

## MTS' PO Terms for Professional Services and Purchase of Materials/Supplies using Federal Funds

- 1. Application.** These PO terms apply to federally funded POs for Professional Services and the purchase of materials and supplies. They equally apply to contracts referenced on the face of the PO. The PO and the referenced Contract are used interchangeably.
- 2. Flow Down.** The Seller understands and agrees and understands that when Flow Down is required, Seller shall include the requirements in all subcontracts to all lower tiers.
- 3. Incorporation of Federal Transit Administration Terms ("FTA").** Seller shall not perform any act, fail to perform any act, or refuse to comply with any MTS request which would cause MTS to be in violation of the FTA terms and conditions. The preceding provisions include terms required under the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (2 CFR § 200 as amended by 2 CFR § 1201), whether or not expressly set forth in the preceding PO provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1F are hereby incorporated by reference. Notwithstanding anything to the contrary, all FTA-mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this PO. Seller acknowledges that changes in federal law, regulation, other requirements, or guidance will become part of the PO by automatic amendment thereto, and those changes shall apply to subcontractors at any tier. Seller's failure to so comply shall constitute a material breach of this PO. Seller agrees to flow down this provision.
- 4. Notice To Third Party Participants.** Seller acknowledges that applicable federal requirements may change without notice due to changes in federal law, regulation, other requirements, or guidance, or changes in the Recipient's Underlying Agreement, including any information incorporated by reference and made part of that Underlying Agreement, and those changes will apply to Seller and all lower tiers. Seller agrees to flow down this provision.
- 5. No Federal Government Commitment or Liability to Third Parties.** MTS and Seller both acknowledge and agree that, absent the express written consent by the Federal Government, the Federal Government is not a party to this PO and shall not be subject to any obligations or liabilities to MTS, Seller or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying PO. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions. The Seller agrees to flow down this provision financed in whole or in part with FTA assistance.
- 6. Civil Rights Laws and Regulations.** Seller acknowledges the following Federal Civil Rights laws and regulations apply to this PO.

### **Federal Equal Employment Opportunity ("EEO") Requirements.** Including, but not limited to:

Nondiscrimination in Federal Public Transportation Programs. 49 U.S.C. § 5332, covering projects, programs, and activities financed under 49 U.S.C. Chpt 53, prohibits discrimination on the basis of race, color, religion, national origin, sex (including sexual orientation and gender identity), disability, or age, and prohibits discrimination in employment or business opportunity.

Prohibition Against Employment Discrimination. Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e, and Executive Order ("EO") No. 11246, EEO," Sept. 24, 1965, as amended, prohibit discrimination in employment on the basis of race, color, religion, sex, or national origin.

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.

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, 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 age 40 and over on the basis of age.

### **Federal Protections for Individuals with Disabilities.**

Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, which prohibits discrimination based on disability in the administration of federally assisted Programs, Projects, or activities.

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 individuals with disabilities. Seller must comply with their responsibilities under Titles I, II, III, 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.

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 individuals with disabilities.

Federal Transit Law (49 U.S.C. § 5332), which includes disability as a prohibited basis for discrimination.

Seller also agrees to comply with any implementing requirements FTA may issue.

**Civil Rights and Equal Opportunity.** MTS is an Equal Opportunity Employer and complies with all applicable Federal civil rights laws and implementing regulations. Apart from inconsistent requirements imposed by Federal laws or regulations, MTS complies with the requirements of 49 U.S.C. § 5323(h) (3) by not using any Federal assistance awarded by FTA to support procurements using exclusionary or discriminatory specifications. Thus, under this PO, Seller shall at all times comply with the following requirements:

Nondiscrimination. In accordance with Federal transit law at 49 U.S.C. § 5332, Seller 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, Seller agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

Race, Color, Religion, National Origin, Sex. In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e et seq., and Federal transit laws at 49 U.S.C. § 5332, Seller agrees to comply with all applicable EEO requirements of U.S. Department of Labor regulations, "Office of Federal Contract Compliance Programs, EEO, Department of Labor," 41 CFR Chpt 60, and EO No. 11246, "EEO in Federal Employment," Sept. 24, 1965, 42 U.S.C. § 2000e note, as amended by any later EO that amends or supersedes it, referenced in 42 U.S.C. § 2000e note. Seller agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, national origin, or sex (including sexual orientation and gender identity). Such action shall include, but not be limited to, the following: employment, promotion, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, Seller agrees to comply with any implementing requirements FTA may issue.

