Memorandum

MIAMI-DADE COUNTY

Date: November 15, 2005

Agenda Item No. 14(A)(3)

To: Honorable Chairman Joe A. Martinez
and Members, Board of County Commissioners

From: George M. Burgess
County Manager

Subject: Approval to Award Contract No. BW7961-3/11: Trapeze Software Implementation, Technical Support and Maintenance Services

---

This item was amended by the Regional Transportation Committee to include language pertaining to federal regulations concerning conflict of interest, lobbying, and debarment.

RECOMMENDATION

It is recommended that the Board of County Commissioners (Board) waive formal bid procedures pursuant to Sections 2-8.1 and 2-8.4 of the County Code and approve Contract No. BW7961-3/11 for software maintenance, technical support, and upgrade services for all Trapeze software applications deployed at Miami-Dade Transit (MDT). This bid waiver establishes a contract for the continuation of a maintenance support for the complex proprietary software modules used for MDT's fixed route scheduling, routing and planning functions as well as the paratransit certification, reservations, schedules, dispatching and complaints/commendations. A significant amount of research was conducted by County staff and it was determined that Trapeze is the only vendor that can provide the maintenance support of this software already in use at MDT.

CONTRACT NO:	BW7961-3/11
CONTRACT TITLE:	Trapeze Software Maintenance, Technical Support, Upgrade and Enhancement Services
DESCRIPTION:	This contract is a long term maintenance agreement providing maintenance services, technical support, licensing, and module implementations of proprietary software in use by MDT since 1998. This agreement will ensure the continued software support of software used for planning, scheduling, routing, certification, reservation, and dispatching. This software is utilized by MDT for critical daily operations.
APPROVAL TO ADVERTISE:	Not Applicable
TERM:	Five years with three, one-year options to renew at the County's sole discretion
CONTRACT AMOUNT:	$3,949,411.40
USING/MANAGING AGENCY:	Miami-Dade Transit (MDT)
FUNDING SOURCE:	MDT Operating, Charter County Transit System Surtax, and Federal Funds as available.

	Any use of Surtax funds will be based on an allocation model that will charge the Surtax for the cost of any additional services implemented as a result of the approval of the half penny sales tax. The total cost of this contract will be distributed through the allocation model.
METHOD OF AWARD:	Bid Waiver
VENDORS RECOMMENDED FOR AWARD:	Trapeze Software Group
VENDORS NOT RECOMMENDED FOR AWARD:	Not Applicable
CONTRACT MEASURES:	None
LIVING WAGE:	Not Applicable
USER ACCESS PROGRAM (UAP):	The contract does not contain the 2% User Access Fee provision due to conflicts with Federal Transit Administration (FTA) regulations.
LOCAL PREFERENCE:	Does not apply due to conflicts with FTA regulations.
PROJECT MANAGER:	Rosie Perez, Senior Chief, Information Technology & Support Services, MDT
ESTIMATED CONTRACT COMMENCEMENT DATE:	This contract will become effective only after approval by the Citizens' Independent Transportation Trust (CITT) or re-affirmation by the County Commission.

BACKGROUND

The Trapeze Software Group currently supports the Trapeze software applications used by Miami-Dade Transit (MDT). These software modules are critical to the daily operation of Transit's Scheduling/Planning and Paratransit Divisions. The modules are proprietary and only Trapeze can provide the maintenance and upgrades to these modules. The County's current contract with Trapeze expires on February 2, 2006, and in order to have adequate support for the application and future enhancements, MDT must establish a new contract with the Trapeze Software Group, the owners of the software. By executing this contract before December 31, 2005, MDT will avoid a $1.2 million price increase by Trapeze planned in their new price schedule that will take effect on January 1, 2006.

Staff negotiated a long term agreement with Trapeze to continue software maintenance, support and enhancements of MDT's fixed route and paratransit scheduling software technologies. As part of the negotiated contract, the County will receive new software upgrades as they are released. Additionally, the County will receive two new enhancements (Plan and Blockbuster) that enhance Transit's ability to develop more accurate demand forecasts for service plans and allow for analysis of what-if scenarios to minimize operating costs. With the planning of more efficient and effective routes, and the ability to rapidly alter schedules, MDT will use ridership data from the bus stop level to modify service to meet the specific needs of each community served. This will significantly improve services.

The Contract provides ongoing maintenance and support services, licensing, and implementations of upgrades to the current applications. Based on extensive comparison analysis conducted on other transit properties using the same software, MDT will realize over $1.4 million in negotiated savings over the life of the contract in addition to other value added benefits that will provide MDT with flexible options in the future. This savings is in addition to the $1.2 million savings for executing the contract before the December 31, 2005 price increase. Additional benefits include reduced daily rates for training and consultation; free upgrade services including onsite implementations and training; on-going executive meetings with Trapeze and MDT staff to ensure that Miami-Dade is utilizing the newest technologies and meeting its operational objectives. This new contract will also establish MDT as a most favored customer, and offers the County a fifty percent discount off published industry prices for product licenses.

On June 12, 1998, under Resolution No. R-619-98, the Board approved Contract TA94-TSS, between Miami-Dade County and Trapeze Software Group. Under the contract, the County purchased Fixed Route scheduling software for Metrobus and Metrorail and associated maintenance support services. The Contract also included options to purchase additional software modules and associated maintenance support during the life of the contract. Subsequently, on December 18, 2001, the Board approved Amendment Number 1 to the Contract to purchase six additional software modules (PASS-CERT, PASS-CT, PASS-COM, PASS-WEB, PASS-IVR and PASS-MON). MDT Paratransit Operations and its service contractors use these modules to certify riders, take trip reservation requests, schedule trips, cancel trips, dispatch and track paratransit vehicles, provide paperless route manifests, and take complaints/commendations for both the Medicaid and Special Transportation Services programs. As a result of the recommendations of the STS Task Force, STS Contractors and service providers use this software to ensure increased accountability and control.

The Trapeze Software Group currently supports the myriad of complex proprietary Trapeze software applications used by MDT. These modules are critical for daily transit operations. The original purchase of the Trapeze software was competitively bid. Since then MDT has had a maintenance contract with Trapeze to support these software applications. The County conducted an extensive market research and concluded that no other company provides all the functions used by MDT. Consequently, the County concluded that Trapeze is the only company that can provide adequate maintenance support services for the application.

11/14/05

Assistant County Manager

MEMORANDUM
(Revised)

TO: Honorable Chairman Joe A. Martinez and Members, Board of County Commissioners

DATE: November 15, 2005

FROM: Murray A. Greenberg
County Attorney

SUBJECT: Agenda Item No. 14(A)(3)

Please note any items checked.

✓	**"4-Day Rule" ("3-Day Rule" for committees) applicable if raised**
	6 weeks required between first reading and public hearing
	4 weeks notification to municipal officials required prior to public hearing
	Decreases revenues or increases expenditures without balancing budget
	Budget required
	Statement of fiscal impact required
✓	**Bid waiver requiring County Manager's written recommendation**
	Ordinance creating a new board requires detailed County Manager's report for public hearing
	Housekeeping item (no policy decision required)
	No committee review

Approved _____ Mayor
Veto _____
Override _____

Agenda Item No. 14(A)(3)
11-15-05

RESOLUTION NO. _____

RESOLUTION WAIVING COMPETITIVE BIDDING FOR THE PURCHASE OF TRAPEZE SOFTWARE IMPLEMENTATION, TECHNICAL SUPPORT, AND MAINTENANCE SERVICES, AND AUTHORIZING THE COUNTY MANAGER TO AWARD SAME WITH AUTHORITY TO EXERCISE OPTIONS-TO-RENEW ESTABLISHED THEREUNDER

WHEREAS, this Board desires to accomplish the purposes outlined in the accompanying memorandum, a copy of which is incorporated herein by reference,

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, that this Board finds it is in the best interests of Miami-Dade County to waive formal bid procedures for the purchase of Trapeze Software Implementation, Technical Support, and Maintenance Services, and to authorize the County Manager to award such contracts with authority to exercise options-to-renew established thereunder pursuant to Section 4.03(D) of the Home Rule Charter and Section 2-8.1 and 2-8.4 of the County Code by a two-thirds (2/3) vote of the Board members present.

The foregoing resolution was offered by Commissioner , who moved its adoption. The motion was seconded by Commissioner and upon being put to a vote, the vote was as follows:

Joe A. Martinez, Chairman
Dennis C. Moss, Vice-Chairman

Bruno A. Barreiro	Dr. Barbara Carey-Shuler
Jose "Pepe" Diaz	Carlos A. Gimenez
Sally A. Heyman	Barbara J. Jordan
Dorrin D. Rolle	Natacha Seijas
Katy Sorenson	Rebeca Sosa
Sen. Javier D. Souto	

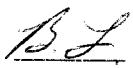
The Chairperson thereupon declared the resolution duly passed and adopted this 15th day of November, 2005. This resolution shall become effective as follows: (1) ten (10) days after the date of its adoption unless vetoed by the Mayor, and if vetoed, shall become effective only upon an override by this Board, and (2) either i) the Citizens' Independent Transportation Trust (CITT) has approved same, or ii) in response to the CITT's disapproval, the County Commission re-affirms its award by two-thirds (2/3) vote of the Commission's membership and such reaffirmation becomes final.

MIAMI-DADE COUNTY, FLORIDA
BY ITS BOARD OF COUNTY
COMMISSIONERS

HARVEY RUVIN, CLERK

By:_____
Deputy Clerk

Approved by County Attorney as
to form and legal sufficiency.



Bruce Libhaber

6

Trapeze Software Implementation, Technical Support, and Maintenance Service

BW7961-3/11

THIS AGREEMENT made and entered into as of this _____ day of _____ 2005 by and between Trapeze Software Group, Inc. , a corporation organized and existing under the laws of the State of Arizona, having its principal office at 8360 East Via de Ventura, Scottsdale, Arizona 85258 (hereinafter referred to as the "Contractor"), and Miami-Dade County, a political subdivision of the State of Florida, having its principal office at 111 N.W. 1st Street, Miami, Florida 33128 (hereinafter referred to as the "County"),

WITNESSETH:

WHEREAS, the Contractor has offered to provide Implementation, Technical Support and Maintenance Services, that shall conform to the Contracted Products (Exhibit A); and all associated addenda and attachments, incorporated herein by reference; and the requirements of this Agreement;

and,

WHEREAS, the County desires to procure from the Contractor such Implementation, Technical Support and Maintenance Services for the County, in accordance with the terms and conditions of this Agreement;

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, the parties hereto agree as follows:

ARTICLE 1. DEFINITIONS

The following words and expressions used in this Agreement shall be construed as follows, except when it is clear from the context that another meaning is intended:

a) The words "Contract" or "Contract Documents" or "Agreement" to mean collectively these terms and conditions, the Contracted Products (Exhibit A), the Price Schedule (Attachment B), the Software License Agreement (Exhibit B), the Software Maintenance Agreement (Exhibit C), the Software Escrow Agreement (Exhibit D), the Federal Transit Administration

7

Requirements (Exhibit E) and all associated addenda and attachments, the Contractor's Proposal, and all other attachments hereto and all amendments issued hereto.

b) The words "Contract Date" to mean the date on which this Agreement is effective.

c) The words "Contract Manager" to mean Miami-Dade County's Director, Department of Procurement Management, or the duly authorized representative.

d) The word "Contractor" to mean Trapeze Software Group, Inc. and its permitted successors and assigns.

e) The word "Days" to mean Calendar Days.

f) The word "Deliverables" to mean all documentation and any items of any nature submitted by the Contractor to the County's Project Manager for review and approval pursuant to the terms of this Agreement.

g) The words "directed", "required", "permitted", "ordered", "designated", "selected", "prescribed" or words of like import to mean respectively, the direction, requirement, permission, order, designation, selection or prescription of the County's Project Manager; and similarly the words "approved", acceptable", "satisfactory", "equal", "necessary", or words of like import to mean respectively, approved by, or acceptable or satisfactory to, equal or necessary in the opinion of the County's Project Manager.

h) The words "Change Order" or "Extra Work" or "Additional Work" resulting in additions or deletions or modifications to the amount, type or value of the Work and Services as required in this Contract, as directed and/or approved by the County.

i) The words "Project Manager" to mean the County Manager or the duly authorized representative designated to manage the Contract.

k) The words "Scope of Services" to mean the document appended hereto as Exhibit A and the Software Maintenance Agreement appended hereto as Exhibit C, which detail the work to be performed by the Contractor.

l) The word "subcontractor" or "subconsultant" to mean any person, entity, firm or corporation, other than the employees of the Contractor, who furnishes labor and/or materials, in connection with the Work, whether directly or indirectly, on behalf and/or under the direction of the Contractor and whether or not in privity of Contract with the Contractor.

m) The words "Work", "Services" "Program", or "Project" to mean all matters and things required to be done by the Contractor in accordance with the provisions of this Contract.

ARTICLE 2. ORDER OF PRECEDENCE

If there is a conflict between or among the provisions of this Agreement, the order of precedence is as follows: 1) these terms and conditions, 2) the Contracted Products (Exhibit A), 3) the Price Schedule (Attachment B), 4) the Software License Agreement (Exhibit B) and the Software Maintenance Agreement (Exhibit C), the Software Escrow Agreement (Exhibit D), the Federal Transit Administration Requirements (Exhibit E) and any associated addenda and attachments.

ARTICLE 3. RULES OF INTERPRETATION

a) References to a specified Article, section or schedule shall be construed as reference to that

specified Article, or section of, or schedule to this Agreement unless otherwise indicated.

b) Reference to any agreement or other instrument shall be deemed to include such agreement or other instrument as such agreement or other instrument may, from time to time, be modified, amended, supplemented, or restated in accordance with its terms.

c) The terms "hereof", "herein", "hereinafter", "hereby", "herewith", "hereto", and "hereunder" shall be deemed to refer to this Agreement.

d) The titles, headings, captions and arrangements used in these Terms and Conditions are for convenience only and shall not be deemed to limit, amplify or modify the terms of this Contract, nor affect the meaning thereof.

ARTICLE 4. NATURE OF THE AGREEMENT

a) The Contractor shall provide the services set forth in the Scope of Services, and render full and prompt cooperation with the County in all aspects of the Services performed hereunder.

b) The Contractor acknowledges that this Agreement requires the performance of all things necessary for or incidental to the effective and complete performance of all Work and Services under this Contract. All things not expressly mentioned in this Agreement but necessary to carrying out its intent are required by this Agreement, and the Contractor shall perform the same as though they were specifically mentioned, described and delineated.

c) The Contractor shall furnish all labor, materials, tools, supplies, and other items required to perform the Work and Services that are necessary for the completion of this Contract. All Work and Services shall be accomplished at the direction of and to the satisfaction of the County's Project Manager.

d) The Contractor acknowledges that the County shall be responsible for making all policy decisions regarding the Scope of Services. The Contractor agrees to provide input on policy issues in the form of recommendations. Subject to mutual written agreement on any change to the cost of providing required Services, the Contractor agrees to implement any and all changes in providing Services hereunder as a result of a policy change implemented by the County. The Contractor agrees to act in an expeditious and fiscally sound manner in providing the County with input regarding the time and cost to implement said changes and in executing the activities required to implement said changes.

