

Purchase Order General Terms and Conditions

This purchase shall be governed by all applicable local, state (Commonwealth of Virginia), and federal laws and regulations, including but not limited to those of the Federal Transit Administration (FTA).

Shipping

1. All materials shall be suitably packed, marked, and shipped in accordance with this Purchase Order and requirements of common carriers.
2. Liability for damage or loss transfers from the seller to the Transportation District Commission of Hampton Roads ("Commission" or "Hampton Roads Transit" or "HRT") at the FOB point as designated herein

Terms and Conditions.

1. **Tax Exemption Status.** The Commission is exempt from the payment of any federal excise or any Virginia sales tax. The price must be net, exclusive of taxes. Tax exemption certificates will be furnished if requested.

2. **Definitions and Acronyms**

Agency or **Commission** or **HRT** or **TDCHR** or **Board of Commissioners** or **Administration** or **Hampton Roads Transit** means the Transportation District Commission of Hampton Roads.

Change Order or **Modification** means a written document signed by the Commission, and issued to the Contractor, which alters the scope of the Work to be performed by the Contractor, changes the schedule for performance of the Work, increases or decreases the Contractor's compensation, or makes any other change to the Purchase Order.

Completion means "final completion."

Contracting Officer means the person granted authority to act on behalf of the Commission in all matters concerning this Purchase Order, any successor thereto, and the authorized representative of the Contracting Officer acting within the limits of authority delegated by the Contracting Officer.

Contractor or **Consultant** means the individual, firm, partnership, corporation, joint venture, or combination thereof who, as an independent Contractor, has entered into this Purchase Order with the Commission for the performance of the Work required by the Purchase Order.

Days except as otherwise provided herein, shall refer to calendar days, including without limitation weekends and holidays.

Final Completion means fulfillment of all the Contractor's obligations under the Purchase Order.

Materials include materials, equipment, products, articles, and other physical items incorporated or to be incorporated into the Work.

Owner means Hampton Roads Transit.

Product Data includes written or printed descriptions, illustrations, standard schedules, performance charts, instructions, brochures, diagrams, drawings, or other information furnished by the Contractor to describe materials to be used for some portion of the Work.

Project means the Commission's overall objective or endeavor of which this Purchase Order forms a part.

Project Manager or **PM** means either the Commission's or the Contractor's designated and authorized representative and point of contact for managing the project. The PM is charged with the oversight and administration of the performance of the Work.

Project Schedule means the schedule prepared by the Contractor and accepted by the Commission setting forth the logical sequence of activities required for the Contractor's orderly performance and completion of the Work in accordance with this Purchase Order, and specifically, to meet the specified milestone dates, including updates.

Samples include physical examples of materials to be supplied or workmanship, which shall, when approved by the Commission, establish standards by which the Work shall be judged.

Shop Drawings means drawings, diagrams, schedules, or other data prepared by the Contractor or any Subcontractor, manufacturer, supplier, or distributor to illustrate or detail some portion of the Work.

Specifications means that part of the Purchase Order containing written directions and requirements for completing the Work. Standards, or portions thereof, cited in the Specifications by reference shall have the same effect as if physically included in the Purchase Order in their entirety.

Specialty Items means materials which are of a special design, or which require special fabrication specifically for this Project.

Subcontract means any agreement including purchase orders (other than one involving an employer/employee relationship) entered into between the Contractor and a Subcontractor calling for services, labor, equipment, and/or materials required for the Purchase Order performance, including any modification thereto.

Subcontractor means any individual, firm, partnership, corporation, joint venture, or combination thereof, or other entity, other than employees of the Contractor, who contract with the Contractor or a Subcontractor of any tier to furnish services, labor, equipment, and/or materials, or labor and materials, under this Purchase Order. As used herein, the term Subcontractor is considered to include the term Supplier.

Supplies, material, and equipment, as used herein shall include without limitation, all items, tangible or intangible, to be incorporated in the Work or otherwise delivered to the Commission hereunder.

Work means the furnishing of all of the supervision, labor, materials, equipment, services, and incidentals necessary to complete any individual item and the entire Purchase Order and the carrying out of any duties and obligations imposed on the Contractor by the Purchase Order.

3. **Changes and Termination.** The Commission may make changes to or terminate this Purchase Order. If changed, any difference in price or time for performance resulting from changes shall be equitably adjusted. If terminated, seller shall not incur new obligations after such notification and shall minimize further cost incurrence. Terminations shall be equitably adjusted.

4. **Extensions of Time/Force Majeure**

A. For purposes of this clause, the term "Force Majeure Event" means an unforeseen event or circumstance beyond the control of, and not occasioned by, the fault or negligence of the Contractor or the Commission that gives rise to a delay in the progress of the Contract, including, without limitation, acts of God, acts of war or insurrection, unusually severe weather, fires, floods, strikes, freight embargoes or other unforeseeable events or circumstances of like nature, but excluding failure of any underlying vendors or suppliers except to the extent they are themselves impacted by a Force Majeure Event.

B. If the Contractor is delayed at any time during the performance of the Contract by a Force Majeure Event, the Contracting Officer will extend the time for completion and/or affected delivery date(s) in the following circumstances:

- i. The cause of the delay arises after the award of the Contract, and neither was nor could have been anticipated by the Contractor by reasonable investigation before such award;
- ii. The delay cannot be avoided or mitigated by the exercise of all reasonable precautions, efforts, and measures available to the Contractor, whether before or after the cause of the delay; and
- iii. The Contractor makes a written request and provides other information to the Contracting Officer as describes below.

C. If the Contractor will be delayed at any time or for any period by two (2) or more of the above-mentioned causes, the Contractor shall not be entitled to a separate extension for each cause but shall be entitled to only one (1) extension for the cumulative effects of the delay.

D. The Contracting Officer may rescind or shorten any extension previously granted if they subsequently determine that any information that the Contractor provided in support of a request for an extension of time was erroneous, or if accurate information would have resulted in a denial of the request for an excusable delay.

E. The request for an extension of time pursuant to subsection B shall be made within ten (10) business days after the Contractor knows or should know of any cause for which it may claim an excusable delay. The Contractor's request shall contain any basis for an extension of time, describing as fully as possible, the nature and projected duration of the delay and its effect on the completion of the work identified in the request. Within thirty (30) calendar days of receipt of all such information, the Contracting Officer shall advise the Contractor of its decision on the requested extension. Prior to the expiration of such period, the Contracting Officer may advise the Contractor in writing that they will require additional time to render a decision.

F. Notwithstanding subsection E above, if a Force Majeure Event material affects the Contractor's ability to satisfy its obligations under this Contract with respect to particular Products and/or Services for thirty (30) calendar days or longer, the Commission, in its sole discretion, may terminate the impacted Services and/or reject the impacted Products, in whole or in part, without liability. In such event, the Commission shall not incur any further obligation or pay any further amounts pursuant to this Contract beyond the termination date. In no event shall a subcontractor at any tier be deemed a party outside the control of the Contractor.

5. **Assignment and Delegation.** The Contractor shall neither delegate any duties or obligations under this Purchase Order nor assign, transfer, convey, sublet, or otherwise dispose of the Purchase Order or its right, title, or interest in or to the same, or any part thereof, without previous consent in writing from the Contracting Officer.

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

7. **Authority of Owner's Representative.** The Work of the Contractor will be conducted under the general direction of the Commission's Project Manager (PM). The PM has authority to oversee the performance of the Work, and may take the following actions:

- A. Act as the principal technical point of contact with the Contractor.
- B. Review and approve invoices and payment estimates. In those cases requiring release of final retained percentage

of payment, the Project Manager will make their recommendations in writing to the Contracting Officer.

- C. Coordinate correspondence with the Contracting Officer if it significantly affects the contractual terms, or the rights and obligations of the parties thereunder.
- D. Notify the Contracting Officer whenever the Project Manager has reason to believe that any estimated cost not-to-exceed amount for a Purchase Order modification will be exceeded.
- E. Approve, in writing, the Contractor's progress schedule when required.
- F. Receive from the Contractor monthly DBE status reports, if applicable.
- G. Provide the Contracting Officer with a written notification after all Work has been satisfactorily completed with stating that they are not aware of any open issues that would preclude close out of the Purchase Order.

The Contractor shall adhere to the actions below only if received from or directed by the Contracting Officer or their designee.

- A. Purchase Order modifications.
- B. Issuance of written orders to stop and/or resume Work.
- C. Negotiations with the Contractor for adjustment of Purchase Order price and/or time.

The presence or absence of the Commission's Project Manager or inspectors at any time shall not relieve the Contractor from adherence to any requirement of the Purchase Order.

For the avoidance of doubt, the Project Manager will have no authority to alter the scope, schedule, deliverables, or pricing of the Purchase Order, or to issue binding directions inconsistent with the Contracting Officer's written instructions. The Contractor shall not be bound by any directive or communication from other Commission personnel unless confirmed in writing by the Contracting Officer.

- 8. **Flow Down.** The Contractor shall ensure appropriate flow-down of applicable Contract provisions to appropriate Subcontracts of every tier. The Contractor agrees that it will incorporate the provisions of this Contract, to the extent applicable, into all Subcontracts and orders with Subcontractors and suppliers of all tiers. It is understood that these provisions apply to all types of Contracts and/or Subcontracts specifically including lump sum (or fixed price Contracts), unit price Contracts, and/or cost type Contracts with or without a guaranteed maximum. It is further understood that change order provisions will apply to all methods of change order pricing specifically including lump sum change order proposals and cost type change order proposals.
- 9. **Subcontracting.** The Commission reserves the right, without liability, to approve any Subcontractor of any tier employed by the Contractor hereunder. Nothing in the Purchase Order shall create any contractual relationship between the Commission and any Subcontractor. The Contractor is fully responsible to the Commission for the acts and omissions of its Subcontractors, vendors, materialmen, and persons directly employed by any of them.

The Contractor shall not, without the prior written consent of the Contracting Officer, substitute any Subcontractor in place of any previously approved Subcontractor. When a portion of the Work which has been subcontracted by the Contractor is not being performed in a manner satisfactory to the

Commission, the Subcontractor shall be removed immediately upon the written request of the Commission and shall not be employed for any future Work under the Purchase Order. The Commission reserves the right to direct the removal from the work site of any individual employed, directly or indirectly, by the Contractor or any Subcontractor. No substitution or replacement of a Subcontractor, however caused, shall relieve the Contractor of its obligation to attain the percentage of DBE activity specified herein.

The Contractor shall, within ten (10) days of receiving payment from the Commission, pay all amounts properly due to its Subcontractors and materialmen, and shall cause its Subcontractors of every tier to pay their Subcontractors and materialmen within an equivalent period after their receipt of payment. The Contractor shall promptly notify the Commission of any circumstance in which payment is not so made. Failure to comply with the requirements of this paragraph may be deemed a material breach of this Purchase Order. Any retainage held at the completion of a Subcontractor's Work shall be returned to the Subcontractor within thirty (30) days of the completion and acceptance of the Subcontractor's Work.

For those Contracts for which a DBE goal has been established, the failure to perform in accordance with the DBE program detailed in Appendix K may result in partial or full suspension of payment and/or progress payments.

Should the Contractor wish to withhold payment otherwise due a Subcontractor hereunder, it shall notify the Commission's representative of such intention in writing, providing the reasons for such withholding. Approval of such withholding by the Commission is required. The Contractor shall furnish the Commission with a copy of the notice given to the Subcontractor or Supplier specifying:

- A. The amount to be withheld;
- B. The specific causes for the withholding under the terms of the Subcontract; and
- C. The remedial actions to be taken by the Subcontractor or Supplier in order to receive payment of the amounts withheld.

- 10. **Invoices.** Mail original and one (1) copy of all invoices to Transportation District Commission of Hampton Roads, ATTN: Accounts Payable, 3400 Victoria Blvd, Hampton, VA 23661. Electronic invoices may be submitted to acctspayable@hrtransit.org.

The form and content of invoices are subject to review and approval by the Commission. Payment will be made only after receipt and approval of a proper invoice. A proper invoice includes the Purchase Order/Contract Number, date of invoice, dates of delivery of item/service, a description of the item/service delivered, sizes and quantities if applicable, unit prices, and extended totals, and any additional information required by the Commission. Invoices shall be accompanied by any supporting documentation that may be required by the Commission.

If applicable, the Contractor shall also provide a "Form E – Contractor's Monthly DBE Payment Report," with each application for payment. This form is provided in Appendix K.

- 11. **Payments.** The Commission will pay to the Contractor at the times and in the manner hereinafter provided, the amount set forth in the Price Schedule for the Work satisfactorily performed, contingent upon the Contractor's satisfactory compliance with the terms and conditions of the Purchase

Order. The Contractor agrees to accept that amount as full and final payment for all labor, materials, supplies, equipment, overhead, profit, taxes, duties, and charges of whatever nature incurred by the Contractor in performing its obligations under the Purchase Order.