Age. In accordance with the Age Discrimination in Employment Act, 29 U.S.C. §§ 621634, U.S. EEOC Commission 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, Seller agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, Seller agrees to comply with any implementing requirements FTA may issue.

## MTS' Terms and Conditions for Purchase Orders Using Federal Funds

Promoting Free Speech and Religious Liberty. Seller 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. The Seller agrees to flow down these Civil Rights provisions.

**7. Equal Employment Opportunity.** During the performance of this PO, Seller agrees:

(1) Seller will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. Seller will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer, recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Seller agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.

(2) Seller will, in all solicitations or advertisements for employees placed by or on behalf of Seller, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

(3) Seller will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with Seller's legal duty to furnish information.

(4) Seller will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided by the agency contracting officer, advising the labor union or workers' representative of the contractor's commitments under section 202 of EO 11246 of Sept. 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(5) Seller will comply with all provisions of EO 11246 of Sept. 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(6) Seller will furnish all information and reports required by EO 11246 of Sept. 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(7) In the event of Seller's noncompliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this PO may be canceled, terminated or suspended in whole or in part and the Seller may be declared ineligible for further Government contracts in accordance with procedures authorized in EO 11246 of Sept. 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in EO 11246 of Sept. 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

Seller agrees to flow down these EEO provisions unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of EO 11246 of Sept. 24, 1965. Seller will take such action with respect to any subcontract or purchase order as may be directed by

the Secretary of Labor as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that in the event Seller becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, Seller may request the United States to enter into such litigation to protect the interests of the United States.

**8. Clean Air Act (42 U.S.C. §§ 7401-7671q) and Federal Water Pollution Control Act (33 U.S.C. §§ 1251-1387).** For POs exceeding \$150,000, Seller agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act (42 U.S.C. §§ 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. §§ 1251-1387). Seller agrees to report violations to MTS, who will in turn notify the FTA, the Federal Emergency Management Agency and the appropriate EPA Regional Office. The Seller agrees to flow down this provision for subcontracts exceeding \$150,000 financed in whole or in part with Federal assistance provided by FTA. 28 CFR § 42.301 et. seq.

**9. Environmental Protections.** Seller agrees to comply with all applicable environmental and resource use laws, regulations, and requirements, and follow applicable guidance, now in effect or that may become effective in the future including the Federal Transit Law, 49 U.S.C. § 5323(c)(2) and 23 U.S.C. § 139; National Environmental Policy Act, 42 U.S.C. § 4321, et seq., as limited by 42 U.S.C. § 5159, and CEQ's implementing regulations, 40 CFR Part 1500-1508; "Environmental Impact and Related Procedures," 23 CFR Part 771 and 49 CFR Part 622; EO 11514, as amended; "Protection and Enhancement of Environmental Quality," March 5, 1970, 42 U.S.C. § 4321 note 35 Fed. Reg. 4247; "Interim Guidance on MAP-21 Section 1319, Accelerated Decision-making in Environmental Reviews," January 14, 2013; "SAFETEA-LU Environmental Review Process, Public Law 109-59," 71 Fed. Reg. 66576, November 15, 2006; EO 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations;" "U.S. DOT Order 5610.2(a), "Department of Transportation Updated Environmental Justice Order;" FTA Circular 4703.1, "Environmental Justice Policy Guidance for Federal Transit Administration Recipients;" the Clean Air Act, Clean Water Act, Wild and Scenic Rivers Act of 1968.