ARTICLE 5. CONTRACT TERM

The Contract shall become effective on the date set forth above and shall be for a duration of five (5) years. The County, at its sole discretion, reserves the right to exercise the option to renew this Contract for a period for three (3) additional years on a year-to-year basis. The County reserves the right to exercise its option to extend this Contract for up to one hundred-eighty (180) calendar days beyond the current Contract period (including any option to renew) and will notify the Contractor in writing of the extension. This Contract may be extended beyond the initial one hundred-eighty (180) calendar day extension period upon mutual agreement between the County and the Contractor, upon approval by the Board of County Commissioners.

ARTICLE 6. NOTICE REQUIREMENTS

All notices required or permitted under this Agreement shall be in writing and shall be deemed sufficiently served if delivered by Registered or Certified Mail, with return receipt requested; or delivered personally; or delivered via fax and followed with delivery of hard copy; and in any case

addressed as follows:

(1) to the County

a) to the Project Manager:

Miami-Dade County Transit
111 NW 1st Street, Suite 510
Miami, FL 33128-1974

Attention: Rosie Perez, Senior Chief
Information Technology and Support Services
Phone: (305) 375- 3651
Fax: (305) 375-1192

and,

b) to the Contract Manager:

Miami-Dade County
Department of Procurement Management
111 N.W. 1st Street, Suite 1300
Miami, FL 33128-1974

Attention: Director
Phone: (305) 375-5257
Fax: (305) 375-2316

(2) To the Contractor

Trapeze Software Group, Inc.
8360 East Via de Ventura
Scottsdale, Arizona 85258

Attention: Mark Dennison, Counsel
Phone: (905) 629-8727
Fax: (905) 629-8408

Either party may at any time designate a different address and/or contact person by giving notice as provided above to the other party. Such notices shall be deemed given upon receipt by the addressee.

ARTICLE 7. PAYMENT FOR SERVICES/AMOUNT OBLIGATED

The Contractor warrants that it has reviewed the County's requirements and has asked such questions and conducted such other inquiries as the Contractor deemed necessary in order to determine the price the Contractor will charge to provide the Work and Services to be performed under this Contract. The compensation for all Work and Services performed under this Contract, including all costs associated with such Work and Services, not including option years as described in Attachment B, shall be in the total amount of **Three Million, Nine Hundred Forty-Nine Thousand, Four Hundred Eleven Dollars, and Forty Cents ($3,949,411.40)**.The County shall have no obligation to pay the Contractor any additional sum in excess of this amount, except for a change and/or modification to the Contract, which is approved and executed in writing by the County and the Contractor.

The County and Contractor acknowledge and agree that the prices set out in this Article 7 and in Attachment B are based on estimated levels of use of the Licensed Software by the County and estimated implementation dates. In the event that any of the estimates in Attachment B become inaccurate, the parties will discuss and agree to an adjustment in the prices to reflect the actual level of use of the Licensed Software by the County and the actual implementation dates.

The Contractor agrees that pricing for any items requested by the County shall be stipulated in Attachment B, Price Schedule. All Services undertaken by the Contractor before County's approval of this Contract shall be at the Contractor's risk and expense.

With respect to travel costs and travel related expenses, the Contractor agrees to adhere to CH. 112.061 of the Florida Statutes as they pertain to out-of-pocket expenses including employee lodging, transportation, per diem, and all miscellaneous cost-and fees. The County shall not be liable for any such expenses that have not been approved in advance, in writing, by the County.

ARTICLE 8. PRICING

Prices shall remain firm and fixed for the term of the Contract including any option or extension periods; however, the Contractor may offer incentive discounts to the County at any time during the Contract term, including any renewal or extension thereof.

The County and Contractor acknowledge and agree that the prices set out in Article 7 and in Attachment B are based on estimated levels of use of the Licensed Software by the County. In the event that any of the estimates in Attachment B become inaccurate, the parties will discuss and agree to an adjustment in the prices to reflect the actual level of use of the Licensed Software by the County.

ARTICLE 9. METHOD AND TIMES OF PAYMENT

The Contractor agrees that under the provisions of this Agreement, as reimbursement for the Contractor's technical support and maintenance services, the Contractor shall invoice the County for the annual maintenance fees in Attachment B, once per year in advance. The Contractor shall invoice the County for all software license fees, software implementation services, and any related expenses, in accordance with the following payment schedule:

Milestone	License Fees
Software Delivery	**10%**
Software Installation	**10%**
Go-Live/Production Ready/Completion FAT	**40%**
Acceptance	**40%**
Implementation Service Fees	**Based on specific project milestones**
Expenses	**As incurred**

All invoices shall show the County's contract number. It is the policy of Miami-Dade County that payment for all purchases by County agencies and the Public Health Trust shall be made in a timely

manner and that interest payments be made on late payments. The time at which payment shall be due to small businesses and minority and women business enterprises shall be thirty (30) days from receipt of a proper invoice. All payments due from the County or the Public Health Trust, and not made within the time specified by this section shall bear interest from thirty (30) days after the due date at the rate of one percent (1%) per month on the unpaid balance. Further, proceedings to resolve disputes for payment of obligations shall be concluded by final written decision of the County Manager, or his or her designee(s), not later that sixty (60) days after the date on which the proper invoice was received by the County or the Public Health Trust.

Invoices and associated back-up documentation shall be submitted in duplicate by the Contractor to the County as follows:

Miami Dade Transit
Information Technology and Support Services
111 NW 1st Street Suite 510
Miami, Florida 33128

Attention: Rosie Perez

The County may at any time designate a different address and/or contact person by giving written notice to the other party.

The Contractor's invoice shall include the County's Agreement number, title of Agreement, name of software application being invoiced, total invoice amount and a statement certifying correctness, signed by the Contractor's Director of Finance. All payments shall be governed by the provision of the Florida Prompt Payment Act. Payment will be made in thirty (30) days after receipt by the County of properly prepared and documented invoices submitted in accordance with this Agreement and the Florida Prompt Payment Act.

ARTICLE 10. INDEMNIFICATION AND INSURANCE

The Contractor shall indemnify and hold harmless the County and its officers, employees, agents and instrumentalities from any and all liability, losses or damages, including attorneys' fees and costs of defense, which the County or its officers, employees, agents or instrumentalities may incur as a result of claims, demands, suits, causes of actions or proceedings of any kind or nature arising out of, relating to or resulting from the performance of this Agreement by the Contractor or its employees, agents, servants, partners principals or subcontractors. The Contractor shall pay all claims and losses in connection therewith and shall investigate and defend all claims, suits or actions of any kind or nature in the name of the County, where applicable, including appellate proceedings, and shall pay all costs, judgments, and attorney's fees which may issue thereon. The Contractor expressly understands and agrees that any insurance protection required by this Agreement or otherwise provided by the Contractor shall in no way limit the responsibility to indemnify, keep and save harmless and defend the County or its officers, employees, agents and instrumentalities as herein provided.

The Contractor's entire liability and responsibility for any and all claims, damages or losses arising from or in connection with this Contract or the use of the Contractor's software by the County or the development, modification or maintenance of the Contractor's software, shall be absolutely limited to the amount of the software license fees paid under this Contract. Trapeze shall not in any event be liable to the County or any third party for losses or damages suffered by County or any third party, whether suffered directly or indirectly or that are immediate or consequential (to the fullest extent permitted by law), which fall within the following categories: a) special damages even though Trapeze was aware of the circumstances in which such special damage could arise, on condition that Trapeze makes Licensee aware of any advance knowledge of special damages being caused;

b) loss of profits, anticipated savings, business opportunity or goodwill; or c) loss of data or information of any kind.

Upon County's notification, the Contractor shall, furnish to Miami-Dade County, Department of Procurement Management, Technical Services Division, 111 N.W. 1st Street, Suite 1300, Miami, Florida 33128-1974, Certificates of Insurance that indicate that insurance coverage has been obtained, which meets the requirements as outlined below:

1. Worker's Compensation Insurance for all employees of the Contractor as required by Florida Statute 440.

2. Public Liability Insurance on a comprehensive basis in an amount not less than $300,000 combined single limit per occurrence for bodily injury and property damage. **Miami-Dade County must be shown as an additional insured with respect to this coverage. The mailing address of the Department of Procurement Management, as the certificate holder, must appear on the certificate of insurance.**

3. Automobile Liability Insurance covering all owned, non-owned, and hired vehicles used in connection with the Services, in an amount not less than $300,000 combined single limit per occurrence for bodily injury and property damage.

4. Professional Liability Insurance in an amount not less than $250,000 with a deductible per claim not to exceed ten percent (10%) of the limit of liability.

The insurance coverage required shall include those classifications, as listed in standard liability insurance manuals, which most nearly reflect the operation of the Contractor. All insurance policies required above shall be issued by companies authorized to do business under the laws of the State of Florida with the following qualifications:

The company must be rated no less than "B" as to management, and no less than "Class V" as to financial strength, according to the latest edition of Best's Insurance Guide published by A.M. Best Company, Oldwick, New Jersey, or its equivalent, subject to the approval of the County Risk Management Division.

OR

The company must hold a valid Florida Certificate of Authority as shown in the latest "List of All Insurance Companies Authorized or Approved to Do Business in Florida", issued by the State of Florida Department of Insurance and are members of the Florida Guaranty Fund.

Certificates of Insurance must indicate that for any cancellation of coverage before the expiration date, the issuing insurance carrier will endeavor to mail thirty (30) day written advance notice to the certificate holder. In addition, the Contractor hereby agrees not to modify the insurance coverage without thirty (30) days written advance notice to the County.

NOTE: MIAMI-DADE COUNTY CONTRACT NUMBER AND TITLE MUST APPEAR ON EACH CERTIFICATE OF INSURANCE.

Compliance with the foregoing requirements shall not relieve the Contractor of this liability and obligation under this section or under any other section in this Agreement.

Award of this Contract is contingent upon the receipt of the insurance documents, as required, within fifteen (15) calendar days after County notification to Contractor to comply before the award is made.

If the insurance certificate is received within the specified time frame but not in the manner prescribed in this Agreement, the Contractor shall be verbally notified of such deficiency and shall have an additional five (5) calendar days to submit a corrected certificate to the County. If the Contractor fails to submit the required insurance documents in the manner prescribed in this Agreement within twenty (20) calendar days after County notification to comply, the Contractor shall be in default of the contractual terms and conditions and award of the Contract will be rescinded, unless such time frame for submission has been extended by the County.

The Contractor shall be responsible for assuring that the insurance certificates required in conjunction with this Section remain in force for the duration of the contractual period of the Contract, including any and all option years or extension periods that may be granted by the County. If insurance certificates are scheduled to expire during the contractual period, the Contractor shall be responsible for submitting new or renewed insurance certificates to the County at a minimum of thirty (30) calendar days in advance of such expiration. In the event that expired certificates are not replaced with new or renewed certificates which cover the contractual period, the County shall suspend the Contract until such time as the new or renewed certificates are received by the County in the manner prescribed herein; provided, however, that this suspended period does not exceed thirty (30) calendar days. Thereafter, the County may, at its sole discretion, terminate this contract.

ARTICLE 11. MANNER OF PERFORMANCE

a) The Contractor shall provide the Services described herein in a competent and professional manner satisfactory to the County in accordance with the terms and conditions of this Agreement. The County shall be entitled to a satisfactory performance of all Services described herein and to full and prompt cooperation by the Contractor in all aspects of the Services. At the reasonable request of the County the Contractor shall promptly remove from the project any Contractor's employee, subcontractor, or any other person performing Services hereunder. The Contractor agrees that such removal of any of its employees does not require the termination or demotion of any employee by the Contractor.

b) The Contractor agrees to defend, hold harmless and indemnify the County and shall be liable and responsible for any and all claims, suits, actions, damages and costs (including attorney's fees and court costs) made against the County, occurring on account of, arising from or in connection with the removal and replacement of any Contractor's personnel performing services hereunder at the behest of the County. Removal and replacement of any Contractor's personnel as used in this Article shall not require the termination and or demotion of such Contractor's personnel.

c) The Contractor agrees that at all times it will employ, maintain and assign to the performance of the Services a sufficient number of competent and qualified professionals and other personnel to meet the requirements to which reference is hereinafter made. The Contractor agrees to adjust its personnel staffing levels or to replace any its personnel if so directed upon reasonable request from the County, should the County make a determination, in its sole discretion that said personnel staffing is inappropriate or that any individual is not performing in a manner consistent with the requirements for such a position.

d) The Contractor warrants and represents that its personnel have the proper skill, training, background, knowledge, experience, rights, authorizations, integrity, character and licenses as necessary to perform the Services described herein, in a competent and professional manner.

e) The Contractor shall at all times cooperate with the County and coordinate its respective work efforts to most effectively and efficiently maintain the progress in performing the Services.

f) The Contractor shall comply with all provisions of all federal, state and local laws, statutes, ordinances, and regulations that are applicable to the performance of this Agreement.

ARTICLE 12. EMPLOYEES ARE THE RESPONSIBILITY OF THE CONTRACTOR

All employees of the Contractor shall be considered to be, at all times, employees of the Contractor under its sole direction and not employees or agents of the County. The Contractor shall supply competent employees. Miami-Dade County may require the Contractor to remove an employee it deems careless, incompetent, insubordinate or otherwise objectionable and whose continued employment on County property is not in the best interest of the County. Each employee shall have and wear proper identification.

ARTICLE 13. INDEPENDENT CONTRACTOR RELATIONSHIP

The Contractor is, and shall be, in the performance of all work services and activities under this Agreement, an independent contractor, and not an employee, agent or servant of the County. All persons engaged in any of the work or services performed pursuant to this Agreement shall at all times, and in all places, be subject to the Contractor's sole direction, supervision and control. The Contractor shall exercise control over the means and manner in which it and its employees perform the work, and in all respects the Contractor's relationship and the relationship of its employees to the County shall be that of an independent contractor and not as employees and agents of the County.

The Contractor does not have the power or authority to bind the County in any promise, agreement or representation other than specifically provided for in this Agreement.

ARTICLE 14. AUTHORITY OF THE COUNTY'S PROJECT MANAGER

a) The Contractor hereby acknowledges that the County's Project Manager will determine in the first instance all questions of any nature whatsoever arising out of, under, or in connection with, or in any way related to or on account of, this Agreement including without limitations: questions as to the value, acceptability and fitness of the Services; questions as to either party's fulfillment of its obligations under the Contract; negligence, fraud or misrepresentation before or subsequent to acceptance of the Proposal; questions as to the interpretation of the Scope of Services; and claims for damages, compensation and losses.

b) The Contractor shall be bound by all determinations or orders which are within the Scope of Services and shall promptly obey and follow every order of the Project Manager, including the withdrawal or modification of any previous order and regardless of whether the Contractor agrees with the Project Manager's determination or order. Where orders are given orally, they will be issued in writing by the Project Manager as soon thereafter as is practicable.

c) The Contractor must, in the final instance, seek to resolve every difference concerning the Agreement with the Project Manager. In the event that the Contractor and the Project Manager are unable to resolve their difference, the Contractor may initiate a dispute in accordance with the procedures set forth in this Article. Exhaustion of these procedures shall be a condition precedent to any lawsuit permitted hereunder.

d) In the event of such dispute, the dispute shall be referred for resolution to the President of the Contractor and the County Manager, or their duly appointed representatives and each party shall meet and resolve the dispute, if possible, within thirty (30) calendar days from the date of such reference. In connection with any appeal proceeding under this provision, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of the appeal. If the parties are unable to resolve the dispute within thirty (30) days, then the dispute shall be referred to a single arbitrator appointed jointly by the parties. In the event

that the parties cannot agree to the single arbitrator to be appointed, then such arbitrator shall be appointed pursuant to the Rules of the American Arbitration Association. The arbitration shall be held in such place as the arbitrator shall select and shall be adjudicated in accordance with the aforementioned Rules and the decision of the arbitrator shall be made within thirty (30) days from the appointment of the arbitrator and be final and binding upon the parties. The arbitrator's fees and expenses shall be paid by the parties as determined by the arbitrator. Pending final decision of a dispute hereunder, the Contractor shall proceed diligently with the performance of the Agreement and in accordance with the County's decision.