The Contractor shall not request payment from the Commission of any amount that the Contractor has withheld or retained from Subcontractors or Suppliers until such time that the Contractor has determined and certified to the Commission that the Subcontractor is entitled to the payment of such amount. If the Contractor has made application for payment to the Commission and subsequently withholds or retains payments from a Subcontractor, the Contractor may be obligated to pay interest to the Commission on that amount, in addition to any other remedies the Commission may have hereunder.

No approval for payment, nor any payment, nor any partial or entire use or occupancy of any portion of the Work by the Commission, will constitute an acceptance of any Work that is not in accordance with the Purchase Order.

In the event Progress Payments are applicable, and unless otherwise specified in the Special Provisions or Specifications, within thirty (30) days after receipt of the Commission's Notice to Proceed, and prior to submission of the Contractor's first invoice, the Contractor shall submit to the Commission a supplementary Schedule of Values allocated to various portions of the Work, prepared in such form, and supported by such data to substantiate its accuracy as the Commission may require. When accepted by the Commission, that schedule shall be the basis for determining the amount of each progress payment.

The Contractor shall submit monthly invoices setting forth the percentage of work, or units of work where applicable, completed during the month and the amount due for such Work based upon the Price Schedule and any supplementary schedule of values that may be required by the PM.

By submitting a Request for Payment, the Contractor warrants that:

- A. Title to all materials furnished by the Contractor or incorporated into the Work by the Contractor and covered by the progress payment shall pass to the Commission at the time the Contractor receives the progress payment;
- B. All materials are free and clear of all liens, claims, security interests, or encumbrances; and
- C. No materials have been acquired by the Contractor or any other entity furnishing materials or Work under this Purchase Order, which are subject to an agreement under which an interest in, or encumbrance on, the materials or Work is retained by the seller or otherwise imposed.

The Commission may, upon request and at its discretion, furnish to any Subcontractor information regarding the percentages of completion or the amounts applied for by the Contractor and the action taken on the application by the Commission on account of work done by the Subcontractor.

12. Availability of Funds.

- A. Funds may not be presently available for performance under this Purchase Order beyond the end of the Commission's current fiscal year (July 1 to June 30). The Commission's obligation for performance of this Purchase Order beyond that date is contingent upon the availability of funds from which payment for Purchase Order purposes

can be made. No legal liability on the part of the Commission for any payment may arise for performance under this Purchase Order until funds are made available to the Contracting Officer for performance and until the Contractor receives notice of availability, to be confirmed in writing, by the Contracting Officer. Any option exercised by the Commission which will be performed in whole or in part in a subsequent fiscal year is subject to availability of funds in the subsequent fiscal year and will be governed by the terms of this Article.

- B. This Purchase Order may be funded in whole or in part by grants from the Federal Transit Administration, the Commonwealth of Virginia, or the Commission's member communities. The performance of this Purchase Order is expressly contingent upon receipt of such funds.

13. Withholding of Payments. The Commission may withhold all or part of a payment to the extent deemed necessary to protect the Commission from loss because of (i) defective Work not remedied; (ii) third-party claims filed, or evidence reasonably indicating that a third-party claim will be filed; (iii) failure of the Contractor to make payments properly to Subcontractors, or for labor, materials, or equipment; (iv) reasonable evidence that the Work cannot be completed for the unpaid balance of the Purchase Order price; (v) damage to the Commission or another Contractor; (vi) the Contractor's failure to carry out the Work in accordance with the Purchase Order; (vii) the Contractor's failure to comply with any material provision or requirement of the Purchase Order; (viii) the Contractor's failure to pay the deductible portion of any insured claim filed by third parties against the Contractor; (ix) the Contractor's failure to provide the required progress schedules and record drawings in accordance with the Purchase Order; (x) any sums expended by the Commission in performing any of the Work under the Purchase Order which the Contractor has failed to perform; or (xi) liquidated damages, if applicable.

14. Conditions Affecting the Work. The Contractor shall be responsible for having taken steps reasonably necessary to ascertain the nature and extent of the Work, and the general and local conditions which can affect the Work or the cost thereof. Any failure by the Contractor to do so shall not relieve the Contractor from responsibility for successfully performing Work without additional expense to the Commission. The Commission assumes no responsibility for any understanding or representations concerning conditions made by any of its officers or agents prior to the execution of this Purchase Order unless such understanding or representations are expressly stated in the Purchase Order.

15. Governing Law and Choice of Venue. This Purchase Order will be governed by the laws of the Commonwealth of Virginia, notwithstanding any conflicts of law provisions to the contrary. The parties agree that the sole and exclusive venue for any disputes arising out of or related to this Purchase Order will be the Federal District Court or State Circuit Court sitting in the City of Norfolk, Virginia. The Commission may enter into agreements to submit disputes arising from contracts entered into pursuant to the Code of Virginia, § 2.2-4366, to mediation, arbitration, or other alternative dispute resolution procedures. Unless otherwise specified, such procedures entered into by the Commission shall be nonbinding.

16. Waiver of Conditions. The waiver of any provision, term, or condition in this Purchase Order by the Commission on any particular occasion shall not constitute a general waiver of that

or any other provision, term, or condition, nor a release from the Contractor's obligation to otherwise perform or observe any other provision, term, or condition of the Purchase Order, and will not be considered a precedent for future waivers.

- 17. Notice of Intent to File a Claim.** Whenever the Contractor deems a potential claim has arisen, the Contractor shall, within three (3) days, notify the Contracting Officer in writing of its intent to file a claim, before proceeding with any Work viewed by the Contractor as outside of the current Scope of Work. The claim shall be submitted within thirty (30) calendar days of initial notification.

Should the Contractor assert a claim against the Commission, under this or any other provision of this Purchase Order, involving an amount in excess of \$50,000.00, it shall accompany such claim with a sworn affidavit and certification that, to the best of the Contractor's knowledge and belief, the facts and amounts stated in the claim are true and complete and that the claim is asserted in good faith. Failure to submit such affidavit and certification will be grounds for denial of such claim.

- 18. Severability.** If any part of this Purchase Order is declared invalid by a court of law, such decision will not affect the validity of any remaining portion, which shall remain in full force and effect, to the greatest extent consistent with the determination of such court. Additionally, the Contractor agrees that if any portion of this Purchase Order or any amendment thereto is determined to be invalid, then the remaining portion thereof that conform to federal laws, regulations, requirements, and guidance will continue in effect.

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

- 20. Onsite Safety and Security.** The Contractor shall be responsible for compliance with all Commission safety and security policies, safety rules, and regulations of the Federal Occupational Safety and Health Act of 1970 (OSHA), and all applicable laws, ordinances, and/or regulations of the Commonwealth of Virginia or locality where the Purchase Order is being performed. Contractors or Subcontractors responsible for operating on track equipment, aerial lifts, or construction/electrical/welding equipment on Commission property shall provide a copy of their safety manual and a list of equipment that will be used onsite, including inspection and training records. A site-specific work plan and job hazard analysis will be provided for all Contractors working on Commission property that are responsible for conducting electrical tasks, construction activities, cutting and brazing, working at heights, or operating on track equipment. All requested documents, including a list of the Contractor's Project Manager and Safety representatives, shall be furnished to the Project Manager who will be responsible for submitting all documents to the Safety Department. Contractors and Subcontractors shall be required to participate in an initial safety briefing with the Safety Department and the Project Manager prior to commencing any onsite work activity. The Safety/Security Departments and the Commission's Project

Manager will conduct random inspection of the Work site to ensure adherence to all safety and security policies.

All Contractors and Subcontractors assigned to work on the Tide Light Rail right-of-way shall be required to complete track access training Level I. Contractors and Subcontractors who will be assigned to perform flagging responsibilities within the Tide Light Rail operating right-of-way must complete track access training Level I and II. All Contractors and Subcontractors who are responsible for operating any on-track equipment, including hi-rail vehicles on the Tide Light Rail operating right-of-way must complete track access training Level I, II, and III. All track access training examinations will be administered in English only. Please refer to Appendix G, HRT Roadway Worker Protection Track Access Guide for further details regarding the track access program and training requirements.

Upon request, the Contractor or Subcontractor shall provide the Commission with a list of names and residential addresses for all onsite representatives or individuals who may require a security badge and/or key. The Contractor or Subcontractor is required to coordinate access issuance needs with the Project Manager, who is responsible for requesting access according to Commission policy. All Contractors must comply with the Commission visitor and parking policy. The Contractor shall be responsible for safely storing and securing all equipment while onsite to minimize any operational impacts. It will be the responsibility of the Contractor's Project Manager and the Commission's Project Manager to consult with the applicable department manager when equipment will be stored in the vehicle yards or mainline.

Upon request, the Contractor or Subcontractor shall provide accurate and updated results of Criminal Background checks generated on persons expected to perform work or other services at Commission properties.

All Contractors, Subcontractors, and onsite representatives working near moving traffic, on the Commission's property, or public roads, including the right-of-way areas and vehicle yards, are required to wear, at a minimum, an American National Standards Institute (ANSI)/International Safety Equipment Association (ISEA) Type R Performance Class 2 vest with an "X" on the rear of the vest and safety boots with ankle protection that are electrical hazard rated and meet the American Society for Testing and Materials (ASTM) F2412 and ASTM F2413 standards. The vest shall be an outer garment and shall not be covered by anything (i.e., articles of clothing, a carrying bag, etc.). Any substitutions such as Class 2 reflective t-shirts or reflective jackets must be pre-approved by the Commission's Safety Department.

Upon entry into any Commission facility, all Contractors, Subcontractors, and onsite representatives must understand and comply with all OSHA regulations, the Commission's policies, and the original equipment manufacturer (OEM) recommendation for Personal Protective Equipment (PPE) such as safety glasses, hard hats or bump caps, safety boots, and protective gloves. All Commission policies related to onsite safety and security will be provided to Contractors by the Project Manager. The Contractor must consult the Project Manager if clarification is required for any safety or security policy/procedure.

The Contractor shall provide a list of all chemicals that will be used in any of the Commission's facilities to the Project Manager. The Project Manager will be responsible for furnishing

the list of chemicals and corresponding Safety Data Sheets to the Safety Department and Director of Facilities for review and approval to use on property. The Contractor shall be responsible for obtaining and posting the Safety Data Sheets to the full extent required by law within their work area.

The Contractor shall be responsible for accident prevention and work site safety, and initiating, maintaining, and supervising all safety precautions and programs in connection with the Work, including the Work of its Subcontractors. This responsibility cannot be delegated to the Commission, Subcontractors, suppliers, or other persons. The Contractor shall take all reasonable precautions for the safety of, and shall provide all reasonable protection to prevent damage, injury, or loss to the following:

- A. The public;
- B. Employees on the work site;
- C. Other persons who may be affected by the Work;
- D. The work materials and equipment to be incorporated therein, whether in storage on or off the work site, under the care, custody, or control of the Contractor or any of its Subcontractors; and
- E. Other property at the work site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, and utilities not designated for removal, relocation, or replacement in the course of construction (if applicable).

If an accident or incident occurs that results in injury or property damage when working in any of the Commissions facilities, the Contractor must cease all work activities and immediately notify the Project Manager. If medical treatment is required, the Contractor is responsible for notifying 911 to seek immediate medical treatment. The Project Manager will be responsible to immediately notify the Safety Department and the Radio Communications Center or the Operations Control Center of any accident or incident involving the Contractor or the Contractor's equipment. The Contractor shall comply with the safety investigation by furnishing any requested documents and participating in interview(s) with the Safety Department for an investigation to be completed. The Contractor and Project Manager will be responsible for implementing corrective actions in coordination with the Commission's Safety Department to prevent unsafe conditions.

The Contractor's Project Manager shall ensure compliance with all safety provisions of the Purchase Order. Additional safety duties of the Contractor's Project Manager shall include the following:

- A. Stop any work site activity when, in their opinion, such stoppage is warranted for the protection of life and/or property;
- B. Review and direct immediate action to correct all substandard safety conditions brought to their attention;
- C. Actively participate in all supervisory safety meetings, including the discussion of observed unsafe work practices and corrective actions, and encouragement of safety suggestions from employees;
- D. Ensure that a "Safety Bulletin Board" is established and maintained to include all required postings and relevant safety posters/information; and
- E. Cooperate with the Commission's Project Manager and Safety representatives.

In accordance with the Purchase Order, the Contractor shall indemnify HRT for fines, penalties, and corrective measures that result from acts of commission or omission of the Contractor, its Subcontractors (if any), agents, employees, and assigns, and their failure to comply with such safety rules, laws, ordinances, and regulations.

