proposed Hardware Update at issue; (ii) the reasons for proposing the Hardware Update and, if applicable, whether the Hardware Update is required in the SI's judgment; (iii) the issues that the Hardware Update is intended to resolve; (iv) the potential impact of the Hardware Update on the NFPS; (v) the amount of time that the SI will need to implement the Hardware Update and any NFPS Agency-supplied services or other NFPS Agency resources that the SI needs to support such Hardware Update implementation; (vi) whether the SI considers the Hardware Update to constitute a Mandatory Update or a Discretionary Update; and (vii) any other information that the MTA requests (each, a "**Hardware Update Proposal**").

15.13.3. Required MTA Approvals for Hardware Updates.

The Engineer shall review each Hardware Update Proposal upon her or his receipt of the same. The Engineer shall be entitled to request additional information and Documentation regarding such Hardware Update Proposal, and the SI shall promptly respond to any such requests. The Engineer has the right to delay or refuse

the installation of any Hardware Update, or to modify the implementation of a proposed Hardware Update or the Hardware Update Proposal, in her or his reasonable discretion.

15.13.4. Installation of Approved Hardware Updates.

Upon the Engineer's approval of a Hardware Update Proposal, the SI shall promptly commence and complete installation of the associated Hardware Update in accordance with: (i) the Hardware Update Proposal (as approved by the Engineer); (ii) the Technical Specifications; (iii) the Engineer's instructions; and (iv) Good Industry Practices. Such Work shall also comply with the following:

15.13.4.1. Hardware Updates Work Performed; Completion.

Hardware Warranty services include all Work necessary to develop, configure, test and install Hardware Updates approved by the MTA, and to put such Hardware Updates into production. The SI shall complete the installation of all Hardware Updates as approved by the Engineer under Section 15.13.3 (Required MTA Approvals for Hardware Updates).

15.13.4.2. Change Control; Testing of Hardware Updates.

Before installing any Hardware Update in NFPS Hardware that is in revenue service, the SI shall perform regression testing and other testing of such Hardware Update in a test environment. For such purposes (among others), the SI shall update the MTA Test Facility throughout the Hardware Warranty Period to maintain a duplicate instance of the SI Test Facility, as necessary. Installation of any Hardware Update shall be done under change control and Configuration Management.

15.13.4.3. Hardware Warranty Integration; Other Affected Systems.

The SI shall be solely responsible for the installation, implementation, integration support and maintenance and operation of all Hardware Updates. If a condition requiring a Hardware Update affects the operation of other NFPS Hardware or NFPS Software components, then the SI shall provide a Hardware Update or Software Update for (or repair or replacement concerning) such other NFPS components.

15.13.4.4. Hardware Update Data Conversion.

The SI shall be responsible for converting any NFPS Data that is required to support the Hardware Update.

15.13.4.5. Updated Documentation for Updated NFPS Hardware.

The SI shall provide updated Documentation in the form of new revision manuals or changed pages to current manuals consistent with the original Documentation supplied or required, and reflecting changes embodied in a Hardware Update. The SI shall also provide (at no charge) installation instructions, procedures and updated maintenance manuals.

15.13.4.6. Training Related to Hardware Updates.

During the Hardware Warranty Period, the SI shall provide updated training course instruction and materials as needed for the Hardware Updates to ensure that the SI meets the training requirements set out in the Contract Documents, including those in Technical Specifications Section 33 (Training Services). For each Hardware Update that the MTA elects to apply, the SI shall develop the procedures to do so and provide all labor and materials required to install the approved Hardware Update.

15.13.5. Tracking Hardware Updates.

During the Hardware Warranty Period, the SI shall document all Hardware Updates on an MTA-approved form, and such Documentation shall be provided upon the completion of each Hardware Update.

15.13.6. SI Costs for Hardware Updates.

The SI shall provide all Hardware Updates at its sole cost and expense during the Hardware Warranty Period except for (i) Discretionary Updates, and (ii) those Hardware Updates to Field Devices that are mandated because of changes in PCI Standards. By way of clarifying example, the SI acknowledges that it shall be responsible, at its sole cost and expense, for all Hardware Updates that are necessary to ensure that the NFPS Hardware complies with PCI Standards, except for Hardware Updates to Field Devices. The MTA shall make the sole determination, in its reasonable discretion, whether (a) a Hardware Update is required due to a change in PCI Standards, and (b) a Hardware Update constitutes a Mandatory Update or a Discretionary Update.

15.13.7. Ongoing SI Hardware Update Obligations.

The SI acknowledges that its support and maintenance of the NFPS Hosting Hardware throughout the Term are necessary for the SI's compliance with its obligation to provide the Technical and Software Support Services. Accordingly, the SI shall provide, at its sole cost and expense, all Hardware Updates for the NFPS Hosting Hardware throughout the entire Technical and Software Support Period (the "**Hosting Hardware Update Services**"). The SI acknowledges that: (i) it shall provide the Hosting Hardware Update Services throughout the entire Technical and Software Support Period and not only during the Hardware Warranty Period, and (ii) its provision of the Hosting Hardware Update Services shall otherwise be in compliance with the Hardware Update obligations set out in this Section 15.13 (SI Hardware Update Obligations). By way of clarification, and not limitation, the SI shall provide Hardware Update Proposals for all NFPS Hosting Hardware throughout the entire Technical and Software Support Period, and the SI shall install all Hardware Updates that have been approved by the MTA pursuant to Section 15.13.3 (Required MTA Approvals for Hardware Updates).

16. NFPS Software Warranties.

16.1. NFPS Software Warranty Period.

For each NFPS Software component subject to a Beneficial Use Certificate, the Software Warranties shall commence as of the issuance of the Beneficial Use Certificate covering such NFPS Software component and expire one (1) year after issuance of the Certificate of Substantial Completion (the "**BU Software Warranty Period**"). For any NFPS Software component that is not the subject of a Beneficial Use Certificate, the Software Warranties shall commence on the first production use of the NFPS Software component and expire one (1) year after issuance of the Certificate of Substantial Completion (the "**Non-BU Software Warranty Period**"). The BU Software Warranty Period and the Non-BU Software Warranty Period are referred to collectively as the "**Software Warranty Period**."

16.2. Warranty of Software Performance.

The SI represents and warrants that the NFPS Software: (i) shall perform accurately and reliably during the Software Warranty Period; (ii) shall perform at least the functions described in and in accordance with the Warranties, the Technical Specifications and any representation or warranty made in literature, drawings, descriptions, or specifications accompanying the NFPS Software or referred to in the Contract Documents; (iii) shall meet or exceed applicable Service Level Requirements and KPIs; and (iv) shall be free of latent or patent defects.

16.3. Software Warranty Services.

Under this Software Warranty, the SI shall, at no additional expense to the MTA Group, provide Error Corrections, Software Updates and related Services. For the avoidance of doubt, the SI shall provide, during the Software Warranty Period, the same Services as it provides during the Post-Warranty Support Period, as such services are further specified in Section 19 (Technical and Software Support Services). For the avoidance of doubt, the Software Services Response and Resolution Times shall apply during the Software Warranty Period.

17. Specific Guarantees.

In addition to the General Warranty and as a component of the Hardware Warranties, the SI shall provide the specific guarantees set out in this Section 17 (Specific Guarantees) (the "**Specific Guarantees**") for (i) the Electrical Equipment, and (ii) the Communications and FCALAN System (collectively, the "**Specific Guarantee Equipment**"), all as specified below.

17.1. Specific Guarantees for Electrical Equipment.

The SI hereby (i) guarantees all apparatus, devices, workmanship and materials furnished and installed under Division 16 and the Technical Specifications (collectively, the "**Electrical Equipment**") for the period and amount specified in Section 17.3 (Specific Guarantee Periods and Amounts), and (ii) guarantees that all such Electrical Equipment and any part or parts which fail to perform the respective duties for which they are intended shall be repaired or replaced, all at the SI's sole cost. The Guarantee Period shall not start until the SI has met all requirements and has furnished all Operation and Maintenance Manuals as required under Section 1L of Division 1, Division 16, and the Technical Specifications.

17.2. Specific Guarantees for Communications and FCALAN System.

The SI hereby (i) guarantees all apparatus, devices, workmanship and materials furnished and installed under Division 19 and Division 20 for the period and amount specified in Section 17.3 (Specific Guarantee Periods and Amounts) (collectively, the "**Communications and FCALAN System**"); and (ii) guarantees that all Communications and FCALAN System equipment and any part or parts which fail to perform the respective duties for which they are intended shall be repaired or replaced, all at the SI's sole expense. The SI shall perform all troubleshooting, analysis and repairs or Software modifications required to repair the Communications and FCALAN System. The SI shall furnish and install all parts, components and materials required for the repair or replacement. The SI shall repair or replace all parts, equipment and Software that have directly or indirectly failed or have been damaged as a result of the failed equipment even if that equipment is not covered under the specific guarantee. The guarantee period shall not start until the SI has met all requirements and furnished all applicable manuals, training, spare parts, testing documentation and as-built drawings, including final tracings (vellum), required in Division 1C, Division 19 and Division 20 and all other requirements under the Technical Specifications.

17.3. Specific Guarantee Periods and Amounts.

The following guarantee periods, and guarantee amounts, shall apply:

No.	Category	Guarantee Period (the "Guarantee Period")	Bond Amount
1.	Electrical Equipment	1 Year commencing on the date specified in Section 17.1 (Specific Guarantees for Electrical Equipment)	\$1,500,000
2.	Communications and FCALAN System	1 Year commencing on the date specified in Section 17.2 (Specific Guarantees for Communications and FCALAN System)	\$1,500,000

17.4. Guarantee Services.

Without limiting or waiving the guarantee services specified in Section 17.1 (Specific Guarantees for Electrical Equipment) and in Section 17.2 (Specific Guarantees for Communications and FCALAN System), the SI shall, promptly upon notice from the MTA or the Engineer, immediately repair or replace (including that which may have previously been performed), at no additional expense to the MTA Group, any part or parts of the Specific Guarantee Equipment that fail to perform the respective functions for which they are intended during the Guarantee Period. Upon completion of repairs or replacements, the MTA will inspect such repaired or replaced parts. The NFPS (or relevant subsystems) shall be retested by the SI after the repairs or replacements are completed. The SI also agrees to repair or replace, during the Guarantee Period of each Specific Guarantee, at no additional expense to the MTA Group, any and all parts of the Transit System which may be damaged due to defects in, or failure of, such parts or of any other part or parts of the NFPS Hardware furnished and installed under this Contract.

17.5. Extension of Guarantee Period.

If repairs are required under this Specific Guarantee for associated Mechanical, Electrical, Power, Signal, Communication, Elevator and Escalator work, then the Guarantee Period shall be extended in accordance with Section 14.2 (Reinstatement of Warranty Period After Repair).

17.6. Guarantee Bond.

To secure such Specific Guarantees, the SI shall deposit with the MTA a specific guarantee bond for each category of Work relating to the Specific Guarantee Equipment. For each such category of Work, the SI shall deposit with the MTA, before the commencement of the Guarantee Period, a bond to the MTA and its successors and assigns, in such form as the MTA shall require and duly executed and acknowledged, in the sum as stated in Section 17.3 (Specific Guarantee Periods and Amounts). The bond shall be (i) with one or more sureties to be corporations or Persons approved by the MTA, and (ii) conditioned on the faithful performance by the SI of all of its obligations under these Specific Guarantees and under the other provisions of this Contract relating to these Specific Guarantees.

18. Systemic Defects.

18.1. Definition of Systemic Defect.

The term "**Systemic Defect**" means a Failure that meets all of the following criteria: the Failure (i) is not due to causes excluded from the SI's Warranty obligations under Section 13.7 (Warranty Exceptions); (ii) occurs on ten percent (10%) or more of the same NFPS component units during the applicable Warranty Period; and (iii) is due to either (a) a defect or failure, including those relating to design, materials or workmanship, or (b) a failure to meet the specified performance requirements set out herein. For the avoidance of doubt, the

Engineer shall be entitled to identify a "Systemic Defect" when the same Failure is observed in a given NFPS component in 10% of an NFPS device type (e.g., BVs, SVs, WVMs, CVMs) during the device type's associated Warranty Period. Systemic Defect analysis shall apply only to device types with fifty (50) or more units installed.

18.2. Determination of Systemic Defect; Notice to SI.

The MTA shall have the final and binding decision to declare a Systemic Defect. The Engineer will provide written notice to the SI within a reasonable time of the MTA's becoming aware that a Systemic Defect exists or may exist, and will again provide written notice upon a determination that a Systemic Defect is in fact present.

18.3. Remedial Plan; Design Studies.

Within sixty (60) calendar days of its receipt of a Systemic Defect determination, the SI shall (i) provide, for the MTA's review and approval, a written plan and schedule with specific timeframes for the correction of the Systemic Defect, and (ii) conduct all necessary and MTA-requested studies or analyses of the Failure. If at any time and for any reason the SI cannot perform said actions within the sixty (60) calendar days, the SI shall immediately notify the MTA in writing of the reason for the delay and what efforts the SI is pursuing to expedite completion. The SI shall also prepare and furnish to the MTA all data and reports applicable to any correction required (including revision and updating of all other affected data called for under the Contract Documents).

18.4. Remediation of Systemic Defect.

If during a Warranty Period a Systemic Defect is identified, then the entire quantity of the NFPS component at issue, including spares and items not yet delivered, shall be considered to have failed, and shall be repaired, corrected, or replaced by the SI at no cost to the MTA Group. Any module or device deemed to be part of a Systemic Defect and remedied by the SI shall have its Warranty Period extended in accordance with Section 15.11 (Extended Warranty for Repaired NFPS Hardware). In addition, the SI shall undertake and complete a work program reasonably designed to prevent the occurrence of the same Failure in all other NFPS components provided under this Contract. The work program shall include inspection and correction of the defective or potentially defective module or device in all of the applicable NFPS components.

18.5. SI Costs of Analysis, Remediation, and Other Work Related to Systemic Defects.

The SI shall be solely responsible for all costs incurred by the SI for performing studies, tests or corrective work, or for delay incident thereto. The SI shall also prepare and furnish to the MTA all data and reports applicable to any correction required (including revision and updating of all other affected data called for under the Contract Documents) at no cost to the MTA Group. The MTA Group shall not be liable for any costs incurred by the SI in complying with this Section 18 (Systemic Defects).

18.6. MTA Self-Help Remedies for SI Failures.

Should the SI fail to promptly and satisfactorily comply with Section 18 (Systemic Defects), the MTA may: (i) perform any design studies or analyses reasonably necessary and may thereafter require the SI to correct, repair, replace or retrofit any system, subsystem, component, part or equipment that is necessary for correction of the defect or failure, in which event the SI shall perform all work necessary to correct, repair, replace and/or retrofit all such defective or failed items within sixty (60) calendar days of such a written request from the MTA; (ii) correct the defect or failure, including performance of any design studies or analyses reasonably necessary, by any other means; or (iii) direct that no corrective measures be taken and, as

appropriate, modify the Contract Documents as necessary to reflect such action, including an equitable price adjustment (reduction) to be deducted from any monies due or to become due to the SI.

18.6.1. Costs Associated with MTA Self-Repair and Associated Work.

The SI shall be liable to and shall reimburse the MTA for all costs incurred by the MTA Group in correcting, or obtaining the correction of, a Systemic Defect or failure, including costs for studies, tests, materials, supplies, equipment, labor, labor fringes, transportation, overhead and other costs reasonably necessary to perform the corrective work or analyses.

18.6.2. MTA Disposal of Items.

Any system, subsystem, component, part, module or equipment replaced by the MTA will be disposed of by the MTA in the manner requested by the SI at the SI's expense. If the SI fails to furnish disposition instructions within fifteen (15) calendar days after the date of a written request by the MTA to do so, the MTA will dispose of such items, at the SI's expense, in such a manner that is appropriate under the circumstances. Such costs may be deducted from monies due, or to become due, to the SI.

18.7. Effect of Systemic Defect on Other Work.

The time for completion of the Work shall not be extended, nor shall the SI's liability for liquidated damages be reduced, as a result of any delay in performance of the Work caused in whole or in part by compliance with this Section 18 (Systemic Defects).

19. Technical and Software Support Services.

The SI shall provide Technical and Software Support Services as described in this Section 19 (Technical and Software Support Services), Section 15.13.7 (Ongoing SI Hardware Update Obligations) and the Technical Specifications, including Technical Specifications Section 31 (Technical and Software Support Services).

19.1. Support Period.

The SI shall provide Technical and Software Support Services commencing on the expiration of the Software Warranty Period and expiring six (6) years later (the "**Technical and Software Support Period**"). If the MTA elects to obtain extended Technical and Software Support Services from the SI in accordance with Section 21 (Optional Services), the term Technical and Software Support Period shall include any additional periods exercised by the MTA in connection with such option.

19.2. Support Related to Third Party Software; Third Party Maintenance Contracts.

To fulfill its obligations concerning Technical and Software Support Services, the SI shall provide support for both SI Software and Third Party Software. In this regard, the SI shall obtain maintenance contracts for Third Party Software that permit the SI to meet: (i) such Technical and Software Support obligations (including its Response and Resolution Time obligations under Section 19.6.5 (Error Response and Resolution Times)); (ii) its Service Level obligations; and (iii) its other Warranty and support obligations under the Contract Documents. The SI shall be responsible for managing and coordinating all maintenance and support with respect to Third Party Software in order to meet such obligations. Accordingly, by way of example and not limitation, the SI shall obtain and track all maintenance, support, subscription and other agreements that are necessary or advisable for the maintenance and support of Third Party Software, and shall promptly provide copies of such agreements to the MTA upon request.

19.3. Support for Prior Software Versions.

The SI acknowledges that the MTA has the right to decline or postpone the SI's implementation of Updates, in accordance with Section 19.8 (Required MTA Approval for Updates). To accommodate this right, the SI at a minimum (i) shall continue to provide Technical and Software Support for all Versions of Third Party Software within two Releases prior to the most recent Release (for example, support will continue for version 2.0 up through and including version 4.0), and (ii) shall provide Technical and Software Support for all SI Software in revenue service, irrespective of the current Version or Release of such SI Software. If the SI is unable to obtain maintenance and support for Third Party Software in a manner sufficient to meet the obligations set out in the Contract Documents and in this Section 19.3 (Support for Prior Software Versions), then the SI shall promptly inform the MTA, and the SI and the MTA shall then proceed in accordance with Section 19.5 (SI-Proposed Software Updates and Other Software Preventative Maintenance). Subject to the above restrictions, the SI shall keep all NFPS Software instances (training, test, development, pre-production and production) at the same configuration and patch level.

19.4. Technical Support.

The SI shall provide the technical and helpdesk support set out in this Section 19.4 (Technical Support) in accordance with the Technical Specifications and Good Industry Practices.

19.4.1. Qualifications of SI Technical Support Personnel.

For purposes of providing Technical and Software Support (among other purposes set out in the Contract Documents), the SI shall retain qualified and knowledgeable technical support and Software development personnel who are familiar with: (i) the NFPS Software (including both the SI Software and the Third Party Software); (ii) the NFPS as a whole; (iii) the MTA-Provided Systems; and (iv) fare collection systems generally. The MTA shall have direct access to these technical personnel for purposes of troubleshooting, receipt of Error Reports, general questions regarding the use and operation of the NFPS Software and its functionality, and those other purposes set out in the Contract Documents. The MTA shall also have access to the SI's technical management support personnel for escalation purposes.

19.4.2. Helpdesk and Phone Support.

During the Technical and Software Support Period, the SI shall provide technical support to the MTA Group for general use and operation of the NFPS Software via telephone consultation, which shall be provided by the SI during normal business hours (8 a.m. to 5 p.m., Eastern time, Monday through Friday, excluding holidays) (the "**Business Hours**"), and on evenings, nights, weekends and holidays (the "**After Hours**") on an as-needed basis or as required by the MTA. The SI shall also establish and provide a staffed 24 hour-per-day phone number for the MTA Group's use in reporting Severity Level 1 and Severity Level 2 Errors and Failures, and any other systemic issues relating to the NFPS.

19.4.3. Access Via Email.

The SI shall be available via email for technical support, and shall maintain a dedicated email address to allow the MTA Group to contact the SI at any time (including outside of Business Hours). The dedicated email address shall be managed by "trouble ticket" Software that tracks problem progress on an incident-by-incident basis in order to ensure the SI's Response and Resolution Times are in compliance with its obligations herein.

19.5. SI-Proposed Software Updates and Other Software Preventative Maintenance.

Subject to the MTA's approval rights under Section 19.8 (Required MTA Approval for Updates), the SI shall propose and provide Updates to the NFPS Software for purposes of Preventative Maintenance and as further set out in this Section 19.5 (SI-Proposed Software Updates and Other Software Preventative Maintenance). Such Updates shall (i) comply with the Technical Specifications (including Technical Specifications Section 31 (Technical and Software Support Services)) and with Good Industry Practices, and (ii) support NFPS operations with no material degradation in Service Levels.

19.5.1. Sources of Proposed Updates.

The SI shall monitor the NFPS Software for Preventative Maintenance purposes and other purposes consistent with Good Industry Practices. Such monitoring obligations shall include affirmatively proposing and providing Updates to the NFPS Software, including Updates to address the following:

19.5.1.1. Internal Development.

During the Technical and Software Support Period, the SI shall propose to the MTA and make available Updates to SI Software. These Updates shall include (i) all routine and other Updates provided for SI COTS Software, and (ii) all relevant Updates to SI-Commissioned and SI-Developed Software, whether the SI developed such Software in the course of servicing the NFPS (in connection, for example, with Error Corrections) or in the course of servicing other customers of the SI with similar systems or Software and as further set out in Section 19.7.3 (SI Provision of Software Releases of SI Software).

19.5.1.2. Improved Technology.

The SI shall also propose Updates to maintain the currency of the applicable NFPS Software and to take advantage of software engineering and other relevant developments.

19.5.1.3. Regulatory Changes.

The SI shall monitor the regulatory environment (and accept and consider the MTA's input on such environment) and propose Updates to accommodate changes in such regulatory environment, in accordance with Section 19.8 (Required MTA Approval for Updates).

19.5.1.4. Updates Based on Deprecation, Sunset or Future Unavailability of NFPS Software.

The SI shall not deprecate, "sunset" or "end-of-life" any SI Software (the "**Sunsets**"). If a Third Party Sunsets Third Party Software, or any part thereof, or replaces, develops or acquires any new product intended to replace such Third Party Software, then the SI shall timely notify the MTA and provide a proposal (under Section 19.8 (Required MTA Approval for Updates)) for Updating or replacing such Third Party Software to the requirements of the Contract Documents. Similarly, if a provider of Third Party Software ceases to support such Third Party Software (whether for financial or other reasons), the SI shall provide alternative solutions to replace such Third Party Software, all in accordance with Section 19.8 (Required MTA Approval for Updates).

19.5.2. Notice to the MTA Concerning Software Preventative Maintenance Updates.

The SI shall notify the MTA whenever Updates for Preventative Maintenance and for the other purposes specified in this Section 19.5 (SI-Proposed Software Updates and Other Software Preventive Maintenance) are available or advisable and provide a proposal with respect to such Updates. The SI must give all such notices in a timely manner commensurate with the sensitivity and importance of the Update at issue. By way of clarification, and not limitation, the SI must give notice to the MTA regarding an Update for a critical security

patch immediately upon such Update's availability. With this proposal, the SI shall describe: (i) the proposed Update at issue; (ii) the reasons for proposing the Update and, where applicable, whether the Update is required in the SI's judgment; (iii) the issues that the Update is intended to resolve; (iv) the potential impact of the Update on the NFPS; and (v) such other information as the MTA may request in accordance with Section 19.8 (Required MTA Approval for Updates) (each, a "**Software Preventative Maintenance Proposal**"). The SI must notify the MTA, and provide good and sufficient explanation, if an Update is required in order to maintain the NFPS Software (including Third Party Software) in good working order and otherwise in accordance with the Contract Documents.

19.6. Updates for Software Errors and Other Software Corrective Maintenance.

In addition to the Preventative Maintenance Updates set out in Section 19.5 (SI-Proposed Software Updates and Other Software Preventative Maintenance), and subject to the MTA's approval rights under Section 19.8 (Required MTA Approval for Updates), the SI shall propose and provide Updates to the NFPS Software for purposes of Corrective Maintenance and as further set out in this Section 19.6 (Updates for Software Errors and Other Software Corrective Maintenance). Such Updates shall (i) comply with the Technical Specifications (including Technical Specifications Section 31 (Technical and Software Support Services)) and with Good Industry Practices, and (ii) support NFPS operations with no material degradation in Service Levels.

19.6.1. Reporting of Software Errors.

The MTA Group shall be entitled to report Errors to the SI, and shall use such form as may be reasonably prescribed by the SI (each, an "**Error Report**"). The MTA Group shall be entitled to submit Error Reports via telephone line, fax or email via the technical support channels specified in Section 19.4 (Technical Support). With its Error Report, the MTA Group shall provide to the SI other documentation, information or assistance reasonably requested by the SI for purposes of confirming and resolving the Error. The SI shall self-report any Errors that it discovers using the technical support channels specified in Section 19.4 (Technical Support) and otherwise report discovered Errors to the Engineer. Finally, the SI shall process, in accordance with Section 19.6.2 (Confirmation; Tracking), reports of Errors made by Subcontractors, Linked NFPS Entities, transit customers and others. The SI shall make means available for these Persons to report Errors (each report of an error, also referred to as an "**Error Report**").

19.6.2. Confirmation; Tracking.

The SI shall confirm receipt of an Error Report, and shall cause all Error Reports and technical support calls to be tracked through the use of an incident tracking system (the "**Incident Tracking System**"). The SI shall cause Error Reports to be reported and logged into such System either: (i) via email; (ii) accessing a web page maintained by the SI for such purpose; or (iii) by telephone, all as provided in Section 19.4 (Technical Support). Upon receipt of an Error Report, the SI shall issue an Incident Tracking Number (each, an "**ITN**") to the MTA via email. Each ITN shall remain open until the Error Report has been satisfactorily resolved in accordance with Section 19.11 (Closure of Issues). On receipt of an Error Report, the SI shall: (a) evaluate the inquiry; (b) provide advice to resolve the problem described in the inquiry; and (c) call in appropriate staff as necessary to respond to the situation in accordance with Section 19.6.5 (Error Response and Resolution Times).

19.6.3. Assigning Severity Level and Chargeable/Non-Chargeable Status.

In connection with the submittal of an Error Report, or within a reasonable time thereafter, the Engineer shall assign a Severity Level to the Error, in accordance with the criteria set out in Technical Specifications Section 30.4.3 (Failure Severity Definitions). In addition, the Engineer will make a determination regarding whether the Error constitutes a Chargeable Failure or a Non-Chargeable Failure. Should the SI disagree with the Engineer's

determination, the SI may appeal to an MTA-designated program director and, if still unresolved, use the dispute resolution process identified in Section 45 (Disputes; Dispute Resolution).

19.6.4. Proposal Concerning Correction or Reasonable Workaround.

Upon receipt of an Error Report, the SI shall work to resolve the Error or provide a Reasonable Workaround. Upon completion of this work, the SI shall prepare a proposal to the MTA regarding the Error Correction or Reasonable Workaround, and shall describe: (i) the proposed Error Correction or Reasonable Workaround; (ii) the timetable for implementing the Error Correction or Reasonable Workaround (and with respect to a Reasonable Workaround, the timeframe for a non-temporary Error Correction); (iii) the potential impact of the Error Correction or Reasonable Workaround on the NFPS; and (iv) such other information as the MTA may request in accordance with Section 19.8 (Required MTA Approval for Updates) (each, a **"Software Corrective Maintenance Proposal"**).

19.6.5. Error Response and Resolution Times.

The SI shall respond to Error Reports and complete the work set out in Section 19.6.4 (Proposal Concerning Correction or Reasonable Workaround) within the timeframes set out below, and based on the assigned Severity Level of the Error Report (the **"Response and Resolution Times"**). Within the specified time, the SI shall determine a resolution or Reasonable Workaround for the Error, and provide the MTA with a proposal for implementing such resolution in accordance with Section 19.8 (Required MTA Approval of Updates). The Severity Level definitions are set out in Technical Specifications Section 30.4.3 (Failure Severity Definitions).

Severity Level	Acknowledgment Time	Provision of Error Correction or Reasonable Workaround Proposal
Level 1 – Critical	15 minutes	Full-time attention (24/7) to the Error until a responsive Software Corrective Maintenance Proposal is provided to the MTA. Target timeframe for the provision of such Proposal: 1 hour after acknowledgment. Maximum timeframe for Provision of such Proposal: 8 hours after acknowledgment.
Level 2 – Urgent	15 minutes	Full-time attention (24/7) to the Error until a responsive Software Corrective Maintenance Proposal is provided to the MTA. Target timeframe for provision of such Proposal: 4 hours after acknowledgment. Maximum timeframe for provision of such Proposal: 24 hours after acknowledgment.
Level 3 – Important	Two (2) Business Days	Maximum timeframe until a responsive Software Corrective Maintenance Proposal is provided to the MTA: five (5) days after acknowledgment.
Level 4 – Low	Five (5) Business Days	Timeframe until a responsive Software Corrective Maintenance Proposal is provided to the MTA: five (5) weeks after acknowledgment.

19.6.6. Escalation.

If the SI is not able to provide a Software Corrective Maintenance Proposal within the timeframes specified in Section 19.6.5 (Error Response and Resolution Times), then the SI shall promptly report to the MTA the status

of the Error Correction process. Where a Severity Level 1 or Level 2 is at issue, the SI shall immediately: (i) make such report; (ii) increase resources committed to the Error Correction and escalate the issue to senior management; and (iii) provide the MTA with status reports at least every two (2) hours thereafter until the Error Correction is determined and the Software Corrective Maintenance Proposal is completed.

19.7. SI Obligations with Respect to Software Releases.

The SI's obligations to provide Updates pursuant to the Contract Documents apply, among other things, to both Software Versions and Software Releases. This Section 19.7 (SI Obligations with Respect to Software Releases) addresses certain cost allocations between the MTA and the SI for the latter's provision of those Updates that constitute Software Releases. The SI acknowledges that, except with respect to certain costs for Software Releases as expressly set out in this Section 19.7 (SI Obligations with Respect to Software Releases), this Section 19.7 (SI Obligations with Respect to Software Releases) does not modify or otherwise impact the SI's obligations with respect to all Updates, including the SI's obligation to provide Updates that constitute new Software Versions.

19.7.1. SI Costs for Software Releases of Third Party Software.

The SI shall be responsible for all costs associated with the provision of Updates that constitute Software Releases of Third Party Software that are required because: (i) the applicable Third Party Software is subject to Sunset as further set out in Section 19.5.1.4 (Updates Based on Deprecation, Sunset or Future Unavailability of NFPS Software); (ii) the SI is no longer able to comply with its obligations set out in Section 19.3 (Support for Prior Software Versions) or to otherwise provide the support and maintenance for the applicable Third Party Software as required pursuant to these Contract Documents; (iii) the current Software Version of any NFPS Software is incompatible with Updates to other NFPS Software, including Updates to Third Party Software that constitute Software Releases; (iv) implementing the Software Release is necessary to ensure NFPS Software compatibility and otherwise to maintain the required NFPS performance; or (v) the Software Release constitutes a Critical Security Update or is otherwise required in order to comply with Applicable Law.

19.7.2. MTA Costs for Software Releases of Third Party Software.

Except for those Updates for which the SI is responsible for providing pursuant to Section 19.7.1 (SI Costs for Software Releases of Third Party Software), the MTA acknowledges that, as between the parties, the MTA shall be responsible for certain costs that the SI incurs in connection with its provision of Updates that constitute Software Releases of Third Party Software (the "**SI Software Release Costs**"). The SI Software Release Costs shall (i) consist only of those fees charged by the applicable Third Party to obtain a license to the Software Release and the SI's initial installation, implementation and integration of such Software Release, and (ii) be reduced by those amounts to which the SI is entitled to be paid by the MTA for the Third Party Software component that is being replaced by the Software Release. The SI's compensation for its provision of any Software Releases pursuant to this Section 19.7.2 (MTA Costs for Software Releases of Third Party Software) shall be treated as Extra Work pursuant to Section 32 (Changes in Work; Change Orders); provided, however, that any Change Order Proposal shall include a detailed explanation of the SI Software Release Costs.

19.7.3. SI Provision of Software Releases of SI Software.

The SI acknowledges that the grant of rights included in Section 35 (Intellectual Property) is intended, in part, to ensure that the SI is able to exploit the SI Software (and derivatives of the same) with other SI customers and that the MTA Group benefits from such exploitation by virtue of receiving new features, functionality, and other changes to the SI Software that the SI provides to its other customers. Accordingly, and notwithstanding anything to the contrary, the SI shall provide to the MTA, at the SI's sole cost and expense, Updates that constitute Software Releases of SI Software (including Software that the SI develops that has substantially

similar functionality or purposes as the SI Software). By way of clarifying example, and not limitation, the SI shall provide to the MTA, at the SI's sole cost and expense, new functionality for SI Software if the SI develops such functionality pursuant to agreements with other parties, and the SI shall incorporate the same into the NFPS (including providing all other Updates necessary to ensure compatibility) at its sole cost and expense, pursuant to this Section 19 (Technical and Software Support Services). To the extent that the SI is prohibited from providing such functionality pursuant to its agreement with other parties, then the SI shall develop the equivalent functionality for the MTA in a manner that does not violate any such third party agreement.

19.7.3.1. Limitation on SI Obligation to Provide Software Releases of SI Software.

The MTA acknowledges that the SI's obligation to provide Updates that constitute Software Releases of SI Software pursuant to this Section 19.7.3 (SI Provision of Software Releases of SI Software) shall only apply to those Software Releases relating to functionality that is present, or intended to be present, in the instance of the SI Software in use in the NFPS. Notwithstanding the preceding sentence, the SI shall notify the MTA of all Software Releases regardless of whether it believes that the applicable Software Release relates to functionality that is present, or intended to be present, in the instance of the SI Software in use in the NFPS. The MTA shall determine, in its reasonable judgment, whether each Software Release is excluded from the SI's obligations pursuant to this Section 19.7.3.1 (Limitation on SI Obligation to Provide Software Releases of SI Software), with such determination taking into account the Final Design NFPS Component Architecture and the functionality present, or intended to be present, in the NFPS at the time during which such determination is being made.

19.7.4. Clarification Regarding the Treatment of Software Releases; Allocation of Costs.

The SI acknowledges that (i) all Software Releases provided by the SI, including those subject to Section 19.7.2 (MTA Costs for Software Releases of Third Party Software), shall be considered NFPS Software for all purposes once the same are implemented into the NFPS, and (ii) the SI shall not receive any additional compensation for such NFPS Software other than as expressly provided in Section 19.7.2 (MTA Costs for Software Releases of Third Party Software). By way of clarification, and not limitation, the SI shall support the then-current version of the NFPS Software (as updated from time to time, including due to Updates that constitute Software Releases) for those amounts included in the Price Schedule and, other than the SI Software Release Costs, the SI shall not be entitled to any additional compensation or consideration related to its provision of Updates that constitute Software Releases.

19.7.5. Determination of Software Updates.

Pursuant to this Section 19 (Technical and Software Support Services), the SI shall notify the MTA of all Updates, including those Updates that constitute Software Versions and Software Releases. The MTA shall make the sole determination, in its reasonable discretion, whether an Update constitutes a Software Version or a Software Release.

19.8. Required MTA Approval for Updates.

Upon receipt, the Engineer shall review Software Preventative Maintenance Proposals and Software Corrective Maintenance Proposals. The Engineer shall be entitled to request information and Documentation regarding such a Proposal, and the SI shall promptly respond. The Engineer has the right to delay or refuse the installation of an Update, or to modify the implementation of a proposed Update.

19.9. Installation of Approved Updates.

Subject to Section 19.10 (Critical Security Updates), upon the Engineer's approval of a Software Preventative Maintenance Proposal or a Software Corrective Maintenance Proposal, the SI shall promptly commence and complete installation of the associated Update, in accordance with: (i) this Section 19.9 (Installation of Approved Updates); (ii) the Technical Specifications, including Technical Specifications Section 5.14.4 (Software Support Services Required SI Response Times) and Section 31 (Technical and Software Support Services); and (iii) instructions from the Engineer (where applicable) in connection with her approval under Section 19.8 (Required MTA Approval of Updates). Such Work shall include the following:

19.9.1. Work Performed; Completion.

Technical and Software Support Services include all Work necessary to develop, configure, test and install Updates approved by the MTA, and to put such Updates into production. The SI shall complete the installation and go-live for an Update as approved by the Engineer under Section 19.8 (Required MTA Approval of Updates).

19.9.2. Change Control; Testing of Updates.

Before installing the Update within the NFPS operating environment, the SI shall perform regression testing and other testing of any Updates in a test environment. For such purposes (among others), and subject to the centralized test instance of the NFPS Backend and NFPS Back Office as further set out in Technical Specifications req. # 28.1-4, the SI shall update each Test Facility throughout the Technical and Software Support Period to maintain a duplicate instance of the SI Test Facility, as necessary. Installation of any Update shall be done under change control and Configuration Management.

19.9.3. Integration; Other Affected Systems.

The SI shall be solely responsible for the installation, implementation, integration support and maintenance and operation of all Updates. If a condition requiring an Update affects the operation of other NFPS Software or NFPS Hardware components, then the SI shall provide an Update for (or repair or replacement concerning) such other NFPS components.

19.9.4. Data Conversion.

The SI shall be responsible for converting any NFPS Data that is required to support the Update.

19.9.5. Installation Documentation; Updated Documentation.

The SI shall provide updated Documentation in the form of new revision manuals or changed pages to current manuals (or updated "help screens") consistent with the original Documentation supplied or required, and reflecting changes embodied in an Update. The SI shall also provide (at no charge) installation instructions, procedures and any installation program required by the installation. By way of example and not limitation, the SI shall provide the MTA with complete Software installation instructions for installation of all backend Software Updates, such that the installation would not require assistance from the SI if it were to be performed by the MTA.

19.9.6. Training Related to Software Error Corrections and Updates.

During the Technical and Software Support Period, the SI shall provide updated training course instruction and materials as needed with respect to Updates. For each Software Update that the MTA elects to apply, the SI shall develop the procedures to do so and provide all labor and materials required to install the updated Software.

19.9.7. Status Updates; Reporting.

During the Technical and Software Support Period, the SI shall document all Updates on an MTA-approved form at the completion of each Update (each, a "**Completed Update Report**"). In addition, the SI shall provide the following Technical and Software Support management services:

19.9.7.1.1 The SI shall support regularly scheduled maintenance management meetings throughout the Technical and Software Support Period, either in person or via phone.

19.9.7.1.2 The SI shall report on the status of open issues and unresolved Errors, using the assigned ITN and data maintained in the Incident Tracking System.

19.9.7.1.3 The SI shall measure and submit monthly reports detailing NFPS performance against Contract requirements for review.

19.9.7.1.4 The SI shall submit to the MTA no less than once every three (3) months a status update setting forth Errors in, and modifications and Software Updates to, the Software, upgrade schedules, vendor changes to systems worldwide, a matrix of key dates for NFPS changes (e.g., PCI upgrade) for the following quarter and beyond and information setting forth details regarding deployed Software Versions.

19.9.7.1.5 The SI shall maintain a change log of all Updates that become available, regardless of whether the Update was implemented by the MTA, and provide this change log to the MTA monthly (the "**Change Log**"). The Change Log shall be sufficiently detailed to allow the MTA to determine when any feature was added or modified, and the scope of the change to that feature.

19.9.7.1.6 The SI shall track and maintain a list of maintenance issues and open items. The SI shall distribute the list to the MTA at least monthly.

19.9.7.1.7 The SI shall perform a root cause analysis and report the results to the MTA for Severity Level 1 and Severity Level 2 Errors, or as otherwise directed by the Engineer.

19.9.7.1.8 The SI shall report Chargeable and Non-Chargeable Failures during maintenance management meetings.

19.10. Critical Security Updates.

19.10.1. Notification to the MTA of Critical Security Updates.

Notwithstanding anything to the contrary, the SI shall immediately notify the MTA in writing (each, a "**Critical Security Update Notice**") if the SI becomes aware of any Update (including Updates for Preventative Maintenance) relating to critical security issues that pose an imminent threat to the security, integrity or functionality of the NFPS (including any components) if such Update is not immediately installed into the NFPS (each, a "**Critical Security Update**"). Each Critical Security Update Notice shall: (i) be written; (ii) be clearly identified as relating to a Critical Security Update; and (iii) set out the basis for the SI's conclusion that the Update constitutes a Critical Security Update.

19.10.2. MTA Response to Critical Security Update Notice; SI Installation of Critical Security Updates.

Within twenty-four (24) hours of its receipt of a Critical Security Update Notice, the MTA shall use its good faith efforts to review the same and to provide the SI with feedback regarding the Critical Security Update

Notice (each, a "**Critical Security Update Review Period**"). Notwithstanding the MTA's review and approval rights set out in Section 19.8 (Required MTA Approval for Updates) and the SI's trigger for its commencement of Update installation set out in Section 19.9 (Installation of Approved Updates), the SI shall immediately commence installing the applicable Critical Security Update if the MTA does not respond to the SI before the expiration of the Critical Security Update Review Period.

19.10.3. Other Obligations Regarding Critical Security Updates.

Except as expressly set out in this Section 19.10 (Critical Security Updates), the SI shall comply with all other obligations regarding Updates.

19.11. Closure of Issues.

All Error Reports shall remain open and unresolved until the Engineer has approved the Completed Update Report submitted by the SI under Section 19.9.7 (Status Updates; Reporting).

19.12. SI Support for OSVD Hardware Root Cause Analyses.

The MTA and the SI acknowledge that the MTA is providing the OSVDs and that the SI is responsible for all OSVD Software, as further set out in Technical Specifications Section 15.2 (Onboard Sales and Validation Devices). Notwithstanding the MTA's provision of the OSVDs, as part of the Technical and Software Support Services, the SI shall provide, at its sole cost and expense, all assistance that the MTA requests in connection with the MTA's performance of any root cause analysis relating to OSVD Hardware and associated failures of the same. The SI acknowledges that nothing in this Section 19.12 (SI Support for OSVD Hardware Root Cause Analyses) shall impact the SI's obligations regarding OSVD Software. By way of clarification, and not limitation, the SI acknowledges that OSVD Software constitutes NFPS Software for all purposes herein.

20. Equipment Removal Services.

20.1. Overview of Equipment Removal Services.

The SI shall provide all Equipment Removal Services set out in the Contract Documents, including Technical Specifications Section 34 (Equipment Removal). The SI shall perform the Equipment Removal Services using Good Industry Practices, and shall complete the Equipment Removal Services within nine (9) months from the MTA's authorization to commence the Services, which shall be issued following the successful completion of Revenue Service Acceptance Testing. The term "**MTA Retired Equipment**" means those NFPS Agency equipment assets that the SI is required to remove pursuant to the Contract Documents in connection with its Equipment Removal Services obligations.

20.2. Additional Obligations Regarding Equipment Removal Services.

The MTA shall be responsible for disconnecting all power and data lines to MTA Retired Equipment prior to the SI's removal of the same, and the MTA and the SI shall work together to determine a feasible schedule relating to the disconnection of power and data lines. The SI shall perform all Equipment Removal Services in accordance with applicable City, State, and Federal rules and regulations.

20.3. Fees for Equipment Removal Services.

The SI shall be compensated for Equipment Removal Services as follows: (i) compensation for the removal and disposal of MTA Retired Equipment that is replaced by NFPS Hardware shall be included within the SI's cost for providing and installing the NFPS Hardware, as set out in the Price Schedule; and (ii) compensation for the

removal of MTA Retired Equipment that is not being removed as part of the NFPS installation Work shall be paid at the unit prices set out in Form D of the Price Schedule.

21. Optional Services.

21.1. Available Optional Services.

As further set out in this Section 21 (Optional Services), the MTA shall have the right to direct the SI to provide any combination of the following Optional Services:

21.1.1. NFPS Extended Backend Hosting Services.

Two (2) five-year Options for extension of Backend Hosting Services as further set out in Technical Specifications Section 35.1 (NFPS Extended Hosting Services).

21.1.2. Extended Website Hosting Services.

Two (2) five-year Options for extending the Websites Hosting Services as further set out in Technical Specifications Section 35.2 (Extended Web Portal Hosting Services).

21.1.3. Retail Point of Sale Network.

Three (3) five-year Options for NFPS deployment as further set out in Technical Specifications Section 35.3 (Retail Point of Sale Network).

21.1.4. Additional NFPS Equipment Quantities, Integration Services, and Media.

Option for the MTA's purchase (on behalf of itself, the MTA Group, or a Linked NFPS Entity) of additional NFPS Equipment, Integration Services related to such additional NFPS Equipment (including installation, development, and all other services) (the "**Option-Specific Integration Services**"), and NFPS Media, with such purchasing at fixed volume pricing for twelve (12) years after NTP as further set out in Technical Specifications Section 35.4 (Additional NFPS Equipment Quantities). By way of clarification, and not limitation, the SI agrees that the cost for such additional NFPS Equipment itself and the Option-Specific Integration Services shall be the amount set out in Price Form F2 (Additional Equipment, Integration Services, and Media) of the Price Schedule, regardless of whether the MTA purchases such additional NFPS Equipment and Option-Specific Integration Services for itself, other MTA Group entities, or Linked NFPS Entities.

21.1.5. Optical Barcode Readers.

If the MTA determines that barcodes or other optical encoding standard(s) provide a viable fare validation mechanism, then the SI shall provide optical barcode scanning capabilities in addition to the Contactless readers as further set out in Technical Specifications Section 35.5 (Optical Barcode Readers). Barcode readers shall, where feasible, be housed in the same enclosure as the Contactless reader, and provide a seamless and intuitive option for the customer.

21.1.6. Extended Technical and Software Support Services; Labor Bank Services.

Two (2) five-year Options for extended Technical and Software Support Services as further set out in Technical Specifications Section 35.6 (Extended Technical and Software Support Services) subsequent to the conclusion of the Technical and Software Support Period during which the SI shall continue to provide Technical and Software Support Services, including remote technical support, Software Updates, NFPS configuration and

administration assistance, all as part of a monthly fee arrangement set out in the Price Schedule. The MTA shall also have Options for an established bank of labor hours to be used for onsite technical support and Software development as requested and approved by the MTA, as further set out in Technical Specifications Section 35.6.3 (Labor Bank) (the "**Labor Bank Services**"). By way of clarification, and not limitation, Labor Bank Services are solely for the provision of onsite technical support and software development services that (i) are explicitly requested by the MTA after the conclusion of the Technical and Software Support Period (each, a "**Service Request**" as further defined in Technical Specifications Section 35.6.2 (Service Request Procedures)), and (ii) do not constitute Technical and Software Support Services (or extended Technical and Software Support Services). The SI acknowledges that it shall not be entitled to treat extended Technical and Software Support Services as Labor Bank Services or otherwise deduct from the labor bank set out in Technical Specifications Section 35.6.3 (Labor Bank) any time spent by the SI providing extended Technical and Software Support Services. Fees for Labor Bank Services shall be provided for the amount set out in the Price Schedule.

21.1.7. Extended Customer Service Support.

Three (3) five-year Options to extend Customer Call Center Services as further set out in Technical Specifications Section 35.7 (Extended Customer Service Support).

21.1.8. Bus Antenna.

If the MTA determines that the existing antenna on board buses is insufficient to support current and planned bus systems, the MTA shall have the option to direct the SI to replace the current bus antennas as further set out in Technical Specifications Section 35.8 (Bus Antenna).

21.1.9. Driver Control Unit.

The MTA has the Option to direct the SI to furnish and install a Driver Control Unit (the "**DCU**") pursuant to Technical Specifications Section 35.9 (Driver Control Unit (DCU)). The DCU shall function in place of the VLU/TCH to provide all necessary NFPS input and displays to fully support the operation of the NFPS onboard NFPS Bus Validators. The DCU shall be an independent unit providing driver control and operation of the Bus Validators and associated components in addition to other onboard bus systems.

21.1.10. NFPS Onboard Systems Router.

The MTA shall have the right to direct the SI to furnish and install a separate mobile router and switch as further set out in Technical Specifications Section 35.10 (NFPS Onboard Systems Router).