ARTICLE 15. MUTUAL OBLIGATIONS

a) This Agreement, including attachments and appendixes to the Agreement, shall constitute the entire Agreement between the parties with respect hereto and supersedes all previous communications and representations or agreements, whether written or oral, with respect to the subject matter hereto unless acknowledged in writing by the duly authorized representatives of both parties.

b) Nothing in this Agreement shall be construed for the benefit, intended or otherwise, of any third party that is not a parent or subsidiary of a party or otherwise related (by virtue of ownership control or statutory control) to a party.

c) In those situations where this Agreement imposes an indemnity obligation on the Contractor, the County may, at its expense, elect to participate in the defense if the County should so choose. Furthermore, the County may at its own expense defend or settle any such claims if the Contractor fails to diligently defend such claims, and thereafter seek indemnity for costs from the Contractor.

d) The County shall:

(i) Provide all data, information, assistance, access to its computers (including direct remote electronic access) and facilities at its location, as reasonably required by the Contractor, in order to facilitate the optimum performance by the Contractor of its obligations.

(ii) Designate a person to manage the project for the County, (the "Project Manager") who is appropriately experienced in its business, skilled in managing software installation and implementation projects and vested with sufficient authority to make and convey the County's decisions relating to the services being provided and Software installed by the Contractor and to use all reasonable endeavors to ensure that any agreed timescales for the County's actions are achieved.

(iii) Designate a person to review decisions of the Project Manager as required (the "Contract Manager") who is appropriately experienced and vested with sufficient authority to make and convey such decisions on behalf of the County.

(iv) Ensure compliance with any applicable data and privacy protection laws, codes of practice or other legal obligations associated with the collection, use and disclosure of its data and any other personal information collected from third parties.

(v) Deliver all data and information to the Contractor during the implementation process necessary to enable the Contractor to install and implement the Contractor's Software.

(vi) Take all such other steps and acts necessary to allow the Contractor to perform its obligations under this Amendment in a timely and efficient manner. Such steps and acts shall include, without limitation, the purchase, installation and implementation by the County of the network communication infrastructure as may be necessary to the fulfillment of the Contractor's obligations set out herein.

ARTICLE 16. QUALITY ASSURANCE/QUALITY ASSURANCE RECORD KEEPING

The Contractor shall maintain, and shall require that its subcontractors and suppliers maintain, complete and accurate records to substantiate compliance with the requirements set forth in the Scope of Services. The Contractor and its subcontractors and suppliers, shall retain such records, and all other documents relevant to the Services furnished under this Agreement for a period of three (3) years from the expiration date of this Agreement and any extension thereof.

ARTICLE 17. AUDITS

The Contractor agrees that the County or its duly authorized representatives or governmental agencies shall, until the expiration of three (3) years after the expiration of this Agreement and any extension thereof, have access to and the right to examine any of the Contractor's books, documents, papers and records and of its subcontractors and suppliers which apply to all matters of the County. Such records shall subsequently conform to Generally Accepted Accounting Principles requirements, and shall only address those transactions related to this Agreement.

The Contractor agrees to maintain an accounting system that provides accounting records that are supported with adequate documentation, and adequate procedures for determining the allowability and allocability of costs.

ARTICLE 18. SUBSTITUTION OF PERSONNEL

In the event the Contractor wishes to substitute personnel for the key personnel identified by the Contractor's Proposal, the Contractor must notify the County in writing and request written approval for the substitution at least ten (10) business days prior to effecting such substitution.

ARTICLE 19. CONSENT OF THE COUNTY REQUIRED FOR ASSIGNMENT

The Contractor shall not assign, transfer, convey or otherwise dispose of this Agreement, including its rights, title or interest in or to the same or any part thereof without the prior written consent of the County.

ARTICLE 20. SUBCONTRACTUAL RELATIONS

a) If the Contractor will cause any part of this Agreement to be performed by a Subcontractor, the provisions of this Contract will apply to such Subcontractor and its officers, agents and employees in all respects as if it and they were employees of the Contractor; and the Contractor will not be in any manner thereby discharged from its obligations and liabilities hereunder, but will be liable hereunder for all acts and negligence of the Subcontractor, its officers, agents, and employees, as if they were employees of the Contractor. The services performed by the Subcontractor will be subject to the provisions hereof as if performed directly by the Contractor.

b) The Contractor, before making any subcontract for any portion of the services, will state in writing to the County the name of the proposed Subcontractor, the portion of the Services which the Subcontractor is to do, the place of business of such Subcontractor, and such other information as the County may require. The County will have the right to require the Contractor not to award any subcontract to a person, firm or corporation disapproved by the

County.

c) Before entering into any subcontract hereunder, the Contractor will inform the Subcontractor fully and completely of all provisions and requirements of this Agreement relating either directly or indirectly to the Services to be performed. Such Services performed by such Subcontractor will strictly comply with the requirements of this Contract.

d) In order to qualify as a Subcontractor satisfactory to the County, in addition to the other requirements herein provided, the Subcontractor must be prepared to prove to the satisfaction of the County that it has the necessary facilities, skill and experience, and ample financial resources to perform the Services in a satisfactory manner. To be considered skilled and experienced, the Subcontractor must show to the satisfaction of the County that it has satisfactorily performed services of the same general type which is required to be performed under this Agreement.

e) The County shall have the right to withdraw its consent to a subcontract if it appears to the County that the subcontract will delay, prevent, or otherwise impair the performance of the Contractor's obligations under this Agreement. All Subcontractors are required to protect the confidentiality of the County's and County's proprietary and confidential information. Contractor shall furnish to the County copies of all subcontracts between Provider and Subcontractors and suppliers hereunder. Within each such subcontract, there shall be a clause for the benefit of the County permitting the County to request completion of performance by the Subcontractor of its obligations under the subcontract, in the event the County finds the Contractor in breach of its obligations, the option to pay the Subcontractor directly for the performance by such subcontractor. Notwithstanding, the foregoing shall neither convey nor imply any obligation or liability on the part of the County to any subcontractor hereunder as more fully described herein.

ARTICLE 21. ASSUMPTION, PARAMETERS, PROJECTIONS, ESTIMATES AND EXPLANATIONS

The Contractor understands and agrees that any assumptions, parameters, projections, estimates and explanations presented by the County were provided to the Contractor for evaluation purposes only. However, since these assumptions, parameters, projections, estimates and explanations represent predictions of future events the County makes no representations or guarantees; and the County shall not be responsible for the accuracy of the assumptions presented; and the County shall not be responsible for conclusions to be drawn therefrom; and any assumptions, parameters, projections, estimates and explanations shall not form the basis of any claim by the Contractor. The Contractor accepts all risk associated with using this information.

ARTICLE 22. SEVERABILITY

If this Agreement contains any provision found to be unlawful, the same shall be deemed to be of no effect and shall be deemed stricken from this Agreement without affecting the binding force of this Agreement as it shall remain after omitting such provision.

ARTICLE 23. TERMINATION FOR CONVENIENCE AND SUSPENSION OF WORK

a) The County may terminate this Agreement if the Contractor attempts to meet its contractual obligation with the County through fraud, misrepresentation or material misstatement.

b) The County may, as a further sanction, terminate or cancel any other contract(s) that the Contractor has with the County and that the Contractor shall be responsible for all direct and indirect costs associated with such termination or cancellation, including attorney's fees.

c) The foregoing notwithstanding, any individual, corporation or other entity which attempts to

meet its contractual obligations with the County through fraud, misrepresentation or material misstatement may be disbarred from County contracting for up to five (5) years in accordance with the County debarment procedures. The Contractor may be subject to debarment for failure to perform and all other reasons set forth in Section 10-38 of the County Code.

In addition to cancellation or termination as otherwise provided in this Agreement, the County may at any time, in its sole discretion, with or without cause, terminate this Agreement by written notice of at least sixty (60) days to the Contractor and in such event:

d) The Contractor shall, upon receipt of such notice, unless otherwise directed by the County:

i. stop work on the date specified in the notice ("the Effective Termination Date");

ii. take such action as may be necessary for the protection and preservation of the County's materials and property;

iii. cancel orders;

iv. assign to the County and deliver to any location designated by the County any noncancelable orders for Deliverables that are not capable of use except in the performance of this Agreement and has been specifically developed for the sole purpose of this Agreement and not incorporated in the Services:

v. take no action which will increase the amounts payable by the County under this Agreement; and

e) In the event that the County exercises its right to terminate this Agreement pursuant to this Article the Contractor will be compensated as stated in the payment Articles, herein, for the:

i. portion of the Services completed in accordance with the Agreement and the Work Order up to the Effective Termination Date; and

ii. noncancelable Deliverables that are not capable of use except in the performance of this Agreement and Work Order and has been specifically developed for the sole purpose of this Agreement Work Order but not incorporated in the Services.

f) All compensation pursuant to this Article are subject to audit.

ARTICLE 24. EVENT OF DEFAULT

a) An Event of Default shall mean a breach of this Agreement by the Contractor. Without limiting the generality of the foregoing and in addition to those instances referred to herein as a breach, an Event of Default, shall include the following:

i. the Contractor has not delivered Deliverables in accordance with a written project schedule mutually agreed to by the parties.

ii. the Contractor has refused or failed, except in case for which an extension of time is provided, to supply enough properly skilled Staff Personnel;

iii. the Contractor has failed to make prompt payment to subcontractors or suppliers for any Services;

iv. the Contractor has become insolvent (other than as interdicted by the bankruptcy laws), or has assigned the proceeds received for the benefit of the Contractor's creditors, or the Contractor has taken advantage of any insolvency statute or debtor/creditor law or if the Contractor's affairs have been put in the hands of a receiver;

v. the Contractor has failed to obtain the approval of the County where required by this Agreement;

vi. the Contractor has failed to provide "adequate assurances" as required under subsection "b" below;

vii. the Contractor has failed in the performance of any warranties stated herein.

b) When, in the opinion of the County, reasonable grounds for uncertainty exist with respect to the Contractor's ability to perform the Services or any portion thereof, the County may request that the Contractor, within the time frame set forth in the County's request, provide adequate assurances to the County, in writing, of the Contractor's ability to perform in accordance with terms of this Agreement. Until the County receives such assurances the County may request an adjustment to the compensation received by the Contractor for portions of the Services which the Contractor has not performed. In the event that the Contractor fails to provide to the County the requested assurances within the prescribed time frame, the County may:

i. treat such failure as a repudiation of this Agreement;

ii. resort to any remedy for breach provided herein or at law, including but not limited to, taking over the performance of the Services or any part thereof either by itself or through others.

c) In the event the County shall terminate this Agreement for default, the County or its designated representatives, may immediately take possession of all applicable equipment, materials, products, documentation, reports and data, and the County shall return to the Contractor all copies of the Contractor's proprietary software, all related software documentation, and any other proprietary material of the Contractor, or will certify to the Contractor that all such copies have been destroyed.

ARTICLE 25. NOTICE OF DEFAULT - OPPORTUNITY TO CURE /TERMINATION

If an Event of Default occurs in the determination of the County, the County shall notify the Contractor ("Default Notice"), specifying the basis for such default, and the County shall allow the Contractor to rectify the default to the County's reasonable satisfaction within a thirty (30) day period. The County may grant an additional period of such duration as the County shall deem appropriate without waiver of any of the County's rights hereunder, so long as the Contractor has commenced curing such default and is effectuating a cure with diligence and continuity during such thirty (30) day period or any other period which the County prescribes. The default notice shall specify the date the Contractor shall discontinue the Services upon the Termination Date.

ARTICLE 26. REMEDIES IN THE EVENT OF DEFAULT

Either party may avail itself of each and every remedy herein specifically given to it now existing at law or in equity, and each and every such remedy shall be in addition to every other so specifically given or otherwise so existing and may be exercised from time to time and as often and in such order as may be deemed expedient by the County, and the exercise, or the beginning of the exercise, of one remedy shall not be deemed to be a waiver of the right to exercise, at the same time or thereafter, any other remedy. The County's rights and remedies as set forth in this Amendment

are not exclusive and are in addition to any other rights and remedies available to it in law or in equity.

ARTICLE 27. PROJECTS AND SERVICES

The parties anticipate that from time to time they will be in contact regarding the County's needs for assistance on clearly defined Projects ("Projects") which are not within the current Scope of Services, in the areas of business strategy, business integration, business process improvement, training, management development, project management, computer programming, systems integration, data processing, software development and other specific activities related to improving the County's computer systems, training or personnel to operate the same, creation or modification of software, and related consulting activities ("Project Services").

ARTICLE 28. STATEMENT OF WORK

Prior to the commencement of Project Services for any Project, the County and the Contractor shall mutually agree upon the terms and conditions required to complete a Statement of Work ("SOW") for the specific Project that shall define in detail the Project Services to be performed. After the SOW has been accepted a detailed requirements cost proposal shall be submitted illustrating the complete financial terms that govern the SOW, proposed Project staffing, anticipated Project schedule, and other information relevant to the Project. Each SOW executed hereunder shall automatically incorporate the terms and conditions of this Agreement.

Concurrently with the execution of the SOW, the County and the Contractor shall agree to a not-to-exceed number of hours and cost for the requested Project Services. In no event shall the Contractor perform any Project Services on the task unless the County issues a written notice to the Contractor to proceed with the task. The Contractor shall not be reimbursed for the preparation of proposals.

The Contractor shall, upon the County's request, provide the County with the Project Services. If the Project Services include enhancements or modifications to the Contractor's software, the Contractor will advise of any additional license fees or maintenance fees which may also apply. The Contractor shall provide the County, if so requested with written confirmation of the date the enhancement or modifications was applied to the Licensed Software, and any and all Documentation relating to the Licensed Software and enhancement or modifications thereto.

If any such enhancement or modifications is not acceptable to the County, the County may refuse to accept same, and in such event, the Contractor agrees to maintain the Licensed Software in the form in effect on the date the Contractor requested the County to accept such update.

ARTICLE 29. SOFTWARE

The Contractor shall provide the County with a license to use the Contractor's software (the "Licensed Software) as more fully described in Exhibit C, "Software License Agreement", attached hereto.

ARTICLE 30. SOFTWARE LICENSE

The Contractor shall grant to the County a software license to use the Licensed Software as more fully described in Exhibit C, "Software License Agreement", attached hereto.

ARTICLE 31. SCOPE OF LICENSE

The County and Contractor agree and understand that the Licensed Software shall operate on equipment specified and agreed to by both parties. The County may use the Licensed Software on such equipment configurations owned, controlled or contracted for, by the County. Any changes to equipment configuration of make, manufacture and/or model is subject to Contractor's approval as described in Article 33, Operating Environment for Information Systems.

The County may order additional license(s) for additional equipment configuration(s) at no charge, provided that the Contractor shall be entitled to payment for services requested in writing by the County.