In compliance with these safety and security provisions, the Contractor shall perform the following:

- A. Comply with the work stoppage orders, as directed by the Commission's Project Manager, the Contractor's Project Manager, the Commission's Chief Safety Officer, and/or other Safety/Security representatives.
- B. Plan and execute all work to comply with applicable federal, Commonwealth of Virginia, and local laws, regulations, industry standards, and Purchase Order requirements with regard to safety, as well as the stated objectives and requirements contained in the Contractor's Safety Plan.
- C. Conduct initial and annual orientation and training programs for employees which shall include, at a minimum, a review of hazards present at the work site, and the PPE and apparel the workers will be required to use or wear as specified under OSHA.
- D. Ensure that all employees, Subcontractors, suppliers, vendors, and other visitors to the work site are properly informed of and comply with all applicable Contractor safety plans and programs, to include all PPE requirements.
- E. Ensure that formal safety meetings are conducted on a weekly basis, maintaining documentation of topics discussed and attendees.
- F. Ensure that any and all safety training is presented in English, as well as the predominant language of the majority of the applicable work force, if that is different from English.
- G. Furnish and/or enforce the wearing and use of the following required PPE for all Contractor and Subcontractor personnel working on the work site:
 - i. Hard hats, meeting the requirements of ANSI/ISEA Z89.1-2014 (R2019), at all times;
 - ii. Work boots, meeting the requirements of ASTM F2412 and ASTM F2413, at all times;
 - iii. Eye protection with side shields, meeting the requirements of ANSI Z87, at all times;
 - iv. Warning vests made of high visibility material with reflectorized tape, meeting the minimum requirements of ANSI/ISEA-107, Type R Performance Class II, at all times; and
 - v. Ear protection, respirators, protective clothing and gloves, safety belts, safety harnesses, lifelines, and lanyards, and any and all other PPE, in accordance with OSHA's specific guidelines for work activities and conditions that necessitate such items for work safety.

- 21. Sensitive Security Information.** The Contractor shall take all appropriate measures to protect "sensitive security information" made available during the course of its performance hereunder, in accordance with 49 U.S.C. 40119(b), then applicable provisions of U.S. Department of Transportation regulations (currently defined in 49 CFR Part 15;

49 U.S.C. § 114(r)), and then applicable provisions of U.S. Department of Homeland Security regulations (currently defined in 49 CFR Part 1520). The Contractor shall ensure, and require its Subcontractors to ensure, that the requirements of this Section be included in Subcontracts at all tiers.

22. Hazardous Chemicals and Wastes. The Contractor shall bear full and exclusive responsibility for any release of hazardous or non-hazardous chemicals or substances by it or its employees, agents, representatives, or by its Subcontractors or suppliers of any tier, or the employees, agents, or representatives of any of them during the course of its performance of the Work. The Contractor shall immediately report any such release to the Commission's Project Manager. The Contractor shall be solely responsible for compliance with all applicable federal, state, and local laws and regulations regarding reporting of such releases of hazardous chemicals or substances to appropriate government agencies. The Contractor shall be solely responsible for all claims and expenses associated with the response to, and removal and remediation of such releases, including, without limitation, the payment of any fines or penalties levied against the Commission as a result of such release, and shall hold harmless, indemnify, and defend the Commission from any claims arising from such release. For purposes of this Section only, "claims" include the following:

- A. All notices, orders, directives, administrative, or judicial proceedings, fines, penalties, fees, or charges imposed by any governmental agency with jurisdiction; and
- B. Any claim, cause of action, or administrative or judicial proceeding brought against the Commission, its Commissioners, officers, employees, or agents, or for any loss, cost (including reasonable attorney's fees), damage, or liability, sustained or suffered by any person or entity including the Commission.

In the event that the Contractor discovers hazardous materials in the course of its Work, it shall immediately cease Work in the affected area, remove its personnel, and notify a field representative of the Commission or the Commission's Project Manager, and shall not resume Work until directed by the Commission. Any delay or other costs incurred by the Contractor as a result of such work stoppage shall be compensable hereunder, provided that the Contractor:

- A. Is not responsible for the hazardous materials under this Section; and
- B. Complies with the requirements of this paragraph regarding the stoppage of Work, notification, and removal of personnel.

If, in the performance of the Work, the Contractor uses hazardous chemicals or substances or creates any hazardous wastes, as defined in federal and state law, all such resulting hazardous wastes shall be properly handled, stored, and disposed of according to federal, state, and local laws, including the use of protective equipment and clothing by workers exposed to such hazardous materials, substances, or wastes, at the expense of the Contractor. The Contractor shall dispose of any and all such hazardous waste under its own EPA Identification Number via a licensed hazardous waste transporter, at an appropriately permitted disposal facility selected by the Contractor. In no event shall the Commission be identified as the generator of any such waste. The Contractor shall determine whether any waste generated during the Work is hazardous waste and shall notify the Commission's Project

Manager if the Contractor generates any hazardous wastes. The Commission reserves the right to a copy of the results of any tests conducted on the waste, and at the Commission's cost, to perform additional tests or examine those wastes prior to disposition. The Contractor shall hold harmless, indemnify, and defend the Commission from any claims arising from the disposal of such hazardous wastes regardless of the absence of negligence or other malfeasance by the Contractor.

23. Environmental Management and Sustainability. The Commission recognizes that environmental compliance involves everyone (both internal and external to the Commission), and expects its Contractors, suppliers, and vendors to provide services in an environmentally responsible manner. This includes, among other things, maximizing the use of recycled and recyclable materials and supplies, utilizing energy-efficient and non-polluting vehicles and equipment, and encouraging employee awareness of environmentally sensitive activities in order to mitigate potential adverse impacts on the environment. As such, acceptance of this Purchase Order constitutes acknowledgement of the information presented herein and included in the Commission's Environmental Compliance Contractor Briefing Package and Preconstruction Mitigation Disclosure Form, additional copies available upon request.

24. Warranty. The Contractor warrants that it shall perform this Purchase Order in a good and skillful manner consistent with accepted industry practice and in compliance with applicable laws and regulations. The Contractor warrants that any products and all services it will provide are of a merchantable quality and suitable for the purposes of this Purchase Order.

Warranty of the Work shall be a minimum of one (1) year from final acceptance. Items corrected during the warranty period shall have an additional warranty period, from acceptance of the correction.

The Contractor shall obtain, for the benefit of the Commission, each of its suppliers' standard commercial warranty for items purchased by the Contractor and incorporated in the Work hereunder. All such warranties, as well as manuals or other documents related to the use or operation of such items, shall be provided to the Commission prior to Final Acceptance of the Work. However, notwithstanding any warranty or inspection and acceptance by the Commission or any provision concerning the conclusiveness thereof, the Contractor warrants that all services performed, and materials, supplies, or equipment furnished under this Purchase Order shall, at time of acceptance, be free from defects in workmanship and conform to the requirements of this Purchase Order. The Contracting Officer will give written notice to the Contractor of any defect or nonconformance identified by the Commission. This notice will state either:

- A. That the Contractor shall correct or reperform any defective or nonconforming Work, or
- B. That the Commission does not require corrective action or reperformance.

If the Contractor is required to correct or reperform, it shall be at no cost to the Commission, and any services corrected or reperformed by the Contractor will be subject to this clause to the same extent as Work initially performed. If the Contractor fails or refuses to correct or reperform, the Contracting Officer may, by Purchase Order or otherwise, correct or replace with similar service and charge to the Contractor the cost

occasioned to the Commission thereby, or make an equitable adjustment in the Purchase Order price. The Contractor will not be entitled to any extension of the Purchase Order schedule as a result of any required correction or reperformance, or failure to do so.

If the Commission does not require correction or reperformance, the Contracting Officer will make an equitable adjustment to the contract price.

In addition to the Contractor's warranty defined herein, warranties provided by a manufacturer shall be passed on to the Commission at no additional cost.

- 25. Inspection of Materials and Supplies.** The Contractor shall provide and maintain an inspection system acceptable to the Commission covering its provision of materials and supplies under this Purchase Order. Complete records of all inspection Work performed by the Contractor shall be maintained and made available to the Commission during Purchase Order performance and for as long afterwards as the Purchase Order requires.

The Commission has the right to inspect all materials and supplies provided by the Contractor, to the extent practicable at all times and places during the term of the Purchase Order. The Commission will perform inspections and tests in a manner that will not unduly delay the Work.

If any of the materials and supplies do not conform to Purchase Order requirements, the Commission may require the Contractor to provide materials and supplies in conformity with Purchase Order requirements, at no cost or delay to the Commission, including costs of reinspection.

When defects in materials and supplies cannot be corrected, the Commission may:

- A. Require the Contractor to take necessary action to ensure that future performance conforms to Purchase Order requirements;
 - B. Reduce the Purchase Order price to reflect the reduced value of materials and supplies provided;
 - C. Charge the Contractor all reasonable cost incurred by the Commission directly related to the acquisition of conforming materials and supplies from another party, or
 - D. Terminate the Purchase Order or the portion affected by the non-performance for default.
- 26. Title and Risk of Loss.** Unless this Purchase Order specifically provides for earlier passage of title, title to the Work, and any supplies, material, or equipment covered by this Purchase Order shall pass to the Commission upon formal acceptance, regardless of when or where the Commission takes physical possession.
- Unless this Purchase Order specifically provides otherwise, risk of loss of or damage to the Work, or supplies, materials, and equipment covered by this Purchase Order shall remain with the Contractor until, and shall pass to the Commission upon, acceptance by the Commission of conforming materials and supplies at the destination specified in this Purchase Order.
- Notwithstanding the above, the risk of loss of or damage to supplies which so fail to conform to the Purchase Order as to give a right of rejection shall remain with the Contractor until cure or acceptance, at which time the above will apply.
- 27. Delivery.** The Contractor shall prepare all materials and supplies for shipment in such a manner as to protect them from damage in transit and shall be responsible for and repair all

damaged parts or replace all losses incurred in the course of delivery of the materials and supplies.

- 28. Materials and Workmanship.** All materials, parts, and equipment furnished by the Contractor shall be new, high grade, and free from defects. Workmanship shall be in accordance with generally accepted industry standards. The Contractor shall establish and maintain quality assurance policies and procedures to ensure compliance with these specifications. Such policies and procedures will be subject to review and approval by the Commission.

The Commission will have the right to correct nonconforming materials and supplies, which are not remedied by the Contractor, with other forces at the Contractor's expense.

Nothing in this Section will limit or restrict the provisions of any warranty of fitness as set forth in the Special Provisions, these General Conditions, and other portions of the Purchase Order Documents.

- 29. Suspension.** The Commission may, without cause, order the Contractor in writing to suspend, delay, or interrupt the Work in whole or in part for such period of time as the Commission may determine. An adjustment may be made for increases in the schedule or cost of performance of the Purchase Order, excluding profit on the increased cost of performance, caused by suspension, delay, or interruption. No adjustment will be made to the extent:

A. That performance is, was, or would have been suspended, delayed, or interrupted by another cause for which the Contractor is responsible; or

B. That an equitable adjustment is made or denied under another provision of this Purchase Order.

- 30. Delay of Work.** If the performance of all or any part of the Work is delayed or interrupted by an act of the Contracting Officer in the administration of this Purchase Order, which act is not expressly or impliedly authorized by this Purchase Order, or by their failure to act within the time specified, an adjustment (excluding profit) will be made for any increase in the schedule or cost of performance of this Purchase Order caused by such delay or interruption and the Purchase Order modified in writing accordingly. Adjustment will be made also to the delivery or performance dates and any other contractual provision affected by such delay or interruption. However, no adjustment will be made under this Article for any delay or interruption to the extent that performance would have been delayed or interrupted by any other cause, including the fault or negligence of the Contractor; or for which an adjustment is provided or excluded under any other provision of this Purchase Order.

No claim under this clause will be allowed for any costs incurred more than twenty (20) working days before the Contractor shall have notified the Contracting Officer in writing of the act or failure to act involved; and unless the claim, in an amount stated, is asserted in writing as soon as practicable after the end of such delay or interruption, but not later than the date of final payment under the Purchase Order.

- 31. Stop Work Order.** The Contracting Officer may, at any time, by written order to the Contractor, require the Contractor to stop all, or any part of the Work called for by this Purchase Order for a period not to exceed ninety (90) calendar days after the order is delivered to the Contractor or any other date cited in the order, and for any further period to which the parties may agree. Any such order will be specifically identified as a Stop Work Order issued pursuant to this Article. Upon receipt of such an

order, the Contractor shall forthwith comply with its terms and take all reasonable steps to protect and preserve the Work and minimize the incurrence of costs allocable to the Work covered by the order during the period of work stoppage. Within a period of ninety (90) calendar days after a Stop Work Order is delivered to the Contractor, or within any extension of that period, the Contracting Officer will either cancel the Stop Work Order, or terminate the Work covered by such order as provided in the Termination for Convenience section of these General Conditions.

If a Stop Work Order issued under this Article is cancelled or the period of the order or any extension thereof expires, the Contractor shall resume work. An equitable adjustment will be made in the delivery schedule or Purchase Order price, or both, and the Purchase Order modified in writing accordingly, if:

- A. The Stop Work Order results in an increase in the time required for or in the Contractor's cost properly allocable to the performance of any part of this Purchase Order; and
- B. The Contractor asserts a claim for such adjustment within thirty (30) calendar days after the end of the period of work stoppage; provided that, if the Contracting Officer decides the facts justify such action, they may receive and act upon any such claim asserted at any time prior to final payment under this Purchase Order.