21.1.11. SBS Pilot.

The MTA shall have the right to direct the SI to develop a proposed pilot program relating to various functions, as further set out in Technical Specifications Section 35.11 (SBS Pilot).

21.1.12. MNR and LIRR NFPS Equipment.

Option for additional NFPS Equipment purchases by the MTA for MNR and LIRR as further set out in Technical Specifications Section 35.12 (MNR and LIRR NFPS Equipment).

21.1.13. MNR and LIRR Media.

Option for additional Media purchases (LU-S Media, LU-R Media, and Paper Media) at fixed volume pricing as further set out in Technical Specifications Section 35.13 (MNR and LIRR Media).

21.1.14. MNR and LIRR NFPS Equipment Spare Parts and Modules Service and Repair.

Three (3) five-year Options for the SI's provision of Third-Call Maintenance for all MNR and LIRR CVMs and TOMs starting at the end of the applicable Hardware Warranty Period and continuing for a term of five (5) years (and as may otherwise be extended as permitted herein), as further set out herein, including in Technical Specifications Section 35.14 (MNR and LIRR NFPS Equipment Spare Parts and Modules Service and Repair).

21.1.15. MNR and LIRR Field Preventative, Remedial, and Lifecycle Maintenance Services.

Three (3) five-year Options for the SI's provision of Field Preventative, Remedial, and Lifecycle Maintenance Services for all MNR and LIRR CVMs and TOMs starting at the end of the applicable Hardware Warranty Period and continuing for a term of five (5) years (and as may otherwise be extended as permitted herein), as further set out herein, including in Technical Specifications Section 35.15 (MNR and LIRR Field Preventative, Remedial, and Lifecycle Maintenance Services).

21.2. Timing for Exercising an Option.

Subject to Section 21.3 (Method of Exercising an Option), the MTA shall have the right to exercise any of the Options beginning any time after the Award Date until the timeframe identified in the following chart (the "Option Period"). The SI shall include the Option Periods in the Master Program Schedule.

No.	Option	Option Period	SI Shall Provide	Tech. Spec. Reference
1.	Extended NFPS Hosting Services	No later than 6 months prior to the end of the then-current service term	Uninterrupted service starting from the last day of the previous service end date.	Section 35.1
2.	Extended Web Hosting Services	No later than 6 months prior to the end of then-current service term	Uninterrupted service starting from the last day of the previous service end date.	Section 35.2
3.	Retail POS Network	No later than (i) the start of FDR for the first five (5) year Option, and (ii) six (6) months prior to the conclusion of the then-current service term for each subsequent five (5) year Option	Support for closed loop payment transactions in the retail network at BU #3.	Section 35.3
4.	Additional NFPS Equipment Quantities, Integration Services, and Media	Any time within twelve (12) years after NTP	Additional NFPS Equipment, Integration Services, and NFPS Media as requested by the MTA.	Section 35.4
5.	Optical Barcode Readers	No later than the end of CDR	Installation and testing of readers simultaneously	Section 35.5

No.	Option	Option Period	SI Shall Provide	Tech. Spec. Reference
			with Validator installations. Delivery of required spares prior to BU #1 and BU #2, as applicable.	
6.	Extended Technical and Software Support Services	No later than 6 months prior to the end of the then-current service term	Uninterrupted service starting from the last day of the previous service end date.	Section 35.6
7.	Extended Customer Service Support	No later than 6 months prior to Substantial Completion or the end of the then-current service term	Uninterrupted service starting from the last day of the previous service end date.	Section 35.7
8.	Bus Antenna	No later than the start of PDR	Installation and testing of bus antennas simultaneously with onboard Bus Validator installations. Delivery of spares prior to BU #1 and BU #2, as applicable.	Section 35.8
9.	Driver Control Unit	No later than the start of PDR	Installation and testing of DCUs simultaneously with onboard Bus Validator installations. Delivery of spares prior to BU #1 and BU #2, as applicable.	Section 35.9
10.	NFPS Onboard Systems Router	No later than the start of PDR	Installation and testing of router and switch simultaneously with onboard Bus Validator installations. Delivery of spares prior to BU #1 and BU #2, as applicable.	Section 35.10
11.	SBS Pilot	No later than the start of CDR	Provision of an MTA-accepted SBS Pilot program within an MTA-directed time, which shall be between BU #1 and BU #5.	Section 35.11

No.	Option	Option Period	SI Shall Provide	Tech. Spec. Reference
12.	MNR and LIRR NFPS Equipment	No later than 12 months prior to the SI's receipt of the Beneficial Use Certificate for BU #4.	Manufacturing, testing, and installation of NFPS Equipment at MNR and LIRR Facilities as part of BU #4. Proposed delivery schedule to be submitted to the MTA no later than 9 months prior to the planned NFPS Equipment installation.	Section 35.12
13.	MNR and LIRR Media	No later than 12 months prior to the SI's receipt of the Beneficial Use Certificate for BU #4.	Manufacturing and testing of NFPS Media for NFPS Equipment at MNR and LIRR Facilities as part of BU #4. Proposed delivery schedule to be submitted to the MTA no later than 9 months prior to the planned NFPS Equipment installation.	Section 35.13
14.	MNR and LIRR NFPS Equipment Spare Parts and Modules Service and Repair	No later than 12 months prior to the SI's receipt of the Beneficial Use Certificate for BU #4.	Uninterrupted service starting from the expiration of the applicable Hardware Warranty Period.	Section 35.14
15.	MNR and LIRR Field Preventative, Remedial, and Lifecycle Maintenance Services	No later than 12 months prior to the SI's receipt of the Beneficial Use Certificate for BU #4.	Uninterrupted service starting from the expiration of the applicable Hardware Warranty Period.	Section 35.15

21.3. Method of Exercising an Option.

The MTA may exercise any of the Options by providing written notice to the SI specifying the price(s) of each item as derived from the Price Schedule, as well as the total price to be paid pursuant to the Option exercised (each, an "**Option Notice**"). If the MTA has not exercised an Option during the respective Option Period or notified the SI of the MTA's intention to do so during the Option Period, then the SI may notify the MTA in writing following the expiration date of such Option Period that the applicable Option Period has expired (each, an "**Expiration Notice**"). The MTA shall have a period of six (6) months following its receipt of an Expiration Notice to exercise the Option that is subject to the Expiration Notice (each, an "**Option Extension Period**"). The MTA shall not have the right to exercise an Option following the expiration of the Option Extension Period.

21.4. Effect of Exercising an Option.

Within thirty (30) calendar days of the SI's receipt of an Option Notice, the SI shall provide the Engineer with an updated Master Program Schedule, and commence performing the applicable Option Services as required pursuant to the Contract Documents, as such may be modified throughout the Term, necessary to manufacture, deliver, test, warrant and maintain the Work.

21.5. Memorialization of MTA Option Exercising.

The MTA's exercising of an Option will be memorialized by the MTA and the SI in the form of a Change Order. The SI acknowledges that: (i) such memorialization is solely for the MTA's administrative purposes; (ii) none of the rights, remedies, or obligations associated with Change Orders, including those set out in Section 32 (Changes in Work; Change Orders), shall apply to Change Orders for Options; (iii) the only adjustments to any pricing for Change Orders shall be made pursuant to Section 28.12 (Limited Adjustments to Certain Base Line Item Pricing; Indexing); and (iv) the MTA's purchase of NFPS Hardware, Option-Specific Integration Services, NFPS Media, and other materials that are covered by an Option shall be subject to the order process set out in Section 34.11 (Order Process for NFPS Hardware, Spare Parts and Product Units, and NFPS Media).

21.6. Additional Requirements for SBS Pilot.

The pilot program Option set out in Section 21.1.11 (SBS Pilot) is intended, in part, to increase the efficiency of the MTA Select Bus Service with onboard fare collection and validation in a manner that reduces or eliminates the need for infrastructure at wayside locations. Depending on the success of the pilot program, the MTA may elect to transition the pilot program to a permanent solution, and eliminate or reduce Wayside Validator Machines and associated Services (including associated Hardware Warranties) from the scope of Work. The SI shall include in the Master Program Schedule a deadline by which the SI must be notified whether the MTA elects to remove the WVM-specific Work from the Project (the "**WVM Removal Deadline**"). The SI shall include the WVM Removal Deadline in the Proposed Master Program Schedule. If the MTA elects to remove WVM-specific Work from the Project on or before the WVM Removal Deadline, or the SI fails to include the WVM Removal Deadline in the Proposed Master Program Schedule, then the MTA shall be credited all amounts associated with the WVM-specific Work except for any non-reoccurring engineering costs for WVMs that the SI has incurred up to the date that the MTA notifies the SI of such removal. If the MTA removes the WVM-specific Work after the WVM Removal Deadline, then such removal shall be treated as Deleted Work pursuant to Section 32.4 (Change Order Procedures for Deleted Work; Credits) and the amount credited to the MTA for such removal shall be calculated as set out therein.

22. Data.

The SI acknowledges that the NFPS is required to collect, process, store, manage, report on and output significant volumes of Data, including: (i) Fare Data; (ii) Financial Data; (iii) Customer Data; (iv) Device Management Data; and (v) Transaction Data. NFPS Data shall include Personally Identifiable Information of customers, sensitive Payment Card Data, data concerning NFPS revenue and other MTA Group Confidential Information and Security-Sensitive Information. Moreover, through data mining and other analytics techniques, Aggregate Data can be derived from baseline NFPS Data, further increasing the value and sensitivity of the set of NFPS Data. The SI shall preserve, and cause the NFPS to preserve, the confidentiality, security and integrity of NFPS Data, and the privacy of Personally Identifiable Information included in NFPS Data, all in accordance with the Technical Specifications and this Contract, including the obligations set out in this Section 22 (Data).

22.1. Data Security and Integrity.

The SI shall maintain and design the NFPS to maintain the security of NFPS Data in accordance with Section 23 (Security). The SI shall similarly design the NFPS to maintain the integrity of NFPS Data in accordance with applicable Key Performance Indicators (including those set out in Technical Specifications Section 5.14 (Performance Requirements)) and to otherwise ensure that the collection, processing, storage, management, and use of collected NFPS Data is done in a manner that complies with all Applicable Laws. Where the Technical Specifications do not establish a specific integrity requirement for components of NFPS Data, then the SI shall maintain, and shall cause the NFPS to maintain, the integrity of NFPS Data in accordance with Good Industry Practices, and throughout the data lifecycle, including collection, processing, storage and archiving of such NFPS Data.

22.2. Data Migration.

Where set out in the Technical Specifications, including in connection with Technical Specifications Section 31 (Technical and Software Support Services), the SI shall provide support and services in connection with migrating legacy Data and NFPS Data to the applicable target NFPS component or other location. The SI shall perform such services in accordance with Good Industry Practices.

22.3. NFPS Data Access Rights.

The SI shall, upon the MTA's request, promptly provide the MTA with access to all NFPS Data in the SI's possession or control, and shall not withhold from the MTA any NFPS Data for any reason including for cause. The SI shall also provide the MTA (at no charge) any data maps, database schema, Documentation, Software or other materials reasonably necessary for the MTA Group to use, translate, interpret, extract and convert NFPS Data for use by the MTA Group.

22.4. No Proprietary Formats for NFPS Data.

NFPS Data shall be stored in the NFPS in an industry-standard format that is not proprietary to the SI, and that meets the requirements for Open Architecture and Open Standards.

22.5. Opt-In Requirement for Collection and Use of Personally Identifiable Information.

22.5.1. Required Opt-In Consent.

If determined by the MTA during design review, and throughout the Term, the SI shall collect an individual's Personally Identifiable Information only if the SI has (i) provided the individual with a conspicuous notice with full, accurate, and easy-to-understand information regarding the collection and potential uses of such Personally Identifiable Information, and (ii) the individual has provided an affirmative consent to the collection and use of such Personally Identifiable Information (each, an "**Opt-In Consent**").

22.5.2. Opt-Out; Retention Policy.

If determined by the MTA during design review, and throughout the Term, the SI shall destroy all collected Personally Identifiable Information, on an individual basis, if the purpose of the collection of such Personally Identifiable Information ends or the individual withdraws her or his Opt-In Consent to the collection and use of the Personally Identifiable Information.

22.5.3. SI Obligation to Secure NFPS Data Rights.

The SI acknowledges that, as between the MTA Group and the SI and as further set out in Section 35.1.1 (MTA Ownership of NFPS Data), the MTA shall own all right, title, and interest in and to the NFPS Data. The SI shall

be solely responsible for ensuring that it secures the necessary interests in and to the NFPS Data so as to secure, on behalf of the MTA, the MTA's ownership interest in and to the NFPS Data as set out herein. To the extent that NFPS Data includes Personally Identifiable Information, the MTA shall determine during design review the scope of the rights in such Personally Identifiable Information that the SI shall be required to secure on behalf of the MTA (including securing the Opt-In Consent); provided, however, that the MTA's rights in such Personally Identifiable Information shall not conflict with the SI's obligations set out in Section 22.5.2 (Opt-Out; Retention Policy).

23. Security.

Throughout the Term, the SI shall implement and maintain with respect to the NFPS (i) the security standards set out in the Technical Specifications, and (ii) the security standards set out in this Section 23 (Security), in Section 24 (Payment Card Industry Standards) and as otherwise required in these Contract Documents (collectively, the "**Security Standards**").

23.1. Required Physical Security Measures.

The SI shall implement and maintain, throughout the Term, safeguards and other protections to control and prevent physical access to MTA Group Confidential Information that are consistent with Good Industry Practices. Physical Security Measures include: (i) secure physical enclosures for equipment and facilities that store or could permit access to MTA Group Confidential Information, as further provided in the Technical Specifications; (ii) badge requirements for visitors to Work Sites or other elements of the NFPS under the SI's control; (iii) requirements that such visitors be accompanied and overseen by authorized personnel; (iv) requirements that such visitors be identified through appropriate means (provision of driver's license or other appropriate credentials) and logged on entry and exit; (v) badge requirements for employees and other authorized non-visitor personnel (such as retained consultants and independent contractors); (vi) monitoring of visible activities within the Work Site or other facility at issue (such as through security cameras and video-feeds); (vii) locked file cabinets, storage areas, offices and other repositories for MTA Group Confidential Information; and (viii) other measures in accordance with Good Industry Practices. These required Physical Security Measures shall include the secure transportation of MTA Group Confidential Information and/or PII outside (a) from the SI, Subcontractor or MTA Group computing facilities or other premises, and (b) from Third Party computing facilities or other premises, where such Third Party is under the control or direction of the SI.

23.2. Required Technical Security Measures.

The SI shall implement and maintain technical security measures throughout the Term that implement the Technical Specifications, including Technical Specifications Section 5.7 (System Security), and that are consistent with Good Industry Practices. These technical security measures shall include the following (collectively, the "**Technical Security Measures**"):

23.2.1. User Authentication.

The SI shall implement and follow secure user authentication protocols that implement Good Industry Practices, and that include (where applicable): (i) control of user IDs and other identifiers; (ii) a secure method of assigning and selecting passwords, or use of unique identifier technologies, such as biometrics or token devices; (iii) control of data security passwords to ensure that such passwords are kept in a location and/or format that does not compromise the security of the data they protect; (iv) restricting access to active users and active user accounts only; and (v) blocking access to user identification after multiple unsuccessful attempts to gain access or the limitation placed on access for the particular system.

23.2.2. Access Controls.

The SI shall implement and follow secure access control measures to (i) restrict access to records and files that contain or constitute MTA Group Confidential Information to those who need such information to perform their job duties, and (ii) assign unique identifications plus passwords, which are not vendor supplied default passwords, to all Persons under its control with access to the NFPS, in order to maintain the integrity of the security of the access controls.

23.2.3. Encryption.

The SI shall implement and maintain encryption-based information security controls in accordance with the Technical Specifications, including Technical Specifications Section 18.1.3 (Encryption Keys), and Good Industry Practices. These encryption controls will include (where applicable) the encryption of MTA Group Confidential Information: (i) that will be transmitted across public networks; (ii) that will travel outside the premises of a secure facility or Work Site; or (iii) that will be transmitted wirelessly. In addition, MTA Group Confidential Information stored on laptops or other portable devices shall be encrypted using strong encryption methodologies, as further set out in the Technical Specifications.

23.2.4. Firewalls; Virus Protections.

The SI shall implement and maintain up-to-date firewall protection and operating system security patches to maintain the integrity and security of the NFPS and NFPS Data, including MTA Group Confidential Information. Up-to-date versions of system security agent software must include malware protection and up-to-date patches and virus definitions, or a version of such software that can still be supported with up-to-date patches and virus definitions, and is set to receive the most current security updates on a regular basis.

23.3. SI Personnel Identification and Access Restrictions.

23.3.1. Photo Identifications.

All SI personnel shall carry photo identifications (each, a "**Photo ID**") at all times and shall identify themselves with such Photo ID when asked at any time by MTA Group personnel, the New York City Police Department, other peace officers or other authorized government personnel. Photo IDs shall be clearly visible at all times while such personnel are performing Work or otherwise on MTA Group property, and such Photo IDs shall not be similar in appearance to MTA Group employee pass or ID Cards.

23.3.2. SI Access.

Prior to each working shift, all SI personnel must be identified to the Engineer's field personnel using the MTA-provided Contractor Access Form and Photo ID. The Engineer will maintain the Contractor Access Forms as part of the SI's permanent files. The Engineer's field personnel may perform ongoing spot checks of both the SI Photo IDs and Contractor Access Forms as part of their daily inspection responsibilities. If any individual does not satisfy MTA Group requirements or is not able or willing to produce the required Photo ID and/or Contractor Access Form, MTA Group personnel may immediately report this matter to the appropriate authorities who may have the individual removed from the MTA Group property. At all operating facilities or while on the Right-of-Way, all SI personnel shall carry a copy of the daily Contractor Access Form for their work location. The Contractor Access Form will indicate the appropriate date and be signed by an MTA Group representative. SI personnel will identify themselves with this Contractor Access Form whenever asked by MTA Group personnel, the New York City Police Department, other peace officers or other authorized government personnel. All SI personnel in MTA Group facilities or construction sites or on the Right-of-Way shall immediately report unknown or unidentified personnel to the Engineer.

23.3.3. Subcontractor Compliance.

By way of clarification, and not limitation, the SI shall ensure that all Subcontractor personnel engaged to perform under this Contract shall comply with the requirements set out in this Section 23.3 (SI Personnel Identification and Access Restrictions), as further established pursuant to Section 23.4.7 (SI Responsibility for Subcontractor and Third Party Compliance with Security Obligations).

23.4. Information Security Policies and Practices.

The SI shall implement, and throughout the Term maintain and follow, a comprehensive information security program (the "**Information Security Program**") with respect to (a) SI employees, consultants, Subcontractors and others engaged or relied upon by the SI for purposes of the Project, and (b) those elements of the SI's systems (including hardware, software and data) that interact or exchange information with the NFPS (collectively, the "**NFPS Security-Sensitive SI Resources**"). The SI's Information Security Program shall comply with: (i) this Section 23.4 (Information Security Policies and Practices); (ii) Good Industry Practices; and (iii) the Technical Specifications (where applicable). The Information Security Program at a minimum shall include the following:

23.4.1. Risk Assessments.

The SI shall conduct and annually update a risk assessment, identifying and assessing reasonably foreseeable internal and external risks to NFPS Security-Sensitive SI Resources, and evaluating and improving, where necessary, the effectiveness of the SI's then-current safeguards and controls for limiting such risks, including: (i) ongoing employee (including temporary and contract employee) training; (ii) employee compliance with policies and procedures; and (iii) means for detecting and preventing security system failures (each a "**Risk Assessment**"). Risk Assessments shall also be conducted immediately following a Security Incident.

23.4.2. Incident Response Plan.

The SI's Information Security Program shall include an incident response plan to address and handle Security Incidents relating to NFPS Data and MTA Group Confidential Information and, at a minimum, shall also apply to NFPS Security-Sensitive SI Resources (the "**Incident Response Plan**"). This Incident Response Plan shall comply with Good Industry Practices and the requirements set out in the Technical Specifications. The SI shall periodically test its incident Response Plan, all in accordance with Good Industry Practices. The SI shall submit a draft of the Incident Response Plan to the MTA for review and approval, and the SI shall otherwise ensure that the Incident Response Plan has been approved and is implemented prior to the earlier of (i) the commencement of the first Pilot Test, and (ii) the SI's collection of NFPS Data from any MTA Group customer.

23.4.3. Monitoring and Continuous Improvement.

The SI shall review its Information Security Program at least quarterly, or whenever there is a change in its business practices or the design, build, deployment, operation or maintenance of the NFPS that implicates the security or integrity of: (i) the NFPS; (ii) NFPS Security-Sensitive SI Resources; or (iii) MTA Group Confidential Information embodied in or related to the NFPS. The SI shall update its Information Security Program regularly to ensure that the Information Security Program is operating in a manner calculated to prevent unauthorized access to or unauthorized use of MTA Group Confidential Information or the NFPS.

23.4.4. Employee Practices.

The SI shall develop and implement, and throughout the Term maintain and follow, practices to ensure its employees comply with the Information Security Program. Such practices shall include: (i) educating and training employees (a) on the proper use of the security systems and compliance with the Security Standards, and (b) on the importance of security for MTA Group Confidential Information including, in particular, Payment

Card Data and Personally Identifiable Information; (ii) imposing disciplinary measures for violations of the Information Security Program and its rules; and (iii) preventing terminated employees from accessing MTA Group Confidential Information (including Personally Identifiable Information).

23.4.5. Subcontractor Security Obligations.

The SI shall include the requirements of this Section 23 (Security) and Section 24 (Payment Card Industry Standards) in all subcontracts under this Contract. The SI shall oversee Subcontractors' compliance with such requirements and shall select and retain only those Subcontractors that are capable of meeting or exceeding, and that in fact meet or exceed, the Security Standards.

23.4.6. Third Party Security Obligations.

In addition to its obligations concerning Subcontractors as set out in Section 23.4.5 (Subcontractor Security Obligations), the SI shall select and retain for work on the NFPS only those Third Parties that are capable of meeting or exceeding, and that in fact meet or exceed, the Security Standards.

23.4.7. SI Responsibility for Subcontractor and Third Party Compliance with Security Obligations.

The SI shall be directly responsible to the MTA for a Subcontractor's or Third Party's breach of the Security Standards, and a breach of the Security Standards by such Subcontractor or Third Party shall be deemed a breach by the SI for all purposes under this Contract.

23.5. Security Audits.

In addition to its other obligations under this Contract, the SI shall cause an audit to be conducted with respect to NFPS Security-Sensitive SI Resources, by a certified public accountant registered with the Public Company Oversight Board based on the Statement on Standards for Attestation Engagements (SSAE) No. 16, and shall obtain a SOC 2 Type 2 report prepared in connection therewith (each, an "**SSAE No. 16 Audit**"). The MTA shall be entitled to require the SI to perform a security audit other than an SSAE No. 16 Audit if, in the determination of the Engineer, an alternative procedure is warranted based on industry practice, developments in information security or other relevant factors (SSAE No. 16 Audits and such alternative procedures are collectively referred to as "**Security Audits**").

23.5.1. Timing.

With respect to each such Security Audit, the SI shall (i) confer with the MTA as to the scope and timing of each Security Audit, and (ii) accommodate the MTA's requirements and concerns to the extent practicable. Unless otherwise agreed by the MTA and the SI, such audit shall be conducted so as to result in a final audit opinion not later than 120 calendar days following the close of the SI's fiscal year.

23.5.2. Provision of Security Audit Reports to the MTA.

The SI shall provide a copy of the report from each such Security Audit to the MTA (each, a "**Security Audit Report**") and its independent auditors as soon as reasonably possible after the conclusion of such Security Audit, and in all events within thirty (30) calendar days of completion. Further, the SI shall provide any updates to any Security Audit Reports to the MTA promptly after they are received by the SI. The SI shall promptly correct any deficiencies identified in any Security Audit Report. At the MTA's request, the SI shall confirm in writing that there have been no changes in the relevant policies, procedures and internal controls since the completion of a Security Audit other than the correction of any deficiencies as provided above. If the SI is or

becomes certified in one or more programs or processes intended to evaluate security (such as ISO 27001), then the SI shall also provide information regarding such certification to the MTA consistent with this Section 23.5.2 (Provision of Security Audit Reports to the MTA). The SI shall not redact the Security Audit Reports specified in this Section 23.5.2 (Provision of Security Audit Reports to the MTA), unless the redacted information (i) does not relate to NFPS Data, or (ii) would compromise or threaten to compromise the security of the SI's systems.

23.5.3. SI Inability to Deliver Security Audit Report.

If the SI is unable to timely deliver the required Security Audit Report, the SI shall: (i) provide the MTA, on or before the date such Security Audit Report is due to be delivered, a written statement describing the circumstances giving rise to any delay or any qualification; (ii) take such actions as shall be necessary to resolve such circumstances as soon as practicable; and (iii) permit the MTA and its external auditors to perform such procedures and testing as are reasonably necessary for their assessment of the operating effectiveness of the SI's policies, procedures and internal controls with respect to NFPS Security-Sensitive SI Resources, all at the SI's expense.

23.6. Additional Requirements Concerning Sensitive Security Information.

The SI must protect, and take measures to assure that its Subcontractors protect, "sensitive information" made available during the course of administering an MTA contract or subcontract in accordance with 49 U.S.C. Section 40119(b) and implementing DOT regulations, "Protection of Sensitive Security Information," 49 CFR Part 15, and with 49 U.S.C. Section 114(s) and implementing Department of Homeland Security regulations, "Protection of Sensitive Security Information," 49 CFR Part 1520.

23.7. SI Designation as Data Controller or Data Processor.

The SI shall be designated as a Data Controller or a Data Processor, as determined by the MTA in the exercise of its reasonable discretion.

23.8. Security Incident; Response.

In the event of a Security Incident, the MTA and the SI shall proceed as follows:

23.8.1. Notification to the MTA.

The SI shall notify the MTA of any Security Incident in the most expedient time possible and in any event, in all instances, the notice shall be provided within the shorter of (i) twelve (12) hours after the suspicion or discovery of a Security Incident, and (ii) the time requirements set out in applicable MTA policy (each, a "**Security Incident Notification**"). The Security Incident Notification shall be sent via email simultaneously to the Engineer and those other designees that the MTA may identify from time to time (collectively, the "**Key Incident Contacts**"). In addition to notifying the Key Incident Contacts via email, the SI shall notify the Key Incident Contacts by either (i) contacting each Key Incident Contact via telephone, or (ii) through such other contact method required by the MTA.

23.8.2. Content of Security Incident Notification.

The Security Incident Notification shall be written and include to the extent known: (i) a detailed description of the Security Incident; (ii) the specific MTA Group Confidential Information impacted; (iii) the identity of each affected person; (iv) measures taken by the SI to identify, prevent and mitigate the effects of the Security Incident; and (v) any other relevant information and Documentation that the MTA may request concerning the

Security Incident. The SI shall provide the MTA with written updates to the Security Incident Notification on a daily basis (or at a different interval set by the MTA) until the Security Incident has been resolved.

23.8.3. SI Remedial Action.

Upon discovery or notification of a Security Incident, and subject to Section 23.8.4 (Limitation on Disclosure), the SI shall take immediate action, at its own expense and in compliance with Applicable Law (including Applicable Privacy Law), to: (i) investigate the Security Incident; (ii) identify, prevent and mitigate the effects of the Security Incident; (iii) perform all other actions reasonably necessary to remedy the Security Incident, prevent future incidents of the same or similar nature and to otherwise restore the confidentiality, security and integrity of MTA Group Confidential Information in the SI's possession or control; and (iv) perform those actions and provide the support reasonably requested by the MTA (collectively, the "**Security Incident Remedial Efforts**"). Except to the extent attributable to the MTA's reckless misconduct, the SI (a) shall be solely responsible for all costs and expenses that it incurs in connection with the Security Incident Remedial Efforts, and (b) shall pay for or reimburse the MTA for all damages, costs, losses, fines, penalties and expenses related to a Security Incident, including those incurred by the MTA Group in connection with preparing and providing notice to impacted data subjects, as well as other related support services such as credit monitoring services and call center services, and regulatory or other governmental fines.

23.8.4. Limitation on Disclosure.

Unless otherwise required or prohibited by Applicable Law, the SI shall not disclose to any Third Party the occurrence of, or any information relating to, a Security Incident without the MTA's prior written approval.

23.8.5. Full Cooperation.

The SI shall fully cooperate with the MTA in connection with its efforts regarding the Security Incident. Such cooperation shall include the provision of all requested access to software, systems and facilities under the SI's control and the immediate provision of all requested information relevant to the MTA's efforts.

23.9. MTA Access Rights.

23.9.1. General NFPS Access Rights.

The MTA shall have rights to access all portions of the NFPS, including NFPS Hardware and NFPS Software, at all times. In order to facilitate the MTA's right to assume full rights and operational capability for the entire NFPS, including system administrative privileges (collectively, the "**Full Access Rights**"), the SI shall maintain a set of access codes and passwords that permit such Full Access Rights, including core switch access codes, encryption keys, full database access codes, terminal and console access addresses and points and root access codes (collectively, the "**Passwords and Access Instructions**"). The Passwords and Access Instructions requirements shall apply to all systems, including proprietary and otherwise restricted systems including the software domain, system administration for applications and network security. The SI shall immediately provide copies of all Passwords and Access Instructions to the MTA upon demand. Subject to Section 23.9.3 (Limited MTA Liability for NFPS Access), the MTA's use of the Passwords and Access Instructions shall not relieve the SI of any obligations under these Contract Documents.

23.9.2. Compliance with Full Access Protocols.

The SI shall develop reasonable Documentation consisting of protocols and procedures relating to the MTA's use of the NFPS pursuant to its Full Access Rights (collectively, the "**Full Access Protocols**"). The SI shall submit the Full Access Protocols to the MTA for review and approval during Design Review, and the MTA's approval of

the Full Access Protocols shall be a prerequisite to the SI receiving the Beneficial Use Certificate for BU #1. The Full Access Protocols shall be designed to ensure that the MTA can exercise its Full Access Rights without material limitation while preserving the security and integrity of the NFPS and NFPS Data. The SI's provision of the Full Access Protocols shall not be a condition precedent to the MTA's ability to exercise its Full Access Rights. Throughout the Term, the SI shall submit updates to the Full Access Protocols to the MTA for review and approval, and such updates shall be submitted as necessary to ensure that the Full Access Protocols are kept current based on changes to the NFPS.

23.9.3. Limited MTA Liability for NFPS Access.

As further set out in the Contract Documents, the SI shall design and provide an NFPS that ensures the security and integrity of the NFPS and NFPS Data, and such design efforts shall take into account the Full Access Rights. The Full Access Protocols are intended, in part, to mitigate risk to the NFPS and NFPS Data based on the Full Access Rights. Except to the extent that the MTA fails to comply with the MTA-approved Full Access Protocols due to the MTA's gross negligence or reckless misconduct, the SI shall be solely responsible for any harm or damage caused by the MTA in connection with the MTA's exercise of the Full Access Rights, including any harm or damage to the NFPS or NFPS Data.

23.9.4. Limited Access to Source Code.

The MTA acknowledges that the Full Access Rights do not include the MTA's right to access Deposit Materials (including applicable Source Code) that the SI is obligated to deposit into escrow pursuant to Section 35.7 (NFPS Software Escrow).

23.10. SI Access to NFPS Agency Resources.

Provided that the SI complies with all applicable NFPS Agency security policies and procedures, the MTA shall provide the SI with necessary access to NFPS Agency resources, but solely for the purpose of the SI fulfilling its obligations hereunder and for no other purpose.

24. Payment Card Industry Standards.

This Section 24 (Payment Card Industry Standards) governs required payment card security standards and procedures under this Contract.

24.1. Compliance with Standards.

As of the Notice to Proceed, and throughout the Term, the SI shall comply with PCI Standards: (i) in providing Services or Deliverables under this Contract; (ii) in storing, processing or transmitting Payment Card Data; and (iii) in engaging in any other activities for any purpose relating to this Contract.

24.2. Subcontractor and Vendor PCI Compliance.

The SI shall ensure that all of its Subcontractors and vendors comply with PCI Standards: (i) in providing Services or Deliverables under this Contract; (ii) in storing, processing or transmitting Payment Card Data; and (iii) in engaging in any other activities for any purpose relating to this Contract. As between the SI and the MTA Group, the SI alone shall be responsible for its Subcontractors' and vendors' non-compliance with PCI Standards.

24.3. Validation.

The SI shall validate its compliance with PCI Standards (and compliance by its applicable Subcontractors and vendors), and shall obtain validation in the manner (or manners) required under the applicable PCI Standards at issue (through use, for example, of a Qualified Security Assessor ("**QSA**"), an Approved Scanning Vendor ("**ASV**"), a Self-Assessment Questionnaire ("**SAQ**") or through other expressly permitted means), and at the frequency required by such Standards. The SI shall report in writing the results of such validations, and any evidence of non-compliance, immediately to the MTA.

24.4. MTA-Requested Validation.

Independent of the SI's validation obligations set out herein, the MTA shall have a right (but no obligation) to conduct a review and audit of the SI's payment card related systems, policies, practices, complaints, data and other information to assess continued compliance with PCI Standards (each, an "**MTA-Requested Validation**").

24.4.1. Process.

The MTA shall provide reasonable notice of an MTA-Requested Validation, except in the case of exigent circumstances, where minimal notice shall be required. The MTA shall be entitled to conduct such MTA-Requested Validations using MTA Group or Third Party personnel (provided such Third Party personnel agree to reasonable confidentiality provisions) (each, a "**Third Party Examiner**"). MTA-Requested Validations shall take place on the dates and at the frequency reasonably designated by the MTA.

24.4.2. No Effect on SI Obligations.

Action or inaction by the MTA under this Section 24.4 (MTA-Requested Validation) shall not affect the SI's obligations to ensure compliance with PCI Standards, and the SI shall continuously maintain such compliance.

24.4.3. Costs of MTA-Requested Validation.

The MTA and the SI shall each bear their own costs of an MTA-Requested Validation, provided, however, that if the process reveals non-compliance with PCI Standards, the SI shall promptly reimburse the reasonable costs incurred by the MTA Group and any Third Party Examiner in conducting an MTA-Requested Validation (without prejudice to other rights and remedies of the MTA Group for such non-compliance).

24.5. Remediation.

In the event of any revealed non-compliance, whether through the standard validation process or an MTA review, the SI shall immediately take all necessary steps to mitigate such non-compliance. Without prejudice to the MTA Group's other rights and remedies, the SI shall provide the MTA with a written mitigation plan, with milestone dates, and shall timely update the MTA during the resolution of the non-compliance.

24.6. Notice to Payment Card Networks.

The SI shall arrange for immediate notice to applicable payment card networks of a Security Incident affecting Payment Card Data or other relevant NFPS Data and, after obtaining the MTA's approval (which can be withheld for just cause), shall cause such notice to be provided to the applicable payment card networks.

24.7. Responsibility for Penalties.

Without limiting any other obligations of the SI under this Contract, and except to the extent resulting from the MTA Group's gross negligence or reckless misconduct, the SI shall be solely responsible for any penalties, fines, levies, audit fees or other fees, remedies or damages imposed by a Third Party, including by a card

association, card processor, issuer of payment cards, merchant acquirer or others in connection with: (i) a Security Incident; (ii) non-compliance with Applicable Privacy Law; or (iii) non-compliance with payment card network obligations.

24.8. Relationship to Other Data Security Provisions.

This Section 24 (Payment Card Industry Standards) addresses security issues for Payment Card Data and compliance with PCI Standards. This section supplements, but does not detract from, or act as a substitute for, other sections in this Contract that address data security, information technology security or other security-related matters (the "**Other Security-Related Contract Provisions**"). In the event of a conflict between (a) this Section 24 (Payment Card Industry Standards) and (b) Other Security-Related Contract Provisions, the language of this Section 24 (Payment Card Industry Standards) shall control.

25. Disaster Recovery and Business Continuity.

During the Term, the SI shall implement, maintain and comply with a plan for data redundancy, business continuity and disaster recovery, as provided in these Contract Documents (collectively, the "**Disaster Recovery Plan**"). Under the Disaster Recovery Plan, the SI shall ensure the timely resumption of applications, data, hardware, communications (such as networking) and all other components of the NFPS in the event of a disaster or outage. The SI shall regularly test the Disaster Recovery Plan and train MTA Group users for contingencies under the Disaster Recovery Plan.

25.1. SI Responsibilities Regarding Disaster Recovery Services.

In addition to any other obligations set out in the Contract Documents, the SI's disaster recovery obligations shall include the following:

25.1.1. Sole Responsibility.

The SI shall retain sole responsibility for overall business continuity plans, application and network recovery, and recovery process management activities related to the NFPS, all with MTA oversight.

25.1.2. Ongoing Operations.

The SI shall maintain the provision and ongoing operation of the NFPS for unaffected areas.

25.1.3. Regular Testing.

The SI shall participate in and support the regular testing and improvement of the Disaster Recovery Plan. Unless otherwise agreed to by the MTA, such testing shall take place on a quarterly basis.

25.1.4. Support MTA Group Standards.

To the extent requested, the SI shall support MTA Group-related standards and, upon request, participate in planning sessions, testing review sessions and other meeting activities with the MTA Group relating to their own disaster recovery efforts, and otherwise support implementation of the Disaster Recovery Plan as it pertains to the support of the implementation, testing and remediation of MTA Group disaster recovery and business continuity plans.

25.1.5. Updates.

The SI shall promptly update the Disaster Recovery Plan or applicable portions thereof and related testing procedures in light of any NFPS changes, modifications or additions.

25.1.6. Support for Future Expansion.

The SI shall support the MTA Group's potential future specification, design and implementation of infrastructure disaster recovery plans.

25.1.7. Fire Suppression.

The SI shall develop fire detection and suppression requirements to comport with obligations contained in these Contract Documents, including those relating to NFPS availability, failover and service levels.

25.2. SI Responsibilities Regarding Testing.

25.2.1. Joint Testing.

The SI shall support the MTA in establishing joint test objectives designed to verify that the NFPS is available within the agreed upon timeframes.

25.2.2. Test Scheduling.

The SI shall support the MTA in scheduling and testing the Disaster Recovery Plan at least quarterly.

25.2.3. Continued Operation During Testing.

The SI shall continue to operate and manage the NFPS during periodic testing of the Disaster Recovery Plan.

25.3. SI Responsibilities Regarding Communications.

25.3.1. Disaster Notification.

The SI shall immediately notify the MTA upon the SI becoming aware of a disaster or outage affecting the NFPS.

25.3.2. Migration Efforts.

The SI shall perform necessary migrations of the NFPS (including NFPS Data) as defined in the Disaster Recovery Plan to reinstate the NFPS (as necessary) so that the NFPS remains fully available as required pursuant to these Contract Documents.

25.3.3. Post-Incident Reinstallation.

Following any disaster, at the MTA's request, the SI shall support MTA Group staff in the reinstallation (if necessary) of any portions of the NFPS not within the SI's control, in accordance with the process for such reinstallation set forth in the Disaster Recovery Plan.

25.3.4. Post-Incident Analysis.

Following any disaster, the SI shall conduct a post-disaster meeting with the MTA for the purpose of developing or enhancing plans to mitigate the adverse impact of future occurrences as they relate to the NFPS.

25.3.5. Continued Compliance.

To the extent applicable to the NFPS, the SI shall maintain compliance with MTA Group documented disaster recovery policies, standards and procedures contained in any MTA Group disaster recovery and business continuity plans.

25.3.6. Ongoing Testing.

The SI shall support an annual test, documented results and feedback procedures contained in the MTA Group disaster recovery and business continuity plans to the extent the same implicate the NFPS within the MTA Group's overall IT infrastructure.

26. Service Levels and Service Credits.

The Service Level Requirements and KPIs establish quantitative measures against which to evaluate the performance of the NFPS and the SI as follows:

26.1. Service Level Period.

The NFPS and the Services shall comply with, and be measured against, all Service Level Requirements and KPIs for each portion of the Work, and such compliance and measurement shall: (i) with respect to all NFPS Hardware (including NFPS Hardware intended for use by MNR and LIRR), commence upon the start date of the applicable Hardware Warranty Period and end on the expiration of the applicable Hardware Warranty Period; (ii) with respect to NFPS Hardware that is subject to Technical Specifications Section 35.15 (MNR and LIRR Field Preventative, Remedial, and Lifecycle Maintenance Services), commence upon the beginning of the applicable Optional Maintenance Term, and end on the expiration of the applicable Optional Maintenance Term; (iii) with respect to NFPS Software, commence upon the start date of the applicable Software Warranty Period and end on the expiration of the Technical and Software Support Period; and (iv) with respect to Services, commence upon the start date of the SI's provision of the applicable Service and end on the later of (a) the expiration of the Technical and Software Support Period, and (b) the expiration of the SI's obligation to provide the applicable Service.

26.2. Changes to the NFPS; Scaling.

The NFPS shall continue to meet applicable Service Level Requirements and KPIs, as described in the Contract Documents, including Technical Specifications Section 5.14 (Performance Requirements), (i) as NFPS transactions increase in number, and the NFPS scales-up, and (ii) as the MTA implements further new or revised MTA-Provided Systems or otherwise expands the NFPS as contemplated pursuant to Section 4 (Expanded Use of NFPS). The SI shall not be liable for failures to meet applicable Service Level Requirements and KPIs to the extent that such failures are attributable to the NFPS scaling beyond the thresholds contemplated in the Contract Documents, including those in Technical Specifications Requirement No. 6.1.1-10.

26.3. Monitoring of Service Level Requirements and KPIs.

The SI shall collect and report to the MTA the Data and information needed to determine the NFPS' compliance and non-compliance with applicable Service Level Requirements and KPIs.

26.3.1. Types of Monitoring by SI.

Unless otherwise specified in the Technical Specifications, each Service Level and KPI shall be measured, recorded and reported by the SI, as directed by the MTA, either: (i) on a daily basis beginning on the date specified in the Service Levels or KPIs for any particular NFPS component ("**Continuous Monitoring**"); (ii) on a sampling basis, with the frequency, target and duration of the monitoring and measurement set by the MTA (with such sampling to include "surprise inspection" monitoring and review) ("**By-Sample Monitoring**"); or (iii) through a mix of Continuous Monitoring and By-Sample Monitoring.

26.3.2. MTA Monitoring.

The MTA shall be entitled to conduct independent monitoring and measurement of the SI's compliance with Service Level Requirements and KPIs, at the frequency and levels set out in Section 26.3.1 (Types of Monitoring by SI), or through such other auditing and monitoring structure as permitted in these Contract Documents (collectively, the "**MTA Monitoring**").

26.3.3. Service Level Reports.

The SI shall compile the results of such monitoring and measurement of Service Levels and KPIs (whether conducted by the MTA or by the SI) in the form of a report (each, a "**Service Level Report**"). On a monthly basis (or such other frequency as determined by the MTA), the SI shall provide to the MTA, as part of the SI's monthly performance reports, the applicable Service Level Report to permit the MTA to verify the SI's performance and compliance with Service Level Requirements and KPIs (where applicable) during the preceding month. The SI shall provide a Service Level Report concerning an instance of By-Sample Monitoring conducted by the SI promptly after completion of such By-Sample Monitoring. Upon request, the SI shall provide supporting information (including applicable raw data) for a Service Level Report in machine-readable form suitable for use on a personal computer, and as may otherwise be reasonably requested by the MTA. The raw data and supporting information shall be the MTA's property and the MTA's Confidential Information, and the SI shall provide the MTA with access to such information online and ad-hoc during the Term and any transition period.

26.3.4. Reporting Form.

The SI shall present measurements and other content within its Service Level Reports in a consistent and complete form and manner. The SI shall generate a standard set of templates and forms to efficiently and uniformly report and communicate the required Service Level Requirements and KPI information to the MTA. The MTA may require the SI to disclose its method or means of monitoring and measurement at any time. The MTA may conduct an audit any time on any aspect of a report, measurement systems, monitoring system or other aspect of the Service Level Requirements and KPI obligations herein.

26.4. Root Cause Analyses; Resolution of Failures.

The SI shall identify root causes for, correct problems leading to, and minimize recurrences of, all missed Service Level Requirements or KPIs, in accordance with the severity of the Failure. The SI shall promptly investigate and correct failures to meet the Service Levels or KPIs, all in accordance with the provisions of Section 16 (NFPS Software Warranties) and Section 19 (Technical and Software Support Services).

26.5. Service Credits.

For non-compliance with applicable Service Level Requirements and/or KPIs, the MTA shall be entitled to the Service Credits specified in Technical Specifications Section 5.14 (Performance Requirements) and Technical Specifications Section 24.1.5 (Service Level Requirements). The MTA shall be entitled to apply these Service Credits against the referenced payment obligations of the MTA (the "**Credit Base**") (as an example: assume the

Service Credit is specified as "8% of the monthly cost of Hosting Services," in which case the Credit Base is the cost of Hosting Services). If Service Credits exhaust the applicable Credit Base, then at its option the MTA shall be entitled: (i) to apply the Service Credits to other payment obligations; (ii) to carry-over the Service Credits to subsequent reporting periods for the Credit Base; (iii) to call on the Ongoing Services Letter of Credit as further set out in Section 43.5 (Letter of Credit; Ongoing Services); or (iv) to otherwise avail itself of the Service Credit True-Up process set out in Technical Specifications Section 5.14.2 (Key Performance Indicators (KPIs)).

26.5.1. Non-Exclusive Remedy.

Service Credits are not the exclusive remedy for a failure to meet Service Level Requirements or applicable KPIs, and all rights and remedies with respect to such non-compliance are reserved in favor of the MTA Group.

26.5.2. Alternatives to Service Credits.

Where non-compliance with a Service Level Requirement or KPI does not generate a Service Credit, such non-compliance may qualify as a Chargeable Failure under the Technical Specifications (including Technical Specifications Section 5.14 (Performance Requirements)).

27. Quality Assurance; Quality Control.

27.1. General Obligations.

In addition to the SI's other obligations set out in these Contract Documents (including the quality assurance and quality control obligations set out in the Divisions (including Division 1J)), the SI shall establish, implement and comply throughout the Term with a Quality Assurance Program (the "**Quality Assurance Program**" or "**QAP**"), and provide sufficient quality assurance ("**QA**") and quality control ("**QC**") staffing to support the delivery of the Quality Assurance Program. All required plans, programs and manuals required by this Section 27 (Quality Assurance; Quality Control) shall be submitted to the MTA for review and approval. Furthermore, the SI shall review, update and submit revised plans, programs and manuals annually, as changes occur or otherwise when the MTA determines that doing so is necessary.

27.2. SI Quality Assurance Program and Staffing.

The Quality Assurance Program shall include the organization, processes and resources needed to achieve consistency and uniformity of Work performed by the SI, Subcontractors, manufacturers and suppliers through implementation of and adherence to documents described in the QAP. The Quality Assurance Program shall also comply with ANSI/ISO/ASQ Q9001-2000, 2008, or 2015, or an MTA-approved equivalent. ISO registration of Subcontractors, manufacturers and suppliers selected by the SI is desirable but not required, unless otherwise set out in the Contract Documents. The Quality Assurance Program shall include the following general requirements, at a minimum:

27.2.1. Inspections.

The SI shall be responsible for the conduct of all inspections required to demonstrate full conformance of the SI's performance of the Work to the requirements set out in the Contract Documents.

27.2.2. Third Party Analysis.

The SI shall be responsible for any independent Third Party analysis requirements.

27.2.3. Provision of Inspection System.

The SI shall provide an inspection system capable of producing objective evidence that materials provided and finished Work performed by the SI meet the quality requirements of the Contract Documents. The inspection system shall be considered acceptable when, at a minimum, it provides for the detection and removal of non-conforming Work or material where it can be corrected prior to placement into a more progressive state.

27.2.4. Quality Manager Designation.

The SI shall designate a specific person as the quality manager with the requisite qualifications to oversee and administer the Quality Assurance Program as required in this Contract.