**10. Patent Rights, Rights in Data and Copyrights.** Seller acknowledges that for federally funded experimental, developmental, or research work, Seller shall grant the FTA intellectual property access and licenses in accordance 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. Any intellectual property agreement and software license rights must include restrictions requiring Seller to obtain FTA's written consent to publish or reproduce or authorize others to publish or reproduce Subject Data until such time as FTA may have either released or approved the release of such data to the public, except for contracts with an academic institution. "Subject Data" means recorded information whether or not copyrighted, and that is delivered or specified to be delivered by the federally funded contract, including but are not limited to computer software, standards, specifications, engineering drawings and associated lists, process sheets, manuals, technical reports, catalog item identifications, and related information, but excluded financial reports, cost analyses, or other similar information used for performance or administration of the Contract. The Federal Government reserves the following rights in any Subject data: (1) The Federal Government reserves a royalty free, nonexclusive and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use for the direct purposes of the Federal Government. Without the copyright owner's consent, the Federal Government may not extend its Federal license to any other party. a. Any subject data developed using federal funds, whether or not a copyright has been obtained; and b. Any rights of copyright purchased by Seller using Federal assistance in whole or in part by the FTA. (2) Seller agrees to permit FTA to make available to the public, either FTA's license in the copyright to any Subject Data, or a copy of the Subject Data for which a copyright has not been obtained. If

## MTS' Terms and Conditions for Purchase Orders Using Federal Funds

the experimental, developmental, or research work is not completed for any reason whatsoever, all data developed shall become subject data as defined herein and shall be delivered as the Federal Government may direct. (3) Unless prohibited by state law, upon request by the Federal Government, Seller agrees to indemnify, save, and hold harmless the Federal Government, its officers, agents, and employees acting within the scope of their official duties against any liability, including costs and expenses, resulting from any willful or intentional violation by the Seller of proprietary rights, copyrights, or right of privacy, arising out of the publication, translation, reproduction, delivery, use, or disposition of any data furnished under that contract. The Seller shall not be required to indemnify the Federal Government for any such liability arising out of the wrongful act of any employee, official, or agents of the Federal Government. (4) Nothing contained in this clause on rights in data shall imply a license to the Federal Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Federal Government under any patent. (5) Data developed by Seller and financed entirely without using Federal assistance provided by the Federal Government that has been incorporated into work required by the underlying Contract is exempt from the requirements herein, provided that the Seller identifies those data in writing at the time of delivery of the PO/Contract work. The Seller agrees to flow down this provision in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance.

**11. Access to Records and Reports and Sites (49 U.S.C. § 5325(g); 2 CFR §§ 200.334-337).** Seller will retain complete and readily accessible records related in whole or in part to the contract, including, but not limited to, data, documents, reports, statistics, leases, subcontracts, arrangements, other third-party Contracts of any type, and supporting materials related to those records. Seller agrees to comply with the record retention requirements in accordance with 2 CFR § 200.334, maintaining all books, records, accounts and reports required or a period of at not less than 3 years after the date of termination or expiration of the PO, except in the event of litigation or settlement of claims arising from the performance, in which case records shall be maintained until the disposition of all such litigation, appeals, claims or exceptions related thereto. Seller agrees to provide sufficient access to FTA and its contractors to inspect and audit records and information related to performance of this PO in accordance with 2 CFR § 200.337 and to permit FTA and its contractors access to the sites of performance under this PO in accordance with 2 CFR § 200.337. This provision must be flowed to all tiers.

**12. Cargo Preference (46 U.S.C. § 55305; 46 CFR § 381).** The Seller agrees: a. to use privately owned United States-Flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to the underlying PO to the extent such vessels are available at fair and reasonable rates for United States-Flag commercial vessels; b. to furnish within 20 working days following the date of loading for shipments originating within the United States or within 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 the preceding paragraph to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590 and to the FTA Recipient (through the Contractor in the case of a subcontractor's bill-of-lading). The Seller agrees to flow down this provision.

**13. Lobbying Restrictions.** Seller acknowledges that for POs in excess of \$100,000, no appropriated federal funds have been or will be paid by on or its behalf to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress (or their employees), and officer or employee of Congress in connection with 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 in accordance with the Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352, as amended; U.S. DOT regulations, "New Restrictions on Lobbying," 49 CFR Part 20, to the extent consistent with 31 U.S.C. § 1352, as amended; and other applicable federal laws, regulations, requirements, and guidance prohibiting the use of federal assistance for any activity concerning legislation or appropriations designed to influence the U.S. Congress or a state legislature. Seller acknowledges it must file a Standard Form LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions if any funds other than federal appropriated funds have been or will be paid. Seller acknowledges that 31 U.S.C. § 1352 imposes civil penalties of \$10,000-\$100,000 for failure to file such certifications. The Seller agrees to flow down this provision and any disclosures must be forwarded from tier-to-tier up to MTS.