If a Stop Work Order is not cancelled and the Work covered by such order is terminated for the convenience of the Commission, the reasonable costs resulting from the Stop Work Order will be allowed in arriving at the termination settlement.

32. Conflict of Interest

- A. The Contractor covenants no appointed or elected official, member or other officer or employee of the Commonwealth of Virginia, or of the Transportation District Commission of Hampton Roads (TDCHR), or their affiliates and subsidiaries:
 - i. Is interested directly or indirectly, in any manner whatsoever in or in the performance of the Purchase Order or in the supplies, Work, or business to which it relates or in any portion of the profits thereof;
 - ii. Has been or will be offered or given any tangible consideration in connection with this Purchase Order; and/or
 - iii. Has used confidential information that they acquired by reason of their public position, and which is not available to the public, in conjunction with the Purchase Order.
- B. The Contractor covenants that it has not, nor anyone on its behalf, directly or indirectly offered, promised, nor actually given any money, honorarium, loan, gift, favor, service, or business or professional opportunity to any appointed or elected official, member or other officer or employee of the Commonwealth of Virginia, or of the TDCHR, or their affiliates and subsidiaries, in conjunction with the preparation of the Proposal or Bid.
- C. The Contractor covenants that no person associated in any way with the Purchase Order participated in the underlying preparation of the Invitation for Bid or Request for Proposal by TDCHR.
- D. The Contractor covenants that it does not employ any current TDCHR employees or former TDCHR employees

(who have been separated from TDCHR for less than one calendar year) that have or had any responsibility for procurement transactions at TDCHR.

E. The Contractor covenants that neither the Contractor nor, to the best of the Contractor's knowledge after diligent inquiry, any director, officer, owner, or employee of the Contractor has any interest, nor shall they acquire any interest, directly or indirectly, which would conflict in any manner or degree with the faithful performance of the Purchase Order hereunder.

F. In the event the Contractor has no prior knowledge of a conflict of interest as set forth in "A" and "E" above and hereafter acquires information which indicates that there may be an actual or apparent violation of any of the above, the Contractor shall promptly bring such information to the attention of the Commission's Director of Procurement. The Contractor shall thereafter cooperate with the Commission's review and investigation of such information and comply with any instruction it receives from the Director of Procurement in regard to remedying the situation.

33. Covenant Against Contingent Fees. The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure this Purchase Order upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For breach or violation of this warranty, the Commission will have the right to annul this Purchase Order without liability or in its discretion, to deduct from the Purchase Order price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.

34. Gratuities. In connection with performance of Work required under this Purchase Order, or any changes or modifications relative thereto, the giving of or offering to give gratuities (in the form of entertainment, gifts, or otherwise) by the Contractor, or any agent, representative or other person deemed to be acting on behalf of the Contractor, or any supplier or Subcontractor furnishing material to or performing Work under this Purchase Order, or any agent, representative or other person deemed to be acting on behalf of such supplier or Subcontractor, to any Commissioner, officer, or employee of the Commission; or to any director, officer, employee or agent of any of the Commission's agents, consultants, representatives or other persons deemed to be acting for or on behalf of the Commission with a view toward securing a Purchase Order or securing favorable treatment with respect to the awarding or amending, managing, or the making of any determinations with respect to the performing of such Purchase Order is expressly prohibited. Violation of this provision will be deemed an instance of default hereunder.

35. Collusion. If at any time it is found that the person, firm, or corporation to whom a Purchase Order has been awarded has, in preparing or presenting any bid or bids, including but not limited to proposals for Purchase Order modifications, colluded with any other party or parties with the intent of preventing full and open competition or the obtaining by the Commission of a fair and reasonable price for the Work hereunder, then the Commission may terminate this Purchase Order for default, or exercise such other remedies as it deems appropriate, and the Contractor and its sureties shall be liable

to the Commission for all loss or damage which the Commission may suffer thereby.

36. Indemnification.

A. Indemnification for Claims of Intellectual Property Infringement. To the fullest extent possible, the Contractor shall indemnify and hold harmless the Commission and its officers, agents, successors, and employees against any and all intellectual property infringement or misappropriation claims brought by a third-party or parties, enforceable in the United States, and related to the Work performed by the Contractor pursuant to this Purchase Order.

The Contractor's indemnity obligations hereunder include: (i) all costs and attorney's fees incurred by the Commission and/or its outside legal counsel, as selected by the Commission in its sole discretion, in the event the Contractor fails to assume the defense of the claim; (ii) payment of any settlement agreed to by the Commission and approved by the Contractor, and (iii) any award of damages against the Commission and in favor of the third-party regardless of whether such claims are unfounded or substantiated.

The Contractor's obligations under this Section shall not apply to the extent that the infringement or violation is caused by (i) functional or other specifications that were provided by or requested by the Commission; or (ii) the Commission's continued use of infringing materials, equipment, or services after the Contractor provides reasonable notice to the Commission of the infringement or any third-party claim that the Contractor receives.

To minimize the potential for claim, the Contractor may, at its option, either: (i) procure the right for the Commission to continue using the materials, equipment, or services at the Contractor's sole expense or (ii) replace or modify, at the Contractor's sole expense, the materials, equipment, or services with comparable materials, equipment, or services that is acceptable to the Commission.

Failure by the Contractor to provide either the right to continue using the materials, equipment, or services as specified in (i) above, or replacement materials, equipment, or services as specified in (ii) above, will constitute a material breach of this Agreement by the Contractor.

B. Indemnification for Personal Injury or Property Damage Claims. To the fullest extent possible, the Contractor shall indemnify and hold harmless the Commission, its officers, employees, agents, successors, assigns, affiliates and subsidiaries against all third-party claims for damages, losses, liabilities, or expenses, related to personal injury to or death of any person or persons, and for any loss or damage to any from the acts, omissions, or willful misconduct of the Contractor, its agents, employees, subcontractors, suppliers, assigns, subsidiaries and/or affiliates.

The Contractor's indemnity obligations hereunder include: (i) all costs and attorney's fees incurred by the Commission and/or its outside legal counsel, as selected by the Commission in its sole discretion, in the event the Contractor fails to assume the defense of the claim; (ii) payment of any settlement agreed to by the Commission and approved by the Contractor, and (iii) any award of

damages against the Commission and in favor of the third-party regardless of whether such claims are unfounded or substantiated.

C. Civil or Criminal Penalties. The Contractor shall indemnify the Commission, its officers, employees, agents, and/or their successors, assigns and/or heirs against any liability, including but not limited to any civil or criminal penalties assessed against any of them resulting from the failure of the Contractor or any Subcontractor to conform to any law or regulation pertaining to professional services performed under this Purchase Order.

D. To be indemnified, the Commission must (i) give the Contractor prompt written notice of the claim and tender its defense within forty-five (45) days of the Commission receiving written notice of the claim; (ii) give the Contractor full and complete authority, information and assistance for the claim's defense and settlement; and (iii) not intentionally prejudice the Contractor's ability to satisfactorily defend or settle the claim. The Contractor shall retain the right, at its option to settle or defend the claim, at its own expense and with its own counsel.

E. The provisions of this "Indemnification" Section states the entire liability and obligations of the Contractor and any of its Affiliates or licensors, and the exclusive remedy of the Commission, with respect to any claims subject to indemnification.

37. Cost or Pricing Data. In accordance with 48 CFR Part 15, Subpart 15.4, and by submission of a bid or offer, the Contractor certifies that throughout performance of the resulting Purchase Order and any modifications and extensions, all costs and pricing are in accordance with federal cost principles as shown in the Federal Acquisition Regulations (FAR) 15.403-4 and 15.403-5, and have been certified, or is required to be certified, in accordance with 15.406-2. This certificate states that, to the best of the Offeror's knowledge and belief, the cost or pricing data is accurate, complete, and current as of a date certain before Purchase Order award.

If applicable, exceptions to certified cost or pricing data are included in FAR 15.403-1(b).

38. Drug-Free Workplace (applicable if over \$10,000). In accordance with the Code of Virginia § 2.2-4312, currently in effect or as may be amended in the future, the Contractor agrees to (i) provide a drug-free workplace for the Contractor's employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the Contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of the Contractor that the Contractor maintains a drug-free workplace; and (iv) include such provisions in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each Subcontractor or vendor.

39. Privacy Act. The Contractor agrees to comply with, and assures the compliance of its employees with, the information restrictions and other applicable requirements with the Privacy Act of 1974, 5 U.S.C. § 552a, currently in effect or as may be amended in the future.

40. Ownership of Works and Inventions. All documents, reports, recommendations, supporting documentation, works of authorship, inventions, improvements, data, processes, computer software programs, and discoveries (hereafter called intellectual property or IP) conceived, created, or furnished under this Agreement and paid for by the Commission will be the sole property of the Commission, with no rights of ownership in the Contractor or any Subconsultants/Subcontractors. This Agreement shall operate as an irrevocable assignment by the Contractor and Subconsultants/Subcontractors to the Commission of the copyright in any IP created, published, or furnished to the Commission under this Agreement, including all rights thereunder in perpetuity. The Contractor and Subconsultants/Subcontractors shall not patent any IP conceived, created, or furnished under this Agreement. The Contractor and Subconsultants/Subcontractors agree to execute and deliver all necessary documents requested by the Commission to affect the assignment of the IP to the Commission or registration or confirmation of the Commission's rights in or to IP under the terms of this Agreement. The Contractor agrees to include the provision in all its Subcontracts under this Agreement.

41. Certification of Internal Controls. This section applies to Contracts where sensitive data and/or processes are subject to Agency Risk Management and Internal Control Standards (ARMICS) standards or other certification is required to demonstrate adequate internal controls (e.g. outsourcing of financial services, when data is collected on behalf of the Commission and/or shared with the Contractor, and other significant Agency functions.

The Contractor shall have clearly delineated processes and procedures for the internal control of sensitive data and processes, which are any data and processes of which the compromising of confidentiality, integrity, and/or availability could have a material adverse effect on the Commission's interests, the conduct of Agency programs, or to the privacy of which individuals are entitled, when such sensitive data or processes are related to the goods and/or services provided pursuant to this agreement.

The Contractor shall provide evidence of compliant and ongoing internal control of sensitive data and processes through a standard methodology, such as but without limitation the American Institute of Certified Public Accountant (AICPA) Service Organization Control (SOC) Reports. The evidence of compliance shall be contained in a report describing the effectiveness of the Contractor's internal controls. The most recent version of the report shall be provided to the Contracting Officer upon request. Trade secrets or proprietary information contained within the report shall not be subject to public disclosure under the Virginia Freedom of Information Act; however, the Contractor must invoke the protection of Code of Virginia, § 2.2-4342F, in writing, prior to or upon submission of the report, and must identify the data or other materials to be protected and state the reasons why protection is necessary.

If deficiencies in the Contractor's internal control processes and procedures are described in the most recent version of the report, the Contractor shall automatically submit the report to the Contracting Officer within a timely manner and shall describe the corrective actions to be put into place by the Contractor to remedy the deficiencies. Failure to report and/or

repair deficiencies in a timely manner shall be cause for the Commission to make a determination of breach of contract.

The Contractor's obligations for certification of internal controls shall survive and continue after completion of this agreement unless the Contractor certifies the destruction of the sensitive data at the end of the Purchase Order term.

42. Notices and Communications. All notices and other communications concerning this Purchase Order shall be written in English, sequentially numbered, reference the Purchase Order number assigned by the Commission, and be in Microsoft Office format, i.e., Word, Excel, or PDF. Notices and other communications may be delivered personally, by facsimile, or by regular, certified, or registered mail. Formal notices and communications are effective when received. Email notices and communications are not considered formal and will not be considered official unless confirmed in writing by the designated Commission representative and delivered as noted above.

All formal communications shall be between the Commission's Project Manager and the Contractor's Project Manager.

43. Continuity of Services.

A. The Contractor recognizes that the services under this Purchase Order are vital to the Commission and must be continued without interruption and that, upon Purchase Order expiration, a successor, either the Commission or another contractor, may continue them. The Contractor agrees:

- i. To exercise its best efforts and cooperation to effect an orderly and efficient transition to a successor;
- ii. To make all Commission owned facilities, equipment, and data available to any successor at an appropriate time prior to the expiration of the Purchase Order to facilitate transition to successor; and
- iii. That the Commission's Contracting Officer shall have final authority to resolve disputes related to the transition of the Purchase Order from the Contractor to its successor.

B. The Contractor shall, upon written notice from the Contracting Officer, furnish phase-in/phase-out services for up to ninety (90) days after this Purchase Order expires and shall negotiate in good faith a plan with the successor to execute the phase-in/phase-out services. This plan shall be subject to the Contracting Officer's approval.

C. The Contractor shall be reimbursed for all reasonable, pre-approved phase-in/phase-out costs (i.e., costs incurred within the agreed period after Purchase Order expiration that result from phase-in, phase-out operations) and a fee (profit) not to exceed a pro rata portion of the fee (profit) under this Purchase Order. All phase-in/phase-out work fees must be approved by the Contracting Officer in writing prior to commencement of said work.