27.3. Scope of SI Quality Assurance Program.

The QAP shall consist of the documented procedures, policies, plans and organization activities of the SI and the Key Vendors, which shall assure that all Work, materials, testing and Documentation conforms to the requirements of the Contract Documents. The QAP shall include or otherwise address, at a minimum: (i) the SI's Organization Chart showing the lines of authority; (ii) responsibility for quality assurance and its relationship with other functions; (iii) titles and names of key personnel; (iv) titles and functions of all quality personnel; (v) within the Work areas, processes, procedures and criteria shall be developed to measure compliance with the Contract Documents and requirements of the specific activity; and (vi) the following ISO-specific requirements: (a) quality management system; (b) control of Documentation; (c) control of records; (d) management responsibility; (e) resource management; (f) product realization; (g) measurement, analysis and improvement; (h) internal audits; (i) control of non-conforming Work; (j) corrective action; and (k) preventive action. The term "**Key Vendors**" means those Subcontractors, suppliers (including Key Suppliers), and manufacturers that provide, or that are predicted to provide, any products or services in connection with the Work that are worth at least five million dollars (\$5,000,000.00) in the aggregate throughout the Term. The SI shall ensure that all Subcontractors, suppliers, and manufacturers that are not Key Vendors fully comply with the SI's documented procedures, policies, and plans set out in the QAP, and the SI's failure to ensure such compliance shall constitute an Event of Default.

27.4. Quality Control; Quality Control Process Manual.

The SI shall establish, implement and comply throughout the Term with a Quality Control Process Manual ("**QCPM**") that includes guidelines for conducting quality control inspections, documenting performance failures and incidents of non-compliance with the Contract Documents requirements, and reporting all performance failures and instances of non-compliance. In addition, the QCPM shall: (i) be organized by types of Work; (ii) contain a log of updates or new processes that are added, which will be maintained to be current; (iii) be available in electronic form, available to users, including the MTA, through terminals or computers at workstations through the NFPS Software; and (iv) include work instructions, as needed, to assure that critical processes are executed and documented in a uniform and traceable manner.

27.5. Quality Assurance.

27.5.1. Quality Assurance Procedures.

The purpose of the quality assurance procedures is to ensure that each component of the NFPS is thoroughly tested for conformity with the applicable specifications before being integrated into the NFPS.

27.5.2. SI QA Responsibilities; QA Documentation.

The SI shall be responsible for: (i) controlling the quality of all components of the NFPS; (ii) ensuring that all vendors and suppliers of raw materials, parts, components, subassemblies and other elements have an

acceptable quality control system; (iii) ensuring the quality of all provided components of the NFPS; and (iv) maintaining substantiating evidence that the components of the NFPS conform to the applicable quality requirements and furnishing such information to the MTA upon request. The SI shall prepare and deliver good and sufficient QA Documentation in accordance with Good Industry Practices.

27.5.3. Quality Assurance Requirements.

The SI shall ensure that all components of the NFPS that have associated Service Levels shall be governed by the quality assurance requirements set out in this Contract as well as industry-standard QA procedures. The SI shall perform all internal QA procedures related to the NFPS and provide good and sufficient Documentation setting out the process and results of such quality assurance procedures to the MTA. Such internal procedures shall include independent peer review by subject matter experts of the Project.

27.5.4. Quality Control Program.

The SI shall establish, implement and comply throughout the Term with a complete Quality Control Plan (the "QCP") to ensure that the Work performed conforms to stated quality assurance requirements set out in the Contract Documents. The QCP shall describe the inspection system for the Work and shall include, at least, the following: (i) a description of the SI quality control system, which shall cover: (a) all Work; (b) when each portion of the NFPS is to be inspected on either a scheduled or unscheduled basis; (c) frequency of inspections; and (d) how inspections are to be conducted; (ii) the name(s) and qualifications of individual(s) responsible for performing quality control inspections and the extent of their authority; (iii) a description of the methods used to record the quality control inspections and corrective actions taken; (iv) a description of the methods used for identifying and preventing defects in the quality of Services performed; and (v) the approach for filling vacancies in a timely manner, providing qualified personnel and maintaining an ongoing training program to ensure that SI personnel acquire the knowledge and skills necessary for new or emerging technology, managing changes in workload requirements and providing timely and accurate invoices.

27.5.5. Record of Activities.

The SI shall maintain a file of all scheduled and performed quality control inspections, inspection results and dates and details of corrective actions, and the file shall be made available to the MTA upon request.

27.5.6. MTA Review of SI Quality Assurance Obligations.

The MTA shall have the right to evaluate and audit the SI's performance of its System Warranty obligations and its obligations under Section 19 (Technical and Software Support Services) in order to determine the SI's compliance with its obligations herein. The MTA's quality assurance is not a substitute for the SI's quality control obligations. All findings of unsatisfactory or non-performed work will be resolved in accordance with the QCP.

27.6. Order of Precedence with Respect to Quality Assurance and Quality Control Obligations.

The SI agrees that to the extent that any provision or requirement in the Divisions relating to the SI's quality assurance and quality control obligations conflicts with those requirements set out in this Section 27 (Quality Assurance; Quality Control), the more stringent provision or requirement shall apply.

28. Payment.

28.1. Consideration.

It is agreed that for all Work, including all Deliverables and Services rendered or to be rendered, and for all costs and expenses incurred under this Contract, the MTA will pay, and the SI shall accept as full payment, the total amount payable for this Contract as more fully set forth in the Price Schedule up to the sum of \$ eight hundred and eighty million, and ninety-six thousand dollars (\$880,096,000.00) (the "**Total Contract Price**"). The Total Contract Price shall also be adjusted as further set out in these Contract Documents, including to reflect those amounts paid by the MTA pursuant to Section 32 (Changes in Work; Change Orders). The Total Contract Price does not represent a commitment or guarantee on the part of the MTA to pay such an amount unless it has been determined to be allowable by application of criteria established herein.

28.1.1. Sole Payment Recipients.

As further set out in Section 2.4 (Relationship Among the MTA, the SI, and the MTA Group), the MTA is procuring all Work herein on behalf of itself and the other MTA Group entities. Accordingly, the MTA and the SI acknowledge that (i) all amounts payable to the SI pursuant to these Contract Documents shall be due from, and paid by, the MTA (to the exclusion of all other MTA Group entities), and (ii) all amounts payable to the MTA Group pursuant to these Contract Documents shall be paid by the SI to the MTA, including any amounts that are otherwise payable to other MTA Group entities. By way of clarifying example, the SI acknowledges that (1) the MTA shall be solely responsible and liable for the payment of all amounts due to the SI for Work that the SI performs for the benefit of MNR and LIRR, and MNR and LIRR shall have no payment obligations to the SI for such Work, and (2) any amount that is payable by the SI to MNR or LIRR shall be paid by the SI to the MTA (and not MNR or LIRR).

28.2. Price to Include.

The MTA shall pay and the SI shall accept the amounts set forth in the Price Schedule as full compensation for all costs and expenses for completing the Work in accordance with the Contract, including: (i) all labor, services, hardware, equipment, software and material required to be done or furnished under this Contract; (ii) all overhead, expenses, fees and profits including the cost of providing storage yards or facilities; (iii) all risks and obligations set forth in the Contract; (iv) any applicable fees or taxes; and (v) all expenses due to any unforeseen difficulty encountered in the prosecution of the Work, except as otherwise expressly set forth in Section 6.6 (Differing Site Conditions).

28.2.1. Connecticut Tax Exemption; Exemption Certificate.

With respect to any portion of the Work taking place in the State of Connecticut, the SI represents and warrants that no amount of Connecticut sales or compensating use taxes on the sale to the SI or Subcontractor of any personal property (including materials, equipment, and components) that will become an integral component part of the Work has been included in the Total Contract Price. The MTA shall provide the SI with a State of Connecticut Tax Exemption Certificate upon request.

28.2.2. New York Tax Exemption.

With respect to any portion of the Work taking place in the State of New York, the SI represents and warrants that no amount of New York sales or compensating use taxes on the sale to the SI or Subcontractor of any personal property (including materials, equipment, and components) that will become an integral component part of the Work has been included in the Total Contract Price.

28.3. Variable Quantities Clause.

With respect to any unit price item for which an estimated quantity is set forth in the Bid, such unit price shall apply regardless of the actual quantity of such item ultimately utilized in, or required by, the Work; except

that, if the actual quantity (excluding any items that the MTA is permitted to purchase pursuant to Section 21 (Optional Services)) for a unit price item differs from the estimated quantity in the Price Schedule by more than thirty percent (30%), then the Engineer shall review whether application of the unit price would cause a substantial inequity to either party and, if so, the unit price for such item shall be equitably adjusted, upward or downward, as reasonably determined by the Engineer. There shall be no claim by the SI for loss of profit on such unit price, and the SI shall not be entitled to any payment, compensation or other adjustments should the estimated quantities not be utilized by the SI in its performance of the Work, other than adjustments to unit pricing as set out in this Section 28.3 (Variable Quantities Clause).

28.4. Detailed Cost Breakdown for Lump Sum Items.

The cost breakdown for each lump sum item shall include its proportionate share of overhead, profit, premium on bond, insurance and all other expenses involved. The quantities and unit prices shall be extended to show the total amount for each item of Work, and the sum of these amounts shall total in each case the exact amount of the lump sum price(s) for the item. The following items and associated costs are to be identified as separate line items in the detailed cost breakdown, as applicable: (i) Master Program Schedule and updates; (ii) operation and maintenance manuals (and other applicable Documentation); (iii) testing; (iv) training; (v) as-built drawings; (vi) Software license and maintenance fees; and (vii) microfilm. The cost breakdown shall be subject to approval by the Engineer.

28.5. Prompt Payment.

All authorized payments to the SI will be made by the MTA Business Service Center (the "**MTA BSC**") via Automated Clearing House ("**ACH**") procedures. The SI hereby authorizes the MTA BSC to make payments to the SI using an ACH designated by the MTA BSC. The SI shall provide current ACH instructions to the MTA BSC promptly upon award (unless it has previously provided ACH instructions that have not changed) using the Vendor Master Setup Maintenance form, which is available online at: <http://www.mtabsc.info/vendors/>. All payments will be made pursuant to Section 2880 of the Public Authorities Law (the "**Prompt Payment Law**") and the MTA's implementing rules, officially called the Statement of Rules and Regulations With Respect To Prompt Payment (the "**Prompt Payment Statement**"). Any terms used in this Section 28.5 (Prompt Payment) that are not defined herein shall have the meanings ascribed to them in the Prompt Payment Statement. The Prompt Payment Statement is codified in Volume 21 of the New York Code of Rules and Regulations, Part 1002.

28.5.1. Payment Period.

In accordance with the Prompt Payment Statement, all payments will be made within thirty (30) calendar days of the Receipt of Invoice (excluding legal holidays) (the "**Payment Period**"), as the term "**Receipt of Invoice**" is defined for (i) Progress Payments, in Section 28.6 (Progress Payments); (ii) Payments on Substantial Completion, in Section 28.7 (Payment Upon Substantial Completion); and (iii) Final Payment, in Section 28.8 (Final Payment), all subject to this Section 28.5 (Prompt Payment).

28.5.2. Audit of Progress Payment Invoice.

The MTA reserves the right to conduct an inspection or audit of any Progress Payment Invoice, the Substantial Completion Payment Estimate and the Final Payment Estimate to verify that the amount to be paid is in accordance with the provisions of the Contract (each, an "**Estimate Audit**"). The applicable "Receipt of Invoice" date under Section 28.6 (Progress Payments), Section 28.7 (Payment Upon Substantial Completion), and Section 28.8 (Final Payment) shall be deemed extended ten (10) Business Days in the event that the MTA elects to perform this function.

28.5.3. Tolling of Payment Period.

Notwithstanding anything to the contrary, the Payment Period shall be tolled, as set forth below, whenever the Estimate Audit reveals a defect in Deliverables, Services or other Work, or suspected improprieties of any kind, which improprieties might include a determination by the Engineer that the SI is in breach of a material term of this Contract. In any such case, the "Receipt of Invoice" date shall be tolled to the date that the Deliverables, Services and/or other Work at issue meet the requirements of the Contract Documents, or the date that the other impropriety is resolved.

28.5.4. Late Payments.

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

28.5.5. Designated Payment Office.

The Designated Payment Office shall mean the office of the Engineer as described in the Notice of Award and may be changed at any time by the MTA upon notification in writing to the SI.

28.6. Progress Payments.

Subject to the terms and conditions of these Contract Documents, progress payments will be made periodically (i) based on the Payment Milestones set out in Division 1G (Payment), and (ii) where provided in Division 1G (Payment), for (a) the value of the Work performed, and (b) for materials not incorporated into the Work that meet the requirements of Section 28.6.1 (Materials Not Yet Incorporated in the Work), all as further specified in this Section 28.6 (Progress Payments) and in Division 1G (Payment) (the "**Progress Payments**"). The SI shall submit to the Engineer an invoice for a Progress Payment when the SI believes in good faith that it has met the requirements for the same (each, a "**Progress Payment Invoice**"). The SI shall include in all Progress Payment Invoices sufficient detail setting out the basis for the requested Progress Payment. Upon receipt of a Progress Payment Invoice, the Engineer shall undertake an inspection to determine whether the SI is entitled to payment for the associated Work.

28.6.1. Materials Not Yet Incorporated in the Work.

This Section explains the term "**Materials Not Yet Incorporated in the Work**," and sets out the process for determining Progress Payments with respect to Materials Not Yet Incorporated in the Work, should the Engineer notify the SI during the Term that it is entitled to payment for Materials Not Yet Incorporated in the Work. The reasonable value or cost (whichever is less) of Materials Not Yet Incorporated in the Work that are on or off the Work Site shall be included in a Progress Payment Invoice, provided the conditions precedent set forth in this Section 28.6.1 (Materials Not Yet Incorporated in the Work) have been met. If such Materials Not Yet Incorporated in the Work are not located at the Work Site, then the SI agrees to pay any additional costs incurred by the MTA Group in connection with any inspection of such materials. The conditions for including any value or cost in the Progress Payment Invoice are as follows:

28.6.1.1.1 The Engineer determines that (i) any Work provided by the SI includes Materials Not Yet Incorporated in the Work, and (ii) such Materials Not Yet Incorporated in the Work meet the requirements of the Technical Specifications and are suitably stored and secured.

28.6.1.1.2 The SI submits to the Engineer (i) proof satisfactory to the MTA that the SI has free and clear title to such Materials Not Yet Incorporated in the Work, and (ii) the SI's representation that all such Materials Not Yet Incorporated in the Work shall remain free and clear of and from all debts, claims, liens, mortgages, taxes and encumbrances.

28.6.1.1.3 If any such Materials Not Yet Incorporated in the Work are not located at the Work Site, the MTA may also require a lease of or license to use the real property where such Materials Not Yet Incorporated in the Work are stored. Such lease or license shall be without cost to the MTA Group and in form and substance satisfactory to the MTA General Counsel.

28.6.1.1.4 If any such Materials Not Yet Incorporated in the Work are stored outside the City, the SI agrees to accept responsibility for and to pay all sales, compensation, use, personal and property taxes that may be levied against the MTA Group by any state or subdivision thereof on account of such Materials Not Yet Incorporated in the Work.

28.6.1.1.5 The SI, at its sole expense, shall transfer title to any such Materials Not Yet Incorporated in the Work to be included in a Progress Payment Invoice free and clear of and from all debts, claims, liens, mortgages, taxes and encumbrances by conveyance in form and substance satisfactory to the MTA General Counsel.

28.6.1.1.6 For any Materials Not Yet Incorporated in the Work included in a Progress Payment Invoice that may subsequently become lost, damaged or unsatisfactory, the amount thereof as allowed by the Engineer shall be deducted from succeeding payments to the SI.

28.6.2. Supporting Documentation for Progress Payments.

The following Supporting Documentation is a condition precedent to the MTA's issuance of the payment for the related Progress Payment Invoice:

28.6.2.1.1 The SI's affidavit certifying that its Subcontractors and suppliers have been paid the amount due to them for the Work performed and materials furnished by each of them which were encompassed by any previous Progress Payments made to the SI.

28.6.2.1.2 The SI's certification of compliance with the minimum wage rates and other provisions and stipulations in accordance with Applicable Law, where required.

28.6.2.1.3 Where this Contract calls for submittal and use of schedule Documentation, the SI's certification endorsed by the Engineer that it is in compliance with any provisions thereof which are listed as conditions precedent to payment.

28.6.2.1.4 Where this Contract requires reporting on progress toward fulfillment of MBE/WBE goal(s), the SI's certification that it is in compliance with any provisions thereof listed as conditions precedent to payment.

28.6.2.1.5 Any submission specified in Section 28.6.1 (Materials Not Yet Incorporated in the Work) with respect to Materials Not Yet Incorporated in the Work.

28.6.2.1.6 Any other Documentation specified in the Contract as a condition precedent for purposes of Progress Payments.

28.7. Payment Upon Substantial Completion.

The Receipt of Invoice for the Payment on Substantial Completion shall mean the later of the date (i) the Substantial Completion Payment Estimate is issued, and (ii) the Supporting Documentation is received at the Designated Payment Office, as described respectively in Section 28.7.2 (Signature and Delivery of Substantial

Completion Payment Estimate) and Section 28.7.4 (Supporting Documentation for Payment on Substantial Completion).

28.7.1. Substantial Completion Payment Estimate.

The Engineer shall, concurrently with the issuance of the Certificate of Substantial Completion, prepare a Substantial Completion Payment Estimate covering (i) the amount to which the SI is entitled as set out in the Price Schedule, and (ii) the amount of the Substantial Completion Retained Percentage held pursuant to Section 29.2 (Retained Percentage), less an amount equal to twice the value of any Remaining Work, as determined by the Engineer in accordance with Section 29.2 (Retained Percentage) and less any other withholdings, reductions or set-offs permitted under the Contract.

28.7.2. Signature and Delivery of Substantial Completion Payment Estimate.

The SI shall sign the Substantial Completion Payment Estimate upon acknowledging thereon the items with which it agrees and disputes (including items omitted). The date the SI delivers to the Engineer such Substantial Completion Payment Estimate (the "**Substantial Completion Estimate Delivery Date**") shall be the date the Substantial Completion Payment Estimate is issued for the amount agreed between the Engineer and the SI thereunder.

28.7.3. Amount of Substantial Completion Payment Estimate; Disputes.

The amount in the Substantial Completion Payment Estimate in dispute is subject to the disputes resolution provisions set out in Section 45.2 (Dispute Resolution Procedure). The Substantial Completion Estimate Delivery Date shall also be deemed to be the date of the Engineer's determination for purposes of Section 45.2 (Dispute Resolution Procedure). If the SI prevails with respect to any disputed amount, then the Substantial Completion Payment Estimate shall be deemed issued for such amount retroactive to the Substantial Completion Estimate Delivery Date.

28.7.4. Supporting Documentation for Payment on Substantial Completion.

In addition to the Supporting Documentation required for a Progress Payment detailed in Section 28.6.2 (Supporting Documentation for Progress Payments), the required Supporting Documentation for the Payment on Substantial Completion is as follows:

28.7.4.1.1 A release by the SI of the MTA Group, in a form approved by the MTA General Counsel, of all claims and liability to the SI for anything theretofore done or furnished for, or in any way relating to, the Work, except with respect to: (i) those claims expressly deleted from the scope of said release; (ii) those claims or potential claims pertaining to monies being withheld by the MTA; and (iii) Third Party claims that have yet to be asserted against the SI; provided, however, that such Third Party claims could not have reasonably been known by the SI if it had made a good faith investigation into the possibility of such Third Party claims before granting the release pursuant to this Section 28.7.4.1.1.

28.7.4.1.2 A statement in writing of each and all alleged claims of the SI against the MTA Group.

28.7.4.1.3 Any other document or item specifically required by the Contract as a condition precedent to the Payment on Substantial Completion.

28.8. Final Payment.

The Receipt of Invoice for the Final Payment shall be the later of the date that (i) the MTA issues the Final Payment Certificate, and (ii) the Supporting Documentation is received at the Designated Payment Office, as described respectively in Section 28.8.2 (Signature and Delivery of Final Payment Estimate) and Section 28.8.4 (Supporting Documentation for Final Payment Estimate).

28.8.1. Final Payment Estimate.

The Engineer shall, concurrently with the issuance of the Final Completion Certificate, prepare a Final Payment Estimate covering (i) any monies due and owing to the SI, and (ii) the amount of the Final Completion Retained Percentage held pursuant to Section 29.2 (Retained Percentage), less any other withholdings, reductions or set-offs permitted under the Contract.

28.8.2. Signature and Delivery of Final Payment Estimate.

The SI shall sign the Final Payment Estimate upon acknowledging thereon the items with which it agrees and disputes (including items omitted). The date the SI delivers to the Engineer such Final Payment Estimate (the "**Final Payment Estimate Delivery Date**") shall be the date the Final Payment Estimate is issued for the amount agreed between the Engineer and the SI thereunder.

28.8.3. Amount of Final Payment Estimate; Disputes.

The amount in the Final Payment Estimate in dispute is subject to the disputes resolution provisions set forth in Section 45.2 (Dispute Resolution Procedure). The date of the Final Payment Estimate Delivery Date shall also be deemed to be the date of the Engineer's determination for purposes of Section 45.2 (Dispute Resolution Procedure). If the SI prevails with respect to any disputed amount, then the Final Payment Estimate shall be deemed issued for such amount retroactive to the Final Payment Estimate Delivery Date.

28.8.4. Supporting Documentation for Final Payment Estimate.

In addition to the Supporting Documentation required for a Progress Payment detailed in Section 28.6.2 (Supporting Documentation for Progress Payments), as applicable, the required Supporting Documentation for the Final Payment is as follows:

28.8.4.1.1 Subcontractor and supplier guarantee(s), if any, specifically set forth in the Contract Documents.

28.8.4.1.2 Any other supporting Documentation or item specifically stated by the Contract to be a condition precedent to the Final Payment.

28.9. Most Favored Customer.

The SI represents and warrants that all of the prices, terms and benefits granted by it herein or under which it offers the MTA options in the future shall be equal to or better than the equivalent terms offered by the SI to any other customer. By way of example, the SI's obligations under this Section 28.9 (Most Favored Customer) apply to: (i) Spare Parts and Product Units; (ii) Updates to NFPS-Sourced Equipment and SI Spare Parts; and (iii) the Services.

28.10. No Estoppel.

No payment or certificate provided by the MTA (or the Engineer, or any other officer, agent or appointee thereof) under this Contract shall preclude or estop the MTA: (i) from showing at any time the true and correct

classification, amount, quality and character of the Work done (including any Deliverables or Services); (ii) from showing at any time that such certificate is untrue or incorrect or improperly made in any particular; or (iii) from showing that such Work or any part thereof does not in fact conform to the requirements of this Contract. Further, the MTA shall not be precluded or estopped, notwithstanding any certificate and payment in accordance therewith, from demanding and recovering from the SI such damages as the MTA Group may sustain by reason of the SI's failure to comply with the Contract Documents. The MTA retains the right to so challenge, question or offer such showing at any time either before or after the completion of the SI's obligations under this Contract and payment therefor (whether pursuant to any Progress Payment Invoice, Substantial Completion Payment Estimate or Final Payment Estimate or otherwise).

28.11. No Waiver.

No portion of this Contract, no power herein reserved to the MTA Group and no rights or remedies of the MTA Group whatsoever (including the MTA's right to recover damages or to obtain other remedies) are waived by the MTA Group (or by the Engineer or any of the employees of the MTA Group): (i) by the acceptance of the whole or part of the Work; (ii) by the grant of any extension of time; (iii) by possession taken by the MTA Group (or the employees of the MTA Group) of any Deliverables or other materials; (iv) by any order, measurement or certificate by the Engineer; (v) by any order by the MTA for payment of money or payment of money; or (vi) by any other action or non-action by the MTA Group or the Engineer under this Contract. The waiver of any breach by the SI under this Contract shall not be held to be a waiver of any other or subsequent breach.

28.12. Limited Adjustments to Certain Base Line Item Pricing; Indexing.

The MTA and the SI acknowledge that providing fixed pricing for certain portions of the Work would be difficult given the length of the Term and the need to forecast pricing variables. In order to reduce Proposal pricing assumptions that the SI would otherwise have included in order to address pricing uncertainties, the MTA agrees that certain Base Line Item Prices for Price-Adjustable Work may be adjusted using identified indices, all as further set out in this Section 28.12 (Limited Adjustments to Certain Base Line Item Pricing; Indexing). The SI represents and warrants that the Base Line Item Pricing included in its Proposal does not include any pricing to address anticipated increased costs or inflation throughout the Term.

28.12.1. Relevant Definitions for Section 28.12 (Limited Adjustments to Certain Base Line Item Pricing; Indexing).

28.12.1.1. Adjusted Price.

The term "**Adjusted Price**" means the revised Base Line Item Price for the Price-Adjustable Work, as determined pursuant to Section 28.12.3 (Determination of Adjusted Price).

28.12.1.2. Base Index.

The term "**Base Index**" means the average of the Relevant Index for the six (6) calendar months preceding the MTA's issuance of the Notice of Award. By way of clarifying example, if the Notice of Award were issued in October, then the Base Index would be the average of the Relevant Index for the preceding April, May, June, July, August, and September.

28.12.1.3. Base Line Item Price.

The term "**Base Line Item Price**" means the price included in the Price Schedule for the applicable Price-Adjustable Work.

28.12.1.4. Bureau of Labor Statistics.

The term "**Bureau of Labor Statistics**" means the United States Department of Labor, Bureau of Labor Statistics.

28.12.1.5. Current Index.

The term "**Current Index**" means: (i) the Current Other Index; (ii) the Current Services Index; or (ii) both the Current Other Index and the Current Services Index, as context permits.

28.12.1.6. Current Other Index.

The term "**Current Other Index**" means the average of the Relevant Index for the six (6) calendar months preceding the SI's provision of an SI Material Sale Offer (pursuant to Section 34.11 (Order Process for NFPS Hardware, Spare Parts and Product Units, and NFPS Media)) for any Price-Adjusted Work that does not constitute an Optional Service.

28.12.1.7. Current Services Index.

The term "**Current Services Index**" means the average of the Relevant Index for the six (6) calendar months preceding any Price-Adjusted Work that constitutes an Optional Service, with the preceding six (6) months based on the Relevant Index published by the Bureau of Labor Statistics, measured from three (3) months prior to the SI's commencement of the applicable Optional Services. By way of example, if the commencement of the Optional Service is in December, then the Relevant Index shall be based on the previous September, August, July, June, May, and April.

28.12.1.8. Index Adjustor.

The term "**Index Adjustor**" means the amount by which the Base Line Item Price is multiplied when calculating the Adjusted Price, as determined pursuant to Section 28.12.3 (Determination of Adjusted Price).

28.12.1.9. Price-Adjustable Work.

The term "**Price-Adjustable Work**" means the specific Work identified in Section 28.12.2 (Price-Adjustable Work and Relevant Indices), and that is subject to a price adjustment pursuant to this Section 28.12 (Limited Adjustments to Certain Base Line Item Pricing; Indexing).

28.12.1.10. Relevant Index.

The term "**Relevant Index**" means the index associated with the applicable Price-Adjustable Work in Section 28.12.2 (Price-Adjustable Work and Relevant Indices). The Relevant Index may include the Producer Price Index (the "**PPI**") or the Consumer Price Index (the "**CPI**") published by the Bureau of Labor Statistics, or the equivalent by heading as determined and reported monthly by the Bureau of Labor Statistics.

28.12.2. Price-Adjustable Work and Relevant Indices.

The Price-Adjustable Work, applicable Price Form(s) within the Price Schedule, and Relevant Indices are as follows:

No.	Price-Adjustable Work	Agreement Section Reference	Price Form	Price Form Item No.	Relevant Index
1.	Optional Backend Hosting Services	21.1.1 (NFPS Extended Backend Hosting Services)	F1 (Contract Options)	01 (Options, Extended Backend Hosting Services)	PPI: WPU381101 (Hosting, Active Server Pages (ASP) and Other Information Technology (IT) Infrastructure Provisioning Services)
2.	Optional Website Hosting Services	21.1.2 (Extended Website Hosting Services)	F1 (Contract Options)	02 (Options, Extended Website Hosting Services)	
3.	Extended Technical and Software Support Services	21.1.6 (Extended Technical and Software Support Services; Labor Bank Services)	F1 (Contract Options)	06.1.1 (Regular On-going Technical and Software Support Services)	PPI: WPU456 (Information Technology (IT) Technical Support and Consulting Services (Partial))
				06.2.1 (Regular On-going Technical and Software Support Services)	
4.	Retail Point of Sale Network	21.1.3 (Retail Point of Sale Network)	F1 (Contract Options)	03.1.2 (Monthly Administrative Fee)	CPI: CWUR0000SA0 (Urban Wage Earners and Clerical Workers: All Items)
				03.1.3 (Fee per each new card sale)	
				03.2.2 (Monthly Administrative Fee)	
				03.2.3 (Fee per each new card sale),	
				03.3.2 (Monthly Administrative Fee)	
				03.3.3 (Fee per each new card sale)	
5.	Extended Customer Service Support	21.1.7 (Extended Customer Service Support)	F1 (Contract Options)	07 (Options, Extended Customer Call Center Services)	CPI: CWUR0000SA0 (Urban Wage Earners and Clerical Workers: All Items)
6.	Parts & Module Repair Services (Third-Call Maintenance)	21.1.14 (MNR and LIRR NFPS Equipment Spare Parts and Modules Service and Repair)	F5 (Options for Hardware Maintenance for LIRR and MNR)	014 (Option 14 – Parts & Module Repair Services (Third-Call Maintenance))	PPI: WPU551 (Repair and Maintenance Services: Commercial and Industrial Machinery and Equipment Repair and Maintenance)
7.	Field Preventative, Remedial, and Lifecycle Maintenance Services	21.1.15 (MNR and LIRR Field Preventative, Remedial, and Lifecycle Maintenance Services)	F5 (Options for Hardware Maintenance for LIRR and MNR)	015 (Option 15 – Field Remedial (Second-Call Maintenance), Preventative and Lifecycle Maintenance Services)	PPI: WPU551 (Repair and Maintenance Services: Commercial and Industrial Machinery and Equipment Repair and Maintenance)
8.	Spare Parts and Product Units	34.10.2 (Price Lists and Certainty)			PPI: WPU115406 (Machinery and Equipment: Point of Sale (POS) Terminals, Funds-Transfer Devices and All

No.	Price-Adjustable Work	Agreement Section Reference	Price Form	Price Form Item No.	Relevant Index
					Other Computer Peripheral Equipment)

28.12.3. Determination of Adjusted Price.

The SI shall not be entitled to any price adjustment for Price-Adjustable Work prior to the Engineer's issuance of the Final Completion Certificate. If the MTA engages the SI to provide any Price-Adjustable Work after the Engineer's issuance of the Final Completion Certificate, then the Adjusted Price for the applicable Price-Adjustable Work shall be calculated as follows:

28.12.3.1. Calculation of the Current Index and the Base Index.

The Current Index and the Base Index for the relevant Price-Adjustable Work shall be calculated using the Relevant Indices identified in Section 28.12.2 (Price-Adjustable Work and Relevant Indices).

28.12.3.2. Calculation of the Index Adjustor.

The Index Adjustor shall be calculated using the following equation:

$$\text{Index Adjustor} = [(Most\ recently\ available\ Current\ Index\ (including\ preliminary\ data)) - (Base\ Index)] / Base\ Index$$

28.12.3.3. Calculation of the Adjusted Price.

Finally, the Adjusted Price shall be calculated using the following equation:

$$\text{Adjusted Price} = \text{Base Line Item Price} + [(\text{Base Line Item Price}) * (\text{Index Adjustor})]$$

The SI acknowledges that the Adjusted Price may result in either an increase or a decrease to the Base Line Item Price depending on whether the applicable Current Index is less than or greater than the applicable Base Index.

28.12.4. MTA Revisions to Relevant Indices.

If the Bureau of Labor Statistics discontinues a Relevant Index or otherwise materially alters its method of calculating a Relevant Index, then the MTA, in its sole and reasonable discretion, shall determine the appropriate substitute index or otherwise make appropriate adjustments to the Relevant Index in order to reflect the intent of the original Relevant Index.

28.12.5. Effect of Adjusted Pricing; Temporal Limit on Price Adjustments.

The SI acknowledges that: (i) the Adjusted Price for any Price-Adjustable Work that constitutes an Optional Service shall apply for the entire duration during which the SI is performing the Optional Service, and the SI shall not be entitled to seek additional pricing adjustments during any such duration; (ii) the Adjusted Pricing for all other Price-Adjustable Work shall be calculated on a per-order basis; and (iii) the Base Line Item Prices shall only be adjusted pursuant to this Section 28.12 (Limited Adjustments to Certain Base Line Item Pricing; Indexing) if the MTA engages the SI to provide the Price-Adjustable Work after the Engineer's issuance of the Final Completion Certificate. By way of clarifying example, and not limitation, if the MTA exercises the five (5) year option for extended Backend Hosting Services pursuant to Section 21.1.1 (NFPS Extended Backend

Hosting Services), then the Adjusted Price for the entire five (5) year period shall be determined based on the commencement date of the SI's provision of the extended Backend Hosting Services, and if the MTA purchases Spare Parts and Product Units pursuant to Section 34.11 (Order Process for NFPS Hardware, Spare Parts and Product Units, and NFPS Media), then the Adjusted Price shall be determined each time that the SI provides the MTA with an SI Material Sale Offer pursuant to Section 34.11 (Order Process for NFPS Hardware, Spare Parts and Product Units, and NFPS Media). By way of further clarifying example, if the MTA exercises an Optional Service set out in 21.1.3 (Retail Point of Sale Network) prior to the Engineer's issuance of the Final Completion Certificate, then the Base Line Item Prices included in F1 (Contract Options) shall not be eligible for pricing adjustments, including pursuant to this Section 28.12 (Limited Adjustments to Certain Base Line Item Pricing; Indexing).

28.12.6. Exclusive Nature of Price Adjustments.

The SI acknowledges that: (i) the pricing adjustments made pursuant to this Section 28.12 (Limited Adjustments to Certain Base Line Item Pricing; Indexing) are the sole means by which the SI is entitled to any increases in amounts included in the Price Schedule for the Work, regardless of any increases in the actual cost or use of labor or materials to the SI; (ii) the SI shall not be entitled to any pricing adjustments pursuant to this Section 28.12 (Limited Adjustments to Certain Base Line Item Pricing; Indexing) for Extra Work; and (iii) nothing included in this Section 28.12 (Limited Adjustments to Certain Base Line Item Pricing; Indexing) shall limit (a) the MTA Group's right to reduced pricing as permitted herein, including in Section 34.10 (Additional Requirements Regarding Certain NFPS Components), or (b) the SI's assumption of price fluctuations as further set out herein, including in Section 34.7.3 (SI Responsibility for Replacement NFPS Hardware).

28.12.7. Clarifying Example of Base Line Item Price Adjustment.

The following provides an example for calculating the Adjusted Price:

Assume that:

- The Notice of Award is October 1, 2017.
- The MTA notifies the SI in November 2029 that it intends to exercise the Option for Extended Technical and Software Support services pursuant to Section 21.1.6 (Extended Technical and Software Support Services; Labor Bank Services), with the commencement of the SI's performance of such Optional Service on June 1, 2030.
- The Relevant Index is identified as the published PPI, with the following values: (i) for the Base Index: (a) April 2017 = 100, (b) May 2017 = 100.1, (c) June 2017 = 100.2, (d) July 2017 = 100.3, (e) August 2017 = 100.4, and (f) September 2017 = 100.5, and (ii) for the Current Index: (1) October 2029 = 125.9, (2) November 2029 = 125.8, (3) December 2029 = 125.7, (4) January 2030 = 125.6, (5) February 2030 = 125.5, and (6) March 2030 = 125.4.
- The Base Line Item Price included on Price Form F1 (Contract Options), Item No. 06.1.1 (Regular On-going Technical and Software Support Services) = \$110.00.

The Adjusted Price would be calculated as follows:

- Base Index = $[(100 + 100.1 + 100.2 + 100.3 + 100.4 + 100.5) / 6]$ or **100.25**
- Current Index = $[(125.9 + 125.8 + 125.7 + 125.6 + 125.5 + 125.4) / 6]$ or **125.65**

- Index Adjustor = $[(125.65 - 100.25) / 100.25]$ or **0.253**
- Adjusted Price = $[110 + (110 * 0.254)]$ or **\$137.83**

Per the above example, if the SI included in its Proposal a line item price of \$110.00 in Price Form F1, Item No. 06.1.1, and the MTA exercised the Option for Extended Technical and Software Support services associated with that Item No. 06.1.1, then the Adjusted Price for such Option would be \$137.94.

29. Setoff, Retention, and Certain Security for Performance.

29.1. MTA Right to Set Off, Deduct, or Withhold.

The MTA may set off, deduct, or withhold from any payment due to the SI such sums as may be specifically allowed in the Contract or by Applicable Law, including the following:

29.1.1.1.1 The Retained Percentage allowed in accordance with Section 29.2 (Retained Percentage);

29.1.1.1.2 Amounts relating to the Specific Guarantees, as further specified in Section 29.3 (Withholding Based on Specific Guarantee Obligations);

29.1.1.1.3 An amount of any claim by a Third Party, as provided in Section 29.4 (Withholding Money Due to the SI; Adverse Claims);

29.1.1.1.4 Any amounts allowed under Section 5.3 (Beneficial Use and Substantial Completion Determinations), Section 5.5 (MTA Damages for Delay by the SI), Section 28.5 (Prompt Payment), Section 28.5.3 (Tolling of Payment Period), and/or other relevant provisions herein;

29.1.1.1.5 Any unpaid legally enforceable debt owed by the SI to the MTA Group, as provided in the MTA's Prompt Payment Statement;

29.1.1.1.6 Any other amounts set out in this Section 29 (Setoff, Retention, and Certain Security for Performance); and

29.1.1.1.7 Any other amount that the MTA believes, in good faith, to be due and owing to the MTA Group by the SI.

The SI shall have the right to dispute, pursuant to Section 45 (Disputes; Dispute Resolution), any withholding done by the MTA pursuant to this Section 29 (Setoff, Retention, and Certain Security for Performance). Any withholding done by the MTA pursuant to this Section 29 (Setoff, Retention, and Certain Security for Performance) that is ultimately held to have been wrongful shall be paid to the SI in accordance with the Prompt Payment Statement.

29.2. Retained Percentage.

As additional security for the faithful performance of this Contract, the MTA shall deduct and retain from all payments five percent (5%) of the amount certified to be due thereunder accruing after the MTA's issuance of the Notice of Award and before the MTA's issuance of the Final Completion Certificate (the "**Retained Percentage**"). The Retained Percentage shall consist of both the (i) "**Substantial Completion Retained Percentage**," which is that portion of the Retained Percentage attributable to payments made for Work related to public works projects (for purposes of clarification, the applicable Work provided pursuant to

Technical Specifications Section 19 (Network Infrastructure), and (ii) "**Final Completion Retained Percentage**," which is that portion of the Retained Percentage other than the Substantial Completion Retained Percentage. By way of clarification, and not limitation, the Retained Percentage (a) shall be deducted from all amounts paid to the SI after the MTA's issuance of the Notice of Award and before the MTA's issuance of the Final Completion Certificate, and (b) shall not be deducted from amounts paid to the SI after the MTA's issuance of the Final Completion Certificate for Work performed following Final Completion. The Retained Percentage, less any amounts that the MTA is entitled to retain permanently pursuant to these Contract Documents, shall be paid to the SI as part of the Substantial Completion Payment or the Final Payment, as further set out in Section 28 (Payment).

29.3. Withholding Based on Specific Guarantee Obligations.

29.3.1. Right to Withhold for Specific Guarantees.

The MTA may withhold, from any payments to be made subsequent to the commencement of any applicable Specific Guarantee Period set out in Section 17 (Specific Guarantees), such sums as may reasonably be necessary to ensure completion of Specific Guarantee obligations with respect to defective Work, including any Deliverables or Services that have been identified by the Engineer.

29.3.2. Permitted Deductions.

The MTA may deduct from any payment due to the SI an amount equal to its costs incurred on account of the SI's failure to fully perform its Specific Guarantee obligations.

29.3.3. Notice of Defective Work.

The Engineer, prior to withholding or deducting any monies hereunder, shall provide the SI with (i) notice of the defective Work, including any Deliverables or Services, and (ii) the basis for the withholding or deduction.

29.3.4. Certification of Fulfillment of Guarantee Obligations.

Upon the Engineer's certification that the SI has fulfilled its guarantee obligations, the MTA will pay the SI any sums of money so retained as provided in Section 29.3.1 (Right to Withhold for Specific Guarantees), subject to the SI's submission of, or compliance with, any remaining Documentation or obligation, as the case may be, in accordance with this Contract.

29.4. Withholding Money Due to the SI; Adverse Claims.

29.4.1. Definition of Adverse Claim.

The term "**Adverse Claim**" means any claim, lien or judgment that meets each of the following criteria: (i) the claim, lien or judgment is asserted by a Person, or entered by a Governmental Authority, against the SI, the MTA Group, the State or any other Governmental Authority; (ii) the SI is, or may be held, liable for such claim, lien or judgment under this Contract or otherwise by law; and (iii) the claim, lien or judgment relates to the Work.

29.4.2. Right to Withhold Payments Based on Adverse Claims.

In the event of an Adverse Claim, the MTA shall be entitled to retain, out of any monies then due or thereafter becoming due to the SI under this Contract, the amount of the Adverse Claim (or so much thereof as may be deemed reasonable by the MTA) as security for the payment of such Adverse Claim. If the liability of any such

party on such Adverse Claim is finally adjudicated by a judgment of a court of competent jurisdiction or if the SI admits that such Adverse Claim is valid, then at the MTA's option such Adverse Claim shall be (i) paid from the amount the MTA has retained under this Section 29.4.2 (Right to Withhold Payments Based on Adverse Claims), or (ii) credited against the payments due to the SI, and the balance of such payments due to the SI, if any, shall be paid by the MTA to the SI.

29.4.3. Additional Retainage from Substantial Completion Payment or Final Payment for Adverse Claims.

Should any Adverse Claim remain unsatisfied at the time the Substantial Completion or Final Payments are due, the MTA shall have the right to retain out of either payment a sum it determines to be sufficient to protect the MTA Group in regard to all such unsatisfied Adverse Claims. In lieu of the foregoing, the MTA may require other security.

29.4.4. Insufficiency of Amounts Retained as Security for Adverse Claims.

In case any amounts that the MTA has retained as security for Adverse Claims are insufficient to pay the amount adjudicated to be due upon such Adverse Claim, the SI shall immediately pay the amount of the deficiency to the MTA.

29.4.5. Alternative Procedures for Adverse Claims by Third Parties.

Notwithstanding anything in this Section 29.4 (Withholding Money Due to the SI; Adverse Claims) to the contrary, in the event of an Adverse Claim by a Person other than the MTA Group, the MTA shall not withhold money due to the SI under this Section 29.4 (Withholding Money Due to the SI; Adverse Claims) if the MTA receives adequate written assurance from the SI's insurance carrier or surety on bonds required under this Contract that the insurer or surety will assume all responsibility in connection with the Adverse Claim, including defending the SI and/or the MTA Group in any lawsuit and paying any judgment based on said Adverse Claim. The MTA shall have sole discretion to determine the adequacy of the assurance furnished.

29.4.6. Withholding Based on Adverse Claims as Additional Security.

For the avoidance of doubt, the MTA's right to retain sums under this Section 29.4 (Withholding Money Due to the SI; Adverse Claims) is in addition to the other sums that the MTA is entitled to retain pursuant to this Contract.

29.5. Substitution of Approved Securities.

The SI may from time to time withdraw portions of the amounts so retained under Section 29.2 (Retained Percentage) or monies otherwise withheld under the Contract – provided any such monies have not been applied by the MTA for reimbursement to itself or a Third Party in accordance with applicable provisions of the Contract – by depositing with the Fiscal Officer of the MTA approved securities with a market value equal to the amount to be withdrawn. The SI shall pay to the MTA the service charges then in effect for the custodial safekeeping of securities deposited with the MTA by the SI pursuant to the terms of this Contract.

29.5.1. Identification of Approved Securities.

Approved securities for purposes of this Section 29.5 (Substitution of Approved Securities) are securities of the United States Government; State of New York; City of New York; or the MTA Group. Other securities may be submitted for MTA approval. All such securities must be payable to, run in favor of, or be transferred to, the MTA.

29.5.2. Effect of Diminishment in Market Value; Further MTA Recourse.

In case the securities shall, during the Term, diminish in market value in the opinion of the MTA, or are sold as set forth in Section 29.6 (Use of Monies Withheld), then, within ten (10) calendar days after notice, the SI shall deposit cash or securities to restore the value to that originally stated. A failure by the SI to deposit such cash or securities in accordance herewith shall be an Event of Default. In lieu of defaulting the SI, the MTA may allow the SI to proceed with the Work and may deduct from any monies then due or which thereafter may become due to the SI the amount necessary to restore the original valuation of such securities, and to hold such amount in lieu thereof.

29.5.3. Returns on Approved Securities.

The MTA shall pay to the SI all interest, dividends and other income on the securities, when and as collected. If the securities are in the form of coupon bonds, the coupons as they respectively become due shall be delivered to the SI, provided, however, that the SI shall not be entitled to interest, dividends or other income on any securities the proceeds of which shall be used or applied as authorized under the Contract.

29.6. Use of Monies Withheld.

Deposits, retainage or other monies withheld, whether in cash or securities substituted, shall be security for the faithful performance of the Contract by the SI. In case any default causes loss, damage or expense to the MTA Group, the MTA shall be entitled to apply the amount necessary to restore such loss, damage or expense, including liquidated damages, out of the said securities (which may be sold), deposits, retainage or other monies withheld by the MTA in accordance with this Section 29 (Setoff, Retention, and Certain Security for Performance).

30. Payment by the SI to Subcontractors and Suppliers.

The SI agrees to make all payments to its Subcontractors and suppliers in accordance with Section 139-f of the State Finance Law. Nothing provided therein or herein shall create any obligation on the part of the MTA to pay or to see to the payment by the SI of any monies to any Subcontractor or supplier, nor create any relationship in contract or otherwise, implied or expressed, between any such Subcontractor or supplier and the MTA Group. The SI shall include in all subcontracts that:

30.1. Timing of Payment to Subcontractors.

Within seven (7) calendar days of the receipt of any payment from the MTA under Section 28 (Payment) or otherwise under this Contract, the SI shall pay each of its Subcontractors and suppliers the proceeds from the payment representing: (i) the value of the Work performed and/or materials furnished by the Subcontractor and/or supplier and reflecting the percentage of the Subcontractor's work completed or the supplier's material supplied in the invoice approved by the MTA and based upon the actual value of the subcontract or purchase order, LESS (ii) an amount necessary to satisfy any claims, liens or judgments against the Subcontractor or supplier which have not been suitably discharged, and LESS (iii) any retained amount as described in Section 139-f (2) of the State Finance Law.

30.2. Subcontractor Downstream Payment Obligations.

Within seven (7) calendar days of the receipt of payment from the SI, the Subcontractor and/or supplier shall pay each of its subcontractors and suppliers in the same manner as the SI has paid the Subcontractor and/or supplier.

30.3. Interest on Overdue Payments.

Any payment for work performed or materials supplied that has been properly invoiced and is more than seven (7) calendar days overdue shall bear interest at the rate set from time to time by the State Tax Commission.

31. Optimizing Third Party Software Licensing and Maintenance Contracts; MTA Third Party Agreements.

31.1. SI Third Party Licensing Optimizing.

31.1.1. Proposal by SI.

The SI shall determine the optimal payment structure for licenses to Third Party Software and associated maintenance contracts for such Third Party Software (where applicable). The SI's determination shall include consideration of whether such Third Party Software licenses and maintenance contracts, for example, (i) should be based on volume, such as the volume of transactions or the number of users, or (ii) should be structured as enterprise licenses, where license and maintenance fees are not based on the number of users, but instead are based on other metrics, such as the duration of the license or maintenance contract and whether such end user rights are, for example, subscription based. The SI shall memorialize this determination in writing, with Supporting Documentation (the "**Third Party Software License Proposal**"), and present such Third Party Software License Proposal to the Engineer in connection with Final Design Review.