ARTICLE 32. SOFTWARE RELATED DOCUMENTATION

The Licensed Software-related Documentation ("Documentation") shall consist of all available generic operator's and user's manuals, system administration manual, training materials, guides, listings, design documents, specifications, flow charts, data flow diagrams, commentary, and other materials and documents that explain the performance, function or operation of individual programs and the interaction of programs within the system; test plans and test data and other materials for use in conjunction with the applicable software. The Documentation will in all cases be fully applicable to the use of the Licensed Software with the Equipment. The Contractor shall deliver to the County three (3) hard copies and one electronic copy of said Documentation and one electronic copy . The County will have the right, as part of the license granted herein, to make additional copies of the Documentation equal in number to the number of workstations licensed for use in the Software License Agreement.

ARTICLE 33. OPERATING ENVIRONMENT FOR INFORMATION SYSTEMS

The Licensed Software, and each module or component and function thereof, will be capable of operating fully and correctly in the operating environment identified in the Scope of Services (the "Equipment"). The Contractor hereby warrants and represents that each application of the Licensed Software will be fully compatible and will interface completely with each other application provided hereunder with the Licensed Software, and with the County's Equipment, such that the Equipment, Licensed Software and Deliverables combined will perform and continuously attain the standards, including but not limited to the performance standards set forth in the Scope of Services.

ARTICLE 34. OWNERSHIP OF LICENSED SOFTWARE

The Contractor hereby warrants and represents that the Contractor possesses all rights to and interests in the Licensed Software, and all portions thereof, or otherwise have the right to grant to the County the affected licenses, without violating any rights of any third party, and there are currently no actual or threatened suits by any such third parties based on an alleged violation of such rights by the Contractor. The Contractor shall require that all suppliers of third party software hereunder furnish to the County the foregoing warranties of ownership with respect to the third party software.

ARTICLE 35. SOFTWARE WARRANTIES

The Contractor warrants that (i) the Licensed Software shall not contain viruses or pre-programmed devices which will cause any software utilized by the County to be erased or become inoperable of processing accurately and in accordance with the warranties specified herein and the Scope Of Services; and (ii) the Licensed Software and each module and function thereof shall be capable of operating fully and correctly on the combination of the Equipment and Software specified in the Scope of Services and furnished by the County.

ARTICLE 36. SOFTWARE WARRANTY PERIOD

The Contractor warrants that, for a period of one (1) year from the "go-live" date of the Licensed Software or functionality enhancements added to the existing System at a specific site, the Software shall (i) be free from defects in material and workmanship under normal use and remain in good working order; (ii) function properly and in conformity with the warranties in this Agreement, (iii) meet all of the performance standards set forth in the Scope of Services.

In the event the Licensed Software does not satisfy the conditions of performance set forth in the Scope Of Services and Contractor's proposal, the Contractor's obligation is to provide a Fix or a Work Around at the Contractor's cost and expense, or to provide different equipment, software and services required to attain the performance requirements set forth in the Scope Of Services and Contractor's proposal, in the sole discretion of the County. Failure by the Contractor to comply with warranty provisions hereof may be deemed by the County as a breach of the Contractor's obligations hereof.

ARTICLE 37. THIRD PARTY WARRANTIES

In addition to the foregoing warranties, the Contractor hereby assigns to the County, and the County shall have the benefit of, any and all subcontractor's and suppliers' warranties and representation with respect to the Licensed Software provided hereunder. In the Contractor's agreements with subcontractors and suppliers, the Contractor shall require that such parties (i) consent to the assignment of such warranties and representations to the County; (ii) agree that such warranties and representations are enforceable by the County in its own name, and (iii) furnish to the County, the warranties and obligations as set forth in Article 35, "Software Warranties", and Article 36, "Software Warranty Period".

ARTICLE 38. FINAL ACCEPTANCE OF SOFTWARE

A. Delivery and installation of the Software and acceptance of deliverables does not constitute Final Acceptance for the purposes of warranty and release of retainage and performance bond. Final Acceptance will be determined by signed notification from the Project Manager and shall be given to the Contractor only after successful completion of the acceptance test described below. Final Acceptance shall occur earlier if the County notifies the Contractor in writing of early acceptance.

B. Upon final completion of the customization and installation of the Licensed Software by the Contractor, the Contractor shall notify the County in writing. The County shall be entitled to a period of forty-five (45) business days to conduct such acceptance tests as it considers appropriate. At the end of this period, the Licensed Software will be deemed to have met the Contractor's standard of performance and shall be deemed to have been granted Final Acceptance, unless County notifies the Contractor otherwise. The County agrees that Final Acceptance shall be based on the requirements of the Scope of Services as defined by the operational review and as may be otherwise specified herein. In the event that the Final Acceptance test requirements are not satisfied and the Contractor is so notified, the Contractor shall within ten (10) business days, unless otherwise directed in writing by County Project Director, deliver to the County the necessary revisions and/or a modification until Final Acceptance is achieved. The County shall not unreasonably deny a written request for an extension to the above ten (10) business day period, so long as the Contractor is proceeding in an expeditious manner.

ARTICLE 39. SOFTWARE PERFORMANCE GUARANTEES

Fulfillment of guaranties of performance of the software as a condition to acceptance will be determined by the County in accordance with the tests stipulated in Article 38, "Final Acceptance of Software", herein. The Contractor shall be responsible for all work and costs involved in effecting replacement, changes or adjustments to the Licensed Software or Software or other Deliverables as may be necessary to fulfill these guarantees, whether they are required by the Scope of Services or are promised in the Contractor's technical data.

ARTICLE 40. REVIEWING DELIVERABLES

The Contractor agrees to submit all Deliverables required to be submitted for review and approval by the County in accordance with the specific requirements in the Scope of Services, and as specified herein. The Contractor understands that the County shall have final approval on all Deliverables.

In reviewing the Deliverables, the Contractor understands that the County will provide the Contractor with:

a) A written notification of the County's approval,

b) A written notification that each Deliverable is approved subject to the Contractor providing prompt correction of a minor deficiency, or,

c) In the case of a Deliverable that does not meet the requirements of the Agreement, a written notification of the County's disapproval. The County's disapproval notification will state with reasonable detail to sufficiency advise the Contractor of the basis on which the Deliverable was determined to be unacceptable.

The County understands that failure by the County to provide a notice of approval or disapproval by the end of the forty five (45) business day period as further defined will constitute approval.

Furthermore:

i. For each Deliverable made hereunder, the County shall have thirty (30) calendar days, commencing on the first business day after receipt by the County of the Deliverable, to determine and notify the Contractor in writing whether the Deliverable is approved as submitted, is approved subject to the correction by the Contractor of minor discrepancies, or whether it is unacceptable and therefore disapproved.

ii. Unless the extension of time has been granted by the County pursuant to Article 42, "Extension of Time", within forty five (45) business days after the receipt of the County's notification of "disapproval", the Contractor shall deliver to the County the necessary revisions and/or modifications for a second review by the County.

iii. If after the second review period the Deliverable remains unacceptable for the County's approval, the County may direct the Contractor to:

a) Proceed with the Services subject to the correction of all outstanding deficiencies which led to the County's determination that a Deliverable was not acceptable for approval on or before a specific date established by the County for correcting such deficiencies; or,

b) Suspend all Services being performed in regard to the execution of the Agreement, except those services necessary for the correction of outstanding deficiencies, until such time that all such outstanding deficiencies have been corrected by the Contractor and resubmitted to the County for approval. Any suspension of the Services under this provision shall not alter the County's right to assess the liquidated damages in the

event that the Services are not completed in accordance with other provisions of this Agreement.

iv. The County shall have the right to approve or accept part of any Deliverable. Any such approval shall be regarded as partial and conditional upon the County's approval or acceptance of all aspects of the Deliverable. The Contractor must correct any deficiencies within the time the County specifies for such correction in the County's notice concerning a partial approval (including approvals subject to correction of minor deficiencies) or, if no time is given, promptly. If the County does not subsequently approve or accept all aspects of the Deliverable, the earlier conditional acceptance of approval may, in the dole absolute discretion of the County, be regarded void and of no effect.

ARTICLE 41. EXTENSION OF TIME

If the Contractor is delayed at any time hereunder due to any of the following then the affected schedule or the required performance of Services may be extended by the County in the reasonable exercise of its discretion for such reasonable time as the County may determine, subject to the following conditions:

a) The cause of the delay is beyond the Contractor's control and arises without its fault or negligence, and arises after the execution hereof and neither was nor could have been anticipated by the Contractor by reasonable investigation; and

b) The completion of the Services will be actually and necessarily delayed by the causes set forth in "(a)" above; and

c) The effect of such cause cannot be avoided or mitigated by the exercise of all reasonable precautions, efforts and measures whether before or after the occurrence of the cause of delay; and

d) The contractor has provided a written request and other information to the County, as described below, within ten (10) days after the time the Contractor knows or reasonably should have known of any cause which might result in a delay for which the Contractor may request an extension of time. The Contractor shall specifically state in such notice that an extension is or may be requested and identify the cause of delay, describing the nature and its effect on the completion of the affected portions of the Services identified in the notice. If the Contractor shall fail to give the foregoing notice, the right to request an extension for such cause shall be waived. All of the conditions of this Article 41 must be met in order to be deemed an Excusable Delay. However, the Contractor shall not be held responsible for any delays which are caused without its knowledge.

All references in this Article 41 to the Contractor shall be deemed to include subcontractors and suppliers, all of whom shall be considered as agents of the Contractor.

The period of extension of time shall be only that which is necessary to make up the time actually lost. The County reserves the right to rescind or shorten any extension previously granted if the County subsequently determines that any information provided by the Contractor in support of its request for an extension of time was erroneous or that there has been a material change in the facts stated.

The County may require the Contractor to furnish such additional information or documentation as the County shall reasonably deem necessary or helpful in considering an extension request. The Contractor understands an extension of time will not be granted unless the Contractor affirmatively demonstrates to the County's reasonable satisfaction that the circumstances show justify such extension.

Within thirty (30) days of its receipt of all information and documentation as may be required by the

County, the County shall advise the Contractor of its decision on such requested extension. Notwithstanding the foregoing, where it is not reasonably practicable for the County to render its decision within such thirty (30) day period, advise the Contractor that it will require additional time and the approximate date upon which it expects to render such decision.

Since the granting of an extension of time may materially alter the scheduling plans and other actions of the County and since, with sufficient notice, the County might, it if should so elect, attempt to mitigate the effect of the delay for which an extension of time might be claimed, and since mere oral notice may cause a dispute as to the existence or substance thereof, the giving of written notice as required in Article 41 (d) above shall be a condition precedent to the Contractor's rights hereunder.

Neither permitting the Contractor to proceed with the Services subsequent to any missed schedule or performance of any Services (as such date may have been extended pursuant to Article 42, "Extension of Time Not Cumulative") nor the making of any payments to the Contractor shall compromise the County's contractual rights to assess liquidated damages or to declare the Contractor in default.

Notwithstanding anything herein to the contrary, the Contractor shall be entitled to rely on the terms of Article 44 "Liquidated Damages", with respect to Contractor's right to a renegotiated implementation schedule prior to any assessment of Liquidated Damages being made.

The County shall notify the Contractor as soon as the County has knowledge that an event occurred which will delay the County in performing its obligations. The County is entitled to an extension of time to perform its obligations and shall have no liability to the Contractor by reason of any delay or failure to perform any obligation or covenant if the delay or failure to perform is occasioned by any cause beyond its reasonable control.

ARTICLE 42. EXTENSION OF TIME NOT CUMULATIVE

In the event the Contractor shall be delayed concurrently by two or more of the causes identified in Article 41, "Extension of Time" above, the Contractor shall be entitled to a separate extension of time for each one of the causes but only one period of extension shall be granted for the delay. In addition, the Contractor shall not be entitled, by reason of a delay, to an extension of time for the completion of the Services unless the Services are necessarily affected by the delay. Accordingly, in the event of a delay, the Contractor shall proceed continuously and diligently with the performance of the unaffected portions of the Services.

ARTICLE 43. NO DAMAGES FOR DELAY

The Contractor hereby agrees to make no claim for damages for delay, whether contemplated or not contemplated, in the performance hereunder occasioned by any acts or omissions to act of the County, any such claim shall be fully compensated for by an extension of time to complete performance of the Services, as provided in Articles 41, 42, and 43, "Extension of Time", "Extension of Time Not Cumulative", and "No Damages for Delay".

ARTICLE 44. LIQUIDATED DAMAGES

a) Subject to the procedure set out in subsection (c) below, upon failure to deliver the Services in accordance with the specification and Implementation Schedule and to satisfaction of the County within the time stated, the Contractor shall be subject to charges for liquidated damages and not as a penalty in the following amounts:

(i) for Blockbuster: one quarter of one percent (0.25%) of the net software license fees for Blockbuster for each and every business day of delay that Blockbuster is not

delivered to a production-ready state, up to a maximum of 20% of the net software license fees for Blockbuster.

(ii) for PLAN: one quarter of one percent (0.25%) of the net software license fees for PLAN for each and every business day of delay that PLAN is not delivered to a production-ready state, up to a maximum of 20% of the net software license fees for PLAN.

(iii) for PASS IVR: one quarter of one percent (0.25%) of the net software license fees for PASS IVR for each and every business day of delay that PASS IVR is not delivered to a production-ready state, up to a maximum of 20% of the net software license fees for Blockbuster.

(iv) for PASS MON: one quarter of one percent (0.25%) of the net software license fees for PASS MON for each and every business day that PASS MON is not delivered to a production-ready state, up to a maximum of 20% of the net software license fees for Blockbuster.

b) The sum of liquidated damages (if any) will be deducted from the payments made to the Contractor, and subject to Contractor's rights under this Article 45, Contractor will not be entitled to later reimbursement of any liquidated damages which are established under subsection (a). In the event that the sum of liquidated damages established under subsection (a) exceeds the amount of compensation then due to the Contractor, Miami Dade County shall be entitled to deduct the liquidated damages from the next payment due to Trapeze (including maintenance fee payments), until the full amount of liquidated damages has been deducted. Whatever sum of money may become due and payable to Miami-Dade County by the Contractor under this Article may be retained out of money belonging to the Contractor in the hands and possession of Miami-Dade County. It is agreed that this Article shall be construed and treated by the parties of this Agreement not as imposing a penalty upon said Contractor for failing fully to complete said work as agreed to in the Sections, but as liquidated damages to compensate Miami-Dade County because of the failure of the Contractor to complete said work fully as specified in this Agreement.

c) Prior to claiming Liquidated Damages, the County must notify the Contractor by written notice within 30 business days of its intent to claim Liquidated Damages. Within 30 business days of the issuance of such written notice, the Contractor shall have the right to submit a revised Implementation Schedule for the sole approval of the County. The Contractor shall have this right one time. Thereafter, Liquidated Damages shall apply to the approved revised Implementation Schedule.

d) Any final payment (or offset) of liquidated damages by the County, upon request by either party, may be made subject to the dispute resolution procedure set out in Article 15, subsection (d).

e) If the Contractor's delay or failure to meet the dates set out in subsection (a) is caused in whole or in part by a delay or failure to perform by the County or its contractors, then the Contractor shall request an Extension of Time in accordance with the terms of this Agreement, to re-negotiate the Implementation Schedule. Notwithstanding anything to the contrary, no liquidated damages may be assessed in these circumstances until the revised Implementation Schedule is agreed to in writing by both parties.

f) Liquidated damages shall not apply to the 100% error-free running of customizations. Given the nature of customized software, it is impossible for the Contractor to anticipate and remedy

all possible errors until the software is being used operationally.