44. Brand Name or Approved Equal. If a brand name, make or model number, or descriptive material is included in the specification without the phrase "or approved equal," it is implied. To be accepted as an approved equal, the Contractor must provide specific supporting documentation that the product offering proposed as "or equal" meets or exceeds the salient physical and functional characteristics of the product specified in the solicitation. Approval as an "approved equal" must be in writing from the Contracting Officer. The Contractor

shall be responsible for ensuring that the product performs equally with the specified brand-named product.

- 45. Product Availability/Substitution.** Substitution of a product, brand, or manufacturer after the award of the Purchase Order is expressly prohibited unless approved in writing by the Contracting Officer. The Commission may, at its discretion, require the Contractor to provide a substitute item of equivalent or better quality subject to the approval of the Contracting Officer, for a price no greater than the Purchase Order price, if the product for which the Purchase Order was awarded becomes unavailable to the Contractor.

46. Registration and Use of Federal Employment Eligibility Verification Program (applicable if over \$50,000).

For purposes of this Section, “E-Verify program” means the electronic verification of work authorization program of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (P.L. 104-208), Division C, Title IV, § 403(a), as amended, operated by the U.S. Department of Homeland Security, or a successor work authorization program designated by the U.S. Department of Homeland Security or other federal agency authorized to verify the work authorization status of newly hired employees under the Immigration Reform and Control Act of 1986 (P.L. 99-603).

In accordance with the Code of Virginia, § 2.2-4308.2, the Contractor shall agree as follows:

A. Any Contractor with more than an average of fifty (50) employees for the previous twelve (12) months entering into a Purchase Order in excess of \$50,000 with the Commission to perform work or provide services pursuant to such Purchase Order shall register and participate in the E-Verify program to verify information and work authorization of its newly hired employees performing Work pursuant to this Purchase Order.

B. Any such Contractor who fails to comply with the provisions of subsection A shall be debarred from contracting with any agency of the Commonwealth for a period of up to one (1) year. Such debarment shall cease upon the Contractor’s registration and participation in the E-Verify program. If requested, the Contractor shall present a copy of their Maintain Company page from E-Verify to prove that they are enrolled in E-Verify.

- 47. Compliance with Federal, State, and Local Laws and Federal Immigration Law.** Pursuant to § 2.2-4311.1 of the Code of Virginia, the Contractor does not, and shall not, during the performance of this Purchase Order, knowingly employ an unauthorized alien as defined in the federal Immigration Reform and Control Act of 1986.

- 48. Authorization to Conduct Business in the Commonwealth of Virginia.** A Contractor organized as a stock or nonstock corporation, limited liability company, business trust, or limited partnership or registered as a registered limited liability partnership shall be authorized to transact business in the Commonwealth of Virginia as a domestic or foreign business entity if so required by Title 13.1 or Title 50 of the Code of Virginia or as otherwise required by law. Any business entity described above that enters into a Purchase Order with the Commission pursuant to the Virginia Public Procurement Act § 2.2-4311 shall not allow its existence to lapse or its certificate of authority or registration to transact business in the Commonwealth of Virginia, if so required under Title 13.1 or Title 50, to be revoked or cancelled at any time during the term of the Purchase Order.

The Commission may void any contract with a business entity if the business entity fails to remain in compliance with the provisions of this section.

- 49. Incorporation of Federal Transit Administration Terms.** The contractual provisions within include, in part, certain Standard Terms and Conditions required under the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (2 CFR § 200, currently in effect or as may be amended in the future), whether or not expressly set forth in the preceding Purchase Order provisions. All contractual provisions required by the U.S. DOT, detailed in 2 CFR § 200 or as amended by 2 CFR § 1201, or the most recent version of FTA Circular 4220.1 are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Purchase Order. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any Commission requests which would cause the Commission to be in violation of the FTA terms and conditions.

- 50. Changes to Federal Requirements.** Federal requirements that apply to the Commission or the Award, the accompanying Underlying Agreement, and any Amendments thereto may change due to changes in federal law, regulation, other requirements, or guidance, or changes in the Commission’s Underlying Agreement including any information incorporated by reference and made part of that Underlying Agreement; and Applicable changes to those federal requirements will apply to each Third-Party Agreement and parties thereto at any tier.

51. Access to Records and Reports.

A. Record Retention. The Contractor shall retain and shall require its subcontractors of all tiers to retain complete and readily accessible records related in whole or in part to this Purchase Order, including, but not limited to data, documents, reports, statistics, sub-agreements, leases, subcontracts, arrangements, other third-party agreements of any type, and supporting materials related to those records.

B. Retention Period. The Contractor agrees to comply with the record retention requirements in accordance with 2 CFR § 200.334. The Contractor shall maintain all books, records, accounts, and reports required under this Purchase Order for a period of not less than three (3) years after date of termination or expiration or final payment of this Purchase Order, except in the event of litigation or settlement of claims arising from the performance of this Purchase Order, in which case records shall be maintained until the disposition of all such litigation, appeals, claims, or exceptions related thereto.

C. Access to Records. The Contractor agrees to provide sufficient access to the FTA and its Contractors, the Contracting Officer, the U.S. Department of Transportation, and the Comptroller General of the United States, or any of their duly authorized representatives, to inspect and audit records and information, including such records and information the Contractor or its subcontractors may regard as confidential or proprietary, related to the performance of this Purchase Order, as reasonably may be required, in accordance with 2 CFR § 200.337.

D. Access to the Sites of Performance. The Contractor agrees to permit the same access to sites of performance under this Purchase Order, as reasonably may be required, in accordance with 2 CFR § 200.337.

E. Commonwealth of Virginia. The Commonwealth of Virginia and any other public entity providing funding for this Purchase Order shall have the same rights as provided to the parties named herein.

52. Disputes (applicable if over \$100,000). Except as otherwise provided in this Purchase Order, any dispute arising under or related to this Purchase Order which is not disposed of by agreement will be decided by the Director of Procurement. The Contractor must submit in writing its Request for Relief from any such dispute to the Director of Procurement within fifteen (15) days of when the Contractor knew or should have known of such dispute. The Request for Relief must contain all facts and supporting documents, if any, in support of the Contractor's position. The Contractor agrees that any facts or documents not referenced by it in the Request for Relief may not be subsequently raised or relied on by the Contractor in any way in any subsequent legal or administrative proceeding. The Director of Procurement will reduce their decision to writing and deliver a copy to the Contractor within thirty (30) calendar days from the date of receipt of the Request for Relief. The decision of the Director of Procurement will be final and binding unless determined by a court of competent jurisdiction to have been either fraudulent or arbitrary and capricious. Pending final decision of a dispute hereunder, the Contractor shall proceed diligently with the performance of the Purchase Order and in accordance with the Director of Procurement's decision. Satisfaction of the dispute resolution process in accordance with this Section shall be a condition precedent to the Contractor filing a subsequent legal or administrative action against the Commission.

53. Termination for Default (applicable if over \$10,000). The Commission may, subject to the provisions herein, by written notice of default to the Contractor, terminate the whole or any part of this Purchase Order in any one of the following circumstances:

- A. The Contractor is in material breach of any provision of this Purchase Order;
- B. The Contractor makes a general assignment of this Purchase Order for the benefit of creditors;
- C. The Contractor repeatedly fails to make prompt payment to Subcontractors or for material or labor; or
- D. The Contractor disregards laws, regulations, ordinances, the orders of a legal authority, or the instructions of the Commission; and the Contractor has not remedied the breach within ten (10) days after receiving written notice from the Commission.

In addition to its right to terminate the Purchase Order for the reasons set forth above, if the Contractor fails to perform any of the other provisions of this Purchase Order, or refuses or fails to perform the Work or any separable part, with the diligence that will ensure its completion in accordance with its terms or within the time specified in this Purchase Order including any extension, and does not cure such failure within a period of ten (10) days (or such longer period as the Contracting Officer may authorize in writing), the Commission may, by written notice to the Contractor and with copy to surety, terminate the right to proceed with the Work (or the separable part of the Work) that

has been delayed. In this event, the Contractor and its sureties will be liable for any damage to the Commission resulting from the Contractor's refusal or failure to complete the Work within the specified time or for liquidated damages for delay if liquidated damages are allowable by this Purchase Order. This liability includes any increased costs to cover incurred by the Commission in completing the Work.

If, after termination of the Contractor's right to proceed, it is determined that the Contractor was not in default, or that the delay was excusable, the rights and obligations of the parties will be the same as if the termination had been issued for the Commission's convenience pursuant to these General Conditions.

The rights and remedies of the Commission in this Article are in addition to any other rights and remedies provided by law or under this Purchase Order.

In the event the Commission terminates this Purchase Order in whole or in part, the Commission may procure, upon such terms and in such manner as the Contracting Officer may deem appropriate, supplies or services similar to those so terminated, and the Contractor will be liable to the Commission for any excess costs for such similar supplies or services incurred by the Commission, including but not by way of limitation the costs of re-procurement; provided, that the Contractor shall continue the performance of this Purchase Order to the extent not terminated under the provisions of this Article.

Except with respect to defaults of Subcontractors, the Contractor will not be liable for any excess costs if the failure to perform the Purchase Order arises out of causes beyond the reasonable anticipation and control, and without the fault or negligence of the Contractor. Such causes may include, but are not restricted to, acts of God or of the public enemy, acts of the Government in its sovereign capacity or the Commission in its contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes and unusually severe weather; but in every case the failure to perform must be beyond the reasonable anticipation and control and without the fault or negligence of the Contractor. If the failure to perform is caused by the default of a Subcontractor, and if such default arises out of causes beyond the reasonable anticipation and control of both the Contractor and Subcontractor, and without the fault or negligence of either of them, the Contractor will not be liable for any excess costs for failure to perform, unless the supplies or services to be furnished by the Subcontractor were obtainable from other sources in sufficient time to permit the Contractor to fulfill its contractual obligations.

If this Purchase Order is terminated, title and possession of any completed or partially completed Work that has been paid for by the Commission, including any supplies, materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and Purchase Order rights that the Contractor has specifically produced or specifically acquired for the performance of this Purchase Order, will pass to the Commission. The Contractor shall protect and preserve such completed or partially completed Work and deliver the same to the Commission on reasonable demand.

54. Step In Rights. At the Commission's option, the Commission may procure the Products and/or Services from an alternate provider in the event that: (a) a Force Majeure Event results in failure to provide the Products and/or Services for more than

thirty (30) calendar days; or (b) the Contracting Officer may consider the Contractor to be in default of any of its material performance obligations under this Contract for so long as the Commission is impacted by the failure or default. In the event that the Commission invokes its rights under this clause, the Contractor will be liable to pay the charges for such alternative products and/or services in excess of the charges the Commission would have paid had such Products been provided and/or Services been performed by the Contractor for up to 180 calendar days.

55. Termination for Convenience (applicable if over \$10,000).

The Commission may terminate this Purchase Order in whole or in part at any time and in its sole discretion. The Commission will deliver a written Notice of Termination to the Contractor specifying the extent to which performance of the Work under the Purchase Order is terminated, and the date upon which such termination becomes effective.

After receipt of a Notice of Termination, the Contractor shall promptly proceed with the following:

- A. Stop the Work on the date and to the extent specified in the Notice of Termination;
- B. Place no further orders or Subcontracts for materials, services, or facilities, except as may be necessary for completion of such portion of the Work which is not terminated;
- C. Terminate all orders and Subcontracts to the extent that they relate to the performance of the Work terminated;
- D. Assign to the Commission, in the manner, at the time, and to the extent directed by the Contracting Officer, all of the rights, title and interests of the Contractor under the orders and Subcontracts so terminated, in which case the Commission will have the right, in its discretion, to settle or pay any or all claims arising out of the termination of such orders and Subcontracts;
- E. Settle all outstanding liabilities and all claims arising out of such termination of orders and Subcontracts, with the approval or ratification of the Contracting Officer, to the extent they may require; the approval or ratification shall be final for purposes of this Article;
- F. Transfer title and possession of any completed or partially completed Work that has been paid for by the Commission, including any supplies, materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and Purchase Order rights that the Contractor has specifically produced or specifically acquired for the performance of this Purchase Order;
- G. Take such action as may be necessary, or as the Contracting Officer may direct, for the protection and preservation of the property related to this Purchase Order which is in the possession of the Contractor and in which the Commission has or may acquire an interest; and
- H. Complete performance of such part of the Work not terminated by the Notice of Termination.

After receipt of a Notice of Termination, the Contractor shall submit to the Contracting Officer its termination claim, in the form and with certification prescribed by the Contracting Officer. Such claims shall be submitted promptly but in no event later than one (1) year from the effective date of termination. Upon failure of the Contractor to submit its

termination claim within the time allowed, the Contracting Officer may determine on the basis of information available, the amount, if any, due the Contractor because of the termination and will pay the amount determined.