31.1.2. Review and Approval by Engineer.

The Engineer shall consider the SI's Third Party Software License Proposal. The SI shall provide additional information concerning this Proposal as requested by the Engineer, and the Engineer shall accept, reject or request modifications to the Third Party Software License Proposal in connection with Final Design Review.

31.2. Mandatory MTA Third Party Agreements.

31.2.1. SI Disclosure of Mandatory MTA Third Party Agreements.

The SI represents that it has disclosed in its Proposal: (i) all Third Party agreements into which the MTA must enter with a Third Party in order for the SI to deliver an NFPS that complies with the Contract requirements (each, a "**Mandatory MTA Third Party Agreement**"); (ii) the products or services associated with each Mandatory MTA Third Party Agreement; (iii) whether the particular products or services are available from multiple Third Parties or only the Third Party identified in the applicable Mandatory MTA Third Party Agreement; (iv) copies of all Mandatory MTA Third Party Agreements, to the extent available after the SI has made good faith efforts to obtain the same; (v) deadlines by which the MTA must execute the Mandatory MTA Third Party Agreements in order to ensure that the SI can comply with the Intermediate Milestone Dates; (vi) the impact of the MTA's election not to enter into any Mandatory MTA Third Party Agreement; (vii) the allocation of risk between the MTA and the SI based on a Mandatory MTA Third Party Agreement; and (viii) the allocation of Mandatory MTA Third Party Agreement fees between the MTA and the SI, and to what extent such fees are included in the Price Schedule. The term "**Mandatory MTA Third Party Agreement Disclosure**" means the disclosure required pursuant to this Section 31.2.1 (SI Disclosure of Mandatory MTA Third Party Agreements). The SI acknowledges that it shall bear the sole cost, expense, responsibility and liability associated with any Mandatory MTA Third Party Agreement that it failed to identify in the Mandatory MTA Third Party Agreement Disclosure.

31.2.2. SI Support for Mandatory MTA Third Party Agreements; Cooperation.

The SI shall provide, at its sole cost and expense, all support reasonably requested by the MTA in connection with the MTA's execution of all Mandatory MTA Third Party Agreements and alternatives to the same if the associated products and services can be provided by Third Parties other than those identified in the Mandatory MTA Third Party Agreement Disclosure. The MTA and the SI shall cooperate to ensure the continuity of the products and services provided pursuant to a Mandatory MTA Third Party Agreement (or Replacement MTA Third Party Agreement) in order to avoid any impact on the NFPS, and such cooperation shall include, at a minimum, the SI's notification in writing to the MTA that any Mandatory MTA Third Party Agreement (or Replacement MTA Third Party Agreement) is to expire at least one (1) year before such expiration.

31.2.3. MTA Right to Substitute MTA Third Party Agreements.

The MTA shall have the right throughout the Term to substitute those products and services provided pursuant to a Mandatory MTA Third Party Agreement with products and services provided by another Third Party pursuant to a separate agreement (each, a "**Replacement MTA Third Party Agreement**"). The SI shall be responsible, at its sole cost and expense, for all implementation, configuration and other integration Work necessary for substituting the products and services provided via a Mandatory MTA Third Party Agreement with those products and services provided via the Replacement MTA Third Party Agreement. By way of clarifying example, if the MTA enters into a Mandatory MTA Third Party Agreement during the Term for services provided by a Payment Processor, and the MTA subsequently terminates the applicable Mandatory MTA Third Party Agreement and engages another Payment Processor pursuant to a Replacement MTA Third Party Agreement, then the SI shall, at its sole cost and expense, take all steps necessary to integrate the new Payment Processor into the NFPS without any loss of performance.

32. Changes in Work; Change Orders.

32.1. Change Order Overview.

The MTA shall have the right, in its sole discretion, to order changes to the Work that result in additions or subtractions to the amount, type, or value of the Work, provided that such changes are within the general scope of the Project. Work created by ordered changes is referred to herein as "**Extra Work**." Work removed from the then-current scope of Work by ordered changes is referred to herein as "**Deleted Work**." Subject to Section 32.5 (Extra Work Directives), all ordered changes that result in Extra Work or Deleted Work shall be embodied in a document signed by both the MTA and the SI (each, a "**Change Order**"), as further set out herein.

32.2. Determination of Certain Compensation for Change Orders.

The SI's compensation for Extra Work shall be based on Fully Loaded Labor Rates and Material Rates that are calculated pursuant to this Section 32.2 (Determination of Certain Compensation for Change Orders). The MTA and the SI agree that the labor and material rates used to calculate the SI's compensation for Extra Work will be determined based on (i) the SI's actual (without markup) Direct Labor Rate, Direct Material Costs, Overhead, and General & Administrative, as verified by MTA-conducted audits, and (ii) the Negotiated Profit.

32.2.1. Relevant Definitions for Section 32.2 (Determination of Certain Compensation for Change Orders).

32.2.1.1. Direct Labor Rate.

The term "**Direct Labor Rate**" means the payment made to SI personnel as compensation for such personnel's performance of any Work, with the payment calculated on a per-hour basis. The term "Direct Labor Rate" expressly excludes the Overhead, General & Administrative, and Negotiated Profit.

32.2.1.2. Direct Material Costs.

The term "**Direct Material Costs**" means the direct cost (without markup) to the SI for material provided to the MTA as part of Extra Work.

32.2.1.3. Fully Loaded Labor Rate.

The term "**Fully Loaded Labor Rate**" means the rate for the applicable labor title that is used to determine SI compensation for Extra Work associated with the SI's provision of Services, as calculated pursuant to Section 32.2.2 (Determination of Labor and Material Rates).

32.2.1.4. General & Administrative or G&A.

The term "**General & Administrative**" or "**G&A**" means those overhead expenses, as determined in accordance with GAAP. The term "General & Administrative" or "G&A" expressly excludes the Direct Labor Rate, Overhead, and Negotiated Profit.

32.2.1.5. Labor and Material Rate.

The term "**Labor and Material Rate**" means, collectively (i) the Fully Loaded Labor Rate, and (ii) the Material Rate.

32.2.1.6. Material Rate.

The term "**Material Rate**" means the rate for material that is used to determine SI compensation for Extra Work associated with the SI's provision of material, as calculated pursuant to Section 32.2.2 (Determination of Labor and Material Rates).

32.2.1.7. Negotiated Profit.

The term "**Negotiated Profit**" means the fixed profit to which the SI is entitled when performing Extra Work. The Negotiated Profit is set out in Price Form G (Labor Rates for Additional Work). The term "Negotiated Profit" expressly excludes the Direct Labor Rate, General & Administrative, and Overhead.

32.2.1.8. NTP Fully Loaded Labor Rate.

The term "**NTP Fully Loaded Labor Rate**" means the Fully Loaded Labor Rate calculated pursuant to those amounts included in Price Form G (Labor Rates for Additional Work), and that the MTA intended to audit, or audited, prior to its issuance of the Notice to Proceed.

32.2.1.9. Overhead.

The term "**Overhead**" means those overhead expenses that the SI incurs, determined in accordance with GAAP, and that are not considered part of General & Administrative. The term "Overhead" expressly excludes the Direct Labor Rate, General & Administrative, and Negotiated Profit.

32.2.1.10. Relevant Labor Index.

The term "**Relevant Labor Index**" means the Producer Price Index Series ID PCU5413--5413-- (Architectural, Engineering and Related Services) published by the Bureau of Labor Statistics.

32.2.2. Determination of Labor and Material Rates.

32.2.2.1. Calculation of the Fully Loaded Labor Rate.

The Fully Loaded Labor Rate shall be calculated as follows:

$$\text{Fully Loaded Labor Rate} = \text{Direct Labor Rate} * ((100\% + \text{Overhead}) * ((100\% + \text{G\&A}) * ((100\% + \text{Negotiated Profit})))$$

32.2.2.2. Calculation of the Material Rate.

The Material Rate shall be calculated as follows:

$$\text{Material Rate} = \text{Direct Material Costs} * ((100\% + \text{G\&A}) * ((100\% + \text{Negotiated Profit})))$$

32.2.2.3. Assumptions for the Labor and Material Rate Calculations.

All calculations of the Labor and Material Rates shall be made on the assumption that: (i) the Overhead, G&A, and Negotiated Profit are expressed as percentages; (ii) the Direct Labor Rate and the Direct Material Costs are expressed as dollar figures; and (iii) the same Negotiated Profit and G&A will be used when calculating the Fully Loaded Labor Rate and the Material Rate.

32.2.2.4. No Adjustments to the Negotiated Profit.

The SI acknowledges that the Negotiated Profit included in Price Form G (Labor Rates for Additional Work) shall remain fixed throughout the Term.

32.2.3. Application of the NTP Fully Loaded Labor Rate.

32.2.3.1. Effective Period of the NTP Fully Loaded Labor Rate.

Subject to Section 32.2.5 (Regular Adjustments to the Direct Labor Rate), the NTP Fully Loaded Labor Rate shall be used to calculate all labor costs for Extra Work relating to any Notices of Proposed Change Orders that the MTA issues between (i) the MTA's issuance of the Notice to Proceed, and (ii) the first January 1 following the fourth anniversary of the MTA's issuance of the Notice to Proceed (the "**Initial Rate Period**").

32.2.3.2. Effective Period of the Material Rate.

The G&A and the Negotiated Profit included in Price Form G (Labor Rates for Additional Work) (the "**NTP Material Rate**") shall be used to calculate the Material Rate for all material provided as part of Extra Work relating to any Notices of Proposed Change Orders that the MTA issues during the Initial Rate Period.

32.2.3.3. SI Representation and Warranty Regarding Accuracy of Price Form G (Labor Rates for Additional Work).

The SI represents and warrants that (i) the Direct Labor Rate, Overhead, and G&A included in Price Form G (Labor Rates for Additional Work) are the actual amounts incurred by the SI, without markup, and (ii) the NTP Fully Loaded Labor Rate included in Price Form G (Labor Rates for Additional Work) was calculated pursuant to Section 32.2.2.1 (Calculation of the Fully Loaded Labor Rate). Although the MTA intended, and may have completed, an audit of the SI's Records prior to the MTA's issuance of the Notice to Proceed, the SI's representations and warranties included in this Section 32.2.3.3 (SI Representation and Warranty Regarding Accuracy of Price Form G (Labor Rates for Additional Work)) are made regardless of whether the MTA completed such audit of the SI's Records prior to the MTA's issuance of the Notice to Proceed.

32.2.4. Regular Adjustments to the Labor and Material Rates.

32.2.4.1. Calculation of Revisions to the Labor and Material Rates.

The term "**Labor and Material Rate Adjustment Date**" means the first January 1 following every fourth anniversary of the MTA's issuance of the Notice to Proceed. Prior to the conclusion of the Initial Rate Period, and commencing two (2) months preceding each Labor and Material Rate Adjustment Date, the MTA shall audit the SI's Records pursuant to Section 40 (Recordkeeping and Audit) in order to determine the current actual amounts (without markup) of the Direct Labor Rate, Overhead, and G&A (the "**Audited Direct Labor Rate**", "**Audited Overhead**", and "**Audited G&A**", respectively). The Audited Direct Labor Rate, Audited Overhead, and Audited G&A shall be used when calculating the new Fully Loaded Labor Rate (each, a "**Revised Fully Loaded Labor Rate**"), and the Audited G&A shall be used when calculating the new Material Rate (each, a "**Revised Material Rate**").

32.2.4.2. Effective Period of the Revised Fully Loaded Labor Rate.

The term "**Adjusted Rate Period**" means, as applicable, the four (4) year interval between either (i) the first January 1 following the MTA's issuance of the Notice to Proceed and the first Labor and Material Rate Adjustment Date, or (ii) the then-current Labor and Material Rate Adjustment Date and the subsequent Labor and Material Rate Adjustment Date. Subject to Section 32.2.5 (Regular Adjustments to the Direct Labor Rate), the applicable Revised Fully Loaded Labor Rate shall be used to calculate all labor costs for Extra Work relating to any Notices of Proposed Change Orders that the MTA issues during the applicable Adjusted Rate Period.

32.2.4.3. Effective Period of the Revised Material Rate.

The applicable Audited G&A and the Negotiated Profit shall be used to calculate the Material Rate for all material provided as part of Extra Work relating to any Notices of Proposed Change Orders that the MTA issues during an applicable Adjusted Rate Period.

32.2.5. Regular Adjustments to the Direct Labor Rate.

32.2.5.1. Calculation of Adjusted Direct Labor Rate.

In addition to the adjustments made to the Labor and Material Rates pursuant to Section 32.2.4 (Regular Adjustments to the Labor and Material Rates), on January 1 of each year throughout the Term (the "**Labor Rate Adjustment Date**"), the MTA shall update the then-current Direct Labor Rate (each, an "**Adjusted Direct Labor Rate**") as follows:

- The MTA shall first calculate the "**Labor Index Adjustor**" as follows:

Labor Index Adjustor = [(Most recently available Relevant Labor Index (including preliminary data) for the one (1) month preceding the then-current Labor Rate Adjustment Date) – (Relevant Labor Index for the one (1) month preceding the immediately preceding Labor Rate Adjustment Date)] / (Relevant Labor Index for the one (1) month preceding the immediately preceding Labor Rate Adjustment Date)

- The MTA shall then calculate the new Adjusted Direct Labor Rate as follows:

*New Adjusted Direct Labor Rate = then-current Adjusted Direct Labor Rate + [(then-current Adjusted Direct Labor Rate) * (applicable Labor Index Adjustor)]*

32.2.5.2. Reductions to the Adjusted Direct Labor Rate.

The SI acknowledges that the calculation of a new Adjusted Direct Labor Rate may result in either an increase or a decrease to the then-current Adjusted Direct Labor Rate depending on whether the change in the Relevant Labor Index is positive or negative.

32.2.5.3. Effective Period of the Adjusted Direct Labor Rate.

The term "**Adjusted Labor Rate Period**" means the period of time between the current Labor Rate Adjustment Date and either the subsequent Labor Rate Adjustment Date or the Labor and Material Rate Adjustment Date, whichever is earlier. The applicable Adjusted Direct Labor Rate shall be used to determine the then-current Revised Fully Loaded Labor Rate (as determined on the immediately preceding Labor and Material Rate Adjustment Date) to be used when calculating all labor costs for Extra Work relating to any Notices of Proposed Change Orders that the MTA issues in the applicable Adjusted Labor Rate Period as follows:

$$\text{Revised Fully Loaded Labor Rate} = \text{New Adjusted Direct Labor Rate} * ((100\% + \text{Audited Overhead}) * ((100\% + \text{Audited G\&A}) * ((100\% + \text{Negotiated Profit})))$$

32.2.5.4. Clarification Regarding Adjusted Direct Labor Rates.

Because the first year of each Adjusted Rate Period will be based on Audited Direct Labor Rates, the SI acknowledges that Adjusted Direct Labor Rates will only be calculated on the anniversary following the commencement of each Adjusted Rate Period. By way of clarifying example, and not limitation, if the Notice to Proceed were issued on November 3, 2017, then the first Adjusted Rate Period would commence on January 1, 2019, and the first Adjusted Direct Labor Rate would not be calculated or apply until January 1, 2019.

32.2.5.5. Clarifying Example of the Adjusted Direct Labor Rate Calculation.

The following provides an example of calculating an Adjusted Direct Labor Rate:

Assume that:

- The Notice to Proceed is November 3, 2017, and Price Form G (Labor Rates for Additional Work) includes a Negotiated Profit = 8%.
- On January 1, 2019, the MTA determined the updated Adjusted Direct Labor Rate pursuant to Section 32.2.5 (Regular Adjustments to the Direct Labor Rate).
- On January 1, 2020, the MTA determined the updated Adjusted Direct Labor Rate pursuant to Section 32.2.5 (Regular Adjustments to the Direct Labor Rate).
- On January 1, 2021, the MTA determined the updated Adjusted Direct Labor Rate pursuant to Section 32.2.5 (Regular Adjustments to the Direct Labor Rate).
- The MTA completed its second audit of the SI's Records to determine the Adjusted Fully Loaded Labor Rate, which came into effect on January 1, 2022. The following values were determined from the audit: (i) Audited Direct Labor Rate = \$110.00; (ii) Audited Overhead = 6%; and (iii) G&A = 4%.
- After December 15, 2022 (or as soon as the November 2022 data is available), the MTA reviewed the Relevant Labor Index and determined the following values: (i) Relevant Labor Index for November 2022 = 100.8, and (ii) Relevant Labor Index for November 2021 = 100.1.

The Adjusted Direct Labor Rate and the Fully Loaded Labor Rate from January 1, 2022, to December 31, 2022 would be calculated as follows:

- January 2022 Fully Loaded Labor Rate = $(\$110) * ((100\% + 6\%) * ((100\% + 4\%) * ((100\% + 8\%)$ or **\$130.96**.
- December 2022 Relevant Labor Index = $[(100.8 - 100.1) / 100.1]$ or **0.007**.
- December 2022 Adjusted Direct Labor Rate = $\$110 + (\$110 * 0.007)$ or **\$110.77**
- January 2023 Fully Loaded Labor Rate $(\$110.77) * ((100\% + 6\%) * ((100\% + 4\%) * ((100\% + 8\%)$ or **\$131.88**.

32.2.6. Additional Considerations Regarding the Labor and Material Rates.

32.2.6.1. Subcontractor Rates.

The Labor and Material Rate calculations set out in this Section 32.2 (Determination of Certain Compensation for Change Orders) are for those portions of the Work performed by the SI and its Affiliates (and their respective personnel). Compensation for Extra Work performed by Subcontractor personnel shall be based on the SI's actual costs for the Extra Work plus an additional five percent (5%) of such actual costs in order to cover the SI's profit, superintendence, administration, insurance, G&A and other overhead expenses, and all other SI costs and expenses. The MTA shall have the right to conduct audits of the SI's and the associated Subcontractor's Records to verify the amounts charged for Extra Work performed by Subcontractor personnel, and the SI shall provide all supporting documentation requested by the MTA, including books, vouchers, collective bargaining labor agreements, records, or other documents showing the actual cost for labor and materials.

32.2.6.2. Inclusion of Additional Job Titles.

If the MTA and the SI agree that labor titles other than those included in Price Form G (Labor Rates for Additional Work) are necessary in the performance of Extra Work, then the additional labor titles shall be permitted to be used; provided, however, that the MTA shall undertake an audit of the SI's Records to determine the Direct Labor Rates and such Direct Labor Rates shall be handled and computed as set forth herein for other Direct Labor Rates.

32.2.6.3. Revisions to the Relevant Labor Index.

If the Bureau of Labor Statistics discontinues a Relevant Labor Index or otherwise materially alters its method of calculating a Relevant Labor Index, then the MTA, in its sole and reasonable discretion, shall determine the appropriate substitute index or otherwise make appropriate adjustments to the Relevant Labor Index in order to reflect the intent of the original Relevant Labor Index.

32.2.6.4. Exclusive Nature of Labor and Material Rate Calculation.

The SI acknowledges that (i) the pricing adjustments made pursuant to this Section 32.2 (Determination of Certain Compensation for Change Orders) are the sole means by which the SI is entitled to any increases in the amounts of the Labor and Material Rates, regardless of any increases in the actual cost or use of labor or materials to the SI, and (ii) nothing included in this Section 32.2 (Determination of Certain Compensation for Change Orders) shall limit the MTA Group's right to reduced pricing as permitted herein, including pursuant to Section 34.10 (Additional Requirements Regarding Certain NFPS Components), or (b) the SI's assumption of

price fluctuations as further set out herein, including in Section 34.7.3 (SI Responsibility for Replacement NFPS Hardware).

32.2.6.5. GAAP Compliance.

As further set out in Section 40 (Recordkeeping and Audit), the SI 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 MTA's auditing pursuant to this Section 32.2 (Determination of Certain Compensation for Change Orders). The MTA and the SI agree that, in the event of a conflict between the definitions of the Direct Labor Rate, Overhead, and G&A, and their treatment under GAAP, the treatment of such terms (or equivalent terms) under GAAP shall control.

32.2.7. Clarifying Example of Calculation Events During the Term.

The following chart includes a hypothetical breakdown of the cost calculations made pursuant to this Section 32.2 (Determination of Certain Compensation for Change Orders):

No.	Date	Event	Applicable Labor and Material Rates	Effective Date of Applicable Labor and Material Rates
1.	November 1, 2017	Notice to Proceed	NTP Fully Loaded Labor Rate; the NTP Material Rate	November 1, 2017 – December 31, 2018
2.	January 1, 2019	First Labor Rate Adjustment Date; the MTA calculated the 2019 Adjusted Direct Labor Rate	The NTP Fully Loaded Labor Rate <i>as modified by</i> the 2019 Adjusted Direct Labor Rate; the NTP Material Rate	January 1, 2019 – December 31, 2020
3.	January 1, 2020	Second Labor Rate Adjustment Date; the MTA calculated the 2020 Adjusted Direct Labor Rate	The 2019 Fully Loaded Labor Rate <i>as modified by</i> the 2020 Adjusted Direct Labor Rate; the NTP Material Rate	January 1, 2020 – December 31, 2020
4.	January 1, 2021	Third Labor Rate Adjustment Date; the MTA calculated the 2021 Adjusted Direct Labor Rate	The 2020 Fully Loaded Labor Rate <i>as modified by</i> the 2021 Adjusted Direct Labor Rate; the NTP Material Rate	January 1, 2021 – December 31, 2021
5.	November 1, 2021	The MTA conducts an audit to determine the 2022 Revised Fully Loaded Labor and Material Rates	N/A	N/A
6.	January 1, 2022	Commencement of second Adjusted Rate Period	The 2022 Revised Fully Loaded Labor and Material Rate	January 1, 2022 – December 31, 2022
7.	January 1, 2023	Fourth Labor Rate Adjustment Date; the MTA calculated the 2023 Adjusted Direct Labor Rate	The 2022 Revised Fully Loaded Labor Rate <i>as modified by</i> the	January 1, 2023 – December 31, 2023

No.	Date	Event	Applicable Labor and Material Rates	Effective Date of Applicable Labor and Material Rates
			2023 Adjusted Direct Labor Rate; the 2022 Revised Material Rate	
8.	January 1, 2024	Fifth Labor Rate Adjustment Date; the MTA calculated the 2024 Adjusted Direct Labor Rate	The 2023 Fully Loaded Labor Rate <i>as modified by</i> the 2024 Adjusted Direct Labor Rate; the 2022 Revised Material Rate	January 1, 2024 – December 31, 2024
9.	January 1, 2025	Sixth Labor Rate Adjustment Date; the MTA calculated the 2025 Adjusted Direct Labor Rate	The 2024 Fully Loaded Labor Rate <i>as modified by</i> the 2025 Adjusted Direct Labor Rate; the 2022 Revised Material Rate	January 1, 2025 – December 31, 2025
10.	November 1, 2025	The MTA conducts an audit to determine the 2026 Revised Fully Loaded Labor and Material Rates	N/A	N/A
11.	January 1, 2026	Commencement of third Adjusted Rate Period	The 2026 Revised Fully Loaded Labor and Material Rate	January 1, 2026 – December 31, 2026
12.	January 1, 2027	Seventh Labor Rate Adjustment Date; the MTA calculated the 2027 Adjusted Direct Labor Rate	The 2026 Revised Fully Loaded Labor Rate <i>as modified by</i> the 2027 Adjusted Direct Labor Rate; the 2026 Revised Material Rate	January 1, 2027 – December 31, 2027

32.3. Change Order Procedures for Extra Work; Basis for Payment.

Change Orders for Extra Work shall be developed as follows:

32.3.1. Equitable Adjustments to the Total Contract Price and Master Program Schedule.

Change Orders for Extra Work shall result in equitable adjustments to the Total Contract Price that reflect the reasonable compensation for the Extra Work, with such adjustments calculated pursuant to this Section 32 (Changes in Work; Change Orders). Change Orders for Extra Work, if applicable pursuant to Section 5.6 (NFPS Agency Delay or Cancellation of NFPS Agency-Supplied Services), shall also include the estimated allowable Impact Costs for such Extra Work, provided that no such allowable Impact Costs shall include any amounts otherwise payable under the Contract, including those amounts related to the Change Order or any Extra Work Directive. Change Orders for Extra Work may also result in equitable adjustments to the Master Program Schedule to reflect the time needed to perform the Extra Work and the impact on other dates set out in the Master Program Schedule.

32.3.2. MTA Initiation of a Change Order.

The MTA shall notify the SI in writing of changes to the Work that result in Extra Work, and such written notice shall include a description of the Extra Work (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 MTA in its sole discretion, and such designation shall denote the complexity of the proposed Extra Work.

32.3.3. SI Submission of a Change Order Proposal.

The SI shall submit to the Engineer a detailed written response that includes any requested revisions to the Contract, including cost adjustments for the Extra Work, estimated allowable Impact Costs, and a schedule for performing the Extra Work (each, a "**Change Order Proposal**"). Such Change Order Proposal shall be due to the Engineer in no event more than fifteen (15) calendar days after the SI's receipt of a Notice of Proposed Change Order bearing a "Normal" designation (or such longer period as the Engineer may allow), and in no event more than thirty (30) calendar days after the SI's receipt of a Notice of Proposed Change Order bearing a "Complex" designation (or such longer period as the Engineer may allow). Any unauthorized delay in the SI's submission of a Change Order Proposal shall result in a day-for-day reduction in any extension of time to which the SI would otherwise have been entitled for the Extra Work.

32.3.4. Change Order Cost Information.

The SI must include in all Change Order Proposals accurate, current, and detailed data to support each component of its Change Order Proposal (including labor and material costs, allowable Impact Costs, and Master Program Schedule revisions) and to demonstrate the reasonableness of the request. Labor and material rates shall be based on the applicable Labor and Material Rates as calculated pursuant to Section 32.2 (Determination of Certain Compensation for Change Orders).

32.3.5. Change Order Master Program Schedule Impact.

To the extent that any Change Order for Extra Work impacts the then-current Master Program Schedule, the SI shall submit with its Change Order Proposal an updated Master Program Schedule that (i) includes the Extra Work, and (ii) reflects the impact of the Extra Work on all outstanding Work and the Substantial Completion Date (if applicable). The SI must clearly demonstrate how it proposes to incorporate the Extra Work into the Master Program Schedule. If the SI fails to include a time extension request with accurate and complete supporting Documentation, then the SI shall be deemed to have agreed that the proposed Extra Work shall not have any impact on the Master Program Schedule.

32.3.6. Impact Cost Requests for Change Orders.

32.3.6.1. Scope of Available Impact Costs.

The SI shall only be entitled to Impact Costs for Change Orders for Extra Work if the conditions for Impact Costs set out in Section 5.6 (NFPS Agency Delay or Cancellation of NFPS Agency-Supplied Services) are otherwise met. By way of clarification, and not limitation, Impact Costs for Change Orders for Extra Work constitute a separate category of Impact Costs than Excusable Delay Impact Costs.

32.3.6.2. Negotiation of Impact Costs; Challenges.

Following the issuance of a notice to proceed for Extra Work, the MTA and the SI shall negotiate in good faith, for a period not to exceed sixty (60) calendar days, the value of any allowable Impact Costs for Change Orders for Extra Work if an Intermediate Milestone Date or the Substantial Completion Date is actually and necessarily delayed by the performance of the Extra Work. If the MTA and the SI are not able to reach an agreement regarding such Impact Costs after the sixty (60) day period, then the MTA shall issue an Extra Work Directive for Impact Costs (if any) to which it believes that the SI is entitled. If the SI disagrees with the Extra Work Directive or the MTA's determination that the SI is not entitled to Impact Costs, then the SI shall initiate a

Dispute pursuant to Section 45 (Disputes; Dispute Resolution) within ten (10) calendar days of the issuance of the Extra Work Directive. If the SI fails to initiate a Dispute within the ten (10) day period, then the SI shall be deemed to have waived any right to challenge the MTA's determination.

32.3.7. No Extra Work Without a Change Order; Disputed Work.

Subject to Section 32.5 (Extra Work Directives), the SI shall not perform Extra Work unless (i) the Engineer directs the SI in writing to perform Extra Work, and expressly indicates in the written direction his or her intention that the ordered work is to be treated as Extra Work (each, an "**Extra Work Mandate**"), or (ii) the MTA and the SI have both executed an applicable Change Order. If the Engineer directs the SI to perform work without issuing an Extra Work Mandate, and the SI believes in good faith that such work constitutes Extra Work (the "**Disputed Work**"), the SI shall nevertheless perform the Disputed Work. Within fifteen (15) calendar days after commencing performance of the Disputed Work or incurring costs attributable to the Disputed Work, or such longer time as the Engineer agrees in writing, the SI shall submit to the Engineer a notice regarding its position (each, a "**Disputed Work Notice**"). The Disputed Work Notice shall include (a) an explanation of why the SI considers the directed work to constitute Disputed Work, and (b) any Impact Costs or extensions to the Master Program Schedule to which the SI believes that it is entitled due to the Disputed Work. The purpose of the Disputed Work Notice is to (1) provide the Engineer 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 MTA with an opportunity to respond to the Disputed Work Notice.

32.3.8. Required Approvals for Extra Work Compensation.

Any compensation for Extra Work pursuant to this Section 32.3 (Change Order Procedures for Extra Work; Basis for Payment) shall be subject to subsequent audit and approval, disapproval, modification, or revision by representatives of the MTA, the State, and applicable Governmental Authorities.

32.4. Change Order Procedures for Deleted Work; Credits.

Change Orders for Deleted Work shall be initiated and addressed pursuant to the same procedures set out in Section 32.3 (Change Order Procedures for Extra Work; Basis for Payment), subject to the following:

32.4.1. Equitable Adjustments.

Change Orders for Deleted Work shall result in equitable adjustments to the Total Contract Price that are reflected as a credit to the MTA in the amount of the Deleted Work, as further set out in this Section 32.4 (Change Order Procedures for Deleted Work; Credits). Change Orders for Deleted Work may also result in equitable adjustments to the Master Program Schedule to reflect the impact of the Deleted Work on the Master Program Schedule. In no event shall the SI be entitled to Impact Costs for Change Orders for Deleted Work.

32.4.2. Limitations of the SI Change Order Proposal.

The Change Order Proposal submitted in response to a Notice of Proposed Change Order for Deleted Work shall include: (i) the credit to which the SI believes that the MTA is entitled based on the Deleted Work (the "**Deleted Work Credit**"); (ii) adjustments to the Master Program Schedule resulting from the Deleted Work; and (iii) details regarding the specific steps that the SI took, and will take, to mitigate costs as required by Section 32.4.4 (SI Deleted Work Cost Mitigation Obligation). The SI shall provide detailed supporting information explaining its basis for the Deleted Work Credit and Master Program Schedule adjustments.

32.4.3. Deleted Work Credit; Impact on the Total Contract Price.

The Deleted Work Credit shall be based on the amounts included in the Price Schedule, and shall also include savings associated with adjustments to the Master Program Schedule. If the Engineer determines that the Deleted Work is not subject to the amounts included in the Price Schedule (for example, if the Deleted Work was previously added as Extra Work), then the Deleted Work Credit shall be based on the amount included in the Change Order for Extra Work, and shall also include any savings associated with adjustments to the Master Program Schedule.

32.4.4. SI Deleted Work Cost Mitigation Obligation.

The SI shall use its best efforts to mitigate all costs associated with Deleted Work, including returning pre-purchased material, cancelling orders for material not yet received, and reassigning labor to perform other Work.

32.4.5. Disputes Regarding Deleted Work Credits.

Any disputes relating to a Change Order Proposal for Deleted Work shall be handled pursuant to Section 32.5 (Extra Work Directives).

32.5. Extra Work Directives.

32.5.1. MTA Right to Direct Work.

The MTA may direct the SI in writing to perform Extra Work or otherwise cease (or not commence) performing Work designated as Deleted Work (each, an "**Extra Work Directive**") if (i) the MTA and the SI fail to agree to the terms of any Change Order Proposal (either for Extra Work or Deleted Work), or (ii) the MTA determines that exigent circumstances warrant issuing an Extra Work Directive. Any modifications to the Extra Work or Deleted Work 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 SI within a reasonable time of the Extra Work Directive. If a dispute over an Extra Work Directive relates to price or timing, then the Extra Work Directive shall also include, as applicable: (a) the amount that the MTA is willing to pay the SI for the Extra Work (including any Impact Costs); (b) the MTA's calculation of the amount of the Deleted Work Credit; and (c) the MTA's position regarding any modifications to the Master Program Schedule. Immediately upon the SI's receipt of an Extra Work Directive, the SI shall commence performing the Extra Work or cease (or not commence) performing Work designated as Deleted Work, all as set forth in the Extra Work Directive.

32.5.2. Disputes Regarding Extra Work Directives.

32.5.2.1. SI Dispute Submission.

If the SI disputes the terms of an Extra Work Directive, then it must submit to the Technical Dispute Resolution Officer a written statement declaring its dispute (each, an "**Extra Work Directive Dispute Notice**"), and such Extra Work Directive Dispute Notice must include the information set out in Section 32.5.2.2 (Content of the Extra Work Directive Dispute Notice). The SI must submit its Extra Work Directive Dispute Notice to the Technical Dispute Resolution Officer within ten (10) calendar days of the SI's receipt of an Extra Work Directive and, if the SI fails to submit an Extra Work Directive Dispute Notice within the ten (10) day period, then the SI shall be deemed to have waived any right to challenge the Extra Work Directive.

32.5.2.2. Content of the Extra Work Directive Dispute Notice.

The SI shall include in the Extra Work Directive Dispute Notice, at a minimum, the following information: (i) a detailed explanation of those aspects of the Extra Work Directive that the SI disputes, provided that such disputed aspects must only relate to specific matters raised by the SI in its Change Order Proposal that were not resolved prior to the issuance of the Extra Work Directive; (ii) an explanation of how the disputed Work was specified in the SI's Proposal; and (iii) if applicable, the manner in which the disputed item was specified in the SI's Proposal.

32.5.2.3. SI Payment During Extra Work Directive Disputes; Impact of Dispute Resolution Officer Decision.

During the resolution of any dispute involving Extra Work Directives, the SI shall be paid for the Extra Work being performed in accordance with the estimate set out in the MTA's Extra Work Directive. Once the Dispute Resolution Officer issues a decision regarding the applicable dispute, the MTA and the SI (as applicable) shall promptly reconcile any amounts due and owing between each other and the MTA shall update the Extra Work Directive to reflect the Dispute Resolution Officer's decision (including any changes to the Master Program Schedule). Any payments made to the SI pursuant to this Section 32.5.2.3 (SI Payment During Extra Work Directive Disputes; Impact of Dispute Resolution Officer Decision) based on the Dispute Resolution Officer's decision shall constitute the full satisfaction of the SI's claim for adjustments to the Total Contract Price or the Master Program Schedule.

32.5.2.4. Performance During Dispute.

During the resolution of a dispute regarding Extra Work Directives, and unless otherwise directed by the Engineer's written instructions, the SI shall diligently and in good faith continue to perform the Extra Work or cease (or not commence) performing Work designated as Deleted Work, all as set forth in the Extra Work Directive. By way of clarification, and not limitation, the SI's submission of an Extra Work Directive Dispute Notice shall in no way affect the SI's obligation to perform Extra Work during the resolution of an initiated dispute.

32.5.3. Required Approvals for Directed Work.

Any compensation for Extra Work or Deleted Work Credits resulting from Extra Work Directives shall be subject to subsequent audit and approval, disapproval, modification, or revision by representatives of the MTA, the State, and applicable Governmental Authorities.

32.6. General Requirements for All Change Orders.

The following provisions apply to all Change Orders for Extra Work and Deleted Work:

32.6.1. Change Order Cost Submissions; FAR Compliance.

The SI agrees that any costs included in a Change Order Proposal to support its proposed price must be allowable under the cost principles of Federal Acquisition Regulation (FAR), Part 31.2.

32.6.2. Change Order Negotiation; Approval and Execution.

Upon receipt of a Change Order Proposal, the MTA may either (i) accept the Change Order Proposal, or (ii) reject the Change Order Proposal and initiate negotiations with the SI regarding revisions to the Change Order Proposal, including the amount of time required for the SI to perform certain Work or the actual cost of materials. If the MTA accepts the Change Order Proposal, then it shall notify the SI and both the MTA and the SI shall execute a Change Order memorializing the terms of the Change Order Proposal. Subject to Section

32.5.3 (Required Approvals for Directed Work), if the MTA rejects a Change Order Proposal, then the MTA and the SI shall negotiate in good faith any revisions that the MTA determines are necessary to the Change Order Proposal (including adjustments to costs and the Master Program Schedule) and the SI shall subsequently promptly revise the Change Order Proposal and resubmit it to the MTA for additional review(s). Notwithstanding anything to the contrary, the Engineer 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 MTA's authorized officer shall be the MTA's signatory for any Change Orders.

32.6.3. Change Order; SI Release.

The SI's execution of a Change Order constitutes the SI's release of the MTA Group from all claims and liabilities that the SI has or may have relating to, or in connection with, the Extra Work or Deleted Work, including additional claims (besides those included in the executed Change Order and subject to the terms above) for Impact Costs and modifications to the Master Program Schedule, and further including any claims for any prior act, neglect, fault, or default of the MTA Group relating to the Extra Work or Deleted Work.

32.7. Clarifications to the Technical Specifications.

The MTA shall have the right to clarify the Technical Specifications (and related contract drawings) as reasonably necessary and to require the SI to act in accordance with such clarification; provided that such clarification does not materially alter the relevant Technical Specifications (each, a "**Permitted Clarification**"). The SI shall not be entitled to additional compensation or other consideration in connection with a Permitted Clarification. In addition, the MTA shall have the right to add explanatory specifications without the same being deemed a change to the Contract Documents.

33. NFPS Changes Following Revenue Service Acceptance Testing.

The MTA shall have the continual right, using the NFPS Interfaces, to replace existing NFPS components with compatible New MTA-Provided Systems, provided that such replacements constitute Qualified MTA-Substituted Products in accordance with Section 3.2 (MTA Substitution Rights and Rights to Add).

34. Deliverables.

34.1. Approval Framework.

34.1.1. MTA Review Process.

Subject to Section 2.4.4 (MTA Right to Delegate Authority) and Section 34.1.2 (Contemporaneous SI Submission Requirements), where this Contract provides the MTA (or any other MTA Group entity) with review and approval rights with respect to a Deliverable, the parties shall proceed as follows: (i) the SI shall deliver to the MTA the Deliverable identified for the review and approval process at issue; (ii) the MTA shall review the Deliverable, retaining the right to request further information; (iii) the MTA shall distribute the Deliverable to other MTA Group entities for review as the MTA determines appropriate; (iv) the MTA shall coordinate, collect, and compile its feedback with feedback provided by the other MTA Group entities (if any); (v) the MTA shall notify the SI of its conclusions concerning the Deliverable, and indicate whether it has accepted or rejected the Deliverable at issue; (vi) if the MTA accepts the Deliverable, then the SI shall proceed with the Deliverable in the manner specified in this Contract; and (vii) if the MTA rejects the Deliverable, and the SI disagrees with the rejection, the parties will meet and confer, and the SI shall proceed as directed by the MTA. By way of clarification, and not limitation, the SI expressly agrees that, unless the authority has been expressly delegated to another MTA Group entity pursuant to Section 2.4.4 (MTA Right to Delegate Authority), only the MTA shall have the right to approve, accept, or reject any Deliverable required herein, and the

approval, acceptance, or rejection of any Deliverable by any MTA Group entity other than the MTA shall have no force or effect, and shall otherwise be invalid.

34.1.2. Contemporaneous SI Submission Requirements.

Notwithstanding the MTA's delegation rights set out in Section 2.4.4 (MTA Right to Delegate Authority), the SI shall contemporaneously deliver to the Engineer (and her designees) copies of (i) all Submissions that the SI delivers to other MTA Group entities, and (ii) all correspondence that the SI delivers to the MTA Group. In the event that any provision in these Contract Documents requires the SI to deliver a Submission or correspondence to a designee other than the Engineer, the SI shall also contemporaneously deliver a copy of the applicable Submission or correspondence to the Engineer.

34.1.3. Serialization of All Submissions and MTA Group Correspondence.

In order to better ensure the tracking of Submissions and the SI's correspondence with the MTA Group, the SI shall uniquely serialize each Submission and each piece of correspondence that it delivers to the MTA Group, and the SI shall otherwise track and ensure delivery and confirmation of each Submission and piece of correspondence.

34.2. CDRL List.

The SI shall provide all Deliverables under this Contract in accordance with the CDRL Lists incorporated in the Technical Specifications and the Divisions. A compiled listing of the Technical Specifications CDRLs is contained in Appendix M.

34.3. Delivery of NFPS Software.

The SI shall deliver the NFPS Software in accordance with this Contract. The NFPS Software shall implement an Open System to the greatest extent possible, and shall comply with all functional, performance, and other requirements defined in this Contract. The SI shall provide the MTA with the latest versions of all NFPS Software in Object Code form and, where available, in Source Code form as well. The SI shall provide to the MTA all updated versions of Software configured and installed (where requisite approval has been obtained under Section 19 (Technical and Software Support Services)) on the appropriate hardware, and implemented, and tested at no additional cost to the MTA Group. Documentation including comprehensive Software Release Notes shall be provided with each Software modification for review and approval by the MTA.

34.3.1. Delivery of Interfaces.

With each delivery of the NFPS Software, the SI shall deliver all applicable Interfaces and include with such Interfaces all applicable Source Code, software development kits ("**SDKs**"), and Documentation.

34.3.2. Delivery of Licenses.

With each delivery of the NFPS Software, the SI shall deliver copies of all license and maintenance contracts applicable to such Software. Any license, subscription, support or other IT-related agreements, though maintained by the SI, shall be in the SI's name and an SI official shall be the primary point of contact on all such agreements. Upon Termination (or on the request of the MTA) the SI shall promptly provide copies of license, subscription, support and other IT-related agreements with respect to such NFPS Software, and shall transfer or otherwise assign such agreements to the MTA, all at the SI's sole cost. If the SI is unable to transfer or otherwise assign such agreements to the MTA, then the SI shall, at its sole cost, secure for the MTA the identical rights that the SI has in those agreements that the SI is unable to transfer or otherwise assign;

provided, that such rights that the SI secures shall be no less than those rights that the SI is obligated to provide to the MTA Group as required herein. By way of clarifying example, if the SI is unable to assign or transfer an existing support agreement to the MTA, then the SI shall, at its sole cost, obtain the identical support services for the MTA under the same terms and conditions of such support agreement.

34.4. Delivery of NFPS Hardware.

Hardware shall be purchased at the latest date identified in the Master Program Schedule to ensure both the timely completion of the Contract and that the NFPS is implemented with the latest, proven technology that is in production at the time of Final Design Review. With each NFPS Hardware delivery, the SI shall update and provide a complete asset list including location and current status (such as in service, under repair, retired) of all NFPS components delivered up to the date of the then-current NFPS Hardware delivery.

34.5. Delivery of NFPS Documentation.

The SI shall deliver the NFPS Documentation on the schedule and with the Deliverables set out in this Contract. Such NFPS Documentation shall include: (i) Design Documentation; (ii) Software Documentation; (iii) QA Documentation; (iv) Training Documentation; (v) Test Documentation; and (vi) API Documentation. If no delivery date or commitment is set out in this Contract, the SI shall deliver the NFPS Documentation in accordance with Good Industry Practices.

34.6. Deliveries to Work Sites.

The SI shall (i) schedule all deliveries to Work Sites at least twenty-four (24) hours in advance, and (ii) obtain the Engineer's prior approval before scheduling any deliveries.

34.7. Availability of NFPS Components.

34.7.1. Period of NFPS Hardware Availability.

As further contemplated in the Overview and Proposal Procedures, the SI shall ensure that all NFPS Hardware components (including Spare Parts and Product Units and complete NFPS Hardware units such as CVMs) that do not constitute COTS Components are available for a period of twenty (20) years following the Engineer's determination that Final Completion has been achieved as further set out in Section 5.4.8 (Determination of Final Completion). The SI shall otherwise ensure that all NFPS Hardware (including NFPS Hardware components that do not constitute COTS Components, Spare Parts and Product Units, and complete NFPS Hardware units such as CVMs) are available for twenty (20) years following NTP. This Section 34.7 (Availability of NFPS Components) sets out certain SI obligations regarding all NFPS component (including NFPS Hardware and NFPS Software) availability.

34.7.2. Manufacturer Discontinuation Tracking and Notification.

Due to the rapid advancement of various industries and other events, the MTA recognizes that various NFPS components (NFPS Hardware, Software, or both) may be discontinued by their manufacturer or vendor at any time. The SI shall, for all NFPS components, obtain a projected schedule of future planned releases, upgrades, and a projected end-of-life statement from the manufacturer or vendor. Major Software version upgrades shall be tracked in the Master Program Schedule. Throughout the Term, and as further set out herein, including in Section 19 (Technical and Software Support Services), the SI shall: (i) promptly notify the Engineer in writing if any manufacturer or vendor announces, at any time during the Term, that an NFPS component will be discontinued; and (ii) if notice of discontinuance is made during the Term and such discontinuance impacts the SI's ability to comply with any of its obligations under the Contract Documents (e.g., the provision of

Second-Call Maintenance to MNR and LIRR), then the SI shall submit to the MTA for review a proposed substitute that meets the functional and performance requirements set out in the Contract Documents. The submission shall be made under the "Or-Equal status for specified Material" Division 1B.1.38 for the approval of the Engineer.

34.7.3. SI Responsibility for Replacement NFPS Hardware.

The SI's obligation to ensure NFPS Hardware component availability, including the twenty (20) year availability requirement following NTP and the twenty (20) year period following the Engineer's determination that Final Completion has been achieved (both as further set out in Section 34.7.1 (Period of NFPS Hardware Availability)), is intended, in part, to provide the MTA with certainty regarding NFPS Hardware component availability and support for the MTA's future expansion. The MTA and the SI agree that (i) certain events, including manufacturer discontinuations (as contemplated pursuant to Section 34.7.2 (Manufacturer Discontinuation Tracking and Notification), part and material shortages, and other events may impact the SI's ability to comply with its obligations herein, including in Section 34.7.1 (Period of NFPS Hardware Availability) (each, an "**Availability Event**"), and (ii) the allocation of risk and liability for an Availability Event shall be determined as further set out herein, including in this Section 34.7 (Availability of NFPS Components).

34.7.3.1. SI Responsibility for Availability Events.

Except for those costs expressly identified in Section 34.7.3.2 (Limited MTA Responsibility for Availability Events Relating to NYCT), the SI agrees that (i) it shall bear the sole risk and liability for any Availability Event, and (ii) if the SI is unable to comply with its obligations set out herein with respect to NFPS Hardware availability, including those obligations in Section 21.1.4 (Additional NFPS Equipment Quantities, Integration Services, and Media) and Section 34.7.1 (Period of NFPS Hardware Availability), then the SI shall at its sole cost and expense (including all non-reoccurring engineering costs): (a) submit to the MTA for review and approval a proposed substitute component that meets all of the requirements associated with the NFPS Hardware component being substituted; (b) procure any such MTA-approved substitute NFPS Hardware component (each, an "**MTA-Approved Substitute NFPS Hardware Component**") and, to the extent that the Contract Documents expressly require the MTA to pay the SI for the applicable NFPS Hardware component (e.g., the MTA's purchase of additional NFPS Equipment pursuant to Section 21.1.4 (Additional NFPS Equipment Quantities, Integration Services, and Media)), provide such MTA-Approved Substitute NFPS Hardware Component to the MTA for the same or lower price as the NFPS Hardware component being substituted; and (c) provide all integration, installation, retrofitting, and other services necessary to ensure that the MTA-Approved Substitute NFPS Hardware Component (and all other impacted NFPS Hardware components) is at least the equivalent to the NFPS Hardware component being substituted in terms of function, performance, longevity, and compatibility with other NFPS Hardware components.

34.7.3.2. Limited MTA Responsibility for Availability Events Relating to NYCT.

The MTA agrees that it shall solely be responsible for the cost of retrofitting and installing all MTA-Approved Substitute NFPS Hardware Components in use by NYCT following the Engineer's issuance of the Final Completion Certificate. By way of clarification, and not limitation, the SI acknowledges that costs attributed to the SI pursuant to Section 34.7.3.1 (SI Responsibility for Availability Events) include, among others, the cost of retrofitting and installing all MTA-Approved Substitute NFPS Hardware Components in use by all entities other than NYCT (including MNR and LIRR) following the Engineer's issuance of the Final Completion Certificate.