ARTICLE 45. PATENT AND COPYRIGHT INDEMNIFICATION

a) The Contractor shall be liable and responsible for any and all claims made against the County for infringement of patents, copyrights, service marks, trade secrets or any other third party proprietary rights, by the use or supplying of any programs, documentation, software, analyses, applications, methods, ways, processes, and the like, in the course of performance or completion of, or in any way connected with, the Work, or the County's continued use of the Deliverables furnished hereunder. Accordingly, the Contractor at its own expense, including the payment of attorney's fees, shall indemnify, and hold harmless the County and defend any action brought against the County with respect to any claim, demand, cause of action, debt, or liability.

b) In the event any Deliverable or anything provided to the County hereunder, or portion thereof is held to constitute an infringement and its use is or may be enjoined, the Contractor shall have the obligation to, at the Contractor's option to (i) modify, or require that the applicable subcontractor or supplier modify, the alleged infringing item(s) at its own expense, without impairing in any respect the functionality or performance of the item(s), or (ii) procure for the County, at the Contractor's expense, the rights provided under this Agreement to use the item(s).

c) The Contractor shall be solely responsible for determining and informing the County whether a prospective supplier or subcontractor is a party to any litigation involving patent or copyright infringement, service mark, trademark, violation, or proprietary rights claims or is subject to any injunction which may prohibit it from providing any Deliverable hereunder. The Contractor shall enter into agreements with all suppliers and subcontractors at the Contractor's own risk. The County may reject any Deliverable that it believes to be the subject of any such litigation or injunction, or if, in the County's judgment, use thereof would delay the Work or be unlawful.

ARTICLE 46. CONFIDENTIALITY

a) All materials, data, transactions of all forms, financial information, and documentation obtained from the County in connection with the Services performed under this Agreement, made or developed by the Contractor or its subcontractors in the course of the performance of such Services, or the results of such Services, for which the County holds the proprietary rights, constitute Confidential Information and may not, without the prior written consent of the County, be used by the Contractor or its employees, agents, subcontractors or suppliers for any purpose other than for the benefit of the County, unless required by law. In addition to the foregoing, all County employee information and County financial information shall be considered confidential information and shall be subject to all the requirements stated herein. Neither the Contractor nor its employees, agents, subcontractors or suppliers may sell, transfer, publish, disclose, display, license or otherwise make available to others any part of such Confidential Information without the prior written consent of the County. Additionally, the Contractor expressly agrees to be bound by and to defend, indemnify and hold harmless the County, and their officers and employees from the breach of any federal, state or local law in regard to the privacy of individuals.

b) The Contractor shall advise each of its employees, agents, subcontractors and suppliers who may be exposed to such Confidential Information of their obligation to keep such information confidential and shall promptly advise the County in writing if it learns of any unauthorized use or disclosure of the Confidential Information by any of its employees or agents, or subcontractor's or supplier's employees, present or former. In addition, the Contractor

agrees to cooperate fully and provide any assistance necessary to ensure the confidentiality of the Confidential Information.

c) It is understood and agreed that in the event of a breach of this Article damages may not be an adequate remedy and the County shall be entitled to injunctive relief to restrain any such breach or threatened breach. Unless otherwise requested by the County, upon the completion of the Services performed hereunder, the Contractor shall immediately turn over to the County all such Confidential Information existing in tangible form, and no copies thereof shall be retained by the Contractor or its employees, agents, subcontractors or suppliers without the prior written consent of the County. A certificate evidencing compliance with this provision and signed by an officer of the Contractor shall accompany such materials.

ARTICLE 47. PROPRIETARY INFORMATION

As a political subdivision of the State of Florida, Miami-Dade County is subject to the stipulations of Florida's Public Records Law.

The Contractor acknowledge that all computer software in the County's possession may constitute or contain information or materials which the County has agreed to protect as proprietary information from disclosure or unauthorized use and may also constitute or contain information or materials which the County has developed at its own expense, the disclosure of which could harm the County's proprietary interest therein.

During the term of the contract, the contractors will not use directly or indirectly for itself or for others, or publish or disclose to any third party, or remove from the County's property, any computer programs, data compilations, or other software which the County has developed (hereinafter "Computer Software"). All third-party license agreements must also be honored by the contractors and their employees, except as authorized by the County and, if the Computer Software has been leased or purchased by the County, all hired party license agreements must also be honored by the contractors' employees with the approval of the lessor or Contractors thereof. This includes mainframe, minis, telecommunications, personal computers and any and all information technology software.

The Contractor will report to the County any information discovered or which is disclosed to the Contractor which may relate to the improper use, publication, disclosure or removal from the County's property of any information technology software and hardware and will take such steps as are within the Contractor's authority to prevent improper use, disclosure or removal.

ARTICLE 48. PROPRIETARY RIGHTS

A. The Contractor hereby acknowledges and agrees that the County retains all rights, title and interests in and to all data and interfaces developed by the County, and copies thereof, which are specifically generated as a result of the use of the Licensed Software by the County. The Contractor, as well as its employees, agents, subcontractors and suppliers may use such data only in connection with the performance of Services as required by this Amendment. The Contractor shall not, without the prior written consent of the County, use such data on any other project in which the Contractor or its employees, agents, subcontractors or suppliers are or may become engaged.

   Submission or distribution by the Contractor to meet official regulatory requirements or for other purposes in connection with the performance of Services shall not be construed as publication in derogation of the County's proprietary rights.

B. Notwithstanding anything in this Amendment to the contrary, the County acknowledges and agrees that by virtue of the Software License Agreement, the County shall be licensed to use the Licensed Software as more fully described therein, and that under such licensing arrangement, the Licensed Software and the related Documentation shall at all times remain the sole property of the Contractor. Contractor shall be entitled to sole ownership of any customizations, modifications or developments to the Licensed Software which might be created by Contractor as a result of the services provided by Contractor under this Amendment.

C. The license to use the Licensed Software specifically includes, but is not limited to, the right of the County to request from Contractor, in writing, the right to disclose, in whole or in part, the technical documentation and Licensed Software to any person or entity outside the County for such person's or entity's use in furnishing any and/or all of the Deliverables provided hereunder exclusively for the County or entities controlling, controlled by, under common control with, or affiliated with the County, or organizations which may hereafter be formed by or become affiliated with the County. Contractor agrees that the granting of such right shall not be unreasonably withheld, provided that the Contractor's proprietary rights are adequately protected and preserved.

ARTICLE 49. BUSINESS APPLICATION AND FORMS

Business Application: The Contractor shall be a registered vendor with the County – Department of Procurement Management, for the duration of this Agreement. It is the responsibility of the Contractor to file the appropriate Vendor Application and to update the Application file for any changes for the duration of this Agreement, including any option years.

Section 2-11.1(d) of Miami-Dade County Code as amended by Ordinance 00-1, requires any county employee or any member of the employee's immediate family who has a controlling financial interest, direct or indirect, with Miami-Dade County or any person or agency acting for Miami-Dade County from competing or applying for any such contract as it pertains to this solicitation, must first request a conflict of interest opinion from the County's Ethic Commission prior to their or their immediate family member's entering into any contract or transacting any business through a firm, corporation, partnership or business entity in which the employee or any member of the employee's immediate family has a controlling financial interest, direct or indirect, with Miami-Dade County or any person or agency acting for Miami-Dade County and that any such contract, agreement or business engagement entered in violation of this subsection, as amended, shall render this Agreement voidable. For additional information, please contact the Ethics Commission hotline at (305) 579-2593.

ARTICLE 50. LOCAL, STATE, AND FEDERAL COMPLIANCE REQUIREMENTS

Contractor agrees to comply, subject to applicable professional standards, with the provisions of any and all applicable Federal, State and the County orders, statutes, ordinances, rules and regulations which may pertain to the Services required under this Agreement, including but not limited to:

a) Equal Employment Opportunity (EEO), in compliance with Executive Order 11246 as amended and applicable to this Contract.

b) Miami-Dade County Florida, Department of Business Development Participation Provisions, as applicable to this Contract.

c) Environmental Protection Agency (EPA), as applicable to this Contract.

d) Miami-Dade County Code, Chapter 11A, Article 3. All contractors and subcontractors performing work in connection with this Contract shall provide equal opportunity for employment because of race, religion, color, age, sex, national origin, sexual preference, disability or marital status. The aforesaid provision shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous place available for employees and applicants for employment, such notices as may be required by the Dade County Fair Housing and Employment Commission, or other authority having jurisdiction over the work setting forth the provisions of the nondiscrimination law.

e) "Conflicts of Interest" Section 2-11 of the County Code, and Ordinance 01-199.

f) Miami-Dade County Code Section 10-38 "Debarment".

g) Miami-Dade County Ordinance 99-5, codified at 11A-60 et. seq. of Miami-Dade Code pertaining to complying with the County's Domestic Leave Ordinance.

h) Miami-Dade County Ordinance 99-152, prohibiting the presentation, maintenance, or prosecution of false or fraudulent claims against Miami-Dade County.

Notwithstanding any other provision of this Agreement, Contractor shall not be required pursuant to this Agreement to take any action or abstain from taking any action if such action or abstention would, in the good faith determination of the Contractor, constitute a violation of any law or regulation to which Contractor is subject, including but not limited to laws and regulations requiring that Contractor conduct its operations in a safe and sound manner.

ARTICLE 51. NONDISCRIMINATION

During the performance of this Contract, Contractor agrees to: not discriminate against any employee or applicant for employment because of race, religion, color, sex, handicap, marital status, age or national origin, and will take affirmative action to ensure that they are afforded equal employment opportunities without discrimination. Such action shall be taken with reference to, but not limited to: recruitment, employment, termination, rates of pay or other forms of compensation, and selection for training or retraining, including apprenticeship and on the job training.

By entering into this Contract with the County, the Contractor attests that it is not in violation of the Americans with Disabilities Act of 1990 (and related Acts) or Miami-Dade County Resolution No. R-385-95. If the Contractor or any owner, subsidiary or other firm affiliated with or related to the Contractor is found by the responsible enforcement agency or the County to be in violation of the Act or the Resolution, such violation shall render this Contract void. This Contract shall be void if the Contractor submits a false affidavit pursuant to this Resolution or the Contractor violates the Act or the Resolution during the term of this Contract, even if the Contractor was not in violation at the time it submitted its affidavit.

ARTICLE 52. CONFLICT OF INTEREST

The Contractor represents that:

a) No officer, director, employee, agent, or other consultant of the County or a member of the immediate family or household of the aforesaid has directly or indirectly received or been promised any form of benefit, payment or compensation, whether tangible or intangible, in connection with the grant of this Agreement.

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

i) is interested on behalf of or through the Contractor directly or indirectly in any manner whatsoever in the execution or the performance of this Agreement, or in the services, supplies or work, to which this Agreement relates or in any portion of the revenues; or

ii) is an employee, agent, advisor, or consultant to the Contractor or to the best of the Contractor's knowledge any subcontractor or supplier to the Contractor.

c) Neither the Contractor nor any officer, director, employee, agency, parent, subsidiary, or affiliate of the Contractor shall have an interest which is in conflict with the Contractor's faithful performance of its obligation under this Agreement; provided that the County, in its sole discretion, may consent in writing to such a relationship, provided the Contractor provides the County with a written notice, in advance, which identifies all the individuals and entities involved and sets forth in detail the nature of the relationship and why it is in the County's best interest to consent to such relationship.

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

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

ARTICLE 53. PRESS RELEASE OR OTHER PUBLIC COMMUNICATION

Under no circumstances shall the Contractor without the express written consent of the County:

a) Issue or permit to be issued any press release, advertisement or literature of any kind which refers to the County, or the Work being performed hereunder, unless the Contractor first obtains the written approval of the County. Such approval may be withheld if for any reason the County believes that the publication of such information would be harmful to the public interest or is in any way undesirable; and

b) Communicate in any way with any contractor, department, board, agency, commission or other organization or any person whether governmental or private in connection with the Services to be performed hereunder except upon prior written approval and instruction of the County; and

c) Except as may be required by law, the Contractor and its employees, agents, subcontractors and suppliers will not represent, directly or indirectly, that any product or service provided by the Contractor or such parties has been approved or endorsed by the County.

ARTICLE 54. BANKRUPTCY

The County reserves the right to terminate this contract, if, during the term of any contract the Contractor has with the County, the Contractor becomes involved as a debtor in a bankruptcy proceeding, or becomes involved in a reorganization, dissolution, or liquidation proceeding, or if a trustee or receiver is appointed over all or a substantial portion of the property of the Contractor under federal bankruptcy law or any state insolvency law.

ARTICLE 55. GOVERNING LAW

This Contract, including appendices, and all matters relating to this Contract (whether in contract, statute, tort (such as negligence), or otherwise) shall be governed by, and construed in accordance with, the laws of the State of Florida.

ARTICLE 56. INDIVIDUALLY IDENTIFIABLE HEALTH INFORMATION and/or PROTECTED HEALTH INFORMATION

Any person or entity that performs or assists Miami-Dade County with a function or activity involving the use or disclosure of "Individually Identifiable Health Information (IIHI) and/or Protected Health Information (PHI) shall comply with the Health Insurance Portability and Accountability Act (HIPAA) of 1996 and the Miami-Dade County Privacy Standards Administrative Order. HIPAA mandates for privacy, security and electronic transfer standards, include but are not limited to:

1. Use of information only for performing services required by the contract or as required by law;
2. Use of appropriate safeguards to prevent non-permitted disclosures;
3. Reporting to Miami-Dade County of any non-permitted use or disclosure;
4. Assurances that any agents and subcontractors agree to the same restrictions and conditions that apply to the Contractor and reasonable assurances that IIHI/PHI will be held confidential;
5. Making Protected Health Information (PHI) available to the customer;
6. Making PHI available to the customer for review and amendment; and incorporating any amendments requested by the customer;
7. Making PHI available to Miami-Dade County for an accounting of disclosures; and
8. Making internal practices, books and records related to PHI available to Miami-Dade County for compliance audits.

PHI shall maintain its protected status regardless of the form and method of transmission (paper records, and/or electronic transfer of data). The Contractor must give its customers written notice of its privacy information practices including specifically, a description of the types of uses and disclosures that would be made with protected health information.

ARTICLE 57. MOST FAVORED CUSTOMER

The Contractor agrees to treat the County as its most favored customer. The Contractor represents that all of the prices, warranties, benefits and other terms being provided hereunder are equal to or better than the terms being offered by the Contractor to its current customers. If during the term of this Agreement the Contractor enters into an agreement with any other customer providing such customer with more favorable terms, then this Agreement will be deemed appropriately amended to provide such terms to the County. The Contractor shall promptly provide the County with any refund of credits thereby created. If the Contractor provides Services to the County which the Contractor did not create specifically for the County and which the Contractor offers to its current customers, the Contractor represents that all of the prices, warranties, benefits and other terms associated with those Services are equal to or better than the terms being offered by the Contractor to its current customers.

ARTICLE 58. FEDERAL CHANGES

Contractor shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation, those listed directly or by reference in the Agreement (Form FTA MA (11) dated October, 2004 between Purchaser and FTA, as they may be amended or promulgated from time to time during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this contract. Contractor shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation, those listed directly or by reference in the Agreement (Form FTA MA (11) dated October, 2004) between Purchaser and FTA, as they may be amended or promulgated from time to time during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this contract.