**14. Conformance With Its National Architecture (23 CFR § 940).** Intelligent Transportation Systems ("ITS") projects shall conform to the National ITS Architecture and standards pursuant to 23 CFR § 940. 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 Parts 613 & 621).

**15. Debarment and Suspension and Voluntary Exclusion-Lower Tier Covered Transactions Requirements (EOs 12549 & 12689).** For POs \$25,000 or more at any tier, Seller represents that neither Seller, its principals; its subcontractors or their principals; the sub-recipients (if applicable) or their principals are suspended, debarred, proposed for debarment, voluntarily excluded from covered transactions, or otherwise disqualified by any federal department or agency from doing business with the Federal Government pursuant to EO 12549 and 12689. 2 CFR Parts 180 & 1200. Seller specifically covenants that neither Seller, its principals, its sub-contractors or their principals, or the sub-recipients (if applicable) or their principals are included on the Excluded Parties List System ("EPLS") maintained by the General Services Administration ("GSA"). MTS reserves the right to cancel the PO/Contract if the Contractor is a federally debarred contractor or a contractor that is presently identified on the list of parties excluded from federal procurement and non-procurement contracts. Seller agrees to flow down this provision.

**16. Disadvantaged Business Enterprises ("DBEs") (49 CFR Part 26).** Seller shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure to carry out these requirements is a material breach of this contract, which may result in the termination of this PO or such other remedy as MTS deems appropriate, which may include, but is not limited to: (1) Withholding monthly progress payments; (2) Assessing sanctions; (3) Liquidated damages; and/or (4) Disqualifying the Seller from future bidding as non-responsible. 49 CFR § 26.13(b). Seller acknowledges that it must pay subcontractors for satisfactory performance of their contracts no later than 30 days from receipt of each payment from MTS. 49 CFR § 26.29(a). Seller acknowledges and agrees that if there is a DBE goal, Seller shall utilize the specific DBEs listed unless it obtains MTS' prior written consent; and that, unless such consent is provided, Seller 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).

**17. Fly America (49 U.S.C. § 40118 & 41 CFR Parts 301-10).** Seller agrees to comply with 49 U.S.C. 40118 (the "Fly America" Act) in accordance with the GSA's regulations at 41 CFR Parts 301-10, which provide that recipients and subrecipients of Federal funds and their contractors are required to use U.S. Flag air carriers for U.S. Government-financed international air travel and transportation of their personal effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter of necessity, as defined by the Fly America Act. Seller shall submit, if a foreign air carrier was used, an appropriate certification or memorandum adequately explaining why service by a

## MTS' Terms and Conditions for Purchase Orders Using Federal Funds

U.S. flag air carrier was not available or why it was necessary to use a foreign air carrier and shall, in any event, provide a certificate of compliance with the Fly America requirements. The Seller agrees to flow down this provision.

**18. Federal Tax Liability and Recent Felony Convictions.** Seller certifies that neither Seller, any lower-tier subcontractors or their respective principals have any unpaid Federal tax liability 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; or were convicted of any federal felony criminal violation within the preceding 24 months. The Seller agrees to flow down this provision.

**19. Notification to FTA.** The FTA has a vested interest in the settlement of any violation of federal law, regulation, or requirement, or any disagreement involving POs or contracts funded with FTA funds, including, but not limited to, a default, breach, major dispute, or litigation, and FTA reserves the right to concur in any settlement or compromise. Both MTS and Seller agree to notify the FTA Chief Counsel and FTA Regional Counsel of any current or prospective legal matter that may affect the federal government, including, 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. Both MTS and Seller additionally agree to notify the U.S. DOT Inspector General, the FTA Chief Counsel or Regional Counsel of any 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 PO or another agreement between MTS and FTA, or an agreement involving a principal, officer, employee, agent, or Third-Party Participant of the Recipient. 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 MTS or Seller. Seller agrees to flow down this provision.