34.7.3.3. Clarifying Example Regarding Costs for Availability Events.

By way of clarifying example, if the SI is unable to provide an SI-developed CVM pin pad prior to the Engineer's issuance of the Final Completion Certificate because a Third Party manufacturer of one of the sub-components of such pin pad discontinues the applicable component, then the SI shall, at its sole cost and expense, either substitute the discontinued sub-component with a fully equivalent substitute, or develop another fully compliant pin pad and subsequently retrofit all CVMs to use the new pin pad. If the SI is unable to provide an SI-developed CVM pin pad following the Engineer's issuance of the Final Completion Certificate because a Third Party manufacturer of one of the sub-components of such pin pad discontinues the applicable component, then the SI shall, at its sole cost and expense, either substitute the discontinued sub-component with a fully equivalent substitute, or develop another fully compliant pin pad, and the MTA shall be responsible for all costs associated with subsequently retrofitting all CVMs to use the new pin pad.

34.8. Risk of Loss to the Work.

34.8.1. Transfer of Risk for NFPS SI-Sourced Equipment.

34.8.1.1. Initiation of NFPS SI-Sourced Equipment Installation Review.

The process for determining whether particular NFPS SI-Sourced Equipment has been successfully installed and operates in a manner fully compliant with the Contract Documents may be initiated by either the MTA or the SI (each, an "**Equipment Review**"). The SI may initiate an Equipment Review by notifying the Engineer in writing when the SI believes in good faith that (i) it has successfully installed, configured, inspected, and tested an applicable portion of NFPS SI-Sourced Equipment pursuant to Technical Specifications Section 27 (Factory Testing and Inspection) and Technical Specifications Section 29 (Deployment and Installation Services), all in compliance with the applicable NFPS SI-Sourced Equipment Testing Procedures and other requirements set out herein, and (ii) such portion of NFPS SI-Sourced Equipment is in a form ready for revenue operation (each, an "**Equipment Review Notice**"). The Engineer may initiate an Equipment Review Notice at any time by providing written notice to the SI. The SI shall provide to the MTA all requested Documentation demonstrating the SI's basis for providing an Equipment Review Notice including, for example, Documentation demonstrating that the applicable NFPS SI-Sourced Equipment has successfully completed all testing requirements and the results of the same (the "**Equipment Review Supporting Documentation**").

34.8.1.2. NFPS SI-Sourced Equipment Testing Procedures.

During design review and in order to facilitate the SI-Sourced Equipment review process set out herein, the SI shall prepare all tests necessary to prove the design and acceptability of the applicable NFPS SI-Sourced Equipment as further set out in Technical Specifications Section 27 (Factory Testing and Inspection), and the SI shall submit the same to the MTA for review and approval (the "**NFPS SI-Sourced Equipment Testing Procedures**"). Unless the MTA determines after its approval of the NFPS SI-Sourced Equipment Testing Procedures that revisions to the same are necessary due to the testing of NFPS SI-Sourced Equipment or subsequent use of NFPS SI-Sourced Equipment after completion of such testing, the MTA agrees that it shall not materially revise the NFPS SI-Sourced Equipment Testing Procedures. The SI shall retest, at its sole cost and expense, any previously-accepted NFPS SI-Sourced Equipment using updated NFPS SI-Sourced Equipment Testing Procedures if (i) the original NFPS SI-Sourced Equipment Testing Procedures have been revised pursuant to this Section 34.8.1.2 (NFPS SI-Sourced Equipment Testing Procedures), and (ii) the applicable NFPS SI-Sourced Equipment was accepted by the MTA based on a previous iteration of the NFPS SI-Sourced Equipment Testing Procedures.

34.8.1.3. NFPS SI-Sourced Equipment Review.

The Engineer shall, within a reasonable period, which shall commence on the latest of (a) her or his receipt of an Equipment Review Notice, (b) her or his determination that an Equipment Review is appropriate, and (c)

her or his receipt of requested Equipment Review Supporting Documentation, review the Work to determine whether: (i) the SI has successfully completed its installation, configuration, inspection and testing requirements set out in Technical Specifications Section 29 (Deployment and Installation Services) with respect to the applicable NFPS SI-Sourced Equipment; (ii) the applicable NFPS SI-Sourced Equipment is completed, is fit for its intended purposes and otherwise meets the criteria set out in the Contract Documents; (iii) all applicable final operation manuals have been approved by the Engineer; (iv) all other related Deliverables necessary for revenue operation of the applicable NFPS SI-Sourced Equipment have been delivered and approved by the Engineer; and (v) the SI has successfully completed all applicable training of MTA Group personnel and submitted applicable Training Documentation to the MTA.

34.8.1.4. Outcome of Equipment Review; No Waiver.

Upon completion of the review set out in Section 34.8.1.3 (NFPS SI-Sourced Equipment Review), the Engineer shall issue to the SI either (i) written notice that the MTA has determined that the applicable NFPS SI-Sourced Equipment has been successfully installed and operates in a manner fully compliant with the Contract Documents (each, an "**Equipment Acceptance Notice**"), or (ii) a rejection notice that includes (a) an explanation of why the applicable NFPS SI-Sourced Equipment has not been successfully installed or otherwise fails to operate in a manner fully compliant with the Contract Documents, and (b) a list of open issues that must be resolved in order to obtain an Equipment Acceptance Notice. Within fourteen (14) days of its receipt of a rejection notice, the SI shall promptly resolve all identified open issues and then reinitiate the process set out in this Section 34.8.1 (Transfer of Risk for NFPS SI-Sourced Equipment) by submitting a new Equipment Review Notice to the Engineer.

34.8.1.5. Limited Effect of an Equipment Acceptance Notice.

The MTA and the SI acknowledge that (i) the risk of loss or damage for the applicable NFPS SI-Sourced Equipment shall transfer from the SI to the MTA upon the SI's receipt of an Equipment Acceptance Notice, and (ii) the SI's Warranty obligations for the applicable NFPS SI-Sourced Equipment may commence upon the SI's receipt of an Equipment Acceptance Notice as further set out in Section 15.1 (General Warranty Period). Notwithstanding anything to the contrary, in no event shall the Engineer's issuance of an Equipment Acceptance Notice constitute a waiver or otherwise relieve the SI from fulfilling all of its obligations under the Contract Documents, including the completion of all Work. By way of clarifying example, the Engineer's issuance of an Equipment Acceptance Notice shall not impact or otherwise modify the Beneficial Use and Substantial Completion review processes set out in Section 5.3 (Beneficial Use and Substantial Completion Determinations), including the MTA's review and approval or rejection of all NFPS SI-Sourced Equipment that was subject to an Equipment Acceptance Notice.

34.8.2. Transfer of Risk on Substantial Completion.

Except as set out in Section 34.8.4 (Transfer of Risk on Beneficial Use) and Section 34.8.1 (Transfer of Risk for NFPS SI-Sourced Equipment), before issuing the Certificate of Substantial Completion, the SI assumes and holds risk of loss or damage to the Work to the fullest extent permitted by Applicable Law, irrespective of whether such loss or damage arises from acts or omissions (whether negligent or not) of the SI, the MTA Group or Third Parties, or from any cause whatsoever, excepting loss or damage arising solely from negligent or willful acts of the MTA Group.

34.8.3. Transfer of Risk on Final Completion.

Before issuance of the Final Completion Certificate, the SI assumes and holds risk of loss or damage to the Remaining Work (if any) to the fullest extent permitted by Applicable Law, irrespective of whether such loss or damage arises from acts or omissions (whether negligent or not) of the SI, the MTA Group or Third Parties, or

from any cause whatsoever, excepting loss or damage arising solely from negligent or willful acts of the MTA Group; provided, however, that if the failure to complete the Remaining Work causes damage to the Work or other parts of the MTA Group property, the SI shall be responsible for all resulting loss or damage.

34.8.4. Transfer of Risk on Beneficial Use.

Except as set out in Section 34.8.1 (Transfer of Risk for NFPS SI-Sourced Equipment), if a part of the Work is subject to the MTA's determination of Beneficial Use, then risk of loss for the specified part of the Work shall transfer to the MTA upon issuance of the Beneficial Use Certificate, except that if the absence of any work awaiting completion subsequent to issuance of the Beneficial Use Certificate causes damage to the Work or the MTA Group property, the SI shall be responsible for all resulting loss or damage.

34.8.5. SI's Risk of Loss Obligations.

The SI's obligation under this Section 34.8 (Risk of Loss to the Work) with respect to Work for which the SI holds the risk of loss or damage to the Work is to promptly repair, replace and make good such loss or damage so as to restore the Work to the same character and condition as before the loss or damage in accordance with the Contract Documents, all without cost to the MTA Group.

34.8.6. Effect of MTA Holding Risk.

34.8.6.1. Limited MTA Responsibility Upon Risk of Loss Transfer.

When risk of loss to the Work (or a portion thereof) is transferred to the MTA, the MTA shall thereafter assume responsibility for the care, protection and ordinary upkeep (excluding the SI's Warranty obligations and any other applicable obligations set out herein) for said Work, except to the extent that the SI remains responsible for Remaining Work or is otherwise responsible for loss or damage as provided in this Section 34.8 (Risk of Loss to the Work). By way of clarification, and not limitation, the SI acknowledges that the transfer of the risk of loss from the SI to the MTA shall not relieve the SI of any of its Warranty or other obligations with respect to any such Work for which the risk of loss has transferred including, for example, the SI's provision of Second- and Third-Call Maintenance and the SI's obligations set out in Section 18 (Systemic Defects).

34.8.6.2. Transfer of Title.

The MTA and the SI agree that the transfer of title for applicable portions of the Work shall transfer from the SI to the MTA upon the earlier of (i) the transfer of the risk of loss for the applicable Work pursuant to this Section 34.8 (Risk of Loss to the Work), and (ii) the MTA's request. The SI shall, at its sole cost and expense, execute and deliver and/or cause to be executed and delivered to the MTA all documents requested by the MTA to perfect or better perfect and/or memorialize the transfer of title thereof to the MTA free and clear of any liens and encumbrances. The SI covenants and agrees that, upon any such transfer of title, the applicable portions of the Work shall not be subject to any lien or encumbrance except liens and encumbrances created by the MTA. On the tenth (10th) day of each calendar quarter (or as more frequently as the MTA may request), commencing on the first calendar quarter following the Notice to Proceed, the SI shall deliver to the MTA written evidence of compliance with the foregoing covenant, in the form and substance reasonably satisfactory to the MTA.

34.8.7. Risk of Loss on MTA Special Equipment.

Risk of loss or damage to work trains, cranes or special equipment supplied and operated by the MTA shall be on the MTA, but the SI shall be responsible for loss or damage thereto arising out of the SI's failure to fulfill a contractual obligation hereunder or the negligence or willful act of the SI, its Subcontractors and suppliers.

34.9. Required Changes.

The Engineer shall have the right, through the end of the Warranty Period, to require the SI to make any necessary changes to the NFPS (including changes to hardware, Software or Documentation) at no additional cost to the MTA Group to achieve conformance with the Contract Documents. The MTA's approval of any submittal, design review or other Documentation does not relieve the SI from conformance with the Contract Documents.

34.10. Additional Requirements Regarding Certain NFPS Components.

34.10.1. MTA Procurement of NFPS Components; No Interference.

Consistent with the Open Architecture requirements for the NFPS, the SI acknowledges that the MTA shall have the right, in its sole and absolute discretion, to obtain any NFPS components from the SI or from Third Parties, including: (i) spare parts for NFPS SI-Sourced Equipment; (ii) the Lowest-Level Replaceable Components for each type of NFPS Hardware, including Consumables; and (iii) complete units of NFPS SI-Sourced Equipment (including Bus Validators, Subway Validators and Wayside Validator Machines) (collectively, the "**Spare Parts and Product Units**"). The SI agrees that it shall sell to the MTA Spare Parts and Product Units throughout the Term, and shall otherwise not interfere with the MTA's procurement of Spare Parts and Product Units from such Third Parties, and that the SI shall provide all reasonably requested assistance to the MTA in connection with the MTA's procurement of Spare Parts and Product Units, which shall include at least: (a) removing any barriers, legal or otherwise, under the SI's control that may bar the MTA from procuring Spare Parts and Product Units from Third Parties; (b) disclosing the identity of such Third Parties and providing contact information for the same; (c) disclosing the identity of employees of said Third Parties who are responsible for sourcing Spare Parts and Product Units; and (d) disclosing the SI's costs for any Spare Parts and Product Units.

34.10.2. Price Lists and Certainty.

The SI shall provide to the MTA, and update to keep current, itemized price lists for Spare Parts and Product Units to ensure that the MTA has price certainty should it decide to purchase additional Spare Parts and Product Units from the SI throughout the Term. Pricing for Spare Parts and Product Units shall be subject in all respects to the SI's obligations under Section 28.9 (Most Favored Customer). The SI shall not increase its pricing to the MTA for Spare Parts and Product Units for so long as the MTA Group is using any applicable NFPS SI-Sourced Equipment (including a single piece of NFPS SI-Sourced Equipment) in connection with its operations, including any such use following the termination or expiration of this Contract.

34.10.3. Continuous Improvement Processes for Spare Parts and Product Units.

In addition to meeting its obligations under Section 34.10.2 (Price Lists and Certainty), the SI shall employ continuous improvement processes with respect to Spare Parts and Product Units. Such continuous improvement processes shall comply with Good Industry Practices, and shall be designed to continuously improve: (i) supply chain management; (ii) raw materials and component pricing; (iii) procurement practices; (iv) manufacturing practices; and (v) other relevant practices, all in order to reduce the cost of Spare Parts and Product Units and to improve the quality and availability of such Spare Parts and Product Units (collectively, the "**Continuous Improvement Processes**"). Throughout the Term and promptly upon demand, the MTA shall have the right to review the SI's then-current Continuous Improvement Processes, and the SI's compliance with the same from the Award Date to the applicable MTA review. The SI shall provide to the MTA the benefits of any cost reductions that the SI obtains through its Continuous Improvement Processes, by proportionate reductions in the prices of Spare Parts and Product Units to the MTA. The SI shall similarly provide to the MTA availability improvements generated by the Continuous Improvement Processes.

34.11. Order Process for NFPS Hardware, Spare Parts and Product Units, and NFPS Media.

This Section 34.11 (Order Process for NFPS Hardware, Spare Parts and Product Units, and NFPS Media) shall apply when the MTA (on behalf of itself or on behalf of other MTA Group entities or Linked NFPS Entities) exercises its right to purchase additional hardware and material (including NFPS Hardware, Option-Specific Integration Services for NFPS Equipment, NFPS Media, and Spare Parts and Product Units) (collectively, the "**Material**") as set out herein, including pursuant to Section 21 (Optional Services) and Section 34.10 (Additional Requirements Regarding Certain NFPS Components).

34.11.1. MTA Notification of Intent to Purchase Material.

The MTA shall exercise its right to purchase Material by providing a written notice to the SI specifying the type, quantity, and delivery timeframe for the applicable Material (each, an "**MTA Material Purchase Notice**").

34.11.2. SI Response to MTA Material Purchase Notice.

Within fourteen (14) days of the SI's receipt of an MTA Material Purchase Notice, the SI shall provide the MTA with a detailed written estimate (each, an "**SI Material Sale Offer**"), which shall constitute an offer, and that includes: (i) the type and quantity of Material being purchased; (ii) an itemized price of each unit of Material based on the Price Schedule; (iii) the calculation of any pricing adjustments to the pricing included in the Price Schedule made pursuant to these Contract Documents, including pursuant to Section 28.9 (Most Favored Customer), Section 28.12 (Limited Adjustments to Certain Base Line Item Pricing; Indexing), and Section 34.10 (Additional Requirements Regarding Certain NFPS Components), with all supporting documentation for such adjustments; (iv) a delivery timeline for each unit of Material; (v) a detailed description of any applicable Warranty (and associated Warranty Periods) for each unit of Material; (vi) the applicable testing criteria of each unit of Material as required pursuant to Section 8 (Inspection, Testing, and Acceptance); and (vii) any other information requested by the MTA. Each SI Material Sale Offer shall remain a firm fixed offer for a period of one-hundred and eighty (180) days after the SI's submission of the same to the MTA.

34.11.3. Negotiation of SI Material Sale Offer.

Upon receipt of an SI Material Sale Offer, the MTA may either (i) accept the SI Material Sale Offer, or (ii) reject the SI Material Sale Offer and initiate negotiations with the SI regarding revisions to the SI Material Sale Offer. If the MTA rejects an SI Material Sale Offer because the included pricing for the Material is not consistent with the calculation requirements set out in these Contract Documents, then the MTA shall have the right to revise such pricing to reflect the applicable calculations and such revised calculations shall be binding on the SI. If the MTA's rejection of an SI Material Sale Offer is due to any other reason, then the MTA and the SI shall meet in good faith to negotiate revisions to the SI Material Sale Offer, and the SI shall subsequently revise the SI Material Sale Offer and resubmit the same to the MTA for further review.

34.11.4. MTA Approval of SI Material Sale Offer.

If the MTA approves an SI Material Sale Offer, then such approval shall be memorialized by the MTA and the SI in the form of a Change Order. The SI acknowledges that (i) such memorialization is solely for the MTA's administrative purposes, and (ii) none of the rights, remedies, or obligations associated with Change Orders, including those set out in Section 32 (Changes in Work; Change Orders), shall apply to Change Orders that memorialize the MTA's approval of an SI Material Sale Offer.

34.11.5. Acceptance Criteria for Purchased Material.

The applicable inspection, testing, and acceptance criteria set out in Section 8 (Inspection, Testing, and Acceptance) shall apply to all Material purchased in accordance with this Section 34.11 (Order Process for NFPS Hardware, Spare Parts and Product Units, and NFPS Media).

35. Intellectual Property.

35.1. Ownership.

35.1.1. MTA Ownership of NFPS Data.

As between the MTA Group and the SI, and subject to the terms and conditions of these Contract Documents (including Section 22.5.3 (SI Obligation to Secure NFPS Data Rights)), the MTA owns all right, title, and interest in and to the NFPS Data (and all associated Intellectual Property Rights) including, for purposes of clarification, all logs, reports, metrics, records and other data.

35.1.2. SI Ownership of SI Software.

As between the MTA Group and the SI, and subject to the terms and conditions of these Contract Documents, the SI owns all right, title, and interest in and to the SI Software (and all associated Intellectual Property Rights).

35.1.3. SI Ownership of Certain Embedded Intellectual Property Rights.

As between the MTA Group and the SI, and subject to the terms and conditions of these Contract Documents (including Section 34.8.6.2 (Transfer of Title)), the SI owns all right, title, and interest in and to all Intellectual Property Rights embedded in SI-Developed Hardware.

35.2. Grant of Rights to the MTA Group.

35.2.1. SI Software.

The SI, under its Intellectual Property Rights, hereby grants to the MTA Group a worldwide, perpetual, irrevocable, non-exclusive, fully paid-up, royalty-free, sublicensable and transferrable license to install, copy, modify, display, distribute, perform, access, execute and otherwise use the SI Software solely for all purposes specified in or reasonably contemplated by the Contract Documents, including for the MTA Group's operations.

35.2.2. Third Party COTS Software.

The SI shall secure for the MTA Group all necessary licenses and rights in Third Party COTS Software to allow the MTA Group (and any other Third Party on behalf of the MTA Group), throughout the Term, to install, execute, copy, display, distribute, perform, access and otherwise use all Third Party COTS Software for all purposes specified in or contemplated by the Contract Documents, including for the MTA Group's operations. The SI shall: (i) identify all Third Party COTS Software components of the NFPS; (ii) obtain from each vendor of Third Party COTS Software all licenses and related terms favorable to the MTA Group in accordance with Good Industry Practices and that permit the full operation of the NFPS as contemplated by the Contract Documents; (iii) provide the MTA copies of all licenses for such Third Party COTS Software components upon request; and (iv) ensure that the MTA Group's rights in everything but Third Party COTS Software (including its rights in SI Software, Documentation and other Deliverables) are not limited by any licensing restrictions applicable to the Third Party COTS Software. The MTA acknowledges that the SI may not be able to secure agreements for Third Party COTS Software explicitly stating that the license includes the right to "install, execute, copy, display,

distribute, perform, access and otherwise use." The SI shall not be in breach of its obligations under this Section 35.2.2 (Third Party COTS Software) if the explicit phrase "install, execute, copy, display, distribute, perform, access and otherwise use" is not included in the associated Third Party COTS Software agreement; provided, however, that the SI (a) secures for the MTA Group all rights to use the Third Party COTS Software as contemplated herein, including those rights set out in Section 35.2.6 (Clarifying Examples Relating to the Grant of Rights), and (b) the rights that the SI secures for the MTA Group in Third Party COTS Software are functionally identical to the right to "install, execute, copy, display, distribute, perform, access and otherwise use."

35.2.3. Third Party Software Interfaces.

The SI shall secure for the MTA Group all necessary licenses and rights in Third Party Software Interfaces to allow the MTA Group (and any other Third Party on behalf of the MTA Group), throughout the Term, to install, execute, copy, modify, display, distribute, perform, access and otherwise use the Third Party Software Interfaces for all purposes specified in or contemplated by the Contract Documents, including for the MTA Group's operations and to further support the Open System design. The SI shall: (i) identify all Third Party Software Interfaces used in the NFPS; (ii) obtain from each vendor of Third Party Software Interfaces all licenses and related terms favorable to the MTA Group in accordance with Good Industry Practices and that permit the full operation of the NFPS as contemplated by the Contract Documents; (iii) provide the MTA copies of all licenses for such Third Party Software Interface components upon request; and (iv) ensure that the MTA Group's rights in everything but Third Party Software Interfaces (including its rights in SI Software, Documentation and other Deliverables) are not limited by any licensing restrictions applicable to the Third Party Software Interfaces. The MTA acknowledges that the SI may not be able to secure agreements for Third Party Software Interfaces explicitly stating that the license includes the right to "install, execute, copy, modify, display, distribute, perform, access and otherwise use." The SI shall not be in breach of its obligations under this Section 35.2.3 (Third Party Software Interfaces) if the explicit phrase "install, execute, copy, modify, display, distribute, perform, access and otherwise use" is not included in the associated Third Party Software Interfaces agreement; provided, however, that the SI (a) secures for the MTA Group all rights to use the Third Party Software Interfaces as contemplated herein, including those rights set out in Section 35.2.6 (Clarifying Examples Relating to the Grant of Rights), and (b) the rights that the SI secures for the MTA Group in Third Party Software Interfaces are functionally identical to the right to "install, execute, copy, modify, display, distribute, perform, access and otherwise use."

35.2.4. NFPS Documentation.

The SI, under its Intellectual Property Rights, hereby grants to the MTA Group a worldwide, perpetual, irrevocable, non-exclusive, fully paid-up, royalty-free, sublicensable and transferrable license to install, copy, modify, display, distribute, perform, access, execute and otherwise use the Documentation for all purposes specified in or contemplated by the Contract Documents, including for the MTA Group's operations.

35.2.5. Deliverables.

With respect to all Deliverables (including NFPS SI-Sourced Equipment) for which there is not an express grant of rights included in this Section 35.2 (Grant of Rights to the MTA Group), the SI, under its Intellectual Property Rights, hereby grants to the MTA Group a worldwide, perpetual, irrevocable, non-exclusive, fully paid-up, royalty-free, sublicensable, transferrable license to install, execute, copy, modify, display, distribute, perform, access and otherwise use the other Deliverables for all purposes specified in or contemplated by the Contract Documents, including for the MTA Group's operations. To the extent that the SI does not own the underlying Intellectual Property Rights in the other Deliverables, the SI shall secure for the MTA Group all necessary licenses and rights in the other Deliverables to allow the MTA Group (and any other Third Party on behalf of the MTA Group), in perpetuity, to install, execute, copy, modify, display, distribute, perform, access and

otherwise use such other Deliverables for all purposes specified in or contemplated by the Contract Documents, including for the MTA Group's operations. By way of clarifying example, the grant of rights included in this Section 35.2.5 (Deliverables) includes the MTA Group's right to use any Intellectual Property Rights that are embedded in NFPS SI-Sourced Equipment, including those Intellectual Property Rights that are owned by the SI or otherwise licensed by the SI from a Third Party pursuant to this Section 35.2.5 (Deliverables).

35.2.6. Clarifying Examples Relating to the Grant of Rights.

For purposes of clarification, and not limitation, the rights granted to the MTA Group pursuant to this Section 35.2 (Grant of Rights to the MTA Group) include the following:

35.2.6.1. MTA Group Engagement of Authorized Vendors.

Subject to the terms and conditions of these Contract Documents, the MTA Group shall have the right to engage Authorized Vendors to exercise the MTA Group's rights set out in Section 35.2 (Grant of Rights to the MTA Group). If the MTA Group provides an Authorized Vendor with SI Confidential Information in connection with the MTA Group's engagement of an Authorized Vendor for the purposes expressly set out in this Section 35.2.6.1 (MTA Group Engagement of Authorized Vendors), then the MTA shall require the Authorized Vendor to execute a non-disclosure agreement that is substantially similar to the MTA Non-Disclosure Agreement in all material respects.

35.2.6.2. Interoperability.

The MTA Group shall have the right to use the SI Software and Third Party Software (including NFPS Interfaces) for purposes of ensuring (i) interoperability among any and all components within the NFPS, and (ii) interoperability among any and all components of the NFPS and other Third Party systems (including those controlled Linked NFPS Entities).

35.2.6.3. Continuation of Rights.

The MTA Group's rights granted pursuant to this Section 35.2 (Grant of Rights to the MTA Group) shall continue regardless of whether: (i) the SI is providing Services; (ii) the MTA Group has engaged a Third Party to provide services relating to the NFPS, including the Services; (iii) the MTA Group has breached any of its obligations under these Contract Documents; (iv) subject to Section 48.7 (Transfer of Subcontracts, Leases, Licenses and Agreements), the Contract Documents have been terminated for any reason or otherwise expired; and (v) either the MTA Group or the SI (at the MTA's direction or approval) replaces a component of the NFPS with a Third Party component or otherwise augments the NFPS with another component not contemplated under these Contract Documents.

35.2.6.4. Expansion of the NFPS; Interaction with Other Systems.

The MTA Group shall have the right to use the NFPS in connection with any expansions to the MTA Group's service area, including expansions that involve patron transfers from Third Party transit authority systems to the MTA Group's system. Such support shall include granting Third Parties access to and use of all NFPS Interfaces for purposes of facilitating interoperability between the NFPS and Third Party transit authority payment systems.

35.2.6.5. Manufacture.

The MTA Group shall have the right to manufacture (a) all SI-Developed Hardware (including SI-Commissioned Hardware), and (b) all other portions of the NFPS Hardware for which the SI holds the same rights. Such manufacturing rights include a perpetual, irrevocable, royalty-free, fully-paid, sublicensable right: (i) to use, execute, copy, and modify the Proprietary Manufacturing Documentation; (ii) to use such Proprietary Manufacturing Documentation in order to engage in Product Manufacturing; and (iii) to make, have made, test, repair, and use Spare Parts and Product Units in connection with such Product Manufacturing; provided, however, that the MTA Group (and its Authorized Vendors) shall not sell or otherwise make available to Third Parties any Spare Parts and Product Units that it or its Authorized Vendors manufacture, unless strictly in connection with the NFPS. If the MTA Group or an Authorized Vendor modifies Spare Parts and Product Units, then the SI shall not be responsible for non-compliance with a Service Level to the extent that the modification caused the Service Level non-compliance. If the MTA Group provides an Authorized Vendor with Proprietary Manufacturing Documentation, then the MTA shall require such Authorized Vendor to execute a non-disclosure agreement that is substantially similar to the MTA Non-Disclosure Agreement in all material respects. By way of clarification, and not limitation, the SI shall not prohibit or otherwise block the MTA Group from manufacturing for itself those portions of NFPS Hardware for which the SI owns the underlying Intellectual Property Rights. Promptly upon the MTA's request, the SI shall provide all requested information and materials necessary for the MTA Group to exercise the rights clarified in this Section 35.2.6.5 (Manufacture), including supplier information, bills of material (BOMs), design documents, manufacturing processes and specifications, tooling information, and other, similar material. The MTA acknowledges that an Authorized Vendor is a Third Party that, among other things, agrees to abide by all license restrictions set out in the Contract Documents.

35.2.6.6. Maintain and Repair.

The MTA Group shall have the right to maintain and repair all portions of the NFPS Hardware. Such maintenance and repair rights include a perpetual, irrevocable, royalty-free, fully-paid, sublicensable right: (i) to access, use, and modify all portions of the NFPS Hardware for purposes of maintaining and repairing the same; and (ii) to make, have made, test, repair, and use Spare Parts and Product Units in connection with such maintenance and repair. Promptly upon the MTA's request, the SI shall provide all requested information and materials necessary for the MTA Group to exercise the rights clarified in this Section 35.2.6.6 (Maintain and Repair), including supplier information, design documents and specifications, tooling information, and other, similar material.

35.2.6.7. MTA Control of the NFPS Websites and NFPS Mobile Applications.

The MTA Group shall have the sole right to assume full and exclusive control and management of the NFPS Mobile Applications' distribution, including distribution via available online application stores. The SI shall also provide, promptly upon the MTA's request, all related SDKs necessary or desirable for making modifications to the NFPS Websites and NFPS Mobile Applications.

35.2.6.8. Implementation of Parallel NFPS Components.

The MTA Group shall have the right to engage a Third Party to develop various portions of the NFPS in a parallel environment for any purpose, including ensuring the NFPS' compliance with the Open System mandate and an orderly transition to a New SI. The SI shall provide all requested support for implementing (and putting into production, where applicable) the parallel components that is reasonably requested by the MTA; if such support requires more than de minimis efforts, then such support shall be treated as Extra Work pursuant to Section 32 (Changes in Work; Change Orders).

35.2.6.9. MTA Group Right to Modify Certain NFPS SI-Sourced Equipment.

The MTA Group shall have the right to access, modify, and otherwise use SI-Developed Hardware (including SI-Commissioned Hardware), provided that the SI shall not be responsible for non-compliance with a Service Level or Key Performance Indicator (including those relating to NFPS Hardware set out in Technical Specifications Section 5.14.5 (Hardware Key Performance Indicators (KPIs))) to the extent that such non-compliance is attributable to the MTA Group's modification pursuant to this Section 35.2.6.9 (MTA Group Right to Modify Certain NFPS SI-Sourced Equipment). If the MTA Group provides a Third Party with SI Confidential Information in connection with the MTA Group's exercising of its rights pursuant to this Section 35.2.6.9 (MTA Group Right to Modify Certain NFPS SI-Sourced Equipment), then the MTA shall require such Third Parties to execute a non-disclosure agreement that is substantially similar to the MTA Non-Disclosure Agreement in all material respects. By way of clarification, and not limitation, the SI shall not prohibit or otherwise block the MTA Group (or Third Parties acting on the MTA Group's behalf) from upgrading, retrofitting or otherwise modifying SI-Commissioned Hardware, or engaging Third Parties to do the same on behalf of the MTA Group.

35.3. Grant of Rights to the SI.

35.3.1. MTA-Provided Systems.

The MTA, under its Intellectual Property Rights, hereby grants to the SI during the Term a limited, non-exclusive, non-sublicensable, non-transferable license to access, modify, and otherwise use those MTA-Provided Systems that the MTA expressly designates as MTA-Provided Systems during Design Review, solely for the SI's use in performing its obligations to the MTA Group under these Contract Documents, and for no other purpose. In addition to the limitations set out in this Section 35.3.1 (MTA-Provided Systems), the SI agrees that its rights shall otherwise be limited to those rights in the MTA-Provided Systems that the MTA is granted pursuant to its relationship with the applicable Third Party licensor; provided, however, that the MTA promptly provides the SI the applicable license terms upon the SI's written request.

35.3.2. MTA Group Trademark Assets.

The term "**MTA Group Trademark Assets**" means any brand name, trademark, service mark and trade dress related to the MTA Group that (i) the MTA provides to the SI, and (ii) the MTA identifies as such in writing. Subject to the terms and conditions of these Contract Documents, the MTA, under its Intellectual Property Rights, hereby grants to the SI during the Term a limited, non-exclusive, non-transferable, non-sublicensable, royalty-free license to affix the MTA Group Trademark Assets to relevant portions of the Deliverables in a manner agreed upon by the MTA. The SI acknowledges (a) the value of the goodwill associated with the MTA Group Trademark Assets, and (b) that any and all use of the MTA Group Trademark Assets shall inure to the benefit of the applicable MTA Group entity. The MTA shall have the right to immediately terminate the rights granted to the SI pursuant to this Section 35.3.2 (MTA Group Trademark Assets) by providing written notice to the SI (the "**Trademark Termination Notice**"). Upon receipt of a Trademark Termination Notice, the SI shall immediately, and in any event within ten (10) calendar days, remove the MTA Group Trademark Assets from all Deliverables designated in the Trademark Termination Notice.

35.3.3. NFPS Data.

Subject to the terms and conditions of this Contract, the MTA, under its Intellectual Property Rights, hereby grants to the SI during the Term a limited, non-exclusive, non-transferable, non-sublicensable license to copy and modify the NFPS Data, but solely for the purpose of the SI fulfilling its obligations to the MTA Group under these Contract Documents. By way of clarification, and not limitation, the SI is prohibited from creating or using Aggregate Data based on the NFPS Data for any purpose other than those necessary for the SI to perform its obligations under these Contract Documents, or otherwise profiling, mining or manipulating NFPS Data except in the performance of its obligations to the MTA Group.

35.3.4. No Implied Rights.

Nothing in these Contract Documents shall be construed so as to grant the SI any rights other than those expressly provided herein. Any rights granted to the SI pursuant to these Contract Documents must be expressly provided herein, and there shall be no implied rights pursuant to the Contract Documents, based on any course of conduct or other construction or interpretation thereof. The MTA expressly reserves (on behalf of itself and all other MTA Group entities) all rights and licenses not expressly granted herein to the SI.

35.4. Software Asset Management.

The SI shall institute and maintain a software asset management program, to ensure that proper licenses have been obtained for all NFPS Software, and that maintenance contracts remain in effect for such Software.

35.5. Delivery of Certain Materials that Embody Intellectual Property Rights.

35.5.1. SI Software Interfaces.

Notwithstanding anything to the contrary, the SI shall deliver Source Code for all SI Software Interfaces upon any of the following events: (i) at least thirty (30) calendar days prior to the implementation of any SI Software Interface into the NFPS; (ii) within five (5) calendar days of the MTA's request; (iii) within five (5) calendar days of any change to Source Code for SI Software Interfaces that has previously been provided to the MTA; and (iv) at any other time set out in the Contract Documents. The SI agrees that any delivery of SI Software Interfaces shall include Source Code that: (a) contains good and sufficient programmers' comments; (b) constitutes the preferred form of the Source Code for making modifications to such Source Code; and (c) includes all related SDKs necessary or desirable for making modifications to such Source Code. The SI shall ensure that the quality and nature of the Source Code for all SI Software Interfaces is otherwise consistent with the requirements set out in Section 35.7.3 (Quality of Requisite Source Code).

35.5.2. Third Party Software Interfaces.

To the extent that the SI has sufficient rights to do so, the SI shall deliver Source Code for all Third Party Software Interfaces upon any of the following events: (i) at least thirty (30) calendar days prior to the implementation of any Third Party Software Interface into the NFPS; (ii) within five (5) calendar days of the MTA's request; (iii) within five (5) calendar days of any change to Source Code for Third Party Software Interfaces that has previously been provided to the MTA; and (iv) at any other time set out in the Contract Documents. The SI agrees that any delivery of Third Party Software Interfaces shall include Source Code that: (a) contains good and sufficient programmers' comments; (b) constitutes the preferred form of the Source Code for making modifications to such Source Code; and (c) includes all related SDKs necessary or desirable for making modifications to such Source Code.

35.5.3. NFPS Documentation.

Notwithstanding anything to the contrary, the SI shall deliver electronic copies of NFPS Documentation upon any of the following events: (i) no more than five (5) calendar days after the MTA's acceptance of NFPS Documentation, as further set out in the Contract Documents; (ii) within five (5) calendar days of the MTA's request; (iii) within five (5) calendar days of any updates to NFPS Documentation; and (iv) at any other time set out in the Contract Documents. By way of clarification, and not limitation, the SI shall provide the MTA all Documentation relating to Hardware Interfaces upon the MTA's request.

35.6. No Proprietary Formats; Media Encoding Format.

The SI hereby grants to the MTA Group a perpetual, non-exclusive, fully paid-up, transferable, sublicensable, and irrevocable license to use, copy, modify and distribute for all purposes Intellectual Property Rights embodied in all card, ticket, and mobile data fare processing and encoding formats and all smart card data field value definitions, data storage locations, security encryption and card initialization processes used in the NFPS. The SI also hereby grants and transfers to the MTA all right and title in all encryption keys used in conjunction with the smart card encoding bit pattern, including working keys, master keys and transport keys, such that the MTA shall be the sole owner of such keys.

35.7. NFPS Software Escrow.

For purposes of this Section 35.7 (NFPS Software Escrow), the term "**Requisite Source Code**" means: (i) Source Code for all SI Software that does not constitute SI Software Interfaces; (ii) Source Code for Third Party Software to the extent that the SI has rights in, or access to, such Source Code; and (iii) the other materials that the SI is obligated to place into escrow pursuant to Section 35.7.12 (Other Deposit Materials).

35.7.1. Escrow Agent Selection.

No more than sixty (60) calendar days after the Award Date, the MTA and the SI shall select a mutually agreeable Third Party escrow agent (the "**Escrow Agent**"). If an Escrow Agent has not been selected within sixty (60) calendar days after the Award Date, then the MTA shall be entitled to unilaterally select an industry-recognized Escrow Agent.

35.7.2. Three-Party Software Escrow Agreement.

The MTA and the SI shall enter into an agreement (the "**Three-Party Software Escrow Agreement**") with the Escrow Agent. The Three-Party Software Escrow Agreement shall contain obligations and rights with respect to the MTA and the SI that are the same in all material respects as those set out in this Section 35.7 (NFPS Software Escrow) using the form supplied by the Escrow Agent. The Three-Party Software Escrow Agreement shall last for a period of not less than the shorter of (i) the delivery of a then-current copy of the Requisite Source Code to the MTA pursuant to Section 35.7.8 (Use of Deposit Materials), and (ii) thirty (30) years from the execution of the Three-Party Software Escrow Agreement.

35.7.3. Quality of Requisite Source Code.

The SI shall ensure that the Requisite Source Code: (i) is in a form such that a programmer of ordinary skill in the applicable programming language(s) is able to efficiently print, display and read it; (ii) includes Source Code listings, Object Code listings, design details, flow charts and related materials that permit the related Software to be efficiently copied, maintained, updated, improved and compiled; (iii) includes related libraries, other source components, compilers and linkers so that, when compiled, linked and otherwise manipulated to create the runtime/executable image for the related Software, such materials create a complete and fully operational run-time/executable version of the Software; (iv) contains good and sufficient programmers' comments; and (v) constitutes the preferred form of the Source Code for making modifications to such Source Code.

35.7.4. Delivery of Source Code to the Escrow Agent.

35.7.4.1. Deposit Materials.

The term "**Deposit Materials**" means all Requisite Source Code that the SI is obligated to provide to the Escrow Agent pursuant to this Section 35.7 (NFPS Software Escrow).

35.7.4.2. Initial Deposit.

The SI shall deliver to the Escrow Agent the Requisite Source Code within thirty (30) calendar days of the introduction of the applicable portion of the Requisite Source Code into a production environment version of the NFPS.

35.7.4.3. Supplements to and Currency of Deposit Materials.

Within ten (10) calendar days of the release of any Update to the Requisite Source Code, the SI shall supplement or replace the Deposit Materials to include such Update, all in Requisite Source Code form. Such Updates shall include the listing of all supplements or replacements on a new Deposit Log, which shall be signed by the SI and delivered with the supplements or replacements to the Escrow Agent.

35.7.4.4. Delivery of Deposit Materials During Transition.

Notwithstanding anything to the contrary, the SI shall immediately deliver to the Escrow Agent a copy of all Deposit Materials in the event of a transition pursuant to this Contract, including Section 48 (Transition Assistance).

35.7.5. Identification of Tangible Media.

Prior to the delivery of the Deposit Materials to the Escrow Agent, the SI shall conspicuously label for identification each document, magnetic tape, disk and other tangible media upon which the Deposit Materials are written or stored (the "**Deposit Log**"). The SI shall provide to the MTA a copy of each Deposit Log prior to the SI's submission of the same and the associated Deposit Materials to the Escrow Agent.

35.7.6. Deposit Inspection.

Upon receipt of the Deposit Materials, the Escrow Agent may conduct a deposit inspection by visually matching the labeling of the tangible media containing the Deposit Materials to the item descriptions and quantities identified herein. In addition, the MTA may elect to cause a verification of the Deposit Materials in accordance with Section 35.7.7 (Deposit Verification) at the SI's sole cost and expense. The SI and the MTA shall have the right to be present at the verification.

35.7.7. Deposit Verification.

Upon receipt of the Deposit Materials, the MTA shall be entitled to commission the Escrow Agent (at the SI's sole cost and expense) to verify the Deposit Materials to ensure that they constitute Requisite Source Code and otherwise comply with the Contract Documents. The SI shall promptly remedy any deviations from these requirements.

35.7.8. Use of Deposit Materials.

The Deposit Materials shall be held by the Escrow Agent in escrow and the MTA Group shall be entitled to access and use such Deposit Materials upon the occurrence of one or more of the following events (collectively, the "**Triggering Events**"): (i) there is a failure to meet any individual Key Performance Indicator or individual Service Level Requirement either (a) for three (3) consecutive measurement periods, or (b) for four (4) measurement periods in any six (6) consecutive measurement periods (each, a "**Chronic Performance Failure**"); (ii) the SI fails to remedy a material deviation in the Deposit Materials from the requirements set out in Section 35.7.3 (Quality of Requisite Source Code) after notice and a thirty (30) day opportunity to cure; (iii) the SI fails to promptly respond adequately, as determined by the MTA in its reasonable judgment, to an Event of Default; (iv) the SI makes a general assignment for the benefit of creditors, files a voluntary petition in bankruptcy or petitions for reorganization or arrangement under the bankruptcy laws; (v) a petition in

bankruptcy is filed against the SI; (vi) a receiver or trustee is appointed for all or any part of the property and assets of the SI; (vii) the SI voluntarily winds-up or liquidates its business or that segment of its business pertinent to the NFPS; (viii) in the event of a transition pursuant to Section 48 (Transition Assistance); or (ix) the SI ceases to provide Technical and Software Support Services in a manner acceptable to the MTA or otherwise offers to provide the Technical and Software Support Services at a cost that the MTA deems, in its reasonable judgment, unreasonable.

35.7.9. Right to Use Deposit Materials Following Release.

Upon the occurrence of a Triggering Event, the MTA Group (and its Authorized Vendors) shall have the perpetual, irrevocable, royalty-free, fully-paid, sublicensable right to execute, copy, modify, and otherwise use the released Requisite Source Code in order to provide corrections for, maintain, improve and otherwise use the NFPS Software covered by the Requisite Source Code as it is used in the NFPS. The MTA Group shall be entitled to engage Authorized Vendors to develop and modify Source Code contained in the Deposit Materials for such purposes. If the MTA Group or an Authorized Vendor modifies the released Source Code and implements the modified Source Code in a production environment (each, a "**Post-Trigger MTA Modification**"), the SI shall not be responsible for non-compliance with a Service Level to the extent that the Post-Trigger MTA Modifications caused the Service Level non-compliance or a warranty failure. If the MTA Group provides an Authorized Vendor with Requisite Source Code that constitutes SI Confidential Information in connection with the MTA Group's exercising of its rights set out in this Section 35.7.9 (Right to Use Deposit Materials Following Release), then the MTA shall require such Authorized Vendor to execute a non-disclosure agreement that is substantially similar to the MTA Non-Disclosure Agreement in all material respects.

35.7.10. Subcontractors.

The SI agrees that it is solely responsible for ensuring that all Subcontractors provide the sufficient rights and material for the SI to comply with its obligations set out in this Section 35.7 (NFPS Software Escrow). By way of clarifying example, and not limitation, should the SI engage a Subcontractor to provide Software, and such software constitutes SI-Developed Software, then the SI shall be obligated to secure all necessary rights from the Subcontractor in order to place the required Deposit Materials in escrow pursuant to this Section 35.7 (NFPS Software Escrow).

35.7.11. MTA Right to Obtain Support.

The SI acknowledges that its employees, Subcontractors, consultants and vendors involved in the development of the NFPS Software (each, an "**SI Developer**") have valuable knowledge and expertise necessary to the maintenance and support of the NFPS Software. The MTA Group shall be entitled to access or otherwise engage SI Developers for the purpose of maintaining the NFPS Software following a release of the Deposit Materials pursuant to this Section 35.7 (NFPS Software Escrow). To permit the MTA Group to exercise this right, the SI hereby agrees to waive enforcement of any non-competition or non-solicitation protections it may have with respect to such SI Developers, for purposes of their assisting the MTA Group (or an Authorized Vendor) in such work (as an independent contractor, employee or otherwise).

35.7.12. Other Deposit Materials.

The SI shall submit with the Deposit Materials: (i) Documentation and a licensed copy of all Software tools such as debuggers, assemblers and compilers needed to convert the supplied Requisite Source Code into executable form used by the target processors and procedures necessary to transfer executable code to operational systems, as well as configuration Documentation to set up the environment to generate the target for the executable Source Code; (ii) hardware devices, such as EPROM programmers, with their accompanying firmware and Software tools, necessary to transfer the executable programs onto the storage device used by

any embedded microprocessor; and (iii) Documentation that provides for all Requisite Source Code the following categories of information (as applicable): (a) general descriptions and operations; (b) architecture and basic program functions; (c) data flow information; (d) detailed memory map and listing; (e) input/output port map; and (f) licensing information for Open Source modules.

35.7.13. No Source Code Escrow for SI Software Interfaces.

For purposes of clarification, and not limitation, the SI shall deliver Source Code for the SI Software Interfaces to the MTA pursuant to Section 35.5 (Delivery of Certain Materials that Embody Intellectual Property Rights) and such Source Code shall not be subject to the provisions of this Section 35.7 (NFPS Software Escrow).

35.7.14. Escrow Fees.

As between the MTA Group and the SI, the SI shall be solely responsible for all costs and expenses associated with both the MTA Group's and the SI's rights and obligations under this Section 35.7 (NFPS Software Escrow), including all fees charged by the Escrow Agent.

35.7.15. NFPS Software Escrow Material Designation.

The SI shall submit to the MTA a written list of all portions of the NFPS that are subject to the escrow obligations within ninety (90) calendar days of the MTA's issuance of the NTP (the "**Escrow Material Inventory List**"). The SI shall provide the MTA with updated versions of the Escrow Material Inventory List both annually and any time Source Code is delivered to the Escrow Agent or the MTA pursuant to this Section 35.7 (NFPS Software Escrow).

35.8. Open Source Software Requirements.

35.8.1. Documentation Requirements.

In addition to the SI's other obligations relating to Open Source Software set out in these Contract Documents, the SI shall submit to the MTA within thirty (30) calendar days of the MTA's issuance of the NTP or at such other time agreed upon by the parties (i) a written list of all portions of Open Source Software that are or are intended to be incorporated into the NFPS, and (ii) copies of all licenses for the Open Source Software (collectively, the "**Open Source Software List**"). The SI shall provide the MTA with updated versions of the Open Source Software List both annually and any time new Open Source Software is included within the NFPS or applicable licenses are updated.

35.8.2. Sufficiency of Rights.

In addition to the SI's other obligations set out in these Contract Documents, including Section 37 (SI Representations and Warranties), the SI shall not include any Open Source Software in the NFPS that is subject to licensing terms that are inconsistent with, or otherwise restrict, the rights granted to the MTA Group pursuant to Section 35.2 (Grant of Rights to the MTA Group) and Section 35.7.8 (Use of Deposit Materials).