ARTICLE 59. INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS

The general contract provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1E, dated June 19, 2003, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any MDC requests which would cause MDC to be in violation of the FTA terms and conditions.

ARTICLE 60. NO GOVERNMENT OBLIGATION TO THIRD PARTIES

The Purchaser and Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this contract and shall not be subject to any obligations or liabilities to the Purchaser, Contractor, or any third party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

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

ARTICLE 61. MIAMI-DADE TRANSIT SYSTEM SALES SURTAX

Since proceeds from the Charter County Transit System Sales Surtax levied pursuant to Section 29.121 of the Code of Miami-Dade County may be used to pay for some part of the cost of this contract, no award of this contract shall be effective and thereby give rise to a contractual relationship with the County unless and until the following have occurred: 1) the County Commission awards the contract, and such award becomes final (either by expiration of 10 days after such award without veto by the Mayor, or by Commission override of a veto); and, 2) either, i) the Citizens' Independent Transportation Trust (CITT) has approved same, or, ii) in response to the CITT's disapproval, the County Commission re-affirms its award by two-thirds (2/3) vote of the Commission's membership and such reaffirmation becomes final. The County will provide written notice to the Contractor if the above conditions have not been met within 30 days of the execution of this Agreement by the Contractor.

ARTICLE 62. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS AND 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 C.F.R. Part 31, apply to its actions pertaining to this project. Upon execution of the underlying contract, 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 the underlying contract or the FTA assisted project for which this contract 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, 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 contract 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. 5307, 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 Contractor, to the extent the Federal Government deems appropriate. The Contractor agrees to include the above two clauses 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.

ARTICLE 63. INTEREST OF MEMBERS OF, OR DELEGATES TO, CONGRESS

No member of, or delegates to, the Congress of the United States shall be admitted to any share or part of this contract or to any benefit arising therefrom (41 U.S.C. 22).

ARTICLE 64. FLY AMERICA REQUIREMENTS

The contractor agrees to comply with 49 U.S.C. 40118 (the "Fly America" Act) in accordance with the General Services Administration's regulations at 41 CFR Part 301-10, which provides that the recipients and sub-recipients 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 extend such service is available, unless travel by foreign air carrier is a matter of necessity, ad defined by the Fly America Act. The Contractor shall submit, if a foreign air carrier was used, an appropriate certification or memorandum adequately explaining why service by a 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 Contractor agrees to include the requirements of this section in all subcontracts that may involve international air transportation.

ARTICLE 65. INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS

The general contract provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1E, dated June 19, 2003 are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any MDC requests which would cause MDC to be in violation of the FTA terms and conditions.

ARTICLE 66. CLEAN AIR

The contractor agrees to comply with all applicable standards, orders or requirements issued pursuant to the Clean Air Act, as amended, 42 U.S.C. 7401 et seq. The Contractor agrees to report

each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office. The Contractor also agrees to include these requirements in each subcontract exceeding $100,000 financed in whole or in part with Federal assistance provided by FTA.

ARTICLE 67. CLEAN WATER

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. The Contractor agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office. The Contractor also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA.

ARTICLE 68. RECYCLED PRODUCTS/RECOVERED MATERIALS

The contractor agrees to comply with all the requirements of Section 6002 of the Resource Conservation and Recovery Act (RCRA), as amended (42 U.S.C. 6962), including but not limited to the regulatory provisions of 40 CFR Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 CFR Part 247.

ARTICLE 69. ENVIRONMENTAL PROTECTION

The Contractor agrees to comply with all applicable requirements of the National Environmental Policy Act of 1969, as amended, 42 U.S.C. §§ 4321 et seq. , Executive Order no. 11514, as amended, "Protection and Enhancement of Environmental Quality," 42 U.S.C. § 4321 note: FTA statutory requirements at 49 U.S.C. § 5324(b): Council on Environmental Quality regulations pertaining to compliance with the National Environmental Policy Act of 1969, as amended, 40 CFR part 1500 st seq.: the joint FHWA/FTA regulations, "Environmental Impact and Related Procedures," 23 CFR part 771 and 49 CFR part 622, and when promulgated, FHWA/FTA joint regulations, "NEPA and Related Procedures for Transportation Decision making, Protection of Public Parks, Wildlife and Waterfowl Refuges, and Historic Sites, " 23 CFR part 1420 and 49 CFR part 623.

ARTICLE 70. ENERGY CONSERVATION

Contractor agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the State energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 U.S.C. Section 6321 et seq.).

ARTICLE 71. SURVIVAL

The parties acknowledge that any of the obligations in this Agreement will survive the term, termination and cancellation hereof. Accordingly, the respective obligations of the Contractor and the County under this Agreement, which by nature would continue beyond the termination, cancellation or expiration thereof, shall survive termination, cancellation or expiration hereof.

ARTICLE 72. NEGOTIATED TERMS

This Agreement reflects the negotiation and agreement of both parties. Nothing contained herein shall be interpreted, by implication or otherwise, as injuring to the benefit or the disadvantage of one party in the absence of such mutual negotiation and agreement.

Maintenance Fees, License Fees, Service Fees, and Expenses As Referenced in Attachment B:	
*Year 1 FY 2006	$1,087,387.00
*Year 2 FY 2007	$649,345.00
Year 3 FY 2008	$479,589.00
Year 4 FY 2009	$635,309.00
Year 5 FY 2010	$738,744.00
*Contingency Funds	$359,037.40
Contract Total:	**$3,949,411.40**

Notes:

1. Year 1 (2006) includes the implementation of advance runcutter (Blockbuster) and planning (PLAN) extensions to the Trapeze FX product and the implementation of the IVR Server for trip confirmation and cancellation (add-on to the PASS-suite).

2. Year 2 (2007) includes the implementation of PASS-MON-Server.

3. 10% of the contract value has been assessed for contingency funds to provide MDT with the necessary funding for additional training, consulting services or ADHOC work orders for further improvement of the then current infrastructure.

Trapeze Daily Rates

The following table presents the maximum daily rates for the term of this agreement that MDT will pay for additional services or training.

Trapeze Daily Rates						
Category	**2005**	**2006**	**2007**	**2008**	**2009**	**2010**
Senior Technical Product Specialist	$1,535	$1,535	$1,841	$1,841	$2,046	$2,046
Junior Technical Product Specialist	$1,228	$1,228	$1,535	$1,535	$1,841	$1,841

Upgrade Services

The proposed terms include three weeks of on-site services to support the upgrade of the County's Trapeze products. These services are to be employed to provide on-site support service to facilitate

the introduction of the latest build available from Trapeze. On-site services will include: technical support, refresher training, and operational consulting to ensure the County is maximizing the use of the products within their operational environment.

BALANCE OF PAGE INTENTIONALLY LEFT BLANK

IN WITNESS WHEREOF, the parties have executed this Agreement effective as of the contract date herein above set forth.

Contractor	Miami-Dade County
By: _____	By: _____
Name: Rick Bacchus	Name: _____
Title: President	Title: _____
Date: November 4, 2005	Date: _____
Attest: _____ Corporate Secretary	Attest: _____ Clerk of the Board
Corporate Seal and legal sufficiency	Approved as to form Bruce Libhaber Assistant County Attorney

EXHIBIT A

CONTRACTED PRODUCTS

Covered Services

The following list identifies the Trapeze applications employed by MDT in support of the agency's mission critical functions within fixed route scheduling, planning, and Paratransit operations included in this Agreement:

- *Trapeze-FX*: Route definition, trip building, blocking, and rostering for fixed route services
- *Trapeze-BB*: Advanced Runcutting for fixed route services
- *Trapeze-PLAN*: Fixed Route ridership and demographic analysis
- *Trapeze-Mapmaker & Bus Stop Import*: map and bus stop integration tools
- *Trapeze-PASS-CERT*: Client registration and certification
- *Trapeze-PASS-CT*: Paratransit trip booking, scheduling, and dispatching
- *Trapeze-MON-Server*: Back office integration technologies for mobile computing systems
- *Trapeze-PASS-EDI*: Electronic Data Interface for Medicaid services
- *Trapeze-INFO-COM*: Customer communications management for Paratransit
- *Trapeze-INFO-WEB*: Internet based client trip confirmation and cancellation
- *Trapeze-INFO-IVR*: Back office integration technologies for automated telephone systems (client trip confirmation and cancellation)

Attachment A: Estimated Annual Operational Characteristics

This information provides the operational characteristics employed to determine the applicable licensing category for each of the years under this agreement. Key operational characteristics include peak fixed route vehicles, total Paratransit fleet and average weekday Paratransit trips per day.

Attachment B: Proposed Costs

The costs associated with the Paratransit applications are based on Miami-Dade Transit agency's estimated average weekday trips that will be provided in each year of this agreement. Fixed Route technologies are based on the agency's estimated peak vehicle requirements for years one through eight. Back office mobile technologies (PASS-MON) are based on total Paratransit vehicles for each year under the term of this agreement.

Attachment C: Long Term Support Services

Description of Trapeze warranty and maintenance programs for the above mentioned applications.

ATTACHMENT A

ESTIMATED ANNUAL OPERATIONAL CHARACTERISTICS

Attachment A: Estimated annual operational characteristics

The following tables present Miami Dade's estimated fleet sizes and average weekday demand response trips for the term of the contract (2006 – 2010). Costs associated with the optional years (2011 through 2013) were determined employing the five (5) year average increase.

Average Weekday Demand Reponses Trips

To determine the estimates presented below, Trapeze calculated the average increase of the total annual trips for the STS service. These numbers were provided by MDT staff.

Annual Trip Growth			
Year	Annual Trips (Estimated)	Change from pervious year	% difference
2006	1,497,340	134,424	10%
2007	1,640,948	143,608	10%
2008	1,803,589	162,641	10%
2009	1,982,736	179,147	10%

Our analysis determined that the average increase in total annual trips is approximately 10%.

Currently, the demand response service at Miami Dade operates approximately 8,500 average weekday trips. These trips include a significant amount of Medicaid Trips. It is our understanding that the Medicaid trips will not increase year-over-year and will remain at approximately 2,000 average weekday trips.

The following table presents the calculations employed to determine the average weekday trips for the term of this agreement.

Step 1: (Total Average Weekday Trips – 2,000 Medicaid Trips)* 110% = Future Years STS Trips

Step 2: Future Years STS Trips + 2,000 Medicaid Trips = Total Average Weekday Trips

The following table presents the estimated average weekday trips for MDT's demand response services and the associated Trapeze license category for the term of this agreement.

Estimated Weekday Trip Average			
Year	Total Trips (Medicaid + STS)	Medicaid	STS
2006	9,150	2000	7,150
2007	9,865	2000	7,865
2008	10,652	2000	8,652
2009	11,517	2000	9,517
2010	12,468	2000	10,468

Applicable Products

Licensing for the following products is currently determined by the average weekday trip.

- PASS-CERT: Client registration and administration
- PASS-CT: Trip Booking, scheduling, dispatching and reporting for coordinated transportation
- INFO-COM: Complaints and commendations management
- INFO-WEB and IVR Server: Client trip cancellation and confirmation
- PASS-EDI: Medicaid exchange interface

Estimated Fleet Sizes

Demand Response Vehicles

The following table presents the estimated size of MDT's paratransit fleet for the term of this agreement. The values presented for years 2005 to 2009 were provided by MDT staff. The value for 2010 was estimated employing the average growth of the fleet in the previous four years (15%).

Annual Fleet Size (paratransit)		
Year	**# of Vehicles**	**Trapeze License Category**
2006	350	340 - 350
2007	382	380 - 390
2008	423	420 - 430
2009	486	480 - 490
2010	559	550 - 560

Applicable Products

Licensing for the following products is currently determined by the total fleet size for demand response vehicles.

- PASS-MON Server: Back Office integration application for mobile computing systems.

Fixed Route Vehicles: Peak Vehicle Requirements

The following table presents the estimated size of MDT's fixed route fleet (as presented by 'Peak Vehicle Requirements) for the term of this agreement. The values presented for years 2005 to 2009 were provided by MDT staff. The value for 2010 was estimated employing the average growth of the fleet in the previous three years (6%).

Estimated Annual Peak Vehicle Requirement (PVR)		
Year	**PVR**	**Trapeze License Category**
2006	942	750-950
2007	1012	>1000
2008	1063	>1000
2009	1063	>1000
2010	1127	>1000

Applicable Products

Licensing for the following products is currently determined by the peak vehicle requirements for fixed route services

- PLAN: Fixed route ridership and demographic analysis
- FX: Fixed route scheduling (route definition, trip building, blocking and rostering)
- BlockBuster: Advanced runcutting system
- MapMaker and Bus Stop Import Tool: Map and bus stop integration tools

Cost Methodology

The following information provides descriptions of the calculations employed to determine the costs associated with the long term support for the above mentioned products.

1. Annual Costs

Annual fees for each product are calculated as the net license fee + 20% of the gross license fee (i.e. support). These calculations are consistent with Trapeze's standard programs.

2. Additional Gross License Fees

As presented in the tables above, MDT operations anticipate growth of approximately 5 to 15% annually in fixed route and paratransit services (peak fixed route vehicles, average weekday booked trips, total paratransit vehicles). For each year within the term of the contract the respective operational characteristic was employed to determine the effective gross license fee. The previous gross license fee was then subtracted from the new value to determine the 'difference' in gross license fees.

The following example illustrates the above description employing PASS-CT.

Example of Gross License Calculations			
Year	Average Daily Weekday Booked Trips (ADWBT)	Gross License Fee associated with ADWBT	Difference (2007-2006)
2006	9150	534,675	N/A
2007	9865	602,217	67,542

In this example, the value of 67,542 would be the difference in gross licenses fee between the two years.

3. Additional Net License Fees

To determine the 'net' license fee associated with the annual costs a percentage of 25 – 50% of the gross license was employed, as negotiated with the MDT Information Technology team.

4. Long Term Maintenance

Long term maintenance is based on 20% of the associated gross license fee. This is consistent with Trapeze standard programs.

Additional Pricing Assumptions

The following assumptions were employed to determine implementation dates and the dates that warranty and maintenance on those applications that MDT has contracted for but have yet to implement.