**20. Program Fraud and False or Fraudulent Statements and Related Acts (31 U.S.C. § 3801 et seq; 49 CFR Part 31; 18 U.S.C. § 1001, 49 U.S.C. § 5307).** The Seller 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 PO. Upon acceptance of this PO or execution an accompanying Contract referenced on the face of this PO, the Seller 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 the PO or the FTA assisted project for which this PO work is being performed. In addition to other penalties that may be applicable, the Seller 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 Seller to the extent the Federal Government deems appropriate. (2) The Seller 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 PO connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. Chpt. 53, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on the Seller, to the extent the Federal Government deems appropriate. The Seller agrees to flow down this provision in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

**21. Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment (2 CFR §§ 200.216, 200.471).** Seller shall not obligate or expend federal grant funds to: (1) Procure or obtain; (2) Extend or renew a PO to procure or obtain; or (3) Enter into a PO (or extend or renew a PO or contract) to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system.

Covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities). (i) 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). (ii) Telecommunications or video surveillance services provided by such entities or using such equipment. (iii) 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.

**22. Prompt Payment.** Seller is required to pay its subcontractors performing work related to this PO for satisfactory performance of that work no later than 30 days after Seller's receipt of payment for that work. In addition, Seller is required to return any retainage payments to those subcontractors within 30 days after the subcontractor's work related to this PO is satisfactorily completed. Seller must promptly notify MTS, the FTA and the Milwaukee County Office of Economic Inclusion whenever a DBE subcontractor performing work related to this PO 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. Seller may not terminate any DBE subcontractor and perform that work through its own forces or those of an affiliate without prior written consent of MTS, FTA and CBDP.

**23. Safe Operation of Motor Vehicles (EO 13513 and US DOT 3902.10).** Seller 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 rented vehicles, or personally operated vehicles. The terms "company-owned" and "company-leased" refer to vehicles owned or leased either by Seller or MTS. Seller agrees to adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers, including policies to ban text messaging while using an electronic device supplied by Seller, and driving a vehicle the driver owns or rents, a vehicle Seller owns, leases, or rents, or a privately-owned vehicle when on official business in connection with the work performed pursuant to this PO.

**24. Simplified Acquisition Threshold (2 CFR §§ 200.317-200.237).** POs or contracts for more than the simplified acquisition threshold (\$250,000), which is the inflation-adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council as authorized by 41 U.S.C. § 1908, or otherwise set by law, must address administrative, contractual, or legal remedies in instances where Sellers violate or breach contract terms, and provide for such sanctions and penalties as appropriate.

**25. Severability.** Seller agrees that if any provision of this agreement or any amendment thereto is determined to be invalid, then the remaining provisions thereof that conform to federal laws, regulations, requirements, and guidance will continue in effect.

**26. Trafficking in Persons.** Seller agrees that it and its employees that participate in the PO, may not: (a) Engage in severe forms of trafficking in persons during the period of time that the PO is in effect; (b) Procure a commercial sex act during the period of time that the PO is in effect; or (c) Use forced labor in the performance of the PO or any sub agreements.

**27. Violation and Breach of Contract.** For POs in excess of \$100,000:

**Disputes.** Disputes arising in the performance of this PO that are not resolved by agreement of the parties shall be decided in writing by the authorized representative of the MTS. This decision shall be final and conclusive unless within 10 days from the date of receipt of its copy, Seller mails or otherwise furnishes a written appeal to MTS' authorized representative. In connection with any such appeal, Seller shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the agencies authorized representative shall be binding upon the Seller and Seller shall abide by the decision.

**Performance During Dispute.** Unless otherwise directed by the agencies authorized representative, Seller shall continue performance under this PO while matters in dispute are being resolved.

**Claims for Damages.** Should either party to the PO suffer injury or damage to person or property because of any act or omission of the party or of any of his employees, agents or others for whose acts he is legally liable, a claim for damages therefore shall be made in writing to such other party within a reasonable time after the first observance of such injury or damage.