36. Confidentiality.

Confidential or sensitive information of the MTA Group or the SI (the "**Disclosing Party**" as context permits) provided to the other party (the "**Receiving Party**" as context permits) shall be governed as follows:

36.1. Confidential Information.

The term "**Confidential Information**" means any information (in any medium) concerning the Disclosing Party that is disclosed or provided to the Receiving Party, whether oral or in writing, in connection with these Contract Documents that: (i) concerns the business, employees, customers, marketing, finance, methods, research, processes, procedures, operations, technical data, specifications, drawings, plans, diagrams, sketches, renderings, maps, surveys, photographs and other information of or about the Disclosing Party; (ii) is marked confidential, restricted or proprietary at the time of disclosure or a reasonable period thereafter; or (iii) by the nature of the information itself, or the circumstances surrounding its disclosure, should in good faith be treated as confidential. The SI agrees that Security-Sensitive Information and Personally Identifiable Information provided by the MTA Group, or to which the SI has access to or otherwise receives pursuant to these Contract Documents, constitutes MTA Group Confidential Information.

36.2. Non-Disclosure; Standard.

The Receiving Party shall not use any Confidential Information of the Disclosing Party for any purpose not expressly permitted by these Contract Documents, and shall disclose such Confidential Information only to those employees, contractors, Subcontractors, suppliers and agents of the Receiving Party who have a need-to-know basis for access to such Confidential Information for the purpose of performing obligations or exercising the Disclosing Party's rights under these Contract Documents and that are under a duty of confidentiality no less restrictive than the Receiving Party's duty hereunder and by Applicable Law. The Receiving Party shall protect the Confidential Information from unauthorized use, access or disclosure in the same manner as the Receiving Party protects its own confidential or proprietary information, but shall in no event use less than a reasonable standard of care and diligence.

36.3. Exceptions.

Except for Security-Sensitive Information and Personally Identifiable Information provided by the MTA Group, for which there shall be no exception, the Receiving Party's obligations hereunder with respect to Confidential Information shall not apply to Confidential Information that the Receiving Party can demonstrate in writing (to the Disclosing Party's satisfaction): (i) was already known to the Receiving Party at the time of disclosure by the Disclosing Party; (ii) was or becomes available to the Receiving Party on a non-confidential basis from a Third Party, provided that such Third Party is not bound by an obligation of confidentiality to the Disclosing Party with respect to such Confidential Information; (iii) is or has become generally available to the public through no fault of the Receiving Party; (iv) is independently developed by the Receiving Party 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 Receiving Party notifies the Disclosing Party of such required disclosure promptly and in writing and cooperates with the Disclosing Party, at the Disclosing Party's reasonable request and expense, in any lawful action to contest or limit the scope of such disclosure.

36.4. Delivery of Confidential Information.

Upon the MTA's request, the SI shall promptly provide the MTA with copies of any and all requested Confidential Information in electronic form, all at the SI's sole cost and expense.

36.5. Order of Priority for NFPS Data.

The SI agrees that to the extent that any provision or requirement relating to NFPS Data conflicts with the requirements set out in this Section 36 (Confidentiality), the more stringent provision or requirement shall apply.

36.6. Public Records.

Notwithstanding anything to the contrary, including Section 36.2 (Non-Disclosure; Standard) and Section 36.3 (Exceptions), the SI acknowledges that (i) the MTA Group may be subject to the New York State Freedom of Information Law (N.Y. Pub. Off. Law sec. 84 *et seq.*) and other laws relating to the disclosure or production of information in the MTA Group's possession (collectively, the "**Public Records Law**"), and (ii) the MTA Group's obligations with respect to SI Confidential Information shall be subject to the Public Records Law.

36.7. No Transmission of MTA Group Confidential Information Outside of the United States; Exceptions.

In no event shall the SI transmit, transfer or otherwise store MTA Group Confidential Information (including Security-Sensitive Information) or other NFPS Data outside of the United States without the MTA's prior written approval, which shall not be unreasonably withheld.

37. SI Representations and Warranties.

37.1. Certain SI Representations and Warranties.

In addition to the other representations, warranties, and covenants set out in this Contract, the SI represents, warrants, and covenants (as applicable) to the MTA Group, as of the Award Date and throughout the Term, as follows:

37.1.1. Quality of Work and Materials.

The SI shall perform the Work: (i) in the best and most professional and workmanlike manner, by qualified individuals of appropriate skill, training and experience, employing requisite resources and materials; (ii) supplying materials of the best class, nature and quality; (iii) with the highest regard to the safety of life and property, and according to the lines, levels and directions given by the Engineer; and (iv) to the full satisfaction of the MTA and otherwise in conformance with the requirements set out in the Contract Documents.

37.1.2. Books and Records.

The SI shall permit the MTA Group and its authorized representatives to inspect and review all of the SI's Work, materials, payrolls, records of personnel, invoices of materials and other relevant construction, equipment, data and records, and to audit the books and records pertaining to the Project.

37.1.3. Existence; Compliance with Law.

The SI (i) is duly incorporated, organized, validly existing and in good standing as a corporation under the laws of the jurisdiction of its incorporation and is duly qualified and in good standing under the laws of each jurisdiction where its ownership, lease or operation of property in the conduct of its property or business requires, and (ii) is in compliance and will continue to be in full compliance with the safety policies of the MTA Group and with all Applicable Laws and industry best practices.

37.1.4. Authority.

The SI has the full power and authority to enter into this Contract and to carry out its obligations herein, as well as the right to convey all licenses, assignments and rights conveyed herein, and its performance hereunder does not violate any existing agreement between the SI and any Third Party.

37.1.5. No Legal Bar.

The SI's execution, delivery and performance of the Contract do not and shall not violate any Applicable Law or the charter or by-laws of the SI or of any agreement or undertaking to which the SI is a party or by which the SI or any of its properties or assets may be bound, and shall 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 agreement or undertaking.

37.1.6. No Litigation.

Except as specifically disclosed to the MTA in writing prior to the Award Date, no claim, litigation, investigation or proceeding of or before any Governmental Authority is currently pending nor, to the best of the SI's knowledge (after undertaking reasonable due diligence), is any claim, litigation or proceeding threatened against the SI or against its properties or revenues (i) which involves a claim of defective design or workmanship in connection with any contract entered into by the SI, or (ii) which, if adversely determined, would have an adverse effect on the business, operations, property or financial or other condition of the SI or otherwise adversely affect the SI's performance under these Contract Documents. For purposes of this Section 37.1.6 (No Litigation), a claim, litigation, investigation or proceeding may be deemed disclosed to the MTA if the MTA has received from the SI (and acknowledged receipt thereof) prior to the Award Date detailed written information concerning the nature of the matter involved, the relief requested and a description of the intention of the SI to controvert or respond to such matter.

37.1.7. No Default.

The SI is not in default of any obligation (including payment and performance) under any agreement or other 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 event of default (as defined in any such agreement or undertaking) has occurred and is continuing or would occur as a result of the execution and performance of this Contract. The SI is not in default under any order, award or decree of any Governmental Authority 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 ability of the SI to carry on its business as presently conducted or the ability of the SI to perform its obligations under this Contract or any of the other financing to which it is a party.

37.1.8. Permits and Approvals.

The SI shall maintain throughout the Term all required consents, approvals, licenses and permits from Governmental Authorities necessary for the performance of its obligations under these Contract Documents.

37.1.9. No Commission.

No Person has been employed or retained to solicit or secure this Contract upon any agreement or understanding for a commission, percentage, brokerage, contingent fee or other consideration, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the SI for the purpose of securing business.

37.1.10. No Inducements.

Both (i) no inducements (in the form of entertainment, gifts, offers of employment or any other thing of value) or gratuities have been offered or given or shall be offered or given to any official or employee of the MTA Group (including individuals who were recent employees of the MTA Group), and (ii) during the Term, the SI shall not make any offer of employment to any employee of the MTA Group, or solicit or interview therefor, without obtaining the prior written approval of the MTA.

37.1.11. Non-Infringement.

As of the later of the Award Date and the applicable date of submission to the MTA for review and approval, both (i) the SI has not knowingly submitted any Work (including any portion of the NFPS, or other Deliverables or Services) that violates or infringes any Intellectual Property Rights of a Third Party, and (ii) the SI has conducted an investigation consistent with Good Industry Practices to ensure that the Work (including any portions of the NFPS, or other Deliverables or Services) does not violate or infringe any Intellectual Property Rights of a Third Party.

37.1.12. Warranty of Design.

The methodology of installation stated or described in the designs and drawings supplied by the SI shall be adequate and sufficient to achieve the full installation and satisfactory operation of the NFPS, as determined by the MTA. Any review or approval of the Work or acceptance of designs or drawings submitted by the SI or payment by the MTA for Work performed by the SI shall neither be deemed to diminish the SI's representation and warranty hereunder or relieve the SI of any liability, nor shall it be construed or operate as a waiver of any rights available to the MTA Group under this Contract or under Applicable Law for any cause of action arising out of performance of this Contract, and the SI shall be and remain liable to the MTA Group in accordance with Applicable Law for all damages caused by the SI's performance of any Work furnished under this Contract.

37.1.13. No Damage to Property.

The SI has reviewed the Contract Documents and if the Work is done without fault or negligence on the part of the SI, such Work shall not cause any damage to the foundations, walls or other parts of adjacent, abutting or overhead buildings, railroads, bridges, structures or surfaces.

37.1.14. Open Source.

The NFPS Software does not and shall not include Open Source Software licensed under a "reciprocal" or "copyleft" open source license (such as the GPL or MPL) that would require the MTA Group to subsequently license or otherwise make available Source Code to a Third Party.

37.1.15. No Viruses.

As of the time of delivery, nothing within the NFPS contains any computer virus, spyware, malware, code of malicious intent, worm or other intentionally destructive code: (i) that would disrupt the use of the NFPS, or any component of the NFPS; (ii) that would destroy or damage NFPS Data or make NFPS Data inaccessible or delayed; or (iii) that would permit the SI's personnel or other Persons access to any portion of the NFPS or other MTA Group computer systems after having their usual access privileges revoked or suspended.

37.1.16. Service Levels and Key Performance Indicators.

There are no Chronic Performance Failures. It is agreed and understood that the recovery of credits paid to the MTA resulting from the failure to meet the Service Levels and Key Performance Indicators shall not constitute the MTA Group's sole remedy for a failure to meet Service Levels or Key Performance Indicators, and the MTA Group expressly reserves all such rights and remedies.

37.1.17. Fit for the Particular Purpose.

All components of the NFPS are suitable for their particular purposes and their use as contemplated under these Contract Documents is consistent with all supplier guidelines, limits and restrictions for such NFPS components.

37.1.18. Legal Compliance.

The SI is in compliance with all Federal, State and local requirements applicable to its performance of the Work which is the subject matter of this Contract, and all individuals utilized by it, whether its own employees or Subcontractor employees, who are required by Applicable Law to have and maintain a professional license are and will remain so fully licensed.

37.1.19. Reasonable Efforts.

The implied warranty under New York law to use reasonable, best efforts to perform its contractual obligations shall apply to the SI's obligations regarding the NFPS (and all components therein) and all other aspects of the SI's performance under the Contract Documents.

37.1.20. Uniform Commercial Code.

The implied warranties established pursuant to N.Y. U.C.C. Law §§ 2-314 and 2-315 shall apply to the SI's obligations regarding the NFPS (and all components therein) and all other aspects of the SI's performance under the Contract Documents.

37.1.21. Covenant of Good Faith and Fair Dealing.

The implied warranty under New York law of good faith and fair dealing shall apply to the SI's obligations regarding the NFPS (and all components therein) and all other aspects of the SI's performance under the Contract Documents.

37.2. Remedies for Breach of Representations and Warranties.

In addition to any other rights and remedies available to the MTA Group, for any material breach of the SI's representations and warranties set out in these Contract Documents (including those in this Section 37 (SI Representations and Warranties)), the MTA shall have the right to terminate the Contract pursuant to Section 47.3 (Default; Remedies) or, at its discretion, to deduct from the Total Contract Price or otherwise to recover the full amount of any harm or other damages that the MTA Group suffers as a result of the SI's material breach of any representation or warranty set out in these Contract Documents (including those in this Section 37 (SI Representations and Warranties)), and to include the occurrence of such a breach in assessments of the SI's responsibility in future bids. By way of clarification, and not limitation, the SI's material breach of any representation or warranty set out in these Contract Documents (including those in this Section 37 (SI Representations and Warranties)) shall constitute an Event of Default.

37.3. Warranty Disclaimers.

EXCEPT AS EXPRESSLY PROVIDED IN THESE CONTRACT DOCUMENTS, EACH PARTY EXPRESSLY DISCLAIMS ALL WARRANTIES AND CONDITIONS OF ANY KIND, EXPRESS OR IMPLIED.

38. Indemnification.

38.1. SI Indemnification.

Subject to Section 38.5 (Limitations on SI Indemnification Obligations; Absence of Negligence Not a Defense), the SI shall defend, indemnify and hold the MTA Group and the Third Party Indemnities, their subsidiaries, respective affiliates and related parties (including the City and the State) and their respective officers, directors, employees, and agents (collectively, the "**MTA Indemnitees**") harmless from and against any Third

Party claim, action, suit or proceeding resulting from: (i) the SI's performance or non-performance under this Contract; (ii) any effluent or other hazardous waste, residue, contaminated soil or other similar material discharged from, removed from, or introduced on, about or under the Contract, and any breach of Section 51 (Environmental Obligations); (iii) a Security Incident; (iv) the SI's failure to comply with Applicable Law, including Applicable Privacy Laws and Standards; (v) a breach of the representations and warranties set out in Section 37 (SI Representations and Warranties); (vi) any Work's actual or alleged infringement of a Third Party's Intellectual Property Rights; (vii) injury to Persons, deaths or property damage caused by the SI; (viii) (a) the goods or services provided pursuant to a Mandatory MTA Third Party Agreement or Replacement MTA Third Party Agreement, and (b) the Third Party's performance of its obligations pursuant to a Mandatory MTA Third Party Agreement or Replacement MTA Third Party Agreement, except to the extent that the Third Party's failure to perform its obligations is due to the MTA's bad faith breach of a material obligation under such Mandatory MTA Third Party Agreement or Replacement MTA Third Party Agreement; and (ix) any other breach of the SI's obligations under this Contract. Subject to Section 38.2 (Procedure for Indemnification), the SI shall indemnify the MTA Indemnitees for all losses, damages, liabilities, fines, penalties, assessments and all reasonable expenses and costs (including attorneys' fees) incurred by the MTA Indemnitees in any such claim, action, suit or proceeding.

38.2. Procedure for Indemnification.

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

38.3. Mitigation of an Injunction.

Without limiting the MTA Group's other rights, in the event that an injunction is obtained by a Third Party against the use of any portion of the NFPS, the SI shall, at its sole cost and expense and within ten (10) calendar days of any injunction, either: (i) procure for the MTA Group the right to continue to use the impacted portions of the NFPS, or (ii) replace or modify the impacted portions of the NFPS with equivalent components (for all purposes, including function, feature and performance) that are not subject to said injunction.

38.4. Effect of Insurance on Indemnification.

The SI agrees that it is the SI's responsibility to indemnify the MTA Indemnitees pursuant to this Section 38 (Indemnification). The provision of insurance, while a potential source of funding for indemnification, is in addition to any indemnification requirements and the failure of the SI's insurance to fully fund any indemnification shall not relieve the SI of any obligation assumed under this Section 38 (Indemnification).

38.5. Limitations on SI Indemnification Obligations; Absence of Negligence Not a Defense.

The SI's indemnification obligations under this Section 38 (Indemnification) shall not apply to the extent that the claim for which the MTA is seeking indemnification is based on the MTA Group's gross negligence or reckless misconduct. The SI acknowledges that its indemnification obligations are absolute and not dependent upon any question of negligence on its part or on the part of its agents, officers, employees or Subcontractors. The MTA's approval of the methods of doing the Work or the MTA Group's failure to call the SI's attention to improper or inadequate methods or to require a change in methods or to direct the SI to take any particular precautions or to refrain from doing any particular thing shall not excuse the SI in case of any injury to Persons or damage to property.

38.6. SI's Responsibility for Subcontractor Actions.

By way of clarification, and not limitation, the SI's indemnification obligations set out in this Section 38 (Indemnification) also apply in those situations in which the cause giving rise to the Indemnification Claim is attributable to a Subcontractor, as further established pursuant to Section 50.7 (SI Full Liability; No Exceptions).

39. Limit of Liability.

39.1. Excluded Categories.

The term "**Excluded Categories**" means any of the following: (i) the SI's breach of its information security obligations, including those set out in Section 23 (Security) and Section 24 (Payment Card Industry Standards); (ii) the SI's breach of its confidentiality obligations, including those set out in Section 36 (Confidentiality); (iii) a Security Incident; (iv) any claim for which the SI is providing indemnification pursuant to Section 38 (Indemnification); (v) the SI's bad faith refusal to perform the Work or any other obligation under these Contract Documents; (vi) bodily injury or death; (vii) property damage; (viii) violations of Applicable Law; (ix) gross negligence or reckless misconduct; (x) SI-Attributable Merchant Chargeback Fees; and (xi) any other category identified as being excluded in the Contract Documents.

39.2. Liability for Merchant Chargeback Fees.

Certain agreements that include Merchant Acquirers and Payment Processors as parties include the imposition of fees on the other party associated with chargebacks and chargeback fraud resulting from uses of Open Payment Media, including uses contemplated in connection with the NFPS (collectively, the "**Merchant Chargeback Fees**"). The SI acknowledges that it is responsible for designing the NFPS in a manner that minimizes chargebacks and chargeback fraud while still achieving the performance requirements for the NFPS. To this end, the SI agrees that it shall be solely responsible for all Merchant Chargeback Fees that are attributable to: (i) the SI's failure to comply with Applicable Law; (ii) the failure of the NFPS to comply with the requirements set out in these Contract Documents; or (iii) the SI's breach of any of its other obligations set out in these Contract Documents (collectively, the "**SI-Attributable Merchant Chargeback Fees**"). The MTA agrees that it shall be solely responsible for all Merchant Chargeback Fees that meet the following two criteria: the Merchant Chargeback Fees (a) do not constitute SI-Attributable Merchant Chargeback Fees, and (b) are incurred due to the normal course of the operation of the NFPS.

39.3. Consequential Damages Waiver.

39.3.1. MTA Group Consequential Damages Waiver.

IN NO EVENT SHALL THE MTA GROUP BE LIABLE TO THE SI FOR ANY INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES OF ANY KIND OR NATURE WHATSOEVER, INCLUDING WITHOUT LIMITATION, LOSS OF PROFITS OR OTHER ECONOMIC LOSS, EVEN IF THE MTA GROUP HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR SUCH DAMAGES WERE, OR SHOULD HAVE BEEN, FORESEEABLE OR KNOWN BY THE MTA GROUP.

39.3.2. Limited SI Consequential Damages Waiver.

EXCEPT WITH RESPECT TO DAMAGES, HARMS, CLAIMS OR OTHER AMOUNTS ARISING FROM THE EXCLUDED CATEGORIES AND FURTHER SUBJECT TO SECTION 39.2 (LIABILITY FOR CERTAIN MERCHANT CHARGEBACK FEES), IN NO EVENT SHALL THE SI BE LIABLE TO THE MTA GROUP FOR ANY INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES OF ANY KIND OR NATURE WHATSOEVER, INCLUDING WITHOUT LIMITATION, LOSS OF PROFITS OR OTHER ECONOMIC LOSS, EVEN IF THE SI HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR SUCH DAMAGES WERE, OR SHOULD HAVE BEEN, FORESEEABLE OR KNOWN BY THE SI.

39.4. Limitation of Liability.

39.4.1. MTA Group Limit of Liability.

NOTWITHSTANDING ANY OTHER PROVISIONS OF THE CONTRACT DOCUMENTS, IN NO EVENT SHALL THE LIABILITY OF THE MTA GROUP TO THE SI, IN THE AGGREGATE, IN LAW OR IN EQUITY, EXCEED THE TOTAL CONTRACT PRICE. THIS LIMITATION OF LIABILITY PROVISION IS INDEPENDENT OF ANY OTHER LIMITATION OF LIABILITY SET FORTH IN THE CONTRACT DOCUMENTS AND REFLECTS A SEPARATE ALLOCATION OF RISK FROM PROVISIONS SPECIFYING OR LIMITING A PARTY'S REMEDIES.

39.4.2. Limited SI Limit of Liability.

EXCEPT WITH RESPECT TO THE EXCLUDED CATEGORIES, IN NO EVENT SHALL THE LIABILITY OF THE SI TO THE MTA GROUP, IN THE AGGREGATE, IN LAW OR IN EQUITY, EXCEED THE TOTAL CONTRACT PRICE. THIS LIMITATION OF LIABILITY PROVISION IS INDEPENDENT OF ANY OTHER LIMITATION OF LIABILITY SET FORTH IN THE CONTRACT DOCUMENTS AND REFLECTS A SEPARATE ALLOCATION OF RISK FROM PROVISIONS SPECIFYING OR LIMITING A PARTY'S REMEDIES.

40. Recordkeeping and Audit.

40.1. Scope of Records; General Audit Right.

Throughout the Term the SI agrees that it shall consistently throughout the Term prepare and maintain, and require the Subcontractors to prepare and maintain, in accordance with Good Industry Practices, those books, records, accounts, reports, and other data compilations pertaining to the Work, its performance of its obligations set out in this Contract, and its business generally (collectively, the "**Records**"), and as otherwise required herein. The SI further agrees that it shall consistently throughout the Term prepare and maintain, and require the Subcontractors to prepare and maintain, all financial Records in accordance with Generally Accepted Accounting Principles (or the IFRS equivalent). Upon reasonable advance written notice (provided that twenty-four (24) hours' prior written notice shall be deemed reasonable) (each, an "**Audit Notice**"), the MTA, any Governmental Authority, the State, and the City, or any of their designated representatives (including a private auditing firm) shall have the right for any purpose and on any Business Day during normal business hours to examine, copy (and take full possession of said copies) and audit all Records, including Records of actual performance, SI personnel information (consistent with any restrictions imposed on the SI by Applicable Law), and all of the information within the SI's possession or control relating to the Project and the SI's business operations (including information that the SI considers confidential).

40.1.1. U.S. Secretary of Labor.

By way of clarifying example, the SI shall permit access to its Records by the United States Secretary of Labor, including for purposes of investigating compliance with Applicable Law pertaining to fair employment practices.

40.1.2. Other Governmental Authorities.

By way of further clarifying example, the SI shall permit access to and copying of its Records and Confidential Information by any other Governmental Authority, including the FTA, the DOT, and the United States Comptroller General, including for purposes of any inquiry or investigation to ascertain compliance with Applicable Law.

40.2. Location of Audits.

40.2.1. Local Office.

The SI shall maintain at its Local Office, or such other place approved by the MTA in writing, and make available at such location, all Records maintained by the SI for the purpose of facilitating all financial, compliance and performance audits conducted pursuant to this Section 40 (Recordkeeping and Audit), and for any other purposes identified by the MTA in the Audit Notice.

40.2.2. Production of Copies.

Promptly upon notice, the SI shall provide copies of all Records in a form and format reasonably requested by the MTA (or its designee), it being understood that a request for copies in a fully searchable digital format, paper format or other industry accepted format shall be deemed reasonable. The SI shall be solely responsible for all costs associated with copying Records requested by the MTA. The SI shall correct any material inaccuracy within thirty (30) calendar days of the completion of such audit and immediately thereafter provide the corrected information to the MTA.

40.3. Record Preservation Obligations.

Unless otherwise mandated by Applicable Law, the SI shall maintain all Records required under this Contract or otherwise kept by the SI for a period of not less than ten (10) years after the termination or expiration of this Contract, or such longer period as may be required by the MTA's records retention policy. Upon notice by the MTA, the SI shall also be obligated to keep such Records for as long as directed by the MTA in the event of litigation or settlement of claims arising from or otherwise related to the Project, and such period shall, at least, continue until the final disposition of all such litigation, appeals or claims.

40.4. MTA Holdback Right.

In addition to all other rights and remedies available to the MTA Group, the MTA shall be entitled to withhold an amount equal to five percent (5%) of invoiced amounts from all invoices following the MTA's reasonable determination that the SI is failing to timely comply with its obligations set out in this Section 40 (Recordkeeping and Audit) (the "**Audit Non-Compliance Holdback**"). The MTA shall pay the SI the applicable Audit Non-Compliance Holdback within thirty (30) calendar days of the MTA's determination that the SI has fully complied with its obligations set out in this Section 40 (Recordkeeping and Audit). The SI agrees that the SI's sole remedy for an Audit Non-Compliance Holdback shall be the MTA's payment of the Audit Non-Compliance Holdback. For purposes of clarification, and not limitation, the SI shall not be entitled to any

interest on the Audit Non-Compliance Holdback or recovery of damages due to an Audit Non-Compliance Holdback.

40.5. Audit Right Extends to Work and Equipment.

The MTA's rights set out in this Section 40 (Recordkeeping and Audit) shall also include the right to inspect the SI's Work and related equipment. By way of clarification, and not limitation, the MTA shall have the right to conduct a physical inventory audit of all NFPS components, and the SI shall provide full and efficient access to such NFPS components in order to perform such an audit.

41. Accuracy of SI Submittals.

41.1. Accuracy and Good Faith.

All submissions by the SI pursuant to these Contract Documents, including those submitted in connection with requests for extensions of time, compensation for Extra Work, claims submitted pursuant to Section 45 (Disputes; Dispute Resolution) and all other documents or submissions related to the Contract, must: (i) be made in good faith; (ii) include full, accurate and complete Supporting Documentation; and (iii) not be misleading, false or fraudulent. The SI is expressly advised that the submission of false or fraudulent Documentation in connection with claims or requests for extensions of time or monetary compensation may result in criminal penalties.

41.2. Sufficiency of Supporting Documentation.

All Supporting Documentation, including that which relates to a request for an extension of time or monetary compensation (whether for Extra Work or in settlement of a claim), must be submitted to the MTA with sufficient information to enable the MTA to fully evaluate the submission. Any deliberate failure or refusal on the SI's part to provide sufficient Supporting Documentation accompanying a submittal shall be deemed to be an act of bad faith on the part of the SI. If the SI submits a request that the MTA determines to have been misleading, false, fraudulent or submitted in bad faith, then the request shall be rejected in its entirety and any related offer or settlement by the MTA, whether proposed or actual, shall be rescinded.

41.3. Reduction Due to Inaccurate or Incomplete Submissions.

All costing and pricing data (including claimed profit and overhead fees) submitted by the SI (including that which it submitted on behalf of, or based on information provided by, its Subcontractors or suppliers) must be current, accurate and complete. Any dated, inaccurate or incomplete costing or pricing data that results in an increase in costs to the MTA for the associated price, cost or claim settlement shall be reduced accordingly, and the Contract Documents shall be modified to reflect the reduction.

41.4. Dispute Resolution and Remedies for Violations.

Notwithstanding anything to the contrary, including the process set out in Section 45 (Disputes; Dispute Resolution), claims by the MTA Group for violations of this Section 41 (Accuracy of SI Submittals) shall be adjudicated by a New York State or federal court of competent jurisdiction in New York State. In the event of a determination by such court that the SI has violated the terms of this Section 41 (Accuracy of SI Submittals), the MTA shall be entitled to recover the MTA Group's costs in connection with its review, consideration or response to any such submittal and/or losses, damages, liabilities, and reasonable expenses and costs (including attorneys' fees) incurred due to any related claim or dispute. Such costs shall generally be computed in accordance with NYCT's "Schedule of Rates for Services Rendered to Outside Parties" in effect at the time such costs are incurred. Where such Schedule does not cover the type of Work in question or its use is

otherwise inappropriate in the judgment of the Engineer, the costs shall be computed as directed by the Engineer. Nothing contained in this Section 41.4 (Dispute Resolution and Remedies for Violations) shall be deemed to limit or impair any other rights or remedies of the MTA Group under these Contract Documents.

41.5. Applicability to Subcontractors.

By way of clarification, and not limitation, the SI's obligations set out in this Section 41 (Accuracy of SI Submittals) shall also apply to the SI's Subcontractors, as further established pursuant to Section 50.7 (SI Full Liability; No Exceptions).

42. Insurance.

42.1. Insurance Required to be Carried.

The SI shall, at its sole cost and expense, obtain and maintain throughout the Term all required insurance, pursuant to and in accordance with the Contract Documents, including Schedule A (Insurance Requirements).

42.2. Subcontractor Insurance.

With respect to insurance coverage for Subcontractors, the SI shall ensure that either (i) all Subcontractors obtain and maintain the same insurance coverage that the SI is obligated to carry pursuant to these Contract Documents, and otherwise comply with all insurance requirements set out in these Contract Documents, or (ii) all insurance carried by the SI pursuant to these Contract Documents names the Subcontractors as additional insured.

42.3. Sufficiency of Insurance Coverage.

Notwithstanding anything to the contrary, the SI shall ensure that the insurance that it is required to maintain pursuant to this Section 42 (Insurance) covers acts and omissions that take place outside of the United States to the extent that any Work performed herein is subject to foreign laws, rules and regulations, or otherwise takes place outside of the United States. By way of clarifying example, and not limitation, all insurance relevant to the SI's use of NFPS Data shall cover Security Incidents that are subject to the laws, rules and regulations of non-U.S. countries if the MTA permits the SI to transmit NFPS Data outside of the United States pursuant to Section 36.7 (No Transmission of MTA Group Confidential Information Outside of the United States; Exceptions).

43. Performance Guarantees.

43.1. Performance and Payment Bonds.

Except as otherwise expressly provided in this Section 43 (Performance Guarantees), prior to the issuance of the Notice of Award, the SI shall furnish Performance, Payment, and Advance Payment Bonds as set forth in Schedule R (Bonding and Letter of Credit Requirements and Forms of Bonds and Letter of Credit).

43.2. Failure to Substitute Sureties; Default.

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 SI shall, within ten (10) calendar days after notice by the MTA, substitute other and sufficient surety or sureties. The SI's failure to comply with this Section 43.2 (Failure to Substitute Sureties; Default) shall constitute an Event of Default.

43.3. Deduction as Alternative to Default.

In lieu of defaulting the SI pursuant to Section 43.2 (Failure to Substitute Sureties; Default), the MTA shall be entitled to allow the SI to continue the Work, in which event the MTA may deduct, from any monies then due or which thereafter may come due to the SI, the amount required to be held by such bond. The monies so deducted may be held by the MTA 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 SI under this Contract.

43.4. Advance Payment Bond.

The Advance Payment Bond shall be in an amount equal to the aggregate amount to be paid to the SI from the Award Date through the MTA's issuance of the Beneficial Use Certificate for BU #1. If a Letter of Credit is to be submitted in whole or in part to satisfy this requirement, it shall conform to the requirements of Schedule R (Bonding and Letter of Credit Requirements and Forms of Bonds and Letter of Credit). In no event shall the amount that the MTA will pay the SI to compensate it for the cost of the Advance Payment Bond exceed the actual cost to the SI up to the not-to-exceed price set forth in Price Form B (Mobilization and Estimated Quantity Work) of the Price Schedule. Notwithstanding the foregoing, the Advance Payment Bond shall be effective from the date that the Advance Payment Bond is submitted in a form acceptable to the MTA until the MTA issues the Beneficial Use Certificate for BU #1.

43.5. Letter of Credit; Ongoing Services.

43.5.1. SI Provision of Letter of Credit.

As a condition precedent to receiving the Final Payment, the SI shall provide the MTA for its benefit and the benefit of the other MTA Group entities with an irrevocable letter of credit in the amount of fifteen million dollars (\$15,000,000) and that is otherwise in conformance with the requirements of Schedule R (Bonding and Letter of Credit Requirements and Forms of Bonds and Letter of Credit) (such letter of credit and any replacement letter of credit contemplated by this Section 43.5 (Letter of Credit; Ongoing Services), each, an "**Ongoing Services Letter of Credit**"). Each Ongoing Services Letter of Credit shall be issued by a bank (a "**Qualified Bank**"), which has a credit rating of A+ or better by Standard & Poor's Ratings Services, LLC, a subsidiary of McGraw Hill Financial, Inc. (or any successor to its rating agency business) and Aa3 or better by Moody's Investors Service, Inc. (or any successor to its rating agency business), and has an office in the State of New York at which such Ongoing Services Letter of Credit can be presented for payment. The MTA shall hold each Ongoing Services Letter of Credit as security for the SI's full performance of: (i) the Work that the SI is obligated to provide following its receipt of the Final Completion Certificate, and (ii) the Services that the SI is obligated to provide following its receipt of the Final Completion Certificate, including the SI's performance of (a) Technical and Software Support Services, and (b) Hosting Services (clauses (i) and (ii) collectively, the "**Ongoing Services**"). The SI shall cause an Ongoing Services Letter of Credit to be maintained through the remainder of the Term.

43.5.2. Calling on the Ongoing Services Letter of Credit.

The MTA shall have the right, in its sole discretion and without prejudice to any other rights and remedies to which the MTA otherwise has, to draw on the existing Ongoing Services Letter of Credit any amount that the MTA determines is necessary to compensate the MTA Group for any loss, damage, expense, or other harm (including failures to meet Service Level Requirements) suffered by the MTA Group due to the SI's failure to perform the Ongoing Services.

43.5.3. Term for the Ongoing Services Letter of Credit.

Each Ongoing Services Letter of Credit shall have an initial term of not less than eighteen (18) months. Not later than sixty (60) days prior to the then expiration date of the existing Ongoing Services Letter of Credit, such letter of credit shall be extended for additional eighteen (18) month periods through the remainder of the Term. If the MTA receives a notification from the issuing bank that an Ongoing Services Letter of Credit will not be extended for any such additional period, then the MTA may draw on the full available amount of such Ongoing Services Letter of Credit.

43.5.4. Replacement Costs.

In the event that the issuer of an Ongoing Services Letter of Credit shall no longer be a Qualified Bank (a "**Replacement Event**"), the SI shall provide a replacement letter of credit from a Qualified Bank and having a stated amount equal to the amount available to be drawn under the existing Ongoing Services Letter of Credit. Any such replacement letter of credit shall otherwise be in conformance with Schedule R (Bonding and Letter of Credit Requirements and Forms of Bonds and Letter of Credit) and this Section 43.5 (Letter of Credit; Ongoing Services). If the SI does not cause a replacement letter of credit from a Qualified Bank to be delivered to the MTA within sixty (60) days following a Replacement Event, the failure to so cause such delivery shall be deemed to be a failure by the SI to perform obligations in respect of Ongoing Services and the MTA may draw on the full available amount of the Ongoing Services Letter of Credit then in effect.

43.5.5. Ongoing Services Letter of Credit; Costs and Expenses.

In all cases, the costs and expenses of establishing, renewing, replacing, canceling, increasing, drawing on and maintaining any Ongoing Services Letter of Credit (including attorneys' fees) incurred by the MTA Group shall be borne by the SI. Such costs and expenses shall be paid upon demand by the MTA on the SI.

43.5.6. Parent Company Guaranty.

The MTA and Cubic Corporation (the "**Guarantor**") entered into a separate agreement titled "Parent Company Guaranty" that establishes the Guarantor's obligations to the MTA based on the SI's breach of its obligations under this Agreement (the "**Guaranty**"). The SI agrees that the Guarantor's breach of an obligation set out in the Guaranty shall constitute an Event of Default under this Agreement.

44. Force Majeure.

Except for any obligations under the Contract Documents that are incurred in response to a Force Majeure Event, the MTA Group and the SI shall be excused, subject to the provisions of this Section 44 (Force Majeure), for failure or delay in performing their respective obligations under the Contract Documents by reason of a Force Majeure Event.

44.1. Force Majeure Event Definition.

Subject to the conditions specified in Section 44.2 (Conditions to Force Majeure Events), any of the following events shall constitute a "**Force Majeure Event**":

44.1.1. Natural Disasters.

An act of God, lightning, unreasonably severe weather, explosion, flood, landslide or earthquake, but only where it causes material and unavoidable damage to all or any material part of the NFPS (including materials procured for use therein) or otherwise causes the NFPS to be substantially unusable.

44.1.2. Nuclear and Biological Events.

A nuclear explosion, radioactive or chemical contamination, ionizing radiation, electromagnetic pulse or fatal biological contamination affecting any relevant MTA Group property, unless the source or cause of the explosion, contamination, radiation, pulse or hazardous material is brought to or near such MTA Group property by the SI or any Subcontractor or any of their employees, servants, agents or consultants.

44.1.3. Great Acts of Violence or Insurrections (GAVIs).

An act of a public enemy, war (declared or undeclared), invasion, armed conflict or act of a foreign enemy, but in each case involving, imminently threatened within, or directly affecting the United States of America, or an act of terrorism, sabotage, blockade, revolution, riot, insurrection, civil commotion or epidemic where it causes material and unavoidable damage to all or any material part of the NFPS (including materials procured for use therein) or otherwise causes the NFPS to be substantially unusable.

44.1.4. Quarantines.

A legally imposed quarantine, against which the party claiming relief could not reasonably have been expected to take precautions, and which prevents or delays the performance by such party of its obligations under the Contract Documents.

44.1.5. Embargos.

An embargo or any failure, shortage or outage of power supplied by the local electricity distribution network.

44.1.6. Governmental Action.

An action (including a change in law) taken by a Governmental Authority, including the Transportation Security Administration, the United States Department of Homeland Security, the Federal Railroad Administration or the Federal Transit Administration (or any successor entity of the foregoing agencies) in response to a threat to, or event affecting, the public health, safety, security or the environment, in each case, the effect of which is to suspend, delay or disrupt the performance by the party claiming relief of any of its obligations under the Contract Documents.

44.1.7. Other Events.

Any other event (other than those described in Section 44 (Force Majeure)) outside the reasonable control of the party claiming relief, and which was not reasonably foreseeable by such party, where such event materially and unavoidably prevents or delays such party from performing any of its obligations under the Contract Documents, provided that the term "reasonably foreseeable" means any event or circumstance or category of events or circumstances specifically described in the Contract Documents or which the party claiming relief knew, or should have known, might occur, and which is of a type that an SI acting in accordance with Good Industry Practices and the Contract Documents would have taken steps to avoid or protect itself against.

44.2. Conditions to Force Majeure Events.

Notwithstanding anything to the contrary, in no event shall an event be considered a Force Majeure Event unless all of the following conditions are true:

44.2.1. Lack of Control.

The claimed Force Majeure Event is outside of the control of the party claiming relief and did not or does not arise from and is not contributed to by any breach by such party of its obligations under the Contract Documents or any other neglect, default, act or omission of such party.

44.2.2. Compliance with Obligations Generally.

The claimed Force Majeure Event has arisen despite the party claiming relief complying with its obligations under the Contract Documents.

44.2.3. Compliance with Specific Obligations.

The party claiming relief pursuant to this Section 44 (Force Majeure) has at all times complied with its obligations described in Section 44.2 (Conditions to Force Majeure Events).

44.2.4. No Avoidance.

The claimed Force Majeure Event could not have been avoided by the party claiming relief implementing an applicable disaster recovery plan (provided that the fault or negligence of the party claiming relief is not the cause of the non-implementation of such disaster recovery plan).

44.2.5. No Accepted Practices.

The claimed Force Majeure Event could not have been prevented by the party claiming relief implementing reasonable precautions or commercially accepted processes, or could not reasonably be circumvented by the party claiming relief using substitute services, alternate sources, work-around plans or other means.

44.3. SI Request for Relief Based on Force Majeure Events.

If the SI seeks to rely on a Force Majeure Event as a basis for not performing any of its obligations under the Contract Documents, then the SI shall promptly, but not later than two (2) calendar days after becoming aware of the event, notify the MTA of the act, event or condition giving rise to its inability to perform (for purposes of this Section 44.3 (SI Request for Relief Based on Force Majeure Events), a "**Noticed Event**"), and such Noticed Event shall include: (i) an estimate of the Noticed Event's expected duration; (ii) the effect or the anticipated effect of such Noticed Event on the SI's obligations under the Contract Documents; and (iii) a description of the steps taken and/or proposed to be taken by the SI to prevent the occurrence of, and/or to mitigate and minimize the effects of the Noticed Event. Upon the submission of a Noticed Event, the SI shall thereafter: (a) exercise all reasonable efforts to continue to perform its obligations in accordance with the provisions of the Contract Documents to the maximum extent possible; (b) expeditiously take action to correct or cure the Noticed Event to the extent practicable; (c) exercise all reasonable efforts to mitigate or limit damages or losses arising from the Noticed Event or condition; and (d) promptly, but not later than two (2) Business Days after, notify the other party of the cessation of the Noticed Event.

44.4. Consequences of Force Majeure Events.

Subject to compliance with their obligations set out in Section 44 (Force Majeure), the party claiming relief shall not be responsible for any failure to perform any of its obligations under the Contract Documents, nor shall there be any breach of the Contract, if and to the extent that such failure is caused by any Force Majeure Event. Following the occurrence of a Force Majeure Event, the payments under the Contract Documents shall continue unaffected, unless otherwise affected under the provisions of the Contract Documents.

45. Disputes; Dispute Resolution.

45.1. Authority of the Engineer.

The SI agrees that all questions that it has relating to the Contract shall be first raised with the Engineer, including those relating to: (i) the value, acceptability and fitness of the Work; (ii) either party's fulfillment of its obligations under the Contract, negligence, fraud or misrepresentation before or subsequent to acceptance of the Proposal; (iii) the interpretation of the Technical Specifications and Contract Drawings; and (iv) claims for damages, compensation and losses.

45.1.1. Engineer-Issued Orders; Requests for Justification.

The Engineer shall have the right to order the SI to perform work that the Engineer determines to be necessary for the SI to fulfill its obligations herein. The Engineer shall also have the right to order the SI's performance in every case in which an unsafe condition may arise in performance of the Work. The SI shall be bound by all determinations or orders issued by the Engineer and shall promptly obey and follow every issued order, including the withdrawal or modification of any previous order and regardless of whether the SI agrees with the Engineer's determination or order. The Engineer's orders shall be in writing unless not practicable, in which event any oral order must be confirmed in writing by the Engineer as soon thereafter as practicable. The SI shall have a representative at the Work Site at all times during performance of the Work and such representative shall be authorized to receive orders from the Engineer. If requested, the Engineer shall promptly provide appropriate explanations and reasons for his or her determinations and orders hereunder.

45.1.2. Engineer Approvals; No Liability.

Any review, acceptance or approval by the Engineer shall be construed merely to mean that the Engineer was unaware of any reason, at that time, to object thereto. No such approval by the Engineer of any modification, sample, Work, Deliverable, Service, schedule document, substitution, drawing or other matter or other Deliverable shall impose any liability upon the MTA Group, nor shall any such approval change any of the requirements of this Contract or otherwise relieve the SI of any responsibilities herein, including the accuracy of Technical Specifications, Contract Drawings or any Warranty obligations.

45.2. Dispute Resolution Procedure.

Except as set out in Section 45.7 (Limited SI Right to Seek Judicial Relief), and subject to Section 2.4.5.2 (Limitations on SI Right to Bring Claims), the provisions of this Section 45.2 (Dispute Resolution Procedure) constitute the SI's sole means for (i) challenging any determination, order or other action of the Engineer pursuant to Section 45.1 (Authority of the Engineer), or (ii) otherwise asserting against the MTA any claim of whatever nature (including claims that the SI would otherwise have against other MTA Group entities, as further set out in Section 2.4.5.2 (Limitations on SI Right to Bring Claims)) arising under, or in any way relating to, these Contract Documents (each, a "**Dispute**"). Exhaustion of this dispute resolution procedure, including the judicial review set forth in Section 45.2 (Dispute Resolution Procedure), shall be the MTA's and the SI's sole remedy in connection with any Dispute. The MTA and the SI agree to the resolution of all SI-initiated Disputes pursuant to the procedures set forth in this Section 45 (Disputes; Dispute Resolution), including the following:

45.2.1. Technical Dispute Resolution Officer; Alternative Selection.

45.2.1.1. Review of Technical Disputes.

The term "**Technical Dispute**" means any Dispute that relates in whole or in primary part to technical issue(s) under the Contract, including: (i) determinations as to the acceptability or fitness of any Work; (ii) the meaning or interpretation of the Technical Specifications or Contract Drawings; (iii) the question of whether Disputed Work falls within the scope of the Technical Specifications; (iv) the acceptability of any proposed substitutions,

modifications or other submissions under the Contract; (v) the disapproval of proposed Subcontractors or suppliers (to the extent such disapproval is related to technical issues); (vi) the determination of Excusable Delay claims to the extent that such claims are related to technical matters; (vii) the question of whether Beneficial Use, Substantial Completion or Final Completion has been achieved; or (viii) the nature and extent of any Remaining Work. In the event of a Technical Dispute, the SI shall notify the MTA whether such Technical Dispute is to be decided by either the MTA Technical Dispute Resolution Officer or the Alternative Technical Dispute Resolution Officer (each, a "**Technical Dispute Resolution Officer**"). The Technical Dispute Resolution Officer, acting personally, shall render a final and binding decision regarding any Technical Disputes.

45.2.1.2. Changes to Technical Dispute Resolution Officer.

The MTA and the SI acknowledge that, given the length of the Term, the individuals assigned as the Technical Dispute Resolution Officers may change. To this end, the Technical Dispute Resolution Officer shall be the individual holding the job title associated with the MTA Technical Dispute Resolution Officer or the Alternative Technical Dispute Resolution Officer at the time of an applicable Technical Dispute unless the MTA, in its reasonable discretion, determines that either (i) an individual that formerly held the job title associated with the MTA Technical Dispute Resolution Officer or the Alternative Technical Dispute Resolution Officer (each, a "**Former Technical Dispute Resolution Officer**") would be better suited to resolve the Technical Dispute, or (ii) the expertise changed from the then-current job title to a new job title (each, a "**Title Change**"). If the MTA determines, in its reasonable discretion, that a Former Technical Dispute Resolution Officer is better suited to resolve a Technical Dispute, then the Former Technical Dispute Resolution Officer shall serve as the Technical Dispute Resolution Officer regardless of her or his then-current job title. If a Title Change has occurred, then the MTA shall have the right to substitute the new job title for the then-current title and the Technical Dispute Resolution Officer shall be the individual holding the new job title. By way of clarifying example, if the individual identified as the Alternative Technical Dispute Resolution Officer in the Notice of Award receives a different job title during the Term and the MTA determines that she is better suited to resolve the Technical Dispute than the then-current individual holding the identified job title, then the Alternative Technical Dispute Resolution Officer identified in the Notice of Award shall serve as the Technical Dispute Resolution Officer regardless of her job title.

45.2.2. Contractual Disputes Review Board as Dispute Resolution Officer.

The MTA's Contractual Disputes Review Board (the "**CDRB**") shall render a final and binding decision regarding any Disputes other than Technical Disputes, unless both the MTA and the SI agree to allow the Technical Dispute Resolution Officer to resolve such other Dispute. Any decision by the CDRB shall be in accordance with the "Guidelines for the Submission of Disputes to the CDRB," which are available from the Procurement Representative and incorporated herein by reference (the "**CDRB Guidelines**"). The CDRB shall be comprised of officers and employees of the MTA Group, and the CDRB shall not include members of the applicable MTA Group entity that is the subject matter of the underlying Dispute. The MTA and the SI further agree that the CDRB Guidelines may be subject to periodic amendment by the MTA; provided that any such amendments do not alter any substantive or due process rights accorded to the SI under this Section 45 (Disputes; Dispute Resolution).

45.2.3. Written Submissions.

The SI shall initiate all Disputes with a written submission (each, a "**Dispute Notice**"), and such Dispute Notice shall be submitted to the Technical Dispute Resolution Officer or the CDRB (each, the "**Dispute Resolution Officer**") within the time specified in the Contract and, if no time is specified, then within ten (10) calendar days of the matter giving rise to the applicable Dispute. Within ten (10) calendar days after submitting a Dispute Notice, the SI shall provide the Dispute Resolution Officer with all evidence and other pertinent information supporting the SI's position and/or claim. Within thirty (30) calendar days from the submission of

the Dispute Notice, the MTA shall submit to the Dispute Resolution Officer all materials that the MTA deems pertinent. Upon submission of a Dispute Notice to the CDRB, either party may request that the CDRB provide informal non-binding mediation in an effort to reach a settlement of the Dispute. If requested, the CDRB shall appoint a mediator to meet with the parties in accordance with the CDRB Guidelines. Each party agrees to participate in mediation at the request of the other party. If mediation is unsuccessful or is not undertaken, then the Dispute Resolution Officer shall render its decision in writing and deliver a copy of the same to the parties within a reasonable time not to exceed sixty (60) calendar days after the receipt of all materials. In rendering its decision, the Dispute Resolution Officer may seek (i) technical or other expertise that it deems necessary or appropriate (notifying both parties to the dispute when the Dispute Resolution Officer so seeks such other information or expertise), and (ii) any additional oral and/or written argument or materials from either or both parties to the Dispute. The Dispute Resolution Officer shall have the discretion to extend the time for submittals required hereunder.