In the event of the failure of the Contractor and the Contracting Officer to agree upon the whole amount to be paid the Contractor, the Contractor may submit a Request for Relief in accordance with the General Conditions. In any event, the total sum to be paid to the Contractor will not exceed the total Purchase Order price as reduced by the amount of payments otherwise made and as further reduced by the Purchase Order price of Work not terminated. Costs claimed, agreed to, or determined shall be in accordance with the applicable Purchase Order cost principles and procedures in 2 CFR Part 200 in effect on the date of this Purchase Order.

Unless otherwise provided in this Purchase Order or by statute, the Contractor shall maintain all records and documents relating to the terminated portion of this Purchase Order for three (3) years after final settlement. This includes all books and other evidence bearing on the Contractor's costs and expenses under this Purchase Order. The Contractor shall make these records and documents available to the Commission, at the Contractor's office, at all reasonable times, without any direct charge. If approved by the Contracting Officer, photographs, microphotographs, or other authentic reproductions may be maintained instead of original records and documents.

56. Energy Conservation. The Contractor agrees to, and assures that its subcontractors shall, comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan in compliance with the Energy Policy and Conservation Act, as amended, 42 U.S.C. § 6321, et seq., and perform an energy assessment for any building constructed, reconstructed, or modified with Federal assistance required under FTA regulations, "Requirements for Energy Assessments," 49 CFR Part 662, Subpart C.

57. Civil Rights Laws and Regulations. The Contractor and any subcontractor agree to comply with all the requirements prohibiting discrimination on the basis of race, color, or national origin of the Title VI of the Civil Rights Act of 1964, as amended 52 U.S.C. 2000d, and U.S. DOT regulation "Nondiscrimination in Federally-Assisted Programs of the Department of Transportation – Effectuation of the Title VI of the Civil Rights Act," 49 CFR Part 21 and any implementing requirement the FTA may issue.

A. Federal Equal Employment Opportunity (EEO) Requirements. These include, but are not limited to, the following:

- i. Nondiscrimination in Federal Public Transportation Programs. 49 U.S.C. § 5332, covering projects, programs, and activities financed under 49 U.S.C. Chapter 53, prohibits discrimination on the basis of race, color, religion, national origin, sex (including sexual orientation), disability or age, and prohibits discrimination in employment or business opportunity.
- ii. Prohibition Against Employment Discrimination. Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e, Title VI of the Civil Rights Act of 1964, 49 CFR Part 21, and 49 U.S.C. § 5332, prohibits discrimination in employment on the basis of race, color, religion, sex, or national origin.

- iii. Nondiscrimination on the Basis of Sexual Orientation and Gender Identity. IIJA 60307(a) adds sexual orientation and gender identity as bases on which a person must not be excluded from participation in, denied the benefits of, or subjected to discrimination under any program or activity receiving FTA financial assistance.

B. Nondiscrimination on the Basis of Sex. Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. § 1681 et seq. and implementing Federal regulations, “Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance,” 49 CFR Part 25 prohibit discrimination on the basis of sex. In addition, the Contractor agrees to comply with any implementing requirements the FTA may issue.

C. Nondiscrimination on the Basis of Age. The “Age Discrimination Act of 1975,” as amended, 42 U.S.C. § 6101 et seq., and Department of Health and Human Services implementing regulations, “Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance,” 45 CFR Part 90, prohibit discrimination by participants in federally assisted programs against individuals on the basis of age. The Age Discrimination in Employment Act (ADEA), 29 U.S.C. § 621 et seq., and Equal Employment Opportunity Commission (EEOC) implementing regulations, “Age Discrimination in Employment Act,” 29 CFR Part 1625, also prohibit employment discrimination against individuals aged forty (40) and over on the basis of age. In addition, the Contractor agrees to comply with any implementing requirements the FTA may issue.

D. Limited English Proficiency (LEP). 42 U.S.C. 2000d-1 note, and DOT, “Policy Guidance Concerning Recipients’ Responsibilities to Limited English Proficient (LEP) Persons,” December 14, 2005, clarifies the responsibilities of the Commission and assists them in fulfilling its responsibilities to LEP persons, pursuant to Title VI of the Civil Rights Act of 1964 and implementing regulations. FTA Circular 4702.1B, “Title VI Requirements and Guidelines for Federal Transit Administration Recipients,” also provides FTA guidance and instructions for implementing the DOT Policy Guidance.

E. Federal Protections for Individuals with Disabilities. The Americans with Disabilities Act of 1990, as amended (ADA), 42 U.S.C. § 12101 et seq., prohibits discrimination against qualified individuals with disabilities in programs, activities, and services, and imposes specific requirements on public and private entities. The Contractor agrees to comply with their responsibilities under Titles I, II, III, IV, and V of the ADA in employment, public services, public accommodations, telecommunications, and other provisions, many of which are subject to regulations issued by other Federal agencies. In addition, the Contractor agrees to comply with any implementing requirements the FTA may issue.

The Commission is an Equal Opportunity Employer. As such, it agrees to comply with all applicable Federal civil rights laws and implementing regulations. Apart from inconsistent requirements imposed by Federal laws or regulations, the Commission agrees to comply with the requirements of 49 U.S.C. § 5323(h)(3), currently in effect or as may be amended in the future, by not using any Federal assistance awarded by the

FTA to support procurements using exclusionary or discriminatory specifications. Under this Purchase Order, the Contractor shall at all times comply with the following requirements and shall include these requirements in each subcontract entered into as part thereof.

A. Nondiscrimination. In accordance with Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, religion, national origin, sex, disability, or age. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

B. Equal Employment Opportunity. In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e et seq., Title I of the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. §§ 12101, et seq.; and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements, without regard to their race, color, religion, national origin, or sex (including sexual orientation). In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

C. Age. In accordance with the Age Discrimination in Employment Act, 29 U.S.C. §§ 621-634, U.S. Equal Employment Opportunity Commission (U.S. EEOC) regulations, “Age Discrimination in Employment Act,” 29 CFR Part 1625, the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6101 et seq., U.S. Health and Human Services regulations, “Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance,” 45 CFR Part 90, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

D. Disabilities. In accordance with section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. § 12101 et seq., the Architectural Barriers Act of 1968, as amended, 42 U.S.C. § 4151 et seq., and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against individuals on the basis of disability. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

E. Federal Law and Public Policy Requirements. The Contractor shall ensure that Federal funding is expended in full accordance with the U.S. Constitution, Federal law, and statutory and public policy requirements: including, but not limited to, those protecting free speech, religious liberty, public welfare, the environment, and prohibiting discrimination.

58. Commonwealth of Virginia Anti-Discrimination. By submitting its bid or proposal, the Contractor certifies to the Commission that it will conform to the provisions of the Federal Civil Rights Act of 1964, as amended, as well as the Virginia Fair Employment Contracting Act of 1975, as amended, where applicable, the Virginians With Disabilities Act, the Americans With Disabilities Act and § 2.2-4311 of the Virginia Public Procurement Act (VPPA). If the award is made to a faith-based organization, the organization shall not discriminate against

any recipient of goods, services, or disbursements made pursuant to this Purchase Order on the basis of the recipient's religion, religious belief, refusal to participate in a religious practice, or on the basis of race, age, color, gender, sexual orientation, gender identity, or national origin and shall be subject to the same rules as other organizations that contract with public bodies to account for the use of the funds provided; however, if the faith-based organization segregates public funds into separate accounts, only the accounts and programs funded with public funds shall be subject to audit by the Commission. (Code of Virginia, § 2.2-4343.1E).

In every Purchase Order over \$10,000 the provisions in i. and ii. below apply:

A. During the performance of this Purchase Order, the Contractor agrees as follows:

- i. The Contractor shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, sexual orientation, gender identity, national origin, age, disability, veteran status, status as a military family, or any other basis prohibited by state law relating to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of the Contractor. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.
- ii. The Contractor, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, shall state that such Contractor is an equal opportunity employer.
- iii. Notices, advertisements, and solicitations placed in accordance with federal law, rule, or regulation shall be deemed sufficient for the purpose of meeting the requirements of this section.
- iv. If the Contractor employs more than five (5) employees, the Contractor shall (1) provide annual training on the Contractor's sexual harassment policy to all supervisors and employees providing services in the Commonwealth, except such supervisors or employees that are required to complete sexual harassment training provided by the Department of Human Resource Management, and (2) post the Contractor's sexual harassment policy in (A) a conspicuous public place in each building located in the Commonwealth that the Contractor owns or leases for business purposes and (B) the Contractor's employee handbook.
- v. The requirements of these provisions i. and ii. are a material part of the Purchase Order. If the Contractor violates one (1) of these provisions, the Commission may terminate the affected part of this Purchase Order for breach, or at its option, the whole Purchase Order. Violation of one (1) of these provisions may also result in debarment from State contracting regardless of whether this specific Purchase Order is terminated.
- vi. In accordance with Executive Order 61 (2017), a prohibition on discrimination by the Contractor, in its employment practices, subcontracting practices, and delivery of goods or services, on the basis of race, sex,

color, national origin, religion, sexual orientation, gender identity, age, political affiliation, disability, or veteran status, is hereby incorporated in this Purchase Order.

B. The Contractor shall include the provisions of i. above in every subcontract or purchase order over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

59. No Federal Government Commitment or Liability to Third Parties. The Commission and the Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of this Purchase Order, absent the express written consent by the Federal Government, the Federal Government is not a party to this Purchase Order and shall not be subject to any obligations or liabilities to the Commission, the Contractor, or any other party (whether or not a party to this Purchase Order) pertaining to any matter resulting from this Purchase Order.

The Contractor agrees to include this clause in each subcontract financed in whole or in part with Federal assistance provided by the FTA. It is further agreed that the clause shall not be modified, except to identify the Subcontractor who will be subject to its provisions.

60. Program Fraud and False or Fraudulent Statements or Related Acts. The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § 3801 et seq. and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 CFR Part 31, apply to its actions pertaining to this Purchase Order. Upon execution of the Purchase Order, the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to this Purchase Order or the FTA assisted project for which this Purchase Order Work is being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the Federal Government deems appropriate.

The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a Purchase Order connected with a project that is financed in whole or in part with Federal assistance originally awarded by the FTA under the authority of 49 U.S.C. Chapter 53, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5323(l) on the Contractor, to the extent the Federal Government deems appropriate.

The Contractor agrees to include this provision in each subcontract financed in whole or in part with Federal assistance provided by the FTA, and to require Subcontractors to do likewise. It is further agreed that the clauses shall not be modified, except to identify the Subcontractor who will be subject to the provisions.

61. Suspension and Debarment (applicable if over \$25,000). The Contractor shall comply and facilitate compliance with U.S. DOT regulations, "Nonprocurement Suspension and Debarment," 2 CFR Part 1200, which adopts and supplements the U.S. OMB "Guidelines to Agencies on Governmentwide

Debarment and Suspension (Nonprocurement),” 2 CFR Part 180. These provisions apply to each Purchase Order or Contract at any tier of \$25,000 or more, and to each Purchase Order or Contract at any tier for a federally required audit (irrespective of the Purchase Order or Contract amount), and to each Purchase Order or contract at any tier that must be approved by an FTA official irrespective of the Purchase Order amount. As such, the Contractor shall verify that its principals, affiliates, and subcontractors are eligible to participate in this federally funded Purchase Order and are not presently declared by any Federal department or agency to be:

- A. Debarred from participation in any federally assisted Award;
- B. Suspended from participation in any federally assisted Award;
- C. Proposed for debarment from participation in any federally assisted Award;
- D. Declared ineligible to participate in any federally assisted Award;
- E. Voluntarily excluded from participation in any federally assisted Award; or
- F. Disqualified from participation in any federally assisted Award.

By signing and submitting its bid or proposal, the Contractor certifies as follows:

The certification in this clause is a material representation of fact relied upon by the Commission. If it is later determined by the Commission that the Bidder or Proposer knowingly rendered an erroneous certification, in addition to remedies available to the Commission, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The Bidder or Proposer agrees to comply with the requirements of 2 CFR Part 180, Subpart C, as supplemented by 2 CFR Part 1200, while this offer is valid and throughout the period of any Purchase Order that may arise from this offer. The Bidder or Proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

62. Notice to FTA and U.S. DOT Inspector General of Information Related to Fraud, Waste, Abuse, or Other Legal Matters (applicable if over \$25,000). If a current or prospective legal matter that may affect the Federal Government emerges, the Contractor must promptly notify the Commission, which will promptly notify the FTA Chief Counsel and FTA Regional Counsel for the Region in which the Commission is located. The Contractor must include an equivalent provision in its sub-agreements at every tier, for any agreement that is a “covered transaction” according to 2 CFR §§ 180.220 and 1200.220.

- A. The types of legal matters that require notification include, but are not limited to, a major dispute, breach, default, litigation, or naming the Federal Government as a party to litigation or a legal disagreement in any forum for any reason.
- B. Matters that may affect the Federal Government include, but are not limited to, the Federal Government’s interests in the Award, the accompanying Underlying Agreement, and any Amendments thereto, or the Federal Government’s administration or enforcement of federal laws, regulations, and requirements.