**Remedies.** Unless this PO provides otherwise, all claims, counterclaims, disputes and other matters in question between MTS' authorized representative and Seller arising out of or relating to this PO or a breach will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within the State and County in which MTS is located.

**Rights and Remedies.** Duties and obligations imposed by the PO and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by MTS or Seller shall constitute a waiver of any right or duty afforded any of them under the PO, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

**28. Termination.** For all POs in excess of \$10,000, Seller acknowledges the MTS has the following termination rights:

**Termination for Convenience.** MTS, by written notice, may terminate this PO, in whole or in part, when it is in MTS' interest. If this PO is terminated, MTS shall be liable only for payment under the payment provisions of this PO for services satisfactorily rendered or goods delivery before the effective date of termination.

**Termination for Default (Breach or Cause).** If Seller does not deliver supplies in accordance with the PO delivery schedule, or if the PO is for services, the Seller fails to perform in the manner called for in the PO, or if Seller fails to comply with any other provisions of the PO, MTS may terminate the PO for default. Termination shall be effected by serving a Notice of Termination on Seller setting forth the manner in which Seller is in default. Seller will be paid only the PO price for supplies delivered and accepted, or services performed in accordance with the manner of performance set forth in the PO. If it is later determined by MTS that Seller had an excusable reason for not performing, such as a strike, fire, or flood, events which are not the fault of or are beyond the control of Seller, MTS, after setting up a new delivery of performance schedule, may allow Seller to continue work, or treat the termination as a Termination for Convenience.

**Opportunity to Cure.** MTS, in its sole discretion may, in the case of a termination for breach or default, allow Seller 10 days in which to cure the defect. In such case, the Notice of Termination will state the time period in which cure is permitted and other appropriate conditions. If Seller fails to remedy to MTS's satisfaction the breach or default of any of the terms, covenants, or conditions of this PO within 10 days after receipt by Seller of written notice from MTS setting forth the nature of said breach or default, MTS shall have the right to terminate the PO without any further obligation to the Seller. Any such termination for default shall not in any way operate to preclude MTS from also pursuing all available remedies against Seller and its sureties for said breach or default.

**Waiver of Remedies for any Breach.** In the event that MTS elects to waive its remedies for any breach by Seller of any covenant, term or condition of this contract, such waiver by MTS shall not limit MTS' remedies for any succeeding breach of that or of any other covenant, term, or condition of this contract.

**29. Solid Wastes (2 CFR § 200.323; 40 CFR Part 247).** Seller and MTS 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 guidelines of the 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 exceeded \$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.

**30. Buy America Requirements (49 U.S.C. § 5323(j); 49 CFR Part 661; 2 CFR § 200.322).** For POs in excess of \$100,000, Seller agrees to comply with 49 U.S.C. § 5323(j), 49 CFR Part 661 and 2 CFR § 200.322, when applicable, which provide that Federal funds may not be obligated unless all steel, iron, and manufactured products used in FTA funded projects are produced in the US, unless a waiver has been granted by FTA or the product is subject to a general waiver.

**31. Transit Asset Management (49 CFR §§ 625 & 630).** The Seller agrees to comply with 49 CFR Part 625 (Transit Asset Management) and 49 CFR Part 630 (National Transit Database).

**32. The Recycled Products (42 U.S.C. § 6962; 40 CFR § 247; EO 12873).** The Seller agrees it will comply with all the requirements of Section 6002 of the Resource Conservation and Recovery Act, as amended (42 U.S.C. § 6962), including but not limited to the regulatory provisions of 40 CFR Part 247.247, and EO 12873, as they apply to the procurement of the items designated in Subpart B of 40 CFR Part 247 when Seller procures \$10,000 or more of one of these items during the fiscal year or has procured \$10,000 or more of such items in the previous fiscal year, using Federal funds. The Seller agrees to flow down this provision.

**33. Energy Conservation (42 U.S.C. § 6321; 49 CFR Part 622).** Seller agrees to comply with the mandatory energy standards and policies of its state energy conservation plans under 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 622, subpart C.