45.2.4. Objections to Type of Dispute Resolution Officer.

If a Dispute Notice is submitted to the CDRB and the MTA asserts that such Dispute constitutes a Technical Dispute, then the MTA shall notify the CDRB in writing of such position within the time otherwise permitted for its submission of all materials pursuant to Section 45.2.3 (Written Submissions) (each, an "**Dispute Resolution Officer Objection**"). The submission of a Dispute Resolution Officer Objection shall stay all further proceedings regarding the Dispute (including the submission of materials) pending the CDRB's decision regarding the Dispute Resolution Officer Objection. The CDRB may request other material(s) and/or argument(s) that it deems appropriate in connection with the Dispute Resolution Officer Objection and the CDRB shall render its decision within ten (10) calendar days of its receipt of all such material(s) and/or argument(s). The MTA shall, within ten (10) calendar days of the CDRB's decision regarding the Dispute Resolution Officer Objection, submit to the applicable Dispute Resolution Officer all materials that it considers pertinent regarding the Dispute.

45.2.5. Additional Provision Relating to the Prosecution of Claims for Money Damages.

Except as otherwise provided herein, if the SI claims or intends to claim compensation for any damage or loss sustained by reason of any act, neglect, fault or default of the MTA Group, then the SI shall furnish a written notice to the Engineer setting forth the nature of the claim and the extent of the damage sustained within seven (7) calendar days of the occurrence of such loss or damages. This written notice shall constitute the SI's submission to the Engineer for the purposes of requesting the Engineer's determination in accordance with Section 45.1 (Authority of the Engineer). Any such claim shall state as fully as then possible all information relating thereto and shall be supported by any then-available documentation, including daily records showing all costs incurred. Such information shall be supplemented with all further information, including information relating to the quantum of losses or damages sustained, as soon as practicable after it becomes or reasonably should become known to the SI. The SI's compliance with this Section 45.2.5 (Additional Provision Relating to the Prosecution of Claims for Money Damages) is a condition to the SI's submission of a Dispute pursuant to Section 45 (Disputes; Dispute Resolution) with respect to any claim for compensation. The SI shall be deemed to have waived any claim for compensation not submitted fully in accordance with this Section 45.2.5 (Additional Provision Relating to the Prosecution of Claims for Money Damages), including those requirements relating to time.

45.2.5.1. Determination of Technical Issues.

Any claim for compensation or monetary damages, the successful prosecution of which necessarily depends upon a technical determination favorable to the SI, shall not proceed unless and until the SI first obtains such a favorable determination with respect to the applicable technical issue. Any claim for compensation or monetary damages must be made within five (5) calendar days after such technical determination.

Notwithstanding the foregoing, the SI must submit to the Engineer any Documentation or proof in support of the monetary claim within seven (7) calendar days of the occurrence of such loss or damage as otherwise set forth above in order to proceed with such a claim.

45.3. Negotiations or Settlement Offers Do Not Impair or Waive the Dispute Resolution Officer's Authority.

The Dispute Resolution Officer's ability to render and the effect of a decision hereunder shall not be impaired or waived by any negotiations or settlement offers in connection with the matter presented, whether or not the Dispute Resolution Officer participated therein, or by any prior decision of others, or by any termination or cancellation of the Work or this Contract.

45.4. Dispute Resolution Officer's Ruling is Final and Binding.

Subject to Section 45.7.3 (Treatment of Certain Disputes and Aggregated Financial Claims), the Dispute Resolution Officer's decision shall be final and binding on both the MTA Group and the SI with respect to the Dispute.

45.5. Performance During the Pendency of Dispute Resolutions.

The SI expressly agrees that: (i) the pendency of a Dispute shall at no time and in no respect constitute a basis for any modification, limitation, or suspension of the SI's obligation to fully perform in accordance with the Contract Documents and the Engineer's orders; (ii) the SI shall remain fully obligated to perform the Work notwithstanding the existence of any such Dispute; and (iii) pending final settlement of the applicable Dispute, the SI shall perform those obligations that are the subject of any such Dispute in the manner as directed by the Engineer.

45.6. No Interference with NFPS During Disputes.

In the event of, and notwithstanding, any Dispute, the SI shall not interfere with, and shall ensure that there is no interference with, the MTA Group's use of the NFPS, the Work or other Services provided herein, and that the same shall remain fully functional and otherwise perform in accordance with the Contract Documents.

45.7. Limited SI Right to Seek Judicial Relief.

45.7.1. SI Judicial Relief Claims.

Notwithstanding the limitations set out in Section 45.2 (Dispute Resolution Procedure), and further subject to Section 39 (Limit of Liability), the SI shall have the right to seek judicial relief in courts of law against the MTA (including any claims that the SI would otherwise have against other MTA Group entities, but for the SI's agreed-to limitation set out in Section 2.4.5.2 (Limitations on SI Right to Bring Claims)) for the following (each, an "**SI Judicial Relief Claim**"): (i) claims that the MTA Group is violating its rights in SI-owned Intellectual Property granted pursuant to Section 35 (Intellectual Property) (each, an "**IP Claim**"); (ii) certain individual claims for damages (each, an "**Individual Financial Claim**"); and (iii) certain combinations of claims for damages (each, an "**Aggregated Financial Claim**"). The SI acknowledges that the term "Dispute" expressly excludes SI Judicial Relief Claims.

45.7.2. Requirements for SI Judicial Relief Claims.

The SI agrees to the following requirements with respect to SI Judicial Relief Claims:

45.7.2.1. IP Claim Requirements.

The SI's right to seek judicial relief in courts of law for IP Claims shall be limited to those IP Claims that meet both of the following conditions: (i) the value of the monetary damages for the claim exceeds ten million dollars (\$10,000,000.00) (the "**IP Claim Financial Threshold**"), and (ii) the SI is not entitled to compensation for the claim pursuant to Section 5 (Performance Schedule), including any Delay-Related SI Remedies. The SI acknowledges that, if it seeks relief for an IP claim pursuant to this Section 45.7 (Limited SI Right to Seek Judicial Relief), then the SI's sole and exclusive relief for IP Claims shall be limited to monetary damages as set out herein, and that the SI shall not be permitted to reduce, revoke or otherwise limit the rights granted to the MTA Group pursuant to the Contract Documents, including those in Section 35 (Intellectual Property), or to otherwise seek injunctive relief, specific performance or other equitable relief.

45.7.2.2. Individual Financial Claim Requirements.

The SI's right to seek judicial relief in courts of law for Individual Financial Claims shall be limited to those claims that meet all of the following conditions: (i) the relief sought is limited to the recovery of only direct damages (excluding all Ineligible Damages); (ii) the value of the direct damages (excluding all Ineligible Damages) for the individual claim exceeds thirty million dollars (\$30,000,000.00) (the "**Individual Claim Financial Threshold**"); (iii) the Individual Claim Financial Threshold is determined based on the direct damages for an individual claim that the SI has actually and demonstrably incurred prior to seeking judicial relief, and not based on the aggregation of direct damages for multiple separate claims, the occurrence of the same claim on multiple occasions or any Ineligible Damages; (iv) the SI is not entitled to compensation for the individual claim pursuant to Section 5 (Performance Schedule), including any Delay-Related SI Remedies; and (v) the individual claim does not constitute an IP Claim. By way of clarifying example, a claim shall only constitute an Individual Financial Claim if it meets the Individual Claim Financial Threshold and is calculated based on the SI's direct damages (excluding Ineligible Damages) resulting from the single occurrence of a specific claim. The SI acknowledges that, if it seeks relief for an Individual Financial Claim pursuant to this Section 45.7 (Limited SI Right to Seek Judicial Relief), then the SI's sole and exclusive relief for Individual Financial Claims shall be limited to direct damages, and that the SI shall not be entitled to seek injunctive relief, specific performance or other equitable relief.

45.7.2.3. Aggregated Financial Claim Requirements.

The SI's right to seek judicial relief in courts of law for Aggregated Financial Claims shall be limited to a group of claims that meets all of the following conditions: (i) the relief sought is limited to the recovery of only direct damages (excluding all Ineligible Damages); (ii) the aggregated value of the direct damages (excluding all Ineligible Damages) for the included claims exceeds thirty million dollars (\$30,000,000.00) (the "**Aggregated Claim Financial Threshold**"); (iii) the Aggregated Claim Financial Threshold is determined based on the direct damages for the included claims that the SI has actually and demonstrably incurred prior to seeking judicial relief; (iv) the included claims all occurred within twelve (12) months of the commencement date of an action concerning the Aggregated Financial Claim; (v) the SI is not entitled to compensation for any of the included claims pursuant to Section 5 (Performance Schedule), including any Delay-Related SI Remedies; and (vi) none of the included claims constitutes either an Individual Financial Claim or an IP Claim. The SI acknowledges that, if it seeks relief for an Aggregated Financial Claim pursuant to this Section 45.7 (Limited SI Right to Seek Judicial Relief), then the SI's sole and exclusive relief for Aggregated Financial Claims shall be limited to direct damages, and that the SI shall not be entitled to seek injunctive relief, specific performance or other equitable relief.

45.7.2.4. Determination of Damages.

For purposes of determining whether the SI's damages arising from an SI Judicial Relief Claim meet the applicable Financial Threshold, the SI shall (i) undertake such damages calculations in good faith and based on

auditable, generally accepted accounting principles, and (ii) submit such determination to the MTA as part of the SI Judicial Relief Claim Notice.

45.7.2.5. Governing Law and Venue for SI Judicial Relief Claims.

The SI's right to bring an SI Judicial Relief Claim is subject to the governing law and venue limitations set out in Section 52.2 (Governing Law; Venue).

45.7.2.6. Notice of SI Judicial Relief Claim.

The SI shall notify the MTA in writing at least thirty (30) days prior to filing an SI Judicial Relief Claim in courts of law (each, an "**SI Judicial Relief Claim Notice**"). Each SI Judicial Relief Claim Notice shall include, at a minimum: (i) a detailed description of the SI Judicial Relief Claim; (ii) the claimed damages for the SI Judicial Relief Claim, with all supporting material that the SI is required to prepare pursuant to Section 45.7.2.4 (Determination of Damages); (iii) a detailed description of the steps that the SI has taken to resolve the dispute prior to submitting the SI Judicial Relief Claim Notice; and (iv) any other information that the MTA reasonably requests. The SI agrees that it shall not file an SI Judicial Relief Claim in courts of law unless it has complied with all of the requirements set out in this Contract, including those in this Section 45.7.2.6 (Notice of SI Judicial Relief Claim).

45.7.3. Treatment of Certain Disputes and Aggregated Financial Claims.

45.7.3.1. Inclusion of Technical Dispute Claims as Aggregated Financial Claims.

The parties acknowledge that (1) Technical Disputes may require the Technical Dispute Resolution Officer to render technical determinations and the financial impact of such technical determinations (the financial impact of each Technical Dispute is referred to herein as a "**Financial Impact**"), and (2) the SI's obligation to resolve Technical Disputes before the Technical Dispute Resolution Officer pursuant to Section 45.2 (Dispute Resolution Procedure), including the obligation to comply with various submission deadlines, may limit the SI's ability to include certain financial claims as part of an Aggregated Financial Claim. To address such potential limitations, the SI shall be permitted to include as part of an Aggregated Financial Claim any Financial Impact if all of the following conditions have first been met: (i) the SI has provided written notice to the MTA (each, a "**Technical Dispute Inclusion Notice**") that the SI irrevocably elects (A) to forgo commencing the Technical Dispute process with respect to the Financial Impact, with such notice being provided within the timeframe required by the SI to initiate the Technical Dispute process pursuant to Section 45.2.3 (Written Submissions), (B) if the Technical Dispute process has been commenced but a final decision has not been rendered with respect to the Financial Impact, to terminate the Technical Dispute process with respect to the Financial Impact (while the remaining technical issues proceed pursuant to the Technical Dispute process), or (C) if the Technical Dispute Resolution Officer has rendered a final decision with respect to the Financial Impact, to reject the Technical Dispute Resolution Officer's final decision (in the case of a Financial Impact decision having been rendered, such notice shall be provided to the MTA within five (5) days of the Technical Dispute Resolution Officer's issuance of its final decision regarding the Financial Impact); (ii) the SI has complied with all of its obligations relating to the resolution of the Technical Dispute, including those set out in Section 45.2 (Dispute Resolution Procedure), up to the date of the SI's provision of a Technical Dispute Inclusion Notice; (iii) the SI has not accepted any compensation, adjustment, or other remediation in connection with such Technical Dispute process; and (iv) the claim underlying the Financial Impact otherwise meets the applicable requirements for including claims within an Aggregated Financial Claim as further set out in Section 45.7.2.3 (Aggregated Financial Claim Requirements) (for example, the claim underlying the Financial Impact occurred within twelve (12) months of the commencement date of an action concerning the Aggregated Financial Claim). The SI agrees that, unless every requirement set out in the preceding sentence is met in its entirety, no

Financial Impact claims that should have been or were subject to a Technical Dispute can be included in an Aggregated Financial Claim. The SI acknowledges that the rights set out in this Section 45.7.3.1 (Inclusion of Technical Dispute Claims as Aggregated Financial Claims) apply solely to the Technical Dispute Resolution Officer's scope of authority with respect to determining the amount of the Financial Impact, and such rights shall have no effect on the Technical Dispute Resolution Officer's issuing a decision with respect to all portions, including all technical determinations, of a Technical Dispute, and that the Technical Dispute shall otherwise be resolved by the Technical Dispute Resolution Officer. By way of clarifying example, if the Technical Dispute Resolution Officer is determining whether Disputed Work falls within the scope of the Technical Specifications, then the SI may submit a Technical Dispute Inclusion Notice with respect to the Financial Impact of such determination, but the Technical Dispute Resolution Officer shall nevertheless determine whether the Disputed Work falls within said scope, and the SI shall be bound by such determination for all purposes herein.

45.7.3.2. Inclusion of CDRB Dispute Claims as Aggregated Financial Claims.

The parties acknowledge that the SI's obligation to resolve Disputes before the CDRB (each, a "**CDRB Dispute**") pursuant to Section 45.2 (Dispute Resolution Procedure), including the obligation to comply with various submission deadlines, may limit the SI's ability to include certain claims as part of an Aggregated Financial Claim. To address such potential limitation, the SI shall be permitted to include as part of an Aggregated Financial Claim those claims that are subject to a CDRB Dispute if all of the following conditions have first been met: (i) the SI has provided written notice to the MTA (each, a "**CDRB Inclusion Notice**") that the SI irrevocably elects (A) to forgo commencing the CDRB Dispute process in its entirety with respect to any such claims, with such notice being provided within the timeframe required by the SI to initiate the CDRB Dispute process pursuant to Section 45.2.3 (Written Submissions), (B) if the CDRB Dispute process has been commenced but a final decision has not been rendered, to terminate the CDRB Dispute process in its entirety with respect to such claims, or (C) if the CDRB has rendered a final decision, to reject the CDRB's final decision (in the case of a final decision having been rendered, such notice shall be provided to the MTA within five (5) days of the CDRB's issuance of its final decision); (ii) the SI has complied with all of its obligations relating to the resolution of the CDRB Dispute, including those set out in Section 45.2 (Dispute Resolution Procedure), up to the date of the SI's provision of a CDRB Inclusion Notice; (iii) the SI has not accepted any compensation, adjustment, or other remediation in connection with such CDRB Dispute process; and (iv) the claim underlying the CDRB Dispute otherwise meets the applicable requirements for including claims within an Aggregated Financial Claim as further set out in Section 45.7.2.3 (Aggregated Financial Claim Requirements) (for example, the claim underlying the CDRB Dispute occurred within twelve (12) months of the commencement date of an action concerning the Aggregated Financial Claim). The SI agrees that, unless every requirement set out in the preceding sentence is met in its entirety, no claims that should have been or were subject to a CDRB Dispute can be included in an Aggregated Financial Claim. By way of clarification, and not limitation, if the SI rejects only a portion of the CDRB's final decision regarding a CDRB Dispute (and not the final decision in its entirety), then the SI shall not be entitled to include any part of the underlying claim in an Aggregated Financial Claim for any purpose.

45.7.3.3. Effect of Inclusion Notices.

The SI agrees that its provision of a Technical Dispute Inclusion Notice or a CDRB Inclusion Notice to the MTA shall (i) with respect to a Technical Dispute Inclusion Notice, (a) render any actions or decisions of the Technical Dispute Resolution Officer with respect to Financial Impact determinations that are subject to the Technical Dispute void and of no further effect on either of the parties, (b) irrevocably limit the SI's recourse for pursuing such claims to the SI Judicial Relief Claim process set forth in Section 45.7.2 (Requirements for SI Judicial Relief Claims), and (c) have no effect on all portions of the Technical Dispute (and Technical Dispute Resolution Officer's decision regarding the same) that do not consist of the Technical Dispute Resolution Officer's determination of the amount of compensation between the MTA and the SI based on the Financial

Impact, and (ii) with respect to a CDRB Inclusion Notice, both (1) render any actions or decisions of the CDRB with respect to claims subject to the CDRB Dispute void and of no further effect on either of the parties, and (2) irrevocably limit the SI's recourse for pursuing such claims to the SI Judicial Relief Claim process set forth in Section 45.7.2 (Requirements for SI Judicial Relief Claims).

45.8. Limitations of Dispute Resolution Process.

The SI acknowledges that: (i) this Section 45 (Disputes; Dispute Resolution) establishes the SI's sole and exclusive remedy against the MTA Group with respect to Disputes (defined in Section 45.2 (Dispute Resolution Procedure)) and SI Judicial Relief Claims; (ii) it is subject to the limitations set out in Section 2.4.5.2 (Limitations on SI Right to Bring Claims); and (iii) this Section 45 (Disputes; Dispute Resolution) does not restrict the MTA Group's ability to exercise any rights against the SI that the MTA Group has under law or equity, including seeking judicial relief in courts of law. By way of clarifying example, nothing in these Contract Documents (including in this Section 45 (Disputes; Dispute Resolution)) shall prohibit or otherwise restrict the MTA Group from bringing an action against the SI in state or federal court based on claims arising from these Contract Documents, and the SI agrees that any claims that it has against any MTA Group entity shall be brought solely against the MTA, regardless of whether the basis for said claim arose due to the actions of an MTA Group entity other than the MTA. The MTA agrees that, to the extent that it elects to avail itself to the dispute resolution procedure set out in Section 45.2 (Dispute Resolution Procedure) with respect to claims that the MTA Group has against the SI, the MTA agrees that the Dispute Resolution Officer's decision shall be final and binding on both the MTA Group and the SI with respect to such claims, as contemplated in Section 45.4 (Dispute Resolution Officer's Ruling is Final and Binding).

45.9. Mutual Agreement Regarding Alternative Dispute Resolution.

The MTA and the SI agree that, notwithstanding the dispute resolution process otherwise set out in this Section 45 (Disputes; Dispute Resolution), the MTA and the SI may mutually agree to resolve a particular dispute (including a Dispute) via an alternative dispute resolution process, including mediation and binding arbitration. Both the MTA and the SI acknowledge that: (i) express consent by both parties is necessary to resolve a dispute pursuant to this Section 45.9 (Mutual Agreement Regarding Alternative Dispute Resolution); (ii) any consent provided pursuant to this Section 45.9 (Mutual Agreement Regarding Alternative Dispute Resolution) shall only apply to the specific dispute at issue; and (iii) either party can refuse to agree to the alternative dispute resolution process contemplated in this Section 45.9 (Mutual Agreement Regarding Alternative Dispute Resolution) for any reason.

46. Term.

Unless terminated earlier as set forth herein, this Contract shall come into force and effect upon the Award Date and shall continue until the longer of: (i) the conclusion of the Technical and Software Support Period; (ii) seven (7) years following the successful completion of Revenue Service Acceptance Testing; and (iii) the conclusion of the term of any Option exercised by the MTA pursuant to Section 21 (Optional Services) (the "Term").

47. Termination; Effect of Termination.

47.1. Contract Null and Void Due to Debarment.

This Contract shall be null and void if the MTA determines that the SI, as of the bid submission or the Award Date, was debarred from bidding on or being awarded, or was a substantially owned Affiliate of a party debarred from bidding on or being awarded, a public agency contract in New York pursuant to Section 141-b of the Workers' Compensation Law or pursuant to any other federal or New York State law. Additionally, at no

additional cost to the MTA Group, the SI shall replace any Subcontractor that the MTA or the SI determines was debarred from bidding on public agency contracts in New York as of the Proposal submission or the Award Date.

47.2. Termination for Convenience.

In addition to cancellation or termination as otherwise provided in the Contract Documents, the MTA shall be entitled at any time to terminate this Contract or any portion of the Work without cause and in its sole discretion and for convenience by providing written notice to the SI of the same.

47.2.1. Payment to SI in the Event of Termination for Convenience.

For purposes of this Section, the term "**Unpaid Completed Work**" means Work completed in accordance with the Contract Documents up to the Termination Date that has not yet been paid, and the term "**Non-Cancelable Material and Equipment**" means non-cancelable material and equipment that is not capable of use except in the performance of the Work and that has been specifically fabricated for the sole purpose of the Work but not incorporated in the Work. If the MTA exercises its rights under this Section 47.2 (Termination for Convenience), the MTA shall pay the SI the sum of:

(i) the lesser of (a) the SI's actual cost of the Unpaid Completed Work plus the SI's actual cost of Non-Cancelable Material and Equipment, and (b) the fair and reasonable value of the Unpaid Completed Work plus the fair and reasonable value of the Non-Cancelable Material and Equipment; plus

(ii) ten percent (10%) of the difference between the Total Contract Price and the aggregate of all payments made before payment for any Unpaid Completed Work identified in subsection (i) of this Section 47.2.1 (Payment to SI in the Event of Termination for Convenience).

The fair and reasonable value shall be based upon the Total Contract Price. In no event shall any payments under this Section 47.2 (Termination for Convenience) exceed the Contract price of such items. All payments pursuant to this Section 47.2 (Termination for Convenience) shall be accepted by the SI as full satisfaction of all claims against the MTA Group arising out of the termination, including lost profits, overhead or other consequential damages. Further, the MTA may deduct or set off against any sums due and payable pursuant to this Section 47.2 (Termination for Convenience) any claims that it may have against the SI. All payments pursuant to this Section 47.2 (Termination for Convenience) are subject to audit.

47.2.2. Termination for Convenience; Integrity Matters.

The MTA, at its discretion, shall be entitled to terminate the Contract or any portion of the Work for convenience based on integrity matters if, during the Term: (i) the SI, an SI director, officer, principal or managerial employee, or owner of a ten percent (10%) or more interest in the SI is convicted of a crime involving a public contract, or (ii) significant concerns about the SI's integrity are raised based upon an evaluation of the events underlying any other determination, or an indictment or other allegation, that the SI or an SI director, officer, principal or managerial employee, or owner of a ten percent (10%) or more interest in the SI, is involved in a criminal or other unlawful activity. In such event, the procedures set forth in this Section 47.2 (Termination for Convenience) shall apply, the SI shall be entitled to the payment set forth in subsection (i) of Section 47.2.1 (Payment to SI in the Event of Termination for Convenience), and the SI shall not be entitled to any payment set forth in subsection (ii) of Section 47.2.1 (Payment to SI in the Event of Termination for Convenience).

47.3. Default; Remedies.

47.3.1. Event of Default.

The term "**Event of Default**" means the SI's material breach of the Contract as determined by the Engineer, including where: (i) performance of the Work is unnecessarily or unreasonably delayed; (ii) the SI is willfully violating any provision of the Contract or is not executing the same in good faith and in accordance with the provisions herein; (iii) the SI has abandoned the Work; (iv) the SI has become insolvent (other than bankrupt), or has assigned the proceeds of the Contract for the benefit of creditors, or taken advantage of any insolvency statute or debtor or creditor law or if its property or affairs have been put in the hands of a receiver; (v) the SI has failed to obtain an approval required by the Contract; (vi) the SI has failed to provide "adequate assurance" as required under 47.3.2 Section (Adequate Assurance); (vii) the SI fails to comply in material respects with Applicable Law; (viii) the SI fails to maintain the required performance guarantees set out in Section 43 (Performance Guarantees) and insurance; (ix) the SI has materially breached any representation or warranty set out in these Contract Documents (including those in Section 37 (SI Representations and Warranties)); (x) subject to Section 49.9.3 (Prior Approval of Key Personnel), the SI has failed to maintain the Key Personnel throughout the Term; or (xi) the SI has engaged in actions or omissions that are otherwise specifically referred to in the Contract as a material breach or Event of Default.

47.3.2. Adequate Assurance.

When, in the opinion of the Engineer, reasonable grounds for insecurity exist with respect to the SI's ability to perform the Work or any portion thereof, the MTA may request that the SI, within a reasonable time, provide written adequate assurance of its ability to perform in accordance with the Contract. Such assurance must be provided by the SI within the time set forth in the MTA's request.

47.3.3. Notice of Default and Opportunity to Cure.

47.3.3.1. Notice of Default.

If an Event of Default occurs, then the MTA shall have the right to notify the SI of the Event of Default (each, a "**Default Notice**"). The Default Notice shall specify the basis(es) for such default. The SI shall deliver to the MTA a written plan to remedy such default (each, a "**Remedial Plan**") within seven (7) calendar days of the SI's receipt of a Default Notice. If the SI fails to submit a Remedial Plan to the MTA within the seven (7) day period, then the SI shall be in default of the Contract, and the MTA shall have the right to immediately terminate the Contract for cause by providing the SI with written notice of its intent to do so.

47.3.3.2. Remedial Plan Content.

The Remedial Plan shall include: (i) a description of the Default Notice that the Remedial Plan is addressing; (ii) an explanation of the reasons for the default(s) described in the Default Notice; (iii) the remedial steps that the SI proposes to take to cure the described default(s); and (iv) the time period within which the SI proposes to implement such remedial steps.

47.3.3.3. Remedial Plan Review.

The MTA shall review the submitted Remedial Plan within a reasonable time, and notify the SI whether the MTA accepts or rejects the Remedial Plan. If the MTA accepts the Remedial Plan, then it shall notify the SI of the same in writing, and such notification shall include the time limit within which the SI must successfully complete (i) the remedial steps included in the SI's Remedial Plan, and (ii) any other remedial steps that the MTA determines are reasonably appropriate (each, a "**Remedial Plan Acceptance Notice**"). If the MTA rejects the Remedial Plan, then the MTA shall have the right to either (a) declare the SI in default of the Contract and immediately terminate the Contract for cause by providing the SI with written notice of its intent to do so, or

(b) notify the SI of its rejection, identify deficiencies in the Remedial Plan and provide a time limit within which the SI can submit a revised Remedial Plan to the MTA for further review pursuant to this Section 47.3.3 (Notice of Default and Opportunity to Cure).

47.3.3.4. Performance of the Remedial Plan.

Upon the SI's receipt of a Remedial Plan Acceptance Notice, the SI shall perform the applicable remedial steps within the time limit included in the Remedial Plan Acceptance Notice. The MTA's right to declare the SI in default of the Contract and to terminate the Contract for cause shall be tolled so long as the MTA determines that the SI is diligently performing the requirements included in the Remedial Plan.

47.3.3.5. Completion of Remedial Plan; Rescinding the Default Notice.

If, upon the SI's completion of the Remedial Plan requirements, the MTA determines that the basis(es) for default have been sufficiently cured, then the MTA shall rescind the Default Notice by providing written notice to the SI of the same within a reasonable time. The MTA shall have the right to declare the SI in default of the Contract and to immediately terminate the Contract for cause by providing the SI with written notice of its intent to do so if: (i) the MTA determines that the SI is failing to diligently perform the requirements included in the Remedial Plan at any point after issuing a Remedial Plan Acceptance Notice; (ii) the MTA determines that the basis(es) for default have not been sufficiently cured after the SI has completed the Remedial Plan requirements; or (iii) the SI has failed to complete the Remedial Plan requirements within the time limits set out in the Remedial Plan Acceptance Notice.

47.3.3.6. Discontinuing Work.

The MTA's notice of termination of the Contract shall specify the date upon which the SI is to discontinue all Work (the "**Decision Date**"). Upon receipt of such notice, the SI shall discontinue the Work upon the Decision Date.

47.3.4. Event of Default Remedies.

Upon the SI's default, the MTA shall have the right to either complete the Work with its own personnel (and those of other MTA Group entities) and/or other contractors or to require the surety to complete the Work under the Performance Bond, as further set out in Section 43.1 (Performance and Payment Bonds). The MTA, in connection with its right to complete the Work, may take possession of and use any or all of the materials, plant, tools, equipment, supplies and property of every kind provided by the SI, and/or procure other materials, plant, tools, equipment, supplies and property for the completion of the same, and to charge the expense of said labor, materials, plant, tools, equipment, supplies and property to the SI.

47.3.5. SI Liability for Damages Stemming from Default.

If an Event of Default is declared, the SI shall be liable for all damages resulting from the default, including the difference between the Total Contract Price and the amount actually expended by the MTA Group to complete the Work, as well as the applicable liquidated damages set out in Section 5.5.1 (Liquidated Damages for LD Non-Excusable Delays). The SI shall also remain liable for any other liabilities and claims set out in the Contract. All damages may be deducted and paid out of such monies due to the SI or the performance guarantees set out in Section 43 (Performance Guarantees), including the Ongoing Services Letter of Credit. Notwithstanding Section 45 (Disputes; Dispute Resolution), the MTA may also bring any suit or proceeding for specific performance or for injunction or to recover damages or to obtain any other relief or for any other purpose under the Contract or otherwise available to the MTA Group at law.

47.3.6. Waiver of Default.

The MTA may in its sole discretion waive a default by the SI, but no such waiver, and no failure by the MTA to take action in respect to any default, shall be deemed a waiver of any subsequent default.

47.3.7. Improper, Unwarranted, or Wrongful Determination of Default.

If the MTA elects to hold the SI in default and/or terminate the Contract or any portion of the Work for cause pursuant to this Section 47.3 (Default; Remedies), and the MTA subsequently determines that the default and/or termination was improper, unwarranted or wrongful, then any such termination shall be deemed for all purposes to have been a termination for convenience pursuant to Section 47.2 (Termination for Convenience). The SI agrees that it shall be entitled to no damages, allowance or expenses of any kind other than as provided for in that Section 47.2 (Termination for Convenience) in connection with any such termination.

47.4. Survival.

In addition to any other right or obligation that by its nature is intended to survive any termination or expiration of these Contract Documents, the following Sections shall survive any termination or expiration of these Contract Documents: (i) Section 35.1 (Ownership); (ii) Section 35.2 (Grant of Rights to the MTA Group); (iii) Section 36 (Confidentiality); (iv) Section 38 (Indemnification); (v) Section 39 (Limit of Liability); (vi) Section 47 (Termination; Effect of Termination); (vii) Section 48 (Transition Assistance); and (viii) Section 52 (General).

47.5. General Effect of Termination.

In addition to any other obligations of the SI set out herein, including those in Section 48 (Transition Assistance), upon receipt of any notice of termination pursuant to Section 47 (Termination; Effect of Termination), and unless otherwise directed by the MTA, the SI shall immediately: (i) stop work on the date specified in the notice (the "**Termination Date**"); (ii) take such action as may be necessary for the protection and preservation of the MTA Group's materials and property; (iii) cancel all cancelable orders for material and equipment; (iv) assign to the MTA, and deliver to the site or any other location designated by the Engineer, any non-cancelable orders for material and equipment that are not capable of use except in the performance of the Work and have been specifically fabricated for the sole purpose of the Work but not incorporated in the Work; (v) take no action that will increase the amounts payable by the MTA under this Contract; (vi) take all measures necessary to mitigate the MTA Group's liability; (vii) cease the use of any MTA-Provided Systems, MTA Group Trademark Assets and NFPS Data, and any other portion of the NFPS identified by the MTA; and (viii) promptly in the timeframe set out by the MTA and as otherwise directed by the MTA, either return to the MTA all NFPS Data or otherwise destroy the NFPS Data and certify to such destruction in writing.

48. Transition Assistance.

48.1. General Overview of Transition Assistance.

In connection with the expiration or termination of this Contract, the SI shall take all actions necessary to accomplish a complete and timely transition of the NFPS from the SI to the MTA, or to any new system integrator (the "**New SI**") without material impact on the NFPS, including the SI's provision of the Services. The SI shall provide personnel support, labor, services and other necessary or desirable transition services (collectively, the "**Transition Services**") to ensure successful and timely migration from the SI to the MTA or the New SI. The SI shall cooperate with the MTA and its New SI and otherwise take all steps reasonably required to assist the MTA in effecting complete and timely Transition Services. The SI shall provide the MTA and the New SI with all information regarding the NFPS and related services and all other information as is otherwise needed or requested for the Transition Services. The SI shall provide for the prompt and orderly conclusion of

all Work, as the MTA may direct, including completion of any Work currently underway, Documentation of Work in progress and other measures to assure an orderly transition to the MTA or the New SI.

48.2. Fees for Transition Services.

Except for those costs expressly attributed to the SI in this Section 48 (Transition Assistance), the SI shall provide such Transition Services as the MTA reasonably requests for a period of up to two (2) years at the MTA's cost, and such cost shall be determined pursuant to Section 32 (Changes in Work; Change Orders). Notwithstanding anything to the contrary, in no event shall the costs for those Transition Services that are substantially similar to the Services exceed the compensation to which the SI would otherwise be entitled under this Contract but for the termination or expiration of this Contract. By way of clarification, and not limitation, if the Transition Services include the continued provision of Technical and Software Support Services, then the applicable fees for that portion of the Transition Services shall not exceed the fees that the MTA would otherwise pay the SI for such Technical and Software Support Services.

48.3. Transition Services Process.

The Transition Services process shall begin on the earlier of any expiration or termination of this Contract or upon written notice by the MTA that the Transition Services are to commence. The SI and the MTA shall discuss in good faith a plan for determining the nature and extent of the SI's Transition Services obligations; provided, however, that the SI's obligation under this Contract to provide all Transition Services shall not be lessened in any respect. The SI shall be required to perform its Transition Services on an expedited basis, as determined by the MTA. Notwithstanding anything to the contrary, the Transition Services shall include the services described herein as well as any additional services reasonably requested by the MTA to complete the transition to a New SI or the MTA.

48.4. Full Cooperation and Information.

From and after the commencement of the Transition Services, the SI shall cooperate fully with the MTA and its New SI to facilitate a smooth transition of the NFPS (and any outstanding Work) to the MTA or such New SI. Such cooperation shall include the provision (both before and after the cessation of the SI's providing all or any part of the NFPS or Services) by the SI to the MTA of reasonably full, complete, detailed and sufficient information (including all information then being utilized by the SI) to enable the MTA Group's personnel (or that of the New SI) to fully assume responsibility for the provision of the NFPS and related Services, all without interruption of the NFPS or deviation of the NFPS from the applicable Service Levels.

48.5. No Interruption or Adverse Impact.

The SI shall cooperate with the MTA, the MTA's Authorized Vendors and the New SI to assist and reasonably effect a smooth transition at the time of Transition Services, with no interruption of or negative impact to: (i) the NFPS; (ii) the Services; (iii) the MTA Group's activities; or (iv) services provided by Third Parties. The MTA and the SI shall work together to ensure that their personnel, vendors and the New SI cooperate and reasonably effect a smooth transition at the time of the Transition Services to provide for no interruption of the NFPS or performance of the Service Levels.

48.6. Third Party Authorizations.

Without limiting the SI's other obligations, the SI shall, at its sole cost and expense, procure for the MTA Group any Third Party authorizations necessary to grant the MTA Group and any New SI the use and benefit of any Third Party agreements between the SI and any Third Parties relating to the NFPS.

48.7. Transfer of Subcontracts, Leases, Licenses and Agreements.

The SI shall, at its sole cost and expense, convey or assign to the MTA or the MTA's designee such subcontracts, leases, licenses, maintenance and support agreements, subscription agreements and other contracts used by the SI, the MTA or any other Person in connection with the NFPS, as the MTA selects. The SI's obligations under this Section 48 (Transition Assistance) shall include the SI's performance of all obligations under such subcontracts, leases, licenses and other agreements to be performed by it with respect to periods prior to the date of conveyance or assignment, and the SI shall reimburse the MTA Group for any claims, liabilities, losses, costs, damages and expenses with respect to the SI's actions or inactions that arose prior to the date of such assignment or conveyance and resulting from any claim that the SI did not perform any such obligations.

48.8. Delivery of Documentation and NFPS Software Interfaces.

The SI shall, at its sole cost and expense, deliver to the MTA or any New SI during the Transition Services period, and otherwise during the Term upon the MTA's request, all Documentation, NFPS Data and materials embodying NFPS Software Interfaces, including in and on any media or form of any kind (as requested by the MTA). By way of clarification, and not limitation, the required information shall include: (i) data or summaries or indices of data related to the MTA Group or its customers and the NFPS, including data in the MTA's databases or otherwise in the MTA's possession; (ii) any Personally Identifiable Information of the MTA Group's customers; (iii) any Intellectual Property of the MTA Group; and (iv) all other MTA Group and SI records, data, files, input materials, reports, forms and other such items that may be received, computed, developed, used or stored by the SI, or by any Subcontractor, in the performance of the SI's duties under the Contract Documents and all materials specifically generated under the Contract Documents held by the SI. The SI shall destroy all other copies thereof not turned over to the MTA as otherwise required herein, all at no charge to the MTA Group.

48.9. Preparation for Transition Services; Complete Documentation.

At all times throughout the Term, the SI shall provide to the MTA sufficient information, including complete Documentation for the NFPS, to enable the MTA to fully assume the operation of the NFPS and related Services as well as the operation, support, maintenance, repair and replacement of the NFPS. The SI shall also provide such Documentation for all Updates to, or replacements of, the NFPS.

48.10. New SI Confidentiality Obligations.

If the MTA provides a New SI with SI Confidential Information in connection with the transition contemplated in this Section 48 (Transition Assistance), then the MTA shall require the New SI to execute a non-disclosure agreement that is substantially similar to the MTA Non-Disclosure Agreement in all material respects.

48.11. All Necessary Cooperation and Actions.

The SI shall provide all cooperation, take such additional actions and perform such additional tasks as may be necessary to ensure the timely Transition Services in compliance with the provisions of this Section 48 (Transition Assistance), including full performance, on or before the termination or expiration of these Contract Documents, of the SI's obligations under this Section 48 (Transition Assistance). The MTA shall cause the New SI to reasonably cooperate with the SI. Notwithstanding anything to the contrary, the SI shall migrate and transition its operation of the NFPS to the MTA or a New SI as otherwise reasonably requested by the MTA.

48.12. Transition of Third Party Software.

In addition to those obligations set out in Section 48.7 (Transfer of Subcontracts, Leases, Licenses and Agreements) and in connection with the Transition Services or at any time during the Term at the MTA's request, the SI shall: (i) identify all Third Party Software components included within the NFPS; (ii) provide copies of the relevant licenses for such Third Party Software; and (iii) assist the MTA in transferring the licenses for such Third Party Software to the MTA, the New SI or a Third Party, all at the SI's sole cost and expense. If the SI is unable to transfer to the MTA the license for any Third Party Software on substantially similar terms, then the MTA shall be entitled to negotiate directly with such Third Party Software vendors and the SI shall be liable for all costs incurred by the MTA Group in connection with securing such licenses, including any costs charged by vendors for transferring existing licenses or executing new licenses (including, for example, any implementation fees charged by a vendor based on the transfer of an existing license or a new license).

49. Required SI Practices.

49.1. New York State Labor Law.

The SI agrees that it shall cause all Persons employed to perform the Work, including its agents, officers and employees, to comply with all Applicable Laws in the jurisdiction in which the Work is performed. The SI further agrees to comply with the requirements of New York State's Labor Law, including Labor Law Sections 220, 220-a, 220-b, 220-d, 222-a and 223 thereof, as amended and supplemented (the "**Labor Law**").

49.1.1. Hours and Wages.

Pursuant to the Labor Law, the SI agrees that no laborer, worker or mechanic in the SI's employ, or other Persons doing or contracting to do the whole or a part of the Work, shall be permitted or required to work more than eight (8) hours in any one day or more than five (5) calendar days in any one week, except in cases of extraordinary emergency, as defined in Section 220 of the Labor Law. The SI further agrees that the wages to be paid for a "legal day's work" (as defined in Section 220) for the Work to all classes of such laborers, workers or mechanics, or upon any material to be used upon or in connection therewith, shall be not less than the prevailing rate for a "legal day's work." The SI further agrees that the wages to be paid for a "legal day's work" shall be paid in cash, provided, however, that an employer may pay her employees by check after complying with the procedures prescribed in Section 220, and that each laborer, worker or mechanic employed by the SI for the Work shall receive the wages and supplements provided for in said Section 220 of the Labor Law. Additional information concerning the SI's obligations are included in Schedule 1L (NYS Labor Law).

49.1.1.1. Schedule of Wages and Supplements.

The schedule of wages and supplements required to be filed with the MTA by the New York City Comptroller prior to advertisement of these Contract Documents in accordance with Section 220(3) of the Labor Law is attached hereto and is hereby incorporated herein. The SI shall be fully responsible in connection with any changes or modifications in such rates or supplements, whether mandated by statute, judicial determination, union contracts or otherwise, and in no event shall the SI be entitled to additional compensation with respect to any such increases in wages and supplements that may go into effect during the Term. If there are differences amongst the New York City, New York State, and federal wage rates for a particular classification of work, then they shall be resolved by applying the highest of the New York City, New York State, and federal wage rates. The SI shall post in a prominent and accessible place on the site of the Work a legible statement of all wage rates and supplements as specified in the Contract Documents to be paid for the various classes of mechanics, workers or laborers employed to perform the Work.

49.1.1.2. Section 220-a Verified Statements.

Before any payments will be made under this Contract, the SI shall file in the office of the Chief Fiscal Officer of the MTA verified statements provided for in Section 220-a of the Labor Law. The statements required shall be verified by the oath of the SI that it has read such statements subscribed by it and knows the contents thereof. Such verified statements shall: (i) certify to the amounts then due and owing from the SI for daily or weekly wages or supplements on account of labor performed for the Work; (ii) set forth the names of the persons whose wages or supplements are unpaid and the amount due to each, respectively; and (iii) set forth the names of all Subcontractors. If the SI has no Subcontractors (or the Subcontractor has no subcontractors), it shall so state in its statement. If there is nothing due and owing to any laborer for daily or weekly wages or supplements on account of labor performed, verified statements to that effect shall be filed by the SI before any payments are made under these Contract Documents.

49.1.1.3. Withholdings for Laborers' Wages and Supplements.

The Chief Fiscal Officer may deduct, from any amount certified under these Contract Documents due to the SI, the sum(s) admitted in the Section 220-a Verified Statements (as described in Section 49.1.1.2 (Section 220-a Verified Statements)) to be due on account of the aforesaid daily or weekly wages or supplements, as provided in Section 220-b of the Labor Law.

49.1.2. Workers' Compensation Law.

If these Contract Documents fall within the purview of the provisions of Chapter 615 of the Laws of 1922, known as the "**Workers' Compensation Law**," and acts amendatory thereof, then the Contract Documents shall be void and of no effect unless the SI performing the Work secures compensation for the benefit of, and keeps insured during the Term, the employees engaged thereon, in compliance with the provisions of the Workers' Compensation Law.

49.1.3. Harmful Dust.

The SI agrees that, where Work is performed wherein a harmful dust hazard is created for which appliances or methods for the elimination of harmful dust have been approved by the New York City Board of Standards and Appeals, the SI shall install, maintain and effectively operate such appliances and methods. The SI further agrees that, if the provisions of Section 222-a, as amended and supplemented, are not complied with, the Contract Documents shall be void.

49.1.4. Applicability to Subcontractors.

By way of clarification, and not limitation, the SI's obligations set out in this Section 49.1 (New York State Labor Law) shall also apply to the SI's Subcontractors, as further established pursuant to Section 50.7 (SI Full Liability; No Exceptions).

49.2. Federal Equal Opportunity Act of 1972.

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

49.3. Omnibus Procurement Act of 1992 and Related Matters.

49.3.1. Condition of Applicability.

In compliance with the New York State Omnibus Procurement Act of 1992, if the gross sum bid or the lump sum enumerated in the Bid is equal to or greater than one million dollars (\$1,000,000.00), this Section 49.3 (Omnibus Procurement Act of 1992 and Related Matters) shall apply to this Contract.

49.3.2. General Requirements; Inclusion Efforts.

The SI shall make reasonable efforts to encourage the participation of New York State Business Enterprises as suppliers and Subcontractors by showing that the SI has: (i) solicited bids, in a timely and adequate manner, from New York State Business Enterprises including certified minority and women-owned businesses; (ii) contacted the New York State Department 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 outreach conferences.

49.3.3. Documentation.

The SI shall submit to the MTA all Documentation evidencing the SI's efforts taken pursuant to Section 49.3.2 (General Requirements; Inclusion Efforts) upon the MTA's request. If the SI determines that New York State Business Enterprises are not available to participate in the Work as Subcontractors or suppliers, then the SI shall submit a written statement to the MTA indicating the method by which such determination was made. If the SI does not intend to use Subcontractors, the SI shall provide a written statement to the MTA verifying such intention.

49.3.4. Notification of Employment Opportunities to New York State Residents.

The SI shall make reasonable efforts to provide notification to New York State residents of employment opportunities by 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 a manner consistent with existing applicable collective bargaining contracts or agreements. Upon the MTA's request, the SI shall provide Documentation of any such efforts to the MTA or New York State.

49.3.5. Offset Credits From Foreign Countries.

The SI acknowledges that New York State may seek to obtain offset credits from foreign countries as a result of this Contract and the SI agrees to cooperate with New York State in these efforts.

49.3.6. Information on Availability of New York State Subcontractors and Suppliers.

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.

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

- Online at: <https://ny.newnycontracts.com/FrontEnd/VendorSearchPublic.asp>
- By contacting the Empire State Development's Division of Minority and Women's Business Development:

625 Broadway
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 and scheduling an appointment to inspect the directory at 2 Broadway, 16th floor, New York, NY 10004. At the SI's request, the MTA's Department of Diversity and Civil Rights will assist a firm in reviewing the directory.

Contractors that want to be informed by e-mail of future contracting opportunities 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>.

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 SI'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 New York State Business Registry application.

49.4. Equal Employment Opportunities for Minority Group Members and Women.

The provisions of this Section 49.4 (Equal Employment Opportunities for Minority Group Members and Women) apply if the award for the Work is (a) in excess of \$25,000 for labor, services, supplies, equipment, material or any combination of the foregoing, or (b) in excess of \$100,000 for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvement thereon. The requirements of this Section 49.4 (Equal Employment Opportunities for Minority Group Members and Women) shall not apply to: (i) any employment outside New York State; (ii) application for employment outside New York State, or solicitations or advertisements therefor; or (iii) any existing employment programs outside New York State.

49.4.1. Discrimination Prohibited.

The SI shall: (i) not discriminate against any employee or applicant for employment; (ii) undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination; and (iii) make and generate Documentation of its conscientious and active efforts to employ and utilize minority group members and women in its workforce to perform the Work, and provide the MTA with copies of such Documentation promptly upon the MTA's request.

49.4.2. Written Statement of Non-Discrimination.

At the MTA's request, the SI shall request that each employment agency, labor union or authorized representative of workers with which the SI has a collective bargaining or other agreement or understanding furnish a written statement that such employment agency, labor union or authorized representative of workers (i) shall not discriminate, and (ii) shall affirmatively cooperate in the implementation of the SI's

obligations set forth in this Section 49.4 (Equal Employment Opportunities for Minority Group Members and Women).