Fiscal Year October - September		
INFO		
Year	**Web**	**IVR**
2005	Live - August 1st 2005	N/A
2006	Maintenance - September 1st, 2005	Implementation Services - IVR (Project start June, Live September)
2007	Maintenace	Warranty: Maintenance Starts October 2007
2008	Maintenance	Maintenance

ATTACHMENT B

PROPOSED COSTS

Attachment B: Proposed Costs

Breakdown of Year 1: 2006 Costs

Cost Breakdown for 'Year 1': 2006						
Products	2005 Costs		2006 Costs		Totals	From Proposed Totals
	Additional Licenses	Outstanding Maintenance	Additional Licenses	Maintenance		
PASS-CT	11,250	15,000	9,919	106,935	143,104	143,104
PASS-COM (INFO-COM)	16,950	11,000	3,140	19,394	50,484	50,484
PASS-CERT	-	10,220	2,529	18,543	31,292	31,292
PASS-EDI (Medicaid Interface)	-	4,900		12,348	17,248	17,248
PASS-IVR Server (1)	-	-	63,641			
PASS-WEB	30,019	-		20,269	113,929	113,929
PASS-MON Server	-	-	-	-	-	
FX	-	59,000	37,813	89,250	186,063	186,063
MapMaker	-	3,500		4,778	8,278	8,278
Workstations	-	11,900	-	11,900	23,800	23,800
Totals	58,219	115,520	117,041	283,416	574,197	574,197

Additional Products					
Products	2005 Costs	2006 Costs		Totals	Totals
	Project Fees (license/services/expenses)	Additional Licenses	Maintenance		
BlockBuster	298,190	-	*warranty*	298,190	298,190
PLAN	215,000	-	*warranty*	215,000	215,000

Notes

(1) Costs presented in 'additional licenses' column for 2006 include implementation for PASS-IVR Server Confirm/Cancel (51,237.00 US$)

B.1: Paratransit Technologies

		Proposed Costs						
Legend	Year	Product [support term] Average Weekday Booked Trips	PASS-CERT *[February to January]*	PASS-CT *[April to March]*	PASS-EDI (Medicaid Interface) *[April to March]*	PASS-COM *[April to March]*	PASS-WEB & IVR Server (Trip Confirmation/Cancellation) *[1 year from 'Go-Live']*	Totals
Proposed	Year 1 (2006)	9,150	31,292	143,104	17,248	50,484	113,929	356,057
	Year 2 (2007)	9,865	26,686	154,214	13,614	27,754	37,989	260,258
	Year 3 (2008)	10,652	30,315	174,675	15,009	31,334	36,216	287,549
	Year 4 (2009)	11,517	34,358	197,846	16,548	35,424	34,661	318,837
	Year 5 (2010)	12,468	38,929	199,117	17,375	40,111	39,579	335,111
Optional	Year 6 (2011)	13,715	52,125	204,267	18,244	45,389	43,141	363,167
	Year 7 (2012)	15,087	55,542	301,026	19,156	51,290	47,024	474,038
	Year 8 (2013)	16,595	64,002	316,453	20,114	57,958	51,256	509,782

B.2: Mobile Computing Technologies

Legend	Year	Total Vehicles	PASS-MON (Back Office Mobile Computing Server)
Proposed	Year 1 (2006)	350	-
	Year 2 (2007) (1)	382	296,739
	Year 3 (2008)	423	*warranty*
	Year 4 (2009)	486	115,425
	Year 5 (2010)	559	176,106
Optional	Year 6 (2011)	643	202,463
	Year 7 (2012)	739	232,832
	Year 8 (2013)	850	267,757

Notes: (1) Year 2 represents original implementation services of $297,905 US

B.3: Fixed Route Technologies

		Proposed Costs						
Legend	Year	Product [support term] Peak Vehicles	FX *[July to June]*	MapMaker & Bus Stop Import *[November to October]*	BlockBuster *[1 year from 'Go-Live']*	PLAN *[1 year from 'Go-Live']*	Enterprise Workstations *[July to June]*	Totals
	Year 1 (2006)	949	186,063	8,278	298,190	215,000	23,800	731,330
	Year 2 (2007)	1012	73,999	6,450	*warranty*	*warranty*	11,900	92,348
Proposed	Year 3 (2008)	1063	89,137	6,772	55,125	29,106	11,900	192,040
	Year 4 (2009)	1063	93,594	7,111	57,881	30,561	11,900	201,047
	Year 5 (2010)	1063	107,274	7,466	60,775	40,112	11,900	227,527
	Year 6 (2011)	1063	112,187	7,840	63,814	42,117	11,900	237,858
Optional	Year 7 (2012)	1063	117,347	8,232	67,005	44,223	11,900	248,706
	Year 8 (2013)	1063	123,214	8,643	70,355	46,434	11,900	260,547

ATTACHMENT C

LONG TERM SUPPORT SERVICES

Attachment C. Long-Term Customer Support

At Trapeze, we are committed to ensuring that our clients receive excellent customer care. As such, our support programs are designed so that we can be as responsive and effective as possible.

In this section, we describe our warranty and maintenance programs.

C.1 Standard Support Services

Our standard services consist of the following: user support, including the call center and the services of customer care representatives; product upgrades, including patches and new releases; and training and education.

C.1.1 User Support

Trapeze has a well-established system in place to respond quickly and effectively to problems or incidents reported by users of our software.

It begins with a call center receptionist, who responds to service requests that come in from a variety of sources, including telephone, email, fax, and Trapeze's Internet support channel (see discussion below). The receptionist collects vital information about the service request. The request is then entered into a queue, assigned a ticket number (which is communicated to the client), and prioritized. The work request is promptly assigned to a customer care representative whose skill set matches the issue at hand.

The customer service representative will investigate the issue and will take the most appropriate course of action to resolve it. This may include making modifications to the software or the data, creating a workaround, or providing training. Once the issue has been resolved, a call center operator follows up to ensure that the client is satisfied. If there are further problems the call center receptionist re-opens the ticket or opens a new ticket.

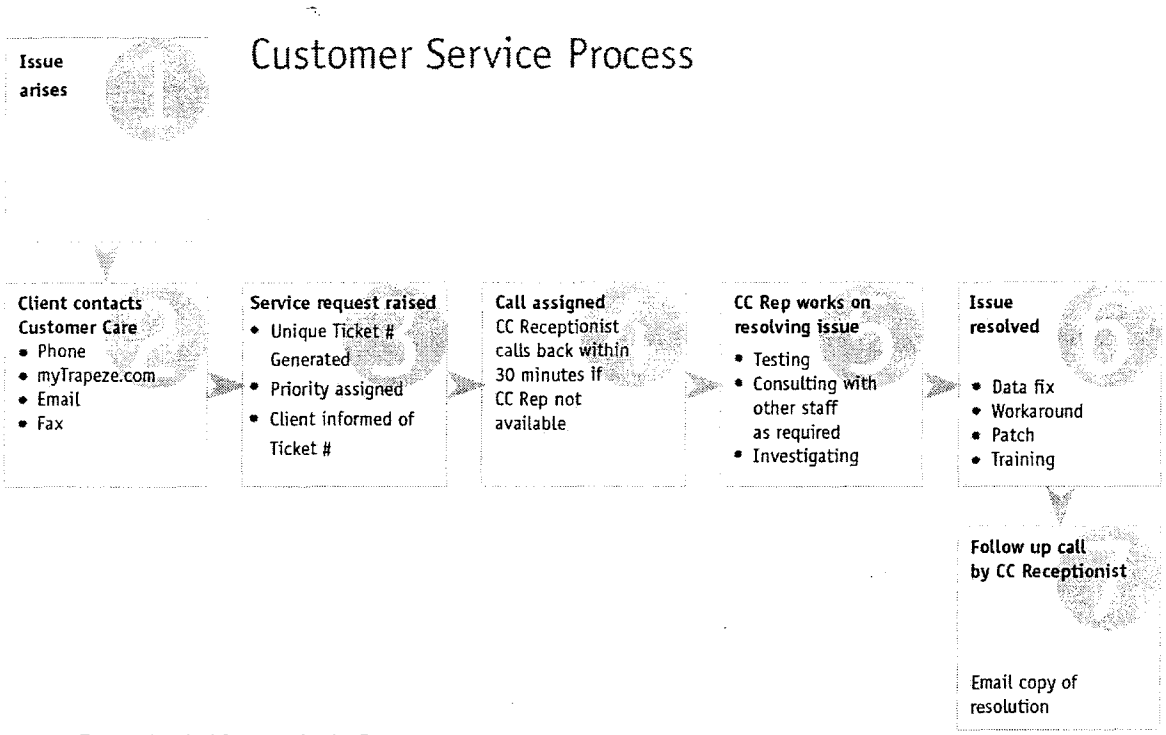


Figure 1: Trapeze Standard Customer Service Process.

The Priority System

Trapeze Customer Care strives to resolve reported issues within a reasonable timeframe. The speed with which issues are addressed depends on their severity. To help us respond appropriately to our customers' support needs, we have developed a system to prioritize incoming requests.

Priority 1

A reported problem in the software, or one of its necessary components, has caused the software to cease functioning or has caused a complete system shutdown. Incidents that may result in downtime and prohibit our clients from carrying on procedures that are crucial to the operations are immediately addressed.

A problem of this level is addressed immediately.

Priority 2

A reported problem in the software or one of its necessary components that has caused a serious disruption of a major business function and cannot be temporarily solved by an alternative method or 'work around'.

A problem of this level is addressed through an interim build, if necessary.

Priority 3	A reported problem in the software or one of its necessary components for which a temporary 'work around' is readily known and available. A problem of this level is addressed through an interim build, if necessary.
Priority 4	A reported problem, question or request that is not included in the definitions of Priority 1, 2 or 3, and demands less immediate attention than said priorities. A problem of this level is addressed through an interim build, if necessary.
Priority 5	A problem of cosmetic nature that may be corrected in the next release or standard upgrade.

Telephone Support

Trapeze provides 24-hour, 7-days-a-week support. Our 1-800 telephone support line is agent attended Monday to Friday, 8 a.m. to 8 p.m. EST. Response time is generally within two hours. Requests for service that are received via **fax** or **e-mail** are handled by our call center receptionist the same way as incoming telephone calls: the ticket number is generated and communicated to the client by a call center receptionist.

Internet Support—MyTrapeze.com

In addition to our telephone support program, we have launched a Web site called MyTrapeze.com, (www.mytrapeze.com) which enables clients to log in to perform a variety of support-related tasks. The site is restricted to registered users, and individual companies can track their requests and the status of the issues they have reported. The MyTrapeze.com site also acts as a forum for Trapeze users and enables clients to share information, discuss 'hot topics,' and play an active role in the development of the products.

Features

- Share ideas, discuss issues, ask advice, and converse with other Trapeze users.
- Access articles and reports written by Trapeze experts about the products they use.
- Submit service requests and new feature requests, indicating the urgency level and the most efficient way for Trapeze support specialists to contact you.

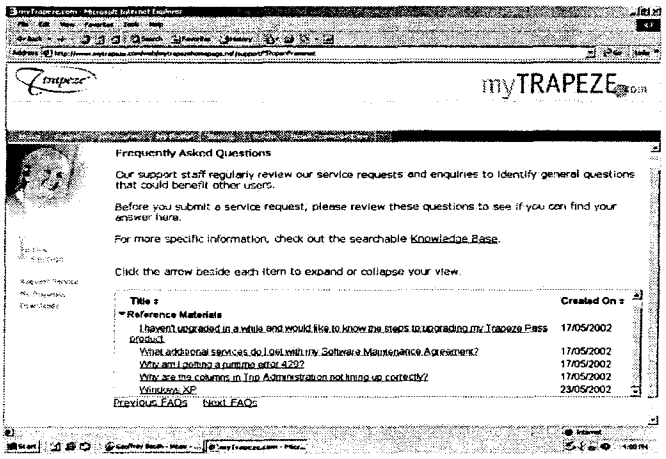


Figure 2: MyTrapeze.com.Trapeze's convenient Internet support channel

- Check the status of your logged issues.
- Provide feedback on training, products, projects and people
- Download product updates from the FTP site
- Look up frequently asked questions and responses

C.1.2 Product Upgrades

As new features and functionality are developed and new technologies are integrated into our products, we release updates to our clients. There are a number of different types of upgrades that are provided through our long term customer care program. These are briefly described below.

In order to ensure the speedy installation of corrections and upgrades, clients must have a modem, direct phone access, and communication and e-mail software.

Interim Product Builds

Interim product builds, also called patches, are used to resolve software problems that have not been assigned Priority 1 status, i.e. that do not require immediate resolution. These patches are generally available for download from the MyTrapeze.com customer support site or they can be downloaded from a CD-ROM.

Patches are identified by a patch number after the product version and release numbers.

e.g. Trapeze 4.51.**28**

Standard Software Upgrades

Modifications to the software occur periodically, and Trapeze ensures that generic enhancements become part of a standard upgrade of the product. These standard upgrades, also called releases, are made available to clients who have contracted for such services as part of the long-term support program. We are committed to releasing at least one major upgrade annually. Services associated with software upgrades, such as installation, user training, and conversion of datasets, are typically not included in the software upgrade programs.

Releases are identified by a release number after the product version number.

e.g. Trapeze 4.**51**

Non-Standard Software Upgrades and Conversions

Trapeze is striving not only to meet the needs of the industry in general but also the specific needs of every client. As such, upgrades specific to the operating environments of individual sites are made available as non-standard upgrades. These upgrades are only available to clients that participate in our long-term support program.

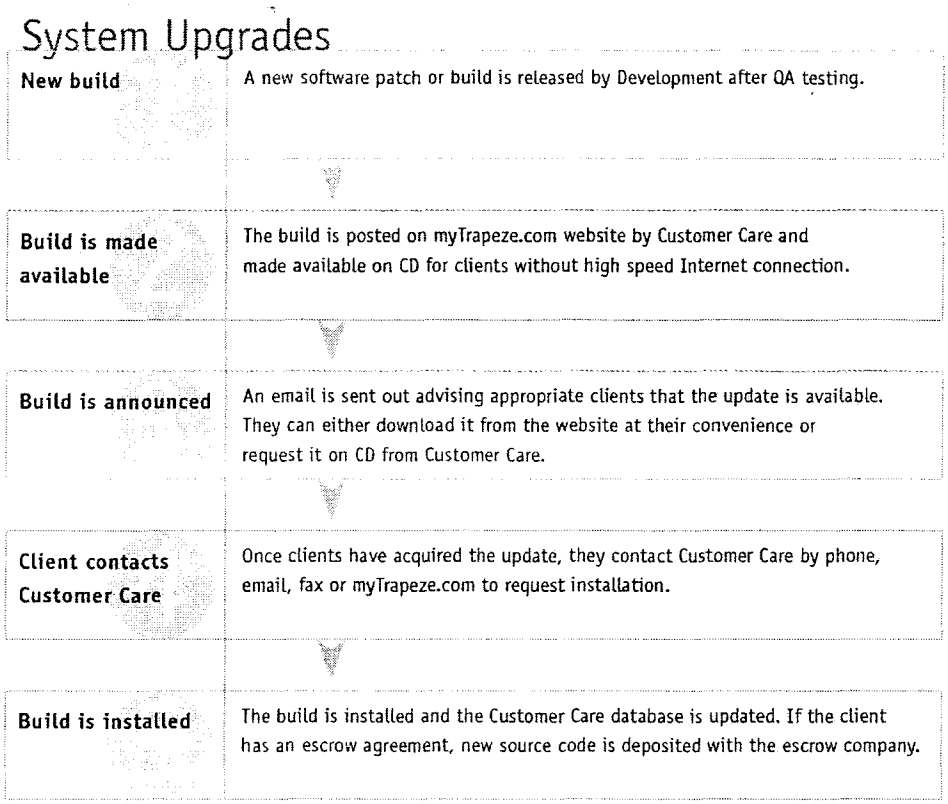


Figure 3: Trapeze's Standard Product Upgrade Process.

C.1.3 Education Services

Trapeze offers ongoing training services re through our long-term support program. This training is handled through WebEx sessions. The WebEx program, which enables users to "share" computer desktops while in different locations, allows Trapeze to train and support its clients regardless of where they are located. Online training sessions are scheduled monthly and are available to clients as part of our customer support programs. Please refer to www.trapezesoftware.com or www.mytrapeze.com for more information on the sessions.

Education services that take place at client sites and at Trapeze's Training Center are not included in the standard support program. For these services, a separate fee applies. For more information, see the next section.

C.2 Non-Standard Support Services

In addition to the services described above, Trapeze offers support services that are not included in the standard warranty and maintenance agreements. These services include additional hardware and system software support, education, source in escrow and consulting services.