C. The Contractor must promptly notify the Commission, which will promptly notify the U.S. DOT Inspector General in addition to the FTA Chief Counsel or Regional Counsel for the Region in which the Commission is located, if the Contractor has knowledge of potential fraud, waste, or abuse occurring on a Project receiving assistance from FTA. The notification provision applies if a person has or may have submitted a false claim under the False Claims Act, 31 U.S.C. § 3729 et seq., or has or may have committed a criminal or civil violation of law pertaining to such matters as fraud, conflict of interest, bribery, gratuity, or similar misconduct. This responsibility occurs whether the Project is subject to this Agreement or another agreement between the Commission involving a principal, officer, employee, agent, or Third-Party Participant of the Commission. It also applies to subcontractors at any tier. Knowledge, as used in this paragraph, includes, but is not limited to, knowledge of a criminal or civil investigation by a Federal, state, or local law enforcement or other investigative agency, a criminal indictment or civil complaint, or probable cause that could support a criminal indictment, or any other credible information in the possession of the Contractor.

63. Solid Wastes (Recovered Materials). Under 2 CFR § 200.323, the Commission and its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in the guidelines of the Environmental Protection Agency (EPA) at 40 CFR Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeds \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

64. Clean Air Act and Federal Water Pollution Control Act (applicable if over \$150,000). The Contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act (42 U.S.C. § 7401 – 7671q), as amended and the Federal Water Pollution Control Act (33 U.S.C. § 1251 – 1387), as amended. Violations must be reported to the FTA and the Regional Office of the Environmental Protection Agency (EPA).

A. Clean Air Act

- i. The Contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.
- ii. The Contractor agrees to report each violation to the Commission and understands and agrees that the Commission will, in turn, report each violation as required to assure notification to the Commission, Federal Emergency Management Agency (FEMA), and the appropriate EPA Regional Office.
- iii. The Contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by the FTA.

B. Federal Water Pollution Control Act

- i. The Contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. § 1251 et seq.
- ii. The Contractor agrees to report each violation to the Commission and understands and agrees that the Commission will, in turn, report each violation as required to assure notification to the Commission, FEMA, and the appropriate EPA Regional Office.
- iii. The Contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FTA.

65. Restrictions on Lobbying (*applicable if over \$100,000*).

A. Conditions on Use of Funds

- i. No appropriated funds may be expended by the Commission on a Federal contract, grant, loan, or cooperative agreement to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any of the following covered Federal actions: the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- ii. Each person who requests or receives from an agency a Federal contract, grant, loan, or cooperative agreement shall file with that agency a certification that the person has not made, and will not make, any payment prohibited by paragraph (i) of this section.
- iii. Each person who requests or receives from an agency a Federal contract, grant, loan, or a cooperative agreement shall file with that agency a disclosure form if such person has made or has agreed to make any payment using non-appropriated funds (to include profits from any covered Federal action), which would be prohibited under paragraph (i) of this section if paid for with appropriated funds.
- iv. Each person who requests or receives from an agency a commitment providing for the United States to insure or guarantee a loan shall file with that agency a statement, whether that person has made or has agreed to make any payment to influence or attempt to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with that loan insurance or guarantee.
- v. Each person who requests or receives from an agency a commitment providing for the United States to insure or guarantee a loan shall file with that agency a disclosure form if that person has made or has agreed to make any payment to influence or attempt to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with that loan insurance or guarantee.

B. Certification and Disclosure

- i. Each person shall file a certification, and a disclosure form, if required, with each submission that initiates agency consideration of such person for: (a) Award of a Federal contract, grant, or cooperative agreement exceeding \$100,000; or (b) An award of a Federal loan or a commitment providing for the United States to insure or guarantee a loan exceeding \$150,000.
- ii. Each person shall file a certification, and a disclosure form, if required, upon receipt by such person of: (a) A Federal contract, grant, or cooperative agreement exceeding \$100,000; or (b) A Federal loan or a commitment providing the United States to insure or guarantee a loan exceeding \$150,000,

Unless such person previously filed a certification, and a disclosure form, if required, under paragraph (i) of this section.

- iii. Each person shall file a disclosure form at the end of each calendar quarter in which there occurs any event that requires disclosure or that materially affects the accuracy of the information contained in any disclosure form previously filed by such person under paragraphs (i) or (ii) of this section. An event that materially affects the accuracy of the information reported includes: (a) A cumulative increase of \$25,000 or more in the amount paid or expected to be paid for influencing or attempting to influence a covered Federal action; or (b) A change in the person(s) or individual(s) influencing or attempting to influence a covered Federal action; or, (c) A change in the officer(s), employee(s), or Member(s) contacted to influence or attempt to influence a covered Federal action.
- iv. Any person who requests or receives from a person referred to in paragraphs (i) or (ii) of this section: (a) A subcontract exceeding \$100,000 at any tier under a Federal contract; (b) A subgrant, contract, or subcontract exceeding \$100,000 at any tier under a Federal grant; (c) A contract or subcontract exceeding \$100,000 at any tier under a Federal loan exceeding \$150,000; or, (d) A contract or subcontract exceeding \$100,000 at any tier under a Federal cooperative agreement, Shall file a certification, and a disclosure form, if required, to the next tier above.
- v. All disclosure forms, but not certifications, shall be forwarded from tier to tier until received by the person referred to in paragraphs (i) or (ii) of this section. That person shall forward all disclosure forms to the Commission.
- vi. Any certification or disclosure form filed under paragraph (v) of this section shall be treated as a material representation of fact upon which all receiving tiers shall rely. All liability arising from an erroneous representation shall be borne solely by the tier filing that representation and shall not be shared by any tier to which the erroneous representation is forwarded. Submitting an erroneous certification or disclosure constitutes a failure to file the required certification or disclosure, respectively. If a person fails to file a required certification or disclosure, the

United States may pursue all available remedies, including those authorized by section 1352, title 31, U.S. Code.

- vii. For awards and commitments in process prior to December 23, 1989, but not made before that date, certifications shall be required at award or commitment, covering activities occurring between December 23, 1989, and the date of award or commitment. However, for awards and commitments in process prior to the December 23, 1989 effective date of these provisions, but not made before December 23, 1989, disclosure forms shall not be required at time of award or commitment but shall be filed within thirty (30) days.
- viii. No reporting is required for an activity paid for with appropriated funds if that activity is allowable under either subpart B or C.

66. Buy America Domestic Preference. To the extent applicable to the performance of this Purchase Order, the Contractor agrees to comply with Buy America Domestic Preference, which provides that Federal funds may not be obligated unless all steel, iron, and manufactured products used in FTA-funded projects are produced in the United States, unless a waiver has been granted by the FTA or the product is subject to a general waiver. General waivers are listed in 49 CFR § 661.7.

Except as the Federal Government determines otherwise in writing, the Contractor agrees to comply with the FTA's U.S. domestic preference requirements and follow federal guidance, including:

A. Buy America. The domestic preference procurement requirements of 49 U.S.C. § 5323(j), and FTA regulations, "Buy America Requirements," 49 CFR Part 661, to the extent consistent with 49 U.S.C. § 5323(j).

B. Build America, Buy America Act. Construction materials used in the Project are subject to the domestic preference requirement of the Build America, Buy America Act, Pub. L. 117-58, div. G, tit. IX, §§ 70911 – 70927 (2021), as implemented by the U.S. Office of Management and Budget's "Buy America Preferences for Infrastructure Projects," 2 CFR Part 184. The Commission acknowledges that this Purchase Order is neither a waiver of § 70914(a) nor a finding under § 70914(b). In accordance with 2 CFR § 184.2(a), the Contractor shall apply the standards of 49 CFR Part 661 to iron, steel, and manufactured products.

- i. Steel and Iron. All steel and iron manufacturing processes must take place in the United States, except metallurgical processes involving refinement of steel additives. The steel and iron requirements apply to all construction materials made primarily of steel or iron and used in maintenance facilities, rail lines, and bridges. These items include but are not limited to structural steel or iron, steel or iron beams and columns, running rail, and contact rail. These requirements do not apply to steel or iron used as components or subcomponents of other manufactured products or rolling stock (49 CFR 661.5(b)–(c)).
- ii. Manufactured Products. For a manufactured product to be considered produced in the United States: (1) all the manufacturing processes for the product must take place in the United States and (2) all the

components of the product must be of U.S. origin. A component is considered of U.S. origin if it is manufactured in the United States, regardless of the origin of its subcomponents (49 CFR 661.5(d)).

- iii. Construction Materials. Construction materials used in an FTA-funded project are subject to the domestic preference requirement of the Build America, Buy America Act, Pub. L. 117-58, div. G, tit. IX, 70911 – 70927 (2021), as implemented by OMB guidance to Federal awarding agencies on the Buy America Preference at 2 CFR 184.6. Additional information is available on the FTA Buy America website.

C. General Waivers. General waivers from the Buy America requirements may be used without submitting a waiver request to FTA. General waivers are listed at Appendix A to 49 CFR 661.7 and on FTA's Buy America website. General waiver requirements are reviewed carefully to ensure that waivers are applied appropriately. FTA general waivers include waivers for:

- i. Nonavailable Articles. This waiver incorporates all waivers published in 48 CFR 25.104, which establishes excepted articles, materials, and supplies for the Buy American Act of 1933 (41 U.S.C. 10a-d), as the waivers may be amended from time to time.
- ii. Microprocessors. FTA has issued a general public interest waiver from the Buy America requirements to microprocessors, computers, microcomputers, or software, or other such devices, which are used solely for the purpose of processing or storing data. This general waiver does not extend to a product or device which merely contains a microprocessor or microcomputer and is not used solely for the purpose of processing or storing data.
- iii. Small Purchases. FTA has issued a general public interest waiver that exempts "small purchases" from Buy America requirements at 49 U.S.C. 5323(j). The term "small purchase" means a purchase of not more than \$150,000 (49 U.S.C. 5323(j)(13)). FTA bases the exemption on the total amount of the contract or subcontract, including labor and options, and not just the value of the goods purchased (FTA's Guidance Letter on Buy America Small Purchase Waivers (Sept. 16, 2016)). This waiver does not apply to construction materials. Note that this small purchase waiver is not related to the micro-purchase or simplified acquisition thresholds that determine procurement processes.
- iv. De Minimis Costs and Small Grants Waiver. DOT has issued a Departmentwide waiver of the Buy America requirements for iron, steel, manufactured products, and construction materials under a single financial assistance award for which: (a) The total value of the non-compliant products is no more than the lesser of \$1,000,000 or five percent (5%) of total applicable costs for the project; or (b) The total amount of Federal financial assistance applied to the project, through awards or subawards, is below \$500,000.

Separate requirements for rolling stock are set out at 49 U.S.C. 5323(j)(2)(C), 49 U.S.C. § 5323(u), and 49 CFR § 661.11.

The Contractor must submit the appropriate Buy America certification to reflect that it will comply with such applicable

law, regulations, guidance, and contractual obligation. Bids or offers that are not accompanied by a completed Buy America certification will be rejected as non-responsive. More information may be found at FTA's Buy America webpage at:

<https://www.transit.dot.gov/buyamerica>.

- 67. Americans with Disabilities Act.** The Contractor agrees to comply with all applicable provisions of section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, which prohibits discrimination on the basis of disability, with the Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. § 12101 et seq., which requires that accessible facilities and services be made available to persons with disabilities, including any subsequent amendment to that Act, and with the Architectural Barriers Act of 1968, as amended, 42 U.S.C. § 4151 et seq., which requires that buildings and public accommodations be accessible to persons with disabilities, including any subsequent amendments to that Act. In addition, the Contractor agrees to comply with any and all applicable requirements issued by the FTA, DOT, DOJ, U.S. GSA, U.S. EEOC, U.S. FCC, and any subsequent amendments thereto and any other nondiscrimination statute(s) that may apply to the Project.

The Contractor also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by the FTA, modified only if necessary to identify the affected parties.

If applicable, plans for facility construction and/or facility alterations that are described in the Scope of Work detailed under this Purchase Order have been designed with the intent of ensuring, to the maximum extent feasible, that the facility, or alterations thereof, shall be accessible to persons with disabilities including individuals who use mobility aids. The Contractor agrees to make each modification detailed in the project plans in a manner that assures that the area constructed or alterations to any area within the facility is readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs. If any aspect of the plans or specifications for this project appear to be inconsistent with the above regulations or any guidance issued by the Access Board, it is essential that the Contractor notify the Project Manager designated by the Commission about any such concern as soon as practicable.

- 68. Cargo Preference – Use of United States-Flag Vessels (applicable for Contracts involving equipment, materials, or commodities which may be transported by ocean vessel).**

The Contractor agrees as follows:

- A. To use privately owned United States-Flag commercial vessels to ship at least fifty percent (50%) of any equipment, materials, or commodities procured, contracted for, or otherwise obtained with funds granted, guaranteed, loaned, or advanced by the U.S. Government under this Purchase Order, and which may be transported by ocean vessel, shall be transported on privately owned United States-flag commercial vessels, if available pursuant to 46 U.S.C. § 55305, and U.S. Maritime Administration regulations, "Cargo Preference – U.S.-Flag Vessels," and 46 CFR Part 381;
- B. To furnish within twenty (20) days following the date of loading for shipments originating within the United States or within thirty (30) working days following the date of loading for shipments originating outside the United

States, a legible copy of a rated, "on-board" commercial ocean bill-of-lading in English for each shipment of cargo described in 46 CFR § 381.7(a)(1) shall be furnished to both the Commission (through the prime Contractor in the case of Subcontractor bills-of-lading) and to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590; and

- C. To include these requirements in all Subcontracts issued pursuant to this Purchase Order when the subcontract may involve the transport of equipment, material, or commodities by ocean vessel.