49.4.3. Statement of Equal Employment Opportunities Without Discrimination.

The SI shall state, in all solicitations or advertisements for employees, that, in the performance of the Work, all qualified applicants will be afforded equal employment opportunities without discrimination.

49.4.4. Workforce Utilization Report.

Following the MTA's issuance of the NTP, the SI shall submit to the Engineer a workforce utilization report (the "**Workforce Utilization Report**"). The Workforce Utilization Report shall be in a form and format reasonably prescribed by the Engineer and shall include details on the SI's (and its Subcontractors') work force actually utilized to perform the Work, broken down by ethnic background, gender, federal occupational categories or other appropriate categories specified by the MTA. Where the work force to be utilized to perform the Work can be separated from the SI's and/or Subcontractor's total work force, the SI shall submit to the Engineer, on a monthly basis throughout the Term, in a form and manner required by the MTA, Workforce Utilization Reports that detail the number of employees that worked on activities related to this Contract. The Workforce Utilization Report shall include the hours the SI's (and its Subcontractors') employees worked on activities related to the Contract and a break-down of those hours by ethnic background, gender and the construction related job titles that fall within the relevant federal occupational categories. The information must be submitted on MTA Form WF-257, a copy of which shall be provided to the SI. If the SI's/Subcontractor's workforce cannot be broken out, the SI/Subcontractor must affirm such and submit an EEO-1 Form detailing its current workforce on a semiannual basis throughout the Term.

49.4.5. Continued Compliance Throughout the Term.

During the Term, the SI shall undertake or continue existing Equal Employment Opportunity programs and shall ensure that all Subcontractors comply with the Equal Employment Opportunity requirements set forth in this Section 49.4 (Equal Employment Opportunities for Minority Group Members and Women).

49.4.6. Subcontractors.

The SI shall include the provisions set forth in this Section 49.4 (Equal Employment Opportunities for Minority Group Members and Women) in every contract for Work performed by Subcontractors. The SI shall ensure that such provisions set forth in this Section 49.4 (Equal Employment Opportunities for Minority Group Members and Women) are binding upon each Subcontractor, including the requirement that Subcontractors 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 SI shall ensure that any such Subcontractor shall provide to the SI information on the ethnic background, gender, and federal occupational categories of the employees performing any Work.

49.4.7. Labor Force Availability Data.

Upon a written request, the MTA Department of Diversity and Civil Rights shall supply the SI with labor force availability data for specific job titles that fall within certain occupational categories. The SI may use this information to identify, recruit and retain minority group members and women for participation in the Work.

49.5. Antitrust Assignment.

The SI hereby assigns, sells and transfers to the MTA all right, title and interest in and to any claims and causes of action arising under the antitrust laws of New York State, Connecticut, or the antitrust laws of the United States relating to the particular goods or services purchased or procured by the MTA under these Contract Documents.

49.6. Compliance with Section 1269-g of the Public Authorities Law.

The SI shall comply fully with Section 1269-g of the New York State Public Authorities Law. Section 1269-g(1) requires, among other things, that contractors and subcontractors: (i) post the information required in Section 1269-g(2) in one or more conspicuous places at each major workplace site where Persons working on the Project (including persons working for a Subcontractor) are most likely to see it; (ii) post the required information on their Internet and intranet website (if applicable) or provide a conspicuous hyperlink (labeled "Protections for Reporting Fraud In New York") to the applicable part of the MTA's website; and (iii) distribute the required information to Persons, including employees and managers, who work on the Project by including it in an employee handbook or by sending an email. The SI's compliance with this Section 49.6 (Compliance with Section 1269-g of the Public Authorities Law) and with Section 1269-g is a material condition of payment. The MTA has posted on its website (www.mta.info) a page providing the information specified in Section 1269-g(2) and also a sample statement. Posting and distributing the sample statement in the manner required by Section 1269-g(1) will satisfy the SI's disclosure obligations under Section 1269-g.

49.6.1. Section 1269-g Certifications.

No later than ninety (90) calendar days from the Award Date, the SI shall file with the Engineer a certification signed by an officer of the SI and sworn to under the pains and penalties of perjury that the SI has posted and distributed the information specified in Section 1269-g(2) in the manner required by Section 1269-g(1). Each request for payment submitted by the SI shall include a certification signed by an officer of the SI and sworn to under the pains and penalties of perjury certifying that (i) the SI has continued to comply with the requirements of Section 1269-g, and (ii) each of its Subcontractors has filed the certification as required by this Section 49.6.1 (Section 1269-g Certifications), and based thereon, has continued to comply with the requirements of Section 1269-g.

49.6.2. Subcontractor Compliance.

The SI shall include in every subcontract with its Subcontractors, and require its Subcontractors to do the same with respect to subcontracts such Subcontractors have with any lower-tier subcontractors, a provision requiring each Subcontractor to comply with Section 1269-g, and requiring each Subcontractor, no later than ninety (90) calendar days from the effective date of each subcontract, to file with the SI a certification signed by an officer of such Subcontractor and sworn to under the pains and penalties of perjury that such Subcontractor has posted and distributed the information specified in Section 1269-g(2) in the manner required by Section 1269-g(1). In complying with their disclosure obligations, Subcontractors may also rely on the sample statement posted by the MTA on its website (see Section 49.6 (Compliance with Section 1269-g of the Public Authorities Law)). The SI shall also insert into every subcontract with its Subcontractors, and require its Subcontractors to do the same with respect to subcontracts such Subcontractors have with any lower-tier subcontractors, a provision stating that material compliance by a Subcontractor with Section 1269-g shall be a material condition of payment under such subcontract.

49.7. Asian Longhorned Beetle.

49.7.1. Regulations Regarding the Asian Longhorned Beetle.

Any Work performed by the SI that involves the handling or removal of any firewood (of hardwood species), trees, logs, green lumber, stumps, roots or branches (whether living, cut or dead) that is one-half inch or more in diameter and is one of the trees listed in the New York State Agriculture and Markets Law (the "**NYS AML**"), Part 139.3 (collectively, "**Host Material**") originating from within the Asian Longhorned Beetle ("**ALB**") Quarantine Zone (as defined by the New York State Department of Agriculture and Markets), must be performed (i) in accordance with federal, state and local laws and regulations regarding the eradication of the ALB, including Part 139 of the NYS AML, and (ii) by a Person certified by the New York State Department of Agriculture and Markets to perform such work. Copies of such certification must be provided to the MTA before any Work involving Host Material is commenced.

49.7.2. Handling of Host Material.

Prior to the handling or disposal of any Host Material within the Quarantine Zone, the certified Person must perform an inspection for the presence of an ALB infestation. If an ALB infestation is detected, then all Work related to the handling or disposal of the relevant Host Material must cease, and the SI shall immediately notify the Engineer for further action. Work involving the infested Host Material may not restart until written notification to proceed is received from the Engineer. 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 the New York State Department of Agriculture and Markets.

49.8. Permits.

49.8.1. SI Obligation to Obtain Required Permits.

The SI shall, at no additional expense to the MTA Group, apply for, obtain approvals for, request, process, obtain and keep in force all permits and approvals (including any amendment or modification to the New York City Department of Transportation permit, if any) required for, necessary for, or in connection with the Project, and the SI shall do so only with the prior knowledge and approval of the Engineer. Such approval shall include all requisite permits, approvals and licenses for battery removal, removal, repackaging, transportation and disposal of fluorescent/mercury vapor lamps, lead containing materials, asbestos and transformers and Work performed on/around/under sidewalks under the auspices of the New York City Department of Transportation, if applicable. The SI shall notify the New York City Department of Transportation a minimum of ten (10) calendar days prior to occupying or working on any portion of roadway or sidewalk.

49.8.2. Liability.

The SI shall be solely responsible for compliance with permit requirements and conditions and regulations set forth in this Section 49.8 (Permits) and shall be solely liable for violations. Those parties that the SI is obligated to indemnify pursuant to Section 38.1 (SI Indemnification) (including, for example, the MTA, the City and the State) shall be named as insureds in any additional policy or certificate of insurance required to obtain any permit. The MTA Group shall not be liable for any injuries (including death) or damage sustained or caused by the SI's operations. These permits shall not act as a waiver of liability for any injury (including death) or damage that might result from the SI's operations, whether due to its negligence or the negligence of any of the indemnified parties designated in Section 38.1 (SI Indemnification) or otherwise. Moreover, such permits shall not absolve the SI from any liability, responsibility or obligation or impose any liability, responsibility or obligation herein, including those to the indemnified parties designated in Section 38.1 (SI Indemnification) as indemnified parties. Such permits shall not affect the SI's responsibility or liability under this Contract.

49.9. SI Expertise and Personnel.

49.9.1. SI's Expertise.

The SI represents and warrants that its employees, Subcontractors and agents possess the professional skills, abilities and expertise necessary to satisfactorily perform the Work in compliance with the requirements set out in the Contract Documents and Good Industry Practices. If, in the MTA's opinion, any of the SI's employees, Subcontractors or agents do not possess such expertise and the SI fails to promptly remedy such situation after notice from the MTA, then the MTA, in its absolute discretion, shall have the right to demand that the applicable employee, Subcontractor or agent cease providing any Work and the SI shall honor such a demand to the extent that doing so is not inconsistent with Applicable Law or applicable collective bargaining agreement.

49.9.2. SI's Personnel.

The SI shall be responsible for the performance of the Work of all of its personnel and Subcontractors, and such responsibilities include the maintenance of schedules, coordination of their Work and resolution of all differences between them. It is understood that all such personnel, whether the SI's employees, Subcontractors retained by the SI or the SI's agents, are not employees of the MTA Group and that the SI is solely responsible for its Work.

49.9.3. Prior Approval of Key Personnel.

The SI acknowledges that the following SI personnel have substantial responsibility for performing the Work: (i) NFPS Project Manager; (ii) Deputy Project Manager; (iii) Lead Engineer; (iv) Quality Engineer; (v) Network Engineer; (vi) Safety Engineer; (vii) Project Scheduler; (viii) Deputy Project Manager - FCALAN/Equipment Removal; (ix) Electrical Engineer - FCALAN/Removal; (x) Communications Expert - FCALAN/Removal; and (xi) Quality Manager - FCALAN/Removal (collectively, the "**Key Personnel**"). The MTA acknowledges that those Key Personnel included in the SI's Proposal have been approved by the MTA as of the Notice to Proceed. In the event the SI finds it necessary and unavoidable that a member of the Key Personnel must be replaced, which may only be done for a good cause shown to the Engineer, the replacement of the Key Personnel shall be subject to the approval of the Engineer.

49.10. Federal Requirements.

49.10.1. Federal Drug and Alcohol Testing Requirements.

The SI shall comply with those requirements set out in Schedule X (Federal Drug & Alcohol Testing Requirements) relating to federal drug and alcohol testing.

49.10.2. Other Federal Requirements.

In addition to the requirements set out in Section 49.10.1 (Federal Drug and Alcohol Testing Requirements), the SI shall comply with all other applicable federal requirements in connection with its performance under these Contract Documents.

49.11. Employee Record Cards; Payroll Information.

49.11.1. Contents of Employee Record Card.

The SI shall create and retain a record card of every employee engaged in the performance of the Work under the Contract Documents, whether employed by the SI or by a Subcontractor (each, an "**Employee Record Card**"). Each Employee Record Card shall consist of the following:

Contract _____

Project and Location _____

Employee's Name _____ Payroll or Badge No _____

Employee's Address _____

Title of position _____ Hourly Wage \$ _____

Classification _____ Fringe Benefits _____

(Journeyman, Reg. Apprentice, Etc.)

Resided in N.Y. State since _____

Where born _____

Naturalized _____

(Date) (Court) (Location)

Employed by _____

(To be signed by the SI's representative)

49.11.2. Retention of Employee Record Cards; Inspection.

All Employee Record Cards shall be kept throughout the Term in the SI's Local Office and shall be made available for inspection by the MTA pursuant to Section 40 (Recordkeeping and Audit). If required, the SI shall file with the MTA copies of the Employee Record Cards.

49.11.3. Submission of Payroll Report.

Throughout the Term, the SI shall submit to the MTA weekly payroll report forms, using the forms issued by the office of the Comptroller and furnished to the SI by the MTA; provided, however, that if the Work is federally funded, the SI shall have the right to instead submit computerized payroll printouts or, with the MTA's permission, submit the same payroll information on federal regulation forms or copies of the computerized payroll in lieu of the payroll report forms issued by the Comptroller.

50. Subcontracting.

50.1. Required Use of Subcontractors and Suppliers Identified in the Proposal.

The SI shall use those Subcontractors or suppliers that required and received pre-award approval from the MTA during the procurement process for those portions of the Work for which they were approved. The MTA acknowledges that such Subcontractors or suppliers included in the SI's Proposal have been approved by the MTA as of the Notice to Proceed. Absent compelling circumstances, the MTA shall not entertain any post-award substitutions of approved Subcontractors or suppliers.

50.2. Request for Engagement of Subcontractors and Suppliers Following the Award Date.

If pre-award approval of a Subcontractor or a supplier would have been required pursuant to the Contract Documents during the procurement process, but such approval was not secured before the Award Date, then the SI must obtain approval from the MTA before the SI can utilize any such Subcontractor or supplier. The MTA shall review requests for approval in accordance with the criteria and requirements set out in the Overview and Proposal Procedures. If a proposed Subcontractor or supplier is not approved, then the SI may (i) propose another Subcontractor or supplier, or (ii) perform such portion of the Work itself and notify the Engineer of the same.

50.3. Other Requests for Changes to Subcontractors and Suppliers.

The term "**Key Suppliers**" means those suppliers that the SI identified in its Proposal and that are predicted to provide, or that actually provide, at least five million dollars (\$5,000,000.00), in the aggregate, worth of products and services associated with the Work throughout the Term. The SI acknowledges that (i) it has identified all suppliers in its Proposal that it knows or should know to constitute Key Suppliers, and (ii) any supplier that provides, in the aggregate, at least five million dollars (\$5,000,000.00) worth of products and services during the Term shall be deemed a Key Supplier regardless of whether such supplier was identified as a Key Supplier in the Proposal. The SI shall notify the Engineer of any proposed additions, deletions or substitutions of any Subcontractors or Key Suppliers, and such notice shall include pertinent information and reasons for the proposed modification. The MTA reserves the right to disapprove such proposed modification in its reasonable discretion. The SI shall also promptly notify the MTA in writing if the SI determines that any supplier not identified as a Key Supplier in the Proposal has become, or is predicted to become, a Key Supplier during the Term. The SI acknowledges that Key Suppliers shall be considered "suppliers" for all purposes under these Contract Documents except with respect to those differing rights and obligations that are explicitly assigned to Key Suppliers.

50.4. SI Obligations Regarding Subcontractor and Supplier Compliance.

The SI shall fully inform all Subcontractors and suppliers of all requirements of the Contract Documents relating either directly or indirectly to the Work to be performed and the materials to be furnished by such Subcontractors and suppliers. In no circumstances shall the SI engage Subcontractors or suppliers to perform Work unless such parties first enter into an agreement that: (i) includes provisions establishing that the labor performed and/or equipment/materials furnished shall comply with the requirements of the Contract Documents; (ii) contains those terms and conditions that are in accordance with Applicable Law regarding payments; (iii) ensures that, unless proscribed by Applicable Law, all provisions relating to payment and retainage shall be no less favorable to the Subcontractor or supplier than are those with respect to the SI as set forth in the Contract Documents; and (iv) includes provisions establishing that the Subcontractor or supplier shall make no claims against the MTA Group relating to the Work performed by the Subcontractor or supplier or the termination of the applicable agreement between the SI and the Subcontractor or supplier.

50.5. No Waiver by the MTA.

The MTA's approval of any Subcontractor or supplier shall not operate as the MTA Group's waiver of any right against the SI or Third Parties, nor shall it relieve the SI of any of its obligations to perform the Work as herein set forth.

50.6. Downstream Subcontractor and Supplier Obligations.

In the event that a Subcontractor or supplier (each, a "**First Tier Sub**") engages its own subcontractors or suppliers (each, a "**Second Tier Sub**"), then those provisions relating to the SI set out in this Section 50 (Subcontracting) shall apply to the First Tier Sub as if the First Tier Sub were the SI, and the Second Tier Sub shall be treated as a First Tier Sub. By way of clarification, and not limitation, any Subcontractor engaged by

the SI shall be obligated to ensure that any agreement it enters into with its own suppliers contains those provisions set out in Section 50.4 (SI Obligations Regarding Subcontractor and Supplier Compliance).

50.7. SI Full Liability; No Exceptions.

To the extent that the SI engages Subcontractors or suppliers in connection with the Contract Documents, the SI agrees that it shall remain fully and directly liable for all obligations under the Contract Documents as though no such subcontracting had occurred. The SI shall be solely responsible for ensuring that any Subcontractors and suppliers it engages fully comply with the SI's obligations under the Contract Documents as if the Subcontractor or supplier were the SI. By way of clarification, and not limitation, any obligation under the Contract Documents that is breached by a Subcontractor shall constitute a breach of that obligation by the SI and the SI shall be fully liable for such breaches.

51. Environmental Obligations.

In fulfilling its obligations under these Contract Documents, the SI shall comply with any and all applicable federal, state and local laws, rules and regulations governing the handling, transportation, disposal and abatement of asbestos, asbestos containing materials, asbestos contaminated materials, lead paint materials, petroleum, petroleum constituents, and all other environmentally regulated substances and hazardous materials, including asbestos. The SI's liability under this Section 51 (Environmental Obligations) shall in no way be limited by the amount of insurance coverage provided by the SI, and shall continue beyond the expiration of the Term for claims, losses, expense, fines, penalties and assessments which arise out of the SI's performance during the Term.

52. General.

52.1. Notices.

Any notices required or permitted under this Section 52.1 (Notices) shall be given to the appropriate party at the address specified below, or at such other address as the party specifies in writing. All notices hereunder must be in writing, in accordance with the Contract, unless expressly indicated otherwise. Such notice shall be deemed given: (i) upon personal delivery; (ii) if sent by facsimile, upon confirmation of receipt; or (iii) if sent by certified or registered mail, postage prepaid, five (5) calendar days after the date of mailing:

MTA:

Director, New Fare Payment Program
2 Broadway, 27th Floor, Room D27.83
New York, NY 10004

With a copy to:

Engineer, New Fare Payment Program
2 Broadway, 27th Floor, Room D27.73
New York, NY 10004

and

MTA General Counsel
2 Broadway, 20th Floor, Room A20.15

New York, NY 10004

SI:

Babette A. Guerrero, Senior Contracts Manager, New York Tri-State Region

With a copy to:

Steve Brunner, Vice President and General Manager, New York Tri-State Region

Nothing in this Section 52.1 (Notices) shall be deemed to preclude or render inoperative the personal service of any notice, direction or communication upon the SI, or if the SI is a corporation, upon any officer, director or designated agent thereof. Nothing in in this Section 52.1 (Notices) shall be deemed to serve as a waiver by the MTA Group of any requirements for the service of notice of process with respect to the filing of a claim or the institution of an action or proceeding as provided by law or elsewhere in these Contract Documents.

52.2. Governing Law; Venue.

52.2.1. Challenges to Dispute Resolution Officer Decisions.

Any final determination of the Dispute Resolution Officer with respect to a Dispute initiated pursuant to Section 45 (Disputes; Dispute Resolution) shall be subject to review solely in the form of a challenge following the decision by the Dispute Resolution Officer, in a court of competent jurisdiction of the State of New York, County of Kings or New York, under Article 78 of the New York Civil Practice Law and Rules or a United States Court located in New York City, under the procedures and laws applicable in that court, it being understood that the review of such Court shall be limited to the question of whether or not the Dispute Resolution Officer's determination is arbitrary or capricious. No evidence or information shall be introduced or relied upon in such proceeding that has not been duly presented to the Dispute Resolution Officer in accordance with Section 45 (Disputes; Dispute Resolution).

52.2.2. Governing Law.

This Contract shall be deemed to be executed in the City of New York, State of New York, regardless of the domicile of the SI, 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, except to the extent that the law of the State of New York is superseded by federal law.

52.2.3. Service of Process.

If the MTA initiates any action against the SI in Federal Court or in New York State Court, then service of process may be made on the SI either in person, wherever the SI may be found, or by registered mail addressed to the SI at its address as set forth in the Contract, or to such other United States address as the SI may provide to the MTA in writing.

52.2.4. Waiver of Forum Non Conveniens, Removal to Federal Court, Motion for Change of Venue.

With respect to any action between the MTA and the SI in New York State Court, the SI hereby expressly waives and relinquishes any rights it might otherwise have: (i) to move to dismiss on grounds of forum non conveniens; (ii) to remove to Federal Court; and (iii) to move for a change of venue to a New York State Court outside Kings or New York County.

52.2.5. Waiver of Motion to Transfer to a Federal Court Outside of New York City.

With respect to any action between the MTA and the SI in Federal Court located in New York City, the SI expressly waives and relinquishes any right it might otherwise have to move to transfer the action to a United States Court outside New York City.

52.2.6. Consent to Transfer Action Upon Request of the MTA.

If the SI commences any action against the MTA in a court located other than in the City and State of New York, then upon request of the MTA, the SI shall either consent to a transfer of the action to a court of competent jurisdiction located in the City and State of New York as above described or, if the court where the action is initially brought will not or cannot transfer the action, the SI shall consent to dismiss such action without prejudice and may thereafter reinstitute the action in a court of competent jurisdiction in New York City as above-described.

52.2.7. Venue for SI Judicial Relief Claims.

The SI agrees that the exclusive venue and jurisdiction for any SI Judicial Relief Claims shall be the state and federal courts located in New York City, New York. The SI and the MTA accept the personal jurisdiction of such courts.

52.3. Severability.

If any provision of these Contract Documents is determined to be unenforceable or invalid by Applicable Law or court decision, such enforceability or invalidity shall not render these Contract Documents unenforceable or invalid as a whole and, in such event, such provision shall be changed and interpreted so as to best accomplish the objectives of such provision within the limits of Applicable Law or court decision.

52.4. Local Office; Engineer's Office.

The SI shall establish prior to the Notice To Proceed, and maintain throughout Final Completion, a local business office in Manhattan to facilitate clear and timely communications between the SI and the MTA (the "**Local Office**"). The SI shall also ensure that it meets the obligations set out in Division 1B – General Clauses, Paragraph 1.29 (Engineer's Office) with respect to the provision of an office for the Engineer.

52.5. Waiver.

The MTA Group's failure to require performance by the SI of any obligation herein shall not affect the MTA Group's full right to require such performance at any time thereafter, nor shall the MTA Group's waiver of a breach of any obligation herein be taken, held or interpreted as a waiver of the obligation itself or any past or subsequent breaches of the same obligation.

52.6. Headings.

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 affect these Contract Documents.

52.7. Remedies Not Exclusive.

Except as expressly set out in these Contract Documents, the MTA Group may avail itself of each and every remedy herein specifically given to the MTA Group or now or hereafter existing at law or in equity or by

statute, and each and every such remedy shall be in addition to every other remedy so specifically given or otherwise so existing and may be exercised from time to time and as often and in such order as may be deemed expedient by the MTA, and the exercise, or the beginning of the exercise, of one remedy shall not be deemed to be a waiver of the right to exercise, at the same time or thereafter, any other remedy.

52.8. Independent Contractors.

The MTA and the SI are independent contractors, and no agency, partnership, joint venture or employer-employee relationship is intended or created by these Contract Documents. By way of clarification, and not limitation, the SI shall not hold itself out as or claim to be an officer or employee of the MTA Group or otherwise make a claim, demand or application to or for any right or privilege applicable to an officer or employee of the MTA Group, including claims for Workers' Compensation coverage, Unemployment Insurance benefits, Social Security coverage or Retirement membership or credit.

52.9. Entire Agreement; Integration.

These Contract Documents set forth the entire understanding between the MTA and the SI and supersede any and all oral or written agreements or understandings between the MTA and the SI relating to the subject matter herein. The SI is not relying on any representations, warranties, assurances or inducements not expressly set forth herein. These Contract Documents may only be changed by a signed writing as further set out herein.

52.10. Order of Precedence; Ambiguities.

52.10.1. Contract Documents.

52.10.1.1. List of Contract Documents.

The term "**Contract Documents**" means the following:

- this Agreement;
- the Best and Final Offer (dated August 30, 2017);
- the Important Notice to Proposers;
- the Special Important Notice to Proposers;
- the Overview and Proposal Procedures;
- the Contract Drawings, Technical Specifications and Technical Specifications Appendices (including the Divisions, Design Guidelines, the MNR Station Standards and Guidelines, and the LIRR Service Guidelines);
- all Addenda;
- the Proposer's Proposal Execution Form;
- the Proposal;
- Price Schedule (including all Price Forms therein);
- Schedule A (Insurance Requirements);
- Schedule E (Proposer Diversity Practices Questionnaire);
- those portions of Schedule J (Responsibility Questionnaire) that contain additional conditions and obligations on the SI and rights in favor of the MTA Group are deemed to be included in the Contract Documents by reference;
- Schedule L (New York State Contract Provisions – Construction);
- Schedule L1 (NYS Labor Law);
- Schedule R (Bonding and Letter of Credit Requirements and Forms of Bonds and Letter of Credit);

- Schedule W (Compliance with NYS State Finance Law and Sections 139-j and 139-k);
- Schedule W1 (Connecticut Notice of Executive Branch State Contractors and Prospective State Contractors of Campaign Contribution and Solicitation Limitations);
- Schedule X (Federal Drug and Alcohol Testing Requirements);
- Schedule Y (Diesel Emission Reduction Act (DERA) Requirements);
- Schedule Z (Office of the State Comptroller Review and Approval);
- Package 3: the M/WBE Program;
- the Notice of Award (dated November 1, 2017);
- Attachment A: Non-Disclosure and Confidentiality Agreement – Prospective Proposer/Contractor;
- Attachment B: Information and Responsibility Request Form;
- Attachment C: Statement of Qualification of Subcontractor;
- Attachment D: Delivery Schedule;
- Attachment E: Vendor Code of Ethics;
- Attachment F: Authority Observed Holidays;
- Attachment G: Labor Law §220 Prevailing Wage Schedule;
- Attachment I: MTA Non-Disclosure Agreement;
- Attachment J (Connecticut State Provisions); and
- Attachment K (Proposal Compendium).

52.10.1.2. Conflicts; Order of Precedence.

Unless the Engineer determines otherwise, in the event of a conflict or inconsistency between or among portions of these Contract Documents, the more stringent provision or requirement shall control, except for situations in which no provision is clearly more stringent, in which case the Engineer shall generally apply the following order of precedence: in the descending order: (i) this Agreement, including all forms, certifications and attachments; (ii) the Notice of Award; (iii) the Technical Specifications; (iv) Addenda; (v) the Proposal (including the Compendium); and (vi) the Request for Proposal documents. In no event shall the order of precedence supersede Applicable Law unless the Engineer determines that the requirements set out herein are more stringent than Applicable Law.

52.10.1.3. Relationship Among Divisions, MNR Station Standards and Guidelines, and LIRR Service Guidelines.

As further set out in Technical Specifications Section 5 (General Design Requirements), the MNR Station Standards and Guidelines, and the LIRR Service Guidelines include requirements with respect to work performed on MNR and LIRR property, respectively. The SI shall comply with all applicable requirements included in the Divisions, the MNR Station Standards and Guidelines, and the LIRR Service Guidelines; provided, however, that in the event of a conflict between the documents: (i) the MNR Station Standards and Guidelines shall control, but only with respect to Work performed on MNR property; (ii) the LIRR Service Guidelines shall control, but only with respect to Work performed on LIRR property; and (iii) the Divisions shall control in all other cases.

52.10.1.4. Clarification Regarding Compendium.

Throughout the procurement process, the SI submitted various information in response to MTA requests, which the MTA compiled into a single document prior to its issuance of the NTP for convenience and reference purposes (the "**Compendium**"). The SI acknowledges that the Compendium constitutes a subset of the Proposal.

52.10.2. Exception to Order of Precedence.

The term "**Priority Proposal Commitment**" means those portions of the Proposal that include commitments, Deliverables, Services, activities, tasks, functions or responsibilities that (i) exceed those set out in this Contract (other than the Proposal), or (ii) are otherwise materially more beneficial to the MTA Group than those set out in this Contract (other than the Proposal). Notwithstanding anything to the contrary, to the extent that the MTA determines, in its sole discretion, that a portion of the Proposal constitutes a Priority Proposal Commitment or that a Priority Proposal Commitment conflicts with a term or provision of the Contract (other than the Proposal), then the term or provision of the Priority Proposal Commitment shall control and take precedence over the term or provision of the Contract (other than the Proposal); provided, however, that the MTA shall have the right, in its sole discretion, to obligate the SI to deliver what is set out in this Contract (other than the Proposal) in lieu of the Priority Proposal Commitment. By way of clarifying example, and not limitation, if the MTA determines that a Proposal includes a Priority Proposal Commitment that the MTA wishes to receive, then the SI shall be obligated to meet the Priority Proposal Commitment set out in the Proposal.

52.10.3. Determination Regarding Ambiguities.

If this Contract contains any errors, inconsistencies, ambiguities or discrepancies including typographical errors, then the SI shall request a clarification of the same by requesting a determination by the Engineer.

52.10.4. Treatment of Value Engineering Proposals and Alternative Proposals.

In addition to submitting proposals responsive to the stated RFP requirements, the SI was permitted to submit both VEPs and Alternative Proposals to the MTA for evaluation. The VEPs and Alternative Proposals were intended, in part, to allow the SI to propose innovative and/or alternative approaches to the Contract requirements that the SI believed, based on its expertise, presented the best value to the MTA Group. This Section 52.10.4 (Treatment of Value Engineering Proposals and Alternative Proposals) describes the treatment of those VEPs and Alternative Proposals that the MTA accepted during the procurement process.

52.10.4.1. Incorporation of Value Engineering Proposals and Alternative Proposals.

The SI and the MTA agree that (i) any VEPs and Alternative Proposals that the MTA accepted are included in the SI's Proposal for all purposes and replace, modify or otherwise augment those portions of the Proposal that the VEPs and Alternative Proposals were intended to replace, modify or otherwise augment, and (ii) such VEPs and Alternative Proposals shall be provided by the SI as part of the Total Contract Price, as further contemplated pursuant to Section 28.1 (Consideration).

52.10.4.2. Impact of Accepted Value Engineering Proposals and Alternative Proposals.

Accepted VEPs and Alternative Proposals can be categorized as those that: (i) add new Contract requirements that were not contemplated in the RFP (for example, "the NFPS shall have additional functionality ABC that was not previously set out in the Technical Specifications") (each, a "**New SI-Recommended Requirement**"); (ii) modify a Prescriptive Requirement by changing the means for achieving the desired functionality (for example, "Prescriptive Requirement X shall be replaced with Prescriptive Requirement Y in order to achieve the same functionality Z") (each, an "**SI-Recommended Prescriptive Requirement Modification**"); or (iii) modify a Functional Requirement by changing the desired functionality (for example, "the NFPS shall have functionality B instead of functionality Z") (each, an "**SI-Recommended Functional Requirement Modification**"). New SI-Recommended Requirements, SI-Recommended Prescriptive Requirement Modifications and SI-Recommended Functional Requirement Modifications are collectively referred to herein as "**SI-Recommended Modifications**").

52.10.4.3. SI Liability for Failed SI-Recommended Prescriptive Requirement Modifications.

The MTA relied, in part, on the SI's knowledge and expertise when the MTA elected to incorporate any SI-Recommended Prescriptive Requirement Modifications into the Proposal. Accordingly, if the MTA determines in its reasonable discretion that an SI-Recommended Prescriptive Requirement Modification fails to provide the required functionality, then the SI shall at its sole cost and expense and as directed by the MTA either (i) revise the SI-Recommended Prescriptive Requirement Modification as necessary to provide the required functionality, or (ii) provide the original Prescriptive Requirement included in the RFP in order to provide the required functionality. By way of clarifying example, if the MTA agrees to the SI's proposal to change a Prescriptive Requirement, and such changed Prescriptive Requirement fails to achieve the defined functionality, then the SI shall be required to correct the failure so that the defined functionality is provided, and such correction shall be at the SI's sole cost and expense.

52.10.4.4. SI Liability for Failures Attributable to SI-Recommended Modifications.

The complex and interdependent nature of the NFPS is such that changes to certain Contract requirements may impact the SI's ability to meet other Contract requirements. The MTA relied, in part, on the SI's knowledge and expertise when the MTA elected to incorporate any SI-Recommended Modifications into the Proposal. If an SI-Recommended Modification impacts the SI's ability to comply with all other Contract requirements, then the SI shall, at its sole cost and expense, take all steps necessary to ensure that the Work complies with the stated Contract requirements.

52.10.4.5. MTA Determination Regarding SI-Recommended Modifications.

The MTA shall make the sole determination, in its reasonable discretion, whether a specific SI-Recommended Modification constitutes: (i) a New SI-Recommended Requirement; (ii) an SI-Recommended Prescriptive Requirement Modification; (iii) an SI-Recommended Functional Requirement Modification; or (iv) some combination of the foregoing.

52.11. Execution in Counterparts; Original Signatures.

This Contract may be executed in one or more counterparts, each of which shall be deemed an original and all of which shall be taken together and deemed to be one instrument. The SI shall deliver all original ink signatures on the Contract Documents as a condition precedent to the commencement of the Term.

52.12. No Oral Modifications.

Except as expressly permitted herein, no change, modification, termination or discharge of this Contract, in any form whatsoever, shall be valid or enforceable unless it is in writing and signed by a duly authorized representative of both the MTA and the SI.

52.13. All Legal Provisions Included.

As a public entity, the MTA is required by law, rule or regulation to include certain provisions in those agreements that the MTA enters into with Third Parties (collectively, the "**Required Contract Provisions**"). Notwithstanding anything to the contrary, if any such Required Contract Provision is not inserted or is not inserted in the correct form, these Contract Documents shall be deemed amended so as to include the Required Contract Provision in the required form, and such Required Contract Provisions shall be binding on the SI and the MTA.

52.14. Interaction with Media and Public.

To the fullest extent permitted by law, the SI shall not publicize, issue or disclose any release, statement or other information relating to the Project (including anything concerning the Work) in any manner, including in advertisements, publications, press releases, articles, websites, social media or speeches, without the MTA's prior written approval. Nothing in this Section 52.14 (Interaction with Media and Public) shall be interpreted as restricting the SI's ability to disclose information to its personnel and Subcontractors in connection with their performance under this Contract pursuant to Section 36.2 (Non-Disclosure; Standard).

52.15. Assignment.

52.15.1. General Prohibition on Assignment; Limited Exception.

Except as expressly set out in this Section 52.15 (Assignment), the SI shall not voluntarily or involuntarily, by agreement, operation of law, or otherwise, sell, assign, encumber, transfer, convey, sublet, or otherwise dispose, in whole or in part (each such action, an "**Assignment**"), either these Contract Documents or any of the SI's interest herein, including an Assignment by a change in control of the SI or any entity directly or indirectly owning or controlling the SI, without the prior written consent of the MTA, which such consent may be withheld, conditioned, or delayed in the MTA's sole discretion (provided that the SI shall have the right to assign monies due or to become due to the SI under these Contract Documents upon prior written notice to the MTA and the MTA's written acknowledgment). A "change in control" used herein includes any change in the ownership or control of the SI or an entity directly or indirectly owning or controlling the SI, whether such change results from: (i) a merger or a sale, assignment, or transfer of stock or assets; (ii) a sale, transfer, or assignment of assets to an Affiliate; or (iii) a transfer or change in control by contract or such other agreement.

52.15.2. Change in Control Due to Common Stock Purchase.

The MTA acknowledges that (i) the SI (and its Affiliates) may have common stock that is quoted on a recognized securities exchange such as the New York Stock Exchange or NASDAQ, and (ii) the SI cannot reasonably comply with the requirements set out in Section 52.15.1 (General Prohibition on Assignment; Limited Exception) and 52.15.3 (Notice of Assignment) to the extent that an unrelated Third Party purchases such common stock. Accordingly, the MTA agrees that, subject to Section 52.15.4 (Termination of Rights Due to Assignment), nothing contained in this Section 52.15 (Assignment) shall restrict or prohibit, or be deemed to restrict or prohibit, any assignment or transfer in the equity interest in any Person (including the SI and its Affiliates) whose common stock is quoted on a recognized securities exchange such as the New York Stock Exchange or NASDAQ pursuant to the purchase of such common stock to an unrelated Third Party.

52.15.3. Notice of Assignment.

In connection with any assignment, transfer, or conveyance occurring due to a change in control, application for any approval required hereunder must be made at least thirty (30) calendar days prior to the proposed effective date of the change in control, or immediately upon the SI's knowledge of a change in control pursuant to Section 52.15.2 (Change in Control Due to Common Stock Purchase). Such application must be submitted in writing to the MTA and contain a reasonably detailed description of all of the material terms of the transaction that are relevant to the MTA, including the proposed form of the assignment agreement and reasonably detailed information with respect to the ownership and control of the applicable transferee and the relevant financial, technical, and other qualifications of the transferee (provided, however, that if the SI reasonably believes that the requested information is confidential and proprietary, then such documentation shall be made available for inspection by the MTA at times and for periods reasonably requested by the MTA at the MTA's designated offices (at which inspection a representative of the SI may be present) no later than twenty-one (21) days following a submission of the application and access to such supporting documentation).

52.15.4. Termination Rights Due to Assignment.

The SI acknowledges that any action by the SI in violation of this Section 52.15 (Assignment) shall constitute an Event of Default and the MTA shall have all rights and remedies available to the MTA Group under law and equity, including termination of these Contract Documents. If a change in control occurs due to a transfer in the equity interest in a Person whose common stock is quoted on a recognized securities exchange such as the New York Stock Exchange or NASDAQ, as contemplated pursuant to Section 52.15.2 (Change in Control Due to Common Stock Purchase), then the SI shall notify the MTA of the same, and the MTA shall have the right to terminate the Contract Documents for convenience, and without any liability to the MTA Group, by providing the SI with written notice of the same (each, an "**Assignment Termination for Convenience**"). The SI acknowledges that, in the event of an Assignment Termination for Convenience, the SI shall not be entitled to any amounts that it would otherwise be entitled to for a termination for convenience, including those amounts set out in Section 47.2.1 (Payment to SI in the Event of Termination for Convenience).

52.16. Compliance with Law; Licenses and Permits.

The SI and any Subcontractor shall comply throughout the Term, at their sole cost and expense, with all local, State and Federal laws, rules, and regulations applicable to this Contract and to the Work to be done hereunder, whether or not referenced in the Contract Documents. Such compliance includes, but is not limited to, compliance with all applicable Connecticut state provisions included in Attachment J (Connecticut State Provisions) (including the Connecticut State Wage Rate Schedule) to the extent applicable.

52.17. Grand Jury Testimony.

Upon refusal of the SI as an individual or as a member, partner, director or officer of the SI, if the SI 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 New York 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:

52.17.1. Bidding Disqualification.

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

52.17.2. Termination of Work.

This Work 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 she or he is a member, partner, director or officer may be cancelled or terminated by New York City, the MTA 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.

52.18. Diesel Emission Reduction Act.

The SI shall comply with applicable portions of the Diesel Emissions Reduction Act as required in the Contract Documents, as further set out in Schedule Y (Diesel Emission Reduction Act (DERA) Requirements).

52.19. Prohibition on the Purchase of Tropical Wood.

52.19.1. Relevant Definitions for Section 52.19 (Prohibition on the Purchase of Tropical Wood).

The following defined terms are used in this Section 52.19 (Prohibition on the Purchase of Tropical Wood):

52.19.1.1. Non-Tropical Hardwood Species.

"**Non-Tropical Hardwood Species**" means any and all hardwood that grows in any geographically temperate regions, as defined by the United States Forest Service, and is similar to tropical hardwood in density, texture, grain, stability or durability. Non-tropical hardwood, the use or purchase of which is preferred under the Contract Documents, shall include those species listed in New York State Finance Law Section 165, paragraph 1.

52.19.1.2. Tropical Hardwood.

"**Tropical Hardwood**" means any and all hardwood, scientifically classified as angiosperme, that grows in any tropical moist forest. A list of Tropical Hardwoods is found in New York State Finance Law Section 165, paragraph 1.

52.19.1.3. Tropical Wood Products.

"**Tropical Wood Products**" means any wood products, wholesale or retail, in any form, including veneer, furniture, cabinets, paneling moldings, doorskins, joinery or sawnwood, which are composed of Tropical Hardwood except plywood.

52.19.2. Prohibitions on the Use of Tropical Hardwood; Exceptions.

New York State Finance Law Section 165 prohibits public benefit corporations (including the MTA) from requiring or permitting the use of Tropical Hardwood or Tropical Wood Products, and the SI shall not use the same unless the MTA determines that: (i) no person or entity doing business in the State is capable of performing the Contract using acceptable Non-Tropical Hardwood Species; (ii) the restriction would violate the terms of a grant to the MTA from the Federal Government; or (iii) the use of Tropical Hardwood is deemed necessary for purposes of historical restoration and there exists no available acceptable Non-Tropical Hardwood Species.

52.20. Freedom of Action.

Subject to Applicable Law, the MTA Group is free and without restriction to procure any products and services as it sees fit, and to engage other Third Parties to assist in the same or otherwise provide products and services, including those that compete directly with the SI.

52.21. Employees of SI.

ALL SI EMPLOYEES (INCLUDING EMPLOYEES OF SUBCONTRACTORS) ASSIGNED TO PERFORM UNDER THESE CONTRACT DOCUMENTS SHALL AT ALL TIMES DURING SUCH ASSIGNMENT BE AND REMAIN EMPLOYEES OF

THE SI (AND SUBCONTRACTORS, AS APPLICABLE) AND THE SI SHALL BE SOLELY RESPONSIBLE FOR THE PAYMENT OF THE EMPLOYEES' COMPENSATION, FOR DEDUCTING ANY REQUIRED WITHHOLDING TAXES AND OTHER EXPENSES ASSOCIATED WITH THE EMPLOYEES' EMPLOYMENT, AND FOR PROVIDING ALL EMPLOYEE BENEFITS. THE MTA GROUP SHALL NOT BE OBLIGATED TO PROVIDE WORKMEN'S COMPENSATION, HEALTH INSURANCE, LIFE INSURANCE, RETIREMENT OR ANY OTHER BENEFITS TO SI OR SUBCONTRACTOR EMPLOYEES.

52.22. Further Assurances.

The SI shall cooperate with the MTA, both during and after the Term, in securing, memorializing and maintaining the MTA Group's Intellectual Property Rights under the Contract Documents and to execute, when requested, any other documents deemed necessary by the MTA to carry out the purpose of the intellectual property provisions of these Contract Documents.

52.23. Rules of Interpretation.

The following rules of interpretation shall apply to this Contract:

52.23.1. Accepted.

The words "accept," "accepted," "approved," "acceptable," "satisfactory," "equal," "necessary," and words of like import used in the Contract Documents mean approved by, or acceptable or satisfactory to, or equal or necessary in the opinion of the Engineer.

52.23.2. Amendments.

References to any agreement or other instrument shall include such agreement or other instrument as it may, from time to time, be modified, amended, supplemented or restated in accordance with its terms.

52.23.3. Days and Business Days.

All references to "days" herein mean calendar days, unless otherwise expressly indicated. All references to "business days" herein mean Mondays through Fridays, exclusive of MTA-observed holidays.

52.23.4. Directed.

The words "directed," "required," "permitted," "ordered," "designated," "selected," "prescribed" and words of like import used in the Contract Documents mean the direction, requirement, permission, order, designation, selection or prescription of the Engineer.

52.23.5. Furnish or Furnishing.

The words "furnish" and "furnishing" and words of like import used in the Contract Documents mean providing, manufacturing, fabricating and delivering to the site of the Project all materials, plant, power, tools, patterns, supplies, appliances, vehicles and conveyances necessary or required to complete the Project.

52.23.6. Hereof.

The terms "hereof," "herein," "hereby," "herewith," "hereto" and "hereunder" when used in the Contract Documents shall refer to the Contract Documents.

52.23.7. Include.

The words "include" and "including" and words of like import used in the Contract Documents shall mean "including, but not limited to" and shall not be interpreted to indicate a finite set, unless otherwise explicitly stated.

52.23.8. Installation.

The words "installation," "install," and "installing" and words of like import used in the Contract Documents mean completely assembling, erecting and connecting all material, parts, components, appliances and supplies and related equipment necessary or required to complete the Project.

52.23.9. Or.

The term "or" when used in the Contract Documents means "and/or." The SI agrees that the Engineer shall make the sole determination regarding any interpretation regarding the use of "and", "or", and "and/or" herein.

52.23.10. Section References.

Unless otherwise explicitly stated, references to a specific schedule, section or paragraph shall be construed as references to that specified schedule, section or paragraph and all sections, subsections and subparagraphs subordinate to the referenced schedule, section or paragraph.

52.23.11. Singular and Gender.

As used herein: (i) the singular shall mean and include the plural, and the plural shall mean and include the singular; (ii) the masculine gender shall mean and include the feminine gender, and the feminine gender shall mean and include the masculine gender.

52.23.12. Use of Serial Comma.

The Contract Documents contains lists or enumerations of items that are separated by commas. In such lists or enumerations, a comma that immediately precedes the coordinating conjunction (each, a "**Serial Comma**"), such as "and" or "or," shall be interpreted to indicate the separation between the final two items. All lists and enumerations of items contained in these Contract Documents shall be interpreted to include the use of a Serial Comma, regardless of whether a Serial Comma is actually included in such list or enumeration. The SI agrees that the Engineer shall make the sole determination regarding any interpretation regarding the use of a Serial Comma.

52.24. Contract Deemed Jointly Drafted.

This Contract shall be deemed to have been jointly drafted and, in construing and interpreting this Contract no provision hereof shall be construed or interpreted for or against either the MTA Group or the SI hereto on the ground that such provision, any other provision, or the Contract as a whole, was purportedly prepared or requested by such party.

52.25. Confirmation of Statements and Representations.

The SI hereby confirms all written statements and representations made by it in the various pre-award documents, including all written statements and representations made by it in Schedule J (Responsibility Questionnaire), the Proposal and the Price Schedule, which documents are relied upon by the MTA in entering into this Contract.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK – SIGNATURE PAGE TO FOLLOW]

CONTRACT NO.: A-34024

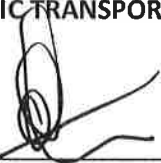
In WITNESS WHEREOF, this Contract has been executed by the METROPOLITAN TRANSPORTATION AUTHORITY and CUBIC TRANSPORTATION SYSTEMS, INC., the CONTRACTOR*, on the day and year indicated on the applicable "Acknowledgment" documents. The CONTRACTOR, if a corporation, has also affixed its seal to this instrument on the day and year indicated on the "Acknowledgment for the CONTRACTOR" document.

THE METROPOLITAN TRANSPORTATION AUTHORITY



Veronique Hakim
Managing Director, Metropolitan Transportation Authority

CUBIC TRANSPORTATION SYSTEMS, INC.



Matthew Cole
President, Cubic Transportation Systems, Inc.

*The Contractor, if a partnership or corporation, must execute this Contract in the exact firm or corporate name as it appears in its partnership agreement or certificate of incorporation. If the Contractor is a corporation and this Contract is executed by an Officer other than the President or Vice President, the Contractor shall furnish a certified copy of by-laws or a resolution authorizing said Officer to sign, unless same has previously been furnished to the Authority. If the Contractor is a joint venture, and an individual executes this Contract on behalf of more than one member of the joint venture, documentation shall be furnished establishing such individual's authority to bind each such member.

ACKNOWLEDGMENT FOR THE METROPOLITAN TRANSPORTATION AUTHORITY

STATE OF NEW YORK,)

) SS.:


COUNTY OF New York)

On this 1st day of November 20 17, before me personally

appeared Veronique Hakim to me known, who, being by me

first duly sworn, did depose and say: That he/she is the MTA Managing Director of the Metropolitan Transportation Authority, the public benefit corporation described in and which executed the foregoing instrument and that he/she acknowledged to me that he/she signed his/her name thereto pursuant to the authorization of said Authority.



 11/1/2017
Notary Public

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NFPS AGREEMENT
A-34024

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