C.2.1 Hardware and System Software Support

For customers seeking support for hardware and third-party software provided by Trapeze, we offer manufacturers' standard warranties. Under most circumstances, extended warranty programs are available upon request.

Trapeze offers a number of support services through our Information Technology group, such as:

- Hardware configuration and analysis procedures
- Hardware and third party product installation
- Network consulting (at time of installation or on an ongoing basis)
- Database administration
- Application hosting

C.2.2 Regional Training Services

To provide our clients with ongoing training, Trapeze schedules training workshops throughout the year. In addition to the workshops held in our Scottsdale, Arizona Training Center, we hold workshops in various locations across North America and in Europe to enable users from different regions to attend without incurring high travel costs. The topics of the workshops are selected from the most frequent client requests.

Trapeze training services are designed for clients who participate in our long-term service programs; however, training center and workshop fees, travel, and accommodations are the responsibility of participants.

C.2.3 User Conferences

To enhance education services for our clients, we hold annual user conferences in North America and Europe. These conferences provide our clients with an opportunity to acquire training on the latest features in Trapeze and to interact with other transit organizations and service providers. The conferences also enable Trapeze to learn more about the needs of our clients and the industry in general. These events are ideal for new and experienced Trapeze users alike. Our sessions, speakers and demonstrations are designed for a wide range of transportation professionals, including executives, schedulers, dispatchers, administrators, mangers, planners, IT specialists and consultants.

To date, in North America we have held twelve successful conferences that focused on our clients' interests. Our 2005 North American User Conference (12th Annual), held in Phoenix, AZ, was attended by approximately 350 delegates from 140 different sites across North America.

Trapeze user conferences are only available to customers who participate in our warranty or maintenance programs. Registration fees, travel and accommodations are the responsibility of participants.

C.2.4 Source in Escrow Services

Trapeze provides a source in escrow service for clients who may wish to have additional protection for the Trapeze software products they have licensed. We can register our clients with a software escrow agent, giving our clients rights to the product source code in the unlikely event that Trapeze ceases to function as a 'going-concern' entity of one form or another. Having the source in escrow is a smart investment that provides an insurance policy by ensuring access to the code for development of the products.

C.2.5 Consulting Services

Our consulting services help our clients use Trapeze software more effectively, and they also supply valuable operational insight. Our consultants review our clients' hardware and software configurations, and they analyze procedures related to the software's use. Trapeze consultants also possess expertise in integrated transportation, intelligent transportation systems, and system planning and scheduling.

Annual reviews provided by Trapeze consultants form another component of our consulting services. These reviews, which are provided as an additional component of the customer care program, determine whether Trapeze products are being employed as effectively as possible. The Trapeze consultant will also report on information technology innovations and industry trends. Our in-house expertise in data and software analysis combined with our real-world operations experience result in a review process that will help maximize your investment in Trapeze software.

Trapeze consulting services include:

Operations Reviews

- Review of software use and scheduling procedures
- Analysis of staff skills and training needs
- Management recommendations

Testing and Analysis

- Third party dataset (e.g. mapping) analysis
- Calibration and testing of Trapeze costing and batching parameters

- Violation sets analysis
- Peer-to-peer analysis
- Backup procedures analysis

Benchmarking

- Assistance in establishing benchmark objectives, enabling clients to accurately measure the effectiveness of their operations.
- Identifying key operational characteristics before the implementation of an application to support post-implementation cost-benefit analyses.

For more information about our consulting services, please contact your Trapeze Account Manager or a Customer Care representative.

EXHIBIT B

SOFTWARE LICENSE AGREEMENT

Client Ref: Miami Dade County

SOFTWARE LICENSE AGREEMENT

This Agreement effectively made this __ day of ____, 2005, between:

Name and Address of Trapeze:
Trapeze Software Group Inc., an Arizona corporation ("Trapeze"), with its principal place of business at:

8360 East Via de Ventura
Scottsdale, Arizona 85258
United States of America

Name and Address of Licensee
Miami-Dade County ("Licensee"), a political subdivision of the State of Florida, with its principal place of business at:
111 North West First St., Suite 510
Miami, Florida 33128
United States of America

Trapeze Contact Office: Contracts Department
Telephone: (905) 629-8727
Facsimile: (905) 629-2585

Licensee Contact Office: Information Technology Services
Telephone: 305-375-3651
Facsimile: 305-375-4608

This Agreement, together with the Services Agreement, represents the complete and exclusive agreement between Trapeze and Licensee concerning the Software and Services and all related matters and supersedes all prior agreements, negotiations, discussions or understandings between Trapeze and Licensee in any way relating to these matters. No other terms, conditions, representations, warranties or guarantees, whether written or oral, express or implied, shall form a part hereof or have any legal effect whatsoever. Any Purchase Order issued by Licensee further to this Agreement shall be exclusively bound by the terms and conditions of this Agreement. This Agreement may not be modified except by a later written agreement signed by both parties.

Trapeze and Licensee acknowledge having read and understood this Agreement and agree to be bound by its terms and conditions.

TRAPEZE SOFTWARE GROUP, INC.

Signature: _____
Name: Simon Parmar
Title: Chief Financial Officer

MIAMI DADE COUNTY

Signature: _____
Name:
Title:

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

_____
Miami-Dade County Transit Counsel

_____
Trapeze Counsel

TERMS AND CONDITIONS

NOW THEREFORE, the parties agree as follows:

1. Definitions In this Agreement, unless the context requires otherwise, the capitalized words set out below shall have the following meanings:

"Agreement"	this software license agreement effectively made as of the __ day of _____, 2005, between Trapeze and Licensee, and the attached exhibits all of which form an integral part of this Agreement and any written amendments;
"Documentation"	the user documentation pertaining to the Software as supplied by Trapeze, which may include operator's and user's manuals, training materials, guides, listings, design documents, specifications, commentary, and other materials or documents that explain the performance , function, or operation of the Software;
"Maintenance Agreement"	the agreement effectively made as of the ___ day of _____, 2005, between Trapeze and License setting out the terms and conditions by which Trapeze agrees to supply long-term maintenance and support for the use by Licensee of the Software, and any attached exhibit(s) thereto;
"Services Agreement"	the Trapeze Software Implementation, Technical Support, and Maintenance Service (Contract # BW7961-3/11) between Trapeze and Licensee dated December 6, 2005.
"Software"	the certain software as identified in Exhibit A;
"Trade Secrets"	the Software, Documentation, and other related information (including all customizations and modifications developed for Licensee) disclosed to Licensee under this Agreement, including trade secrets and other confidential and proprietary information of Trapeze.

2. License Trapeze grants to Licensee a personal, non-transferable and non-exclusive license restricted for use by Licensee at their place of business:

   (a) to use one production copy of the executable code version of the Software, in the form supplied by Trapeze, on hardware approved by Trapeze; and

   (b) to use the Documentation, but only as required to exercise this license.

Licensee may make two back-up copies of the Software. Licensee may use the production copy of the Software solely to process Licensee's own data. The Software may not be used on a service bureau or similar basis to process data of others.

Licensee shall make no attempt to reverse compile, disassemble, or otherwise reverse engineer all or any part of the Software. Other than the rights of use expressly conferred upon Licensee by this paragraph, Licensee shall have no further rights to use the Software or Documentation. Licensee shall not copy, reproduce, modify, adapt or translate them, without the express written consent of Trapeze. Licensee shall not permit disclosure of, access to, or use of the Software by any third party unless authorized in writing by Trapeze.

3. Payment Trapeze will invoice Licensee for the license fees, service fees and related expenses in accordance with the Services Agreement.

4. Trade Secrets Licensee acknowledges that the Trade Secrets are owned by Trapeze or Trapeze has the rights of use and Licensee will maintain the Trade Secrets in confidence and not disclose the Trade Secrets to any third party without Trapeze's prior written consent. These obligations of confidentiality shall survive termination of this Agreement.

5. Media Neither party shall communicate with representatives of the general or technical press, radio, television, or other communication media regarding the work under this Agreement without the prior written consent of the other party. Neither party nor any of its personnel shall publish or reproduce or arrange press releases regarding the other party without the prior written consent of the other party upon such terms as may be agreed.

6. Publication Each party reserves the right to publish, after discussion with the other party, the results of the work done under this Agreement.

7. Warranty

(a) Trapeze warrants the Software to operate in all material respects as specified in the Documentation for a period of twelve (12) months from the "go live" date of the Software, and Trapeze shall be responsible for using reasonable efforts to correct, at its own expense, any defects in the Software that are brought to Trapeze's attention by Licensee within this period.

Licensee acknowledges and agrees that as of the effective date of this Agreement, certain of the Software applications have been in a live environment for greater than twelve months and are therefore subject to the applicable maintenance terms and conditions of the Services Agreement and Maintenance Agreement.

(b) Trapeze warrants that the Software shall not contain viruses that are detectable through currently available commercial means or preprogrammed devices which will cause any software utilized by the Licensee to be erased or become inoperable of processing accurately and in accordance with the warranties specified herein.

This warranty is in lieu of all other warranties, conditions or other terms, express or implied concerning the Software. It excludes any warranty, condition or other term which might be implied or incorporated into this Agreement, whether by statute, regulation, common law, equity or otherwise, including any implied warranties or conditions of quiet usage, merchantability, merchantable quality and fitness for a particular purpose, or from the course of dealing or usage of trade as allowed by law. In particular, Trapeze does not warrant that: (i) the Software will meet any or all of Licensee's particular requirements; (ii) that the operation of the software will operate error free or uninterrupted; or (iii) all programming errors in the software can be found in order to be corrected.

8. Indemnity Trapeze shall defend Licensee in respect of any claims brought against Licensee by a third party based on the Software infringing a copyright owned by this third party. Trapeze shall pay any award rendered against Licensee by a court of competent jurisdiction in this copyright action, as long as Licensee gives Trapeze prompt notice of the claim and Trapeze is permitted to have full control of any defence. If all or any part of the Software becomes, or in Trapeze's opinion is likely to become, the subject of such a claim, Trapeze may either modify the Software to make it non-infringing or terminate this Agreement as it relates to the infringing portion of the Software. This is Trapeze's entire liability concerning intellectual property infringement. Trapeze shall not be liable for any infringement or claim based upon any modification developed by Licensee, or use of the Software in combination with software or other technology not supplied or approved in advance by Trapeze, or use of the Software contrary to Trapeze's instructions or the Documentation.

9. Exclusion of Claim and Liability

(a) Trapeze and Licensee do not rely on and shall have no remedy arising from any statement, representation, warranty or understanding (whether negligently or innocently made) of any person (whether party to this Agreement, or not) other than as expressly set out in this Agreement.

(b) The only remedy available to Licensee for breach of warranty is for breach of contract under the terms of this Agreement. This does not preclude a claim for fraud.

(c) **Trapeze's entire liability and responsibility for any claims, damages or losses whatsoever arising from or in connection with this Agreement or the use of the Software (whether or not in the manner permitted by this Agreement, including claims for contract, tort, misrepresentation, breach of duty or otherwise) or the development, modification or maintenance of the Software shall be absolutely limited to the amount(s) of the License Fees paid by the Licensee.**

(d) **Trapeze shall not in any event be liable to the Licensee or any third party for losses or damages suffered by Licensee or any third party, whether suffered directly or indirectly or that are immediate or consequential (to the fullest extent permitted by law), which fall within the following categories:**

i) special damages, even though Trapeze was aware of the circumstances in which such special damage could arise, on condition that Trapeze makes Licensee aware of any advance knowledge of special damages being caused;

ii) loss of profits; anticipated savings; business opportunity or goodwill; and,

iii) loss of data or information of any kind.

(e) Paragraphs (c) and (d) do not apply to claims arising out of death or personal injury caused by either party's gross negligence or fraudulent misrepresentation.

10. Termination

(a) The license granted by this Agreement is effective until terminated.

(b) Trapeze has the right to terminate the license granted under this Agreement if Licensee is in default of any term or condition of this Agreement, and fails to cure such default within seven (7) days after receipt of written notice of such default. Without limitation, the following are deemed Licensee defaults under this Agreement: (i) Licensee fails to pay any amount when due hereunder; (ii) Licensee becomes insolvent; or (iii) any proceedings shall be commenced by or against Licensee under any bankruptcy, insolvency or similar laws.

(c) If Licensee develops software that is competitive with the Software or Licensee is acquired by or acquires an interest in a competitor of Trapeze, this Agreement shall terminate immediately.

(d) If the license granted under this Agreement is terminated, Licensee shall immediately return to Trapeze all copies of the Software, the Documentation and other materials provided to Licensee pursuant to this Agreement and will certify in writing to Trapeze that all copies or partial copies of the Software, the Documentation and such other materials have been returned to Trapeze or destroyed.

11. Force Majeure Neither party shall be responsible for, and the performance of obligations shall automatically be postponed as a result of, delays beyond the effected party's reasonable control, provided that such party notifies the other party of its inability to perform with

reasonable promptness and performs its obligations hereunder as soon as circumstances permit.

12. Assignment This Agreement, or any of the rights or obligations of Trapeze created herein, may be assigned by Trapeze, but this Agreement is for the sole benefit of Licensee and may not be assigned by Licensee without the express written consent of Trapeze.

13. Applicable Law This Agreement shall be governed by and construed in accordance with the laws of the State of Florida.

14. Notices All notices hereunder shall be in writing and shall be duly given if delivered personally or sent by registered or certified mail, return receipt requested, postage prepaid, to the respective addresses of the parties appearing on page one of this Agreement. Any notice given shall be deemed to have been received on the date, which it is delivered if delivered personally, or, if mailed, on the fifth business day next following the mailing thereof. Either party may change its address for notices by giving notice of such change as required in this section.

15. Audits Trapeze may perform audit(s) on the use of the Software and Documentation upon giving Licensee a minimum of five (5) business days' written notice. Licensee agrees to make the necessary operational records, databases, equipment, employees and facilities available to Trapeze for the audit(s). The purpose of the audit will be to verify compliance with the terms and conditions of this Agreement.

16. Escrow Services Trapeze shall keep and maintain current copies of the software source code, including all customizations created, designed and/or implemented on behalf of Licensee, with an independent escrow agent, as per Trapeze's standard Source Code Escrow Agreement. Upon Licensee's payment of the escrow fees to Trapeze, Licensee shall then be entitled, upon the occurrence of conditions set out in the terms of release set out in the Source Code Escrow Agreement, to release of the source code.

17. Trapeze and Licensee acknowledge and agree that this Agreement shall supersede, replace and take precedence over the following previous Software License Agreements:

    (a) Software License Agreement included as Attachment C to Contract No. TA94-TSS dated June 22, 1998 for the Trapeze FX product.

    (b) Software License Agreement dated March 13, 2002, for the Trapeze PASS CT, PASS COM, PASS CERT, PASS MON, PASS IVR (Confirm/Cancel), PASS WEB, and Malteze (Medicaid Interface).

    (c) Software License Agreement dated July 5th, 2004 for the Trapeze Mapmaker product.

    (d) Software License Agreement dated July 5th, 2004 for workstations used for all Trapeze products licensed to Licensee as of July 5th, 2004.

EXHIBIT A

Item	Licensed Product	Product Description	Configuration
1	Trapeze FX	Route Definition, Trip Building, Blocking and Rostering for Fixed Route Services	Enterprise license
2	Trapeze PASS CT	Paratransit Trip Booking, Scheduling and Dispatching	Enterprise license
3	Trapeze PASS COM	Customer