- 69. Fly America (applicable for foreign air transport or travel).**

A. **Definitions.** As used in this clause –

- i. "International air transportation" means transportation by air between a place in the United States and a place outside the United States or between two (2) places both of which are outside the United States.
- ii. "United States" means the fifty (50) States, the District of Columbia, and outlying areas.
- iii. "U.S.-flag air carrier" means an air carrier holding a certificate under 49 U.S.C. Chapter 411.

B. When Federal funds are used to fund travel, Section 5 of the International Air Transportation Fair Competitive Practices Act of 1974 (49 U.S.C. 40118) (Fly America Act) requires contractors, Agencies, and others use U.S.-flag air carriers for U.S. Government-financed international air transportation of personnel (and their personal effects) or property, to the extent that service by those carriers is available. It requires the Comptroller General of the United States, in the absence of satisfactory proof of the necessity for foreign-flag air transportation, to disallow expenditures from funds, appropriated or otherwise established for the account of the United States, for international air transportation secured aboard a foreign-flag air carrier if a U.S.-flag air carrier is available to provide such services.

C. If available, the Contractor, in performing work under this Purchase Order, shall use U.S.-flag carriers for international air transportation of personnel (and their personal effects) or property.

D. In the event that the Contractor selects a carrier other than a U.S.-flag air carrier for international air transportation, the Contractor shall include a statement on vouchers involving such transportation essentially as follows:

Statement of Unavailability of U.S.-Flag Air Carriers

International air transportation of persons (and their personal effects) or property by U.S.-flag air carrier was not available or it was necessary to use foreign-flag air carrier service for the following reasons. See FAR § 47.403. [State reasons]:

E. The Contractor shall include the substance of this clause in each subcontract or purchase under this Purchase Order that may involve international air transportation.

- 70. Disadvantaged Business Enterprise Requirements.**

A. It is the policy of the Commission and the United States Department of Transportation that Disadvantaged Business Enterprises (DBEs), as defined herein and in the Federal regulations published at 49 CFR Part 26, including any amendments thereto, shall have an equal opportunity to participate in DOT-assisted contracts.

B. The Contractor or Subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Contract. The Contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the Contractor to carry out these requirements is a material breach of this Contract, which may result in the termination of this Contract or such other remedy as the Commission deems appropriate, which may include, but is not limited to the following:

- i. Withholding monthly progress payments;
- ii. Assessing sanctions;
- iii. Liquidated damages; and/or
- iv. Disqualifying the Contractor from future bidding as non-responsible under 49 CFR § 26.13(b).

C. The Contractor is required to pay subcontractors for satisfactory performance of their contracts no later than thirty (30) days from receipt of each payment the Commission makes to the Prime Contractor. 49 CFR § 26.29(a).

D. Finally, for Contracts with defined DBE Contract goals, the Contractor shall utilize the specific DBEs listed unless the Contractor obtains the Commission's written consent; and that, unless the Commission's consent is provided, the Contractor shall not be entitled to any payment for work or material unless it is performed or supplied by the listed DBE. 49 CFR § 26.53(f)(1).

Virginia's Small, Women and Minority Owned Business Certifications (SWaM/MBE/WBE) ARE NOT an acceptable substitution for the DBE requirement.

The Contractor shall submit the required Appendix K, Form E, Contractor Monthly Report of DBE Participation, on a monthly basis directly to the Commission's DBE Program Manager. As part of the flow down requirements, the Contractor shall require that all DBE Subcontractors submit the required Appendix K Form E-2, DBE Subcontractor Monthly Report, directly to the Commission's DBE Program Manager on a monthly basis.

71. Technical Restrictions on the Acquisition of Property and Services.

A. **Intelligent Transportation Systems.** An Intelligent Transportation System (ITS) includes electronics, communications, or information processing used singly or in combination to improve the efficiency or safety of a surface transportation system. ITS projects shall conform to the National ITS Architecture and standards pursuant to 23 CFR § 940. Property and services shall comply with the National ITS Architecture and Standards to the extent required by 23 U.S.C. § 517(d) and FTA notice, "FTA National ITS Architecture Policy on Transit Projects," 66 FR 1455, January 8, 2001, and later published policies or implementing directives the FTA may issue. Additional information regarding ITS is included in Circular 5010.1F. Conformance with the National ITS Architecture is interpreted to mean the use of the National ITS Architecture to develop a regional ITS architecture in support of integration and the subsequent adherence of all ITS projects to that regional ITS architecture. Development of the regional ITS architecture should be consistent with the transportation planning process for Statewide and Metropolitan Transportation Planning (49 CFR Part 613 and 621).

B. **Use of \$1 Coins.** To comply with Section 104 of the Presidential \$1 Coin Act of 2005, 31 U.S.C. 5112(p), FTA assisted property that requires the use of coins or currency in public transportation service or supporting services must be fully capable of accepting and dispensing \$1 coins.

If the solicitation documents identify this Purchase Order as subject to the Policy, or if the Contractor has reason to believe that the Policy applies to its services hereunder, the Contractor shall be responsible, in consultation with the Commission, for determining what, if any Work performed, or products supplied, under this Purchase Order are subject to and conforming to all requirements of that Policy as applicable.

72. **Federally Imposed Tariffs.** In the event that the President of the United States, the United States Congress, Customs and Border Protection, or any other federal entity authorized by law, imposes an import duty or tariff (a "tariff"), on an imported good that results in an increase in the Contractor's costs to a level that renders performance under the Purchase Order impracticable, the Commission may agree to an increase to the purchase price for the affected good. No increase in purchase price may exceed twenty-five percent (25%) of the additional tariff imposed on the goods imported or purchased by the Contractor that are provided to the Commission under this Purchase Order.

Prior to the Commission agreeing to a price increase pursuant to this Section, the Contractor must provide to the Commission the following documentation, all of which must be satisfactory to the Commission:

A. Evidence demonstrating: (i) the unit price paid by the Contractor as of the date of award for the good or raw material used to furnish the goods to the Commission under this Purchase Order, (ii) the applicability of the tariff to the specific good or raw material, and (iii) the Contractor's payment of the increased import duty or tariff (either directly or through an increase to the cost paid for the good or raw material). The evidence submitted shall be sufficient in detail and content to allow the Commission to verify that the tariff is the cause of the price change.

B. A certification signed by the Contractor that it has made all reasonable efforts to obtain the good or the raw materials comprising the good procured by the Commission at a lower cost from a different source located outside of the country against which the tariff has been imposed.

C. A certification signed by the Contractor that the documentation, statements, and any other evidence it submits in support of its request for a price increase under this Section are true and correct, and that the Contractor would otherwise be unable to perform under this Purchase Order without such price increase.

D. As requested by the Commission, written instructions authorizing the Commission to request additional documentation from individuals or entities that provide the good or the raw materials to verify the information submitted by the Contractor.

If the Commission agrees to a price increase pursuant to this Section, the parties further agree to add the following terms to this Purchase Order:

A. During the Term and for five (5) years after the termination of this Purchase Order, the Contractor shall retain, and the Commission and its authorized representatives shall have

the right to audit, examine, and make copies of, all of the Contractor's books, accounts, and other records related to this Purchase Order and the Contractor's costs for providing goods to the Commission, including, but not limited to those kept by the Contractor's agents, assigns, successors, and subcontractors.

- B. Notwithstanding anything to the contrary in this Purchase Order, the Commission shall have the right to terminate this Purchase Order for the Commission's convenience upon fifteen (15) days' written notice to the Contractor.
- C. In the event the import duty or tariff is repealed or reduced prior to termination of this Purchase Order, the increase in the Commission's Purchase Order price shall be reduced by the same amount and adjusted accordingly.
- D. Any material misrepresentation of fact by the Contractor relating in any way to the Commission's payment of additional sums due to tariffs shall be fraud against the taxpayers of the Commonwealth of Virginia and subject the Contractor to treble damages pursuant to the Virginia Fraud Against Taxpayers Act.

73. Prohibition on Certain Telecommunications and Video Surveillance Equipment or Services. The Commission is prohibited from obligating or expending loan or grant funds to:

- A. Procure or obtain covered telecommunications equipment or services;
- B. Extend or renew a Purchase Order to procure or obtain covered telecommunications equipment or services; or
- C. Enter into a Purchase Order (or extend or renew a Purchase Order) to procure or obtain covered telecommunications equipment or services.

As described in section 889 of Public Law 115-232, "covered telecommunications equipment or services" means any of the following:

- A. Telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).
- B. For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).
- C. Telecommunications or video surveillance services provided by such entities or using such equipment.
- D. Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

For the purposes of this section, "covered telecommunications equipment or services" also include systems that use covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system in the performance of this Purchase Order.

In implementing the prohibition under section 889 of Public Law 115-232 heads of executive agencies administering loan, grant,

or subsidy programs shall prioritize available funding and technical support to assist affected businesses, institutions, and organizations as is reasonably necessary for those affected entities to transition from covered telecommunications equipment or services, to procure replacement equipment or services, and to ensure that communications service to users and customers is sustained. See section 889 of Public Law 115-232 and 2 CFR § 200.471.

74. Safe Operation of Motor Vehicles.

A. **Seat Belt Use.** In compliance with Federal Executive Order No. 13043, "Increasing Seat Belt Use in the United States," April 16, 1997, 23 U.S.C. Section 402 note, the Contractor is encouraged to adopt and promote on-the-job seat belt use policies and programs for its employees and other personnel that operate company-owned vehicles, company-leased vehicles, or personally operated vehicles, and to include this provision in each third-party subcontract involving this Purchase Order. The terms "company-owned" and "company-leased" refer to vehicles owned or leased either by the Contractor or the Commission.

B. **Texting While Driving and Distracted Driving.** Consistent with Executive Order No. 13513, "Federal Leadership on Reducing Text Messaging While Driving," October 1, 2009, 23 U.S.C. 402 note, and DOT Order 3902.10, "Text Messaging While Driving," December 30, 2009, the Contractor agrees to adopt and enforce workplace safety policies and initiatives for its employees and other personnel to decrease crashes caused by distracted drivers, including policies to ban text messaging while driving, and to include this provision in each third-party subcontract involving this Purchase Order.

75. Prompt Payment. The Contractor is required to pay its subcontractors performing work related to this Purchase Order for satisfactory performance of that work no later than thirty (30) days after the Contractor's receipt of payment for that work. In addition, the Contractor is required to return any retainage payments to those subcontractors within thirty (30) days after the subcontractor's work related to this Purchase Order is satisfactorily completed.

The Contractor must promptly notify the Commission whenever a DBE subcontractor performing work related to this Purchase Order is terminated or fails to complete its work and must make good faith efforts to engage another DBE subcontractor to perform at least the same amount of work. The Contractor may not terminate any DBE subcontractor and perform that work through its own forces or those of an affiliate without prior written consent of the Commission.

76. Trafficking in Persons. The Contractor agrees that it and its employees that participate in this Purchase Order, may not:

- A. Engage in severe forms of trafficking in persons during the period of time that the Purchase Order is in effect;
- B. Procure a commercial sex act during the period of time that the Purchase Order is in effect; or
- C. Use forced labor in the performance of the Purchase Order or subcontracts thereunder.

77. Forced or Indentured Child Labor (applicable if over \$10,000). During the performance of this Purchase Order, the use of forced or indentured child labor is prohibited. Any Prime Contractor shall include such prohibition in every subcontract

that exceeds \$10,000 and shall be binding upon each subcontractor or vendor.

For the purposes of this section, “forced or indentured child labor” means all work or service exacted from any person younger than eighteen (18) years of age under the menace of any penalty for the nonperformance of such work or service and for which such person does not offer himself voluntarily or performed by any person younger than eighteen (18) years of age pursuant to a contract the enforcement of which can be accomplished by process or penalties.

78. Federal Tax Liability and Recent Felony Convictions.

A. The Contractor certifies that it:

- i. Does not have any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability; and
- ii. Was not convicted of the felony criminal violation under any Federal law within the preceding twenty-four (24) months.

If the Contractor cannot so certify, the Commission will refer the matter to the FTA and not enter into any Third-Party Agreement with the Contractor without the FTA’s written approval.

B. The Commission requires the Contractor to flow this requirement down to participants at all lower tiers, without regard to the value of any sub-agreement.

79. Rights to Inventions Made Under a Contract or Agreement. If the federal award meets the definition of “funding agreement” under 37 CFR § 401.2(a) and the Commission wishes to enter into a Contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the Commission must comply with the requirements of 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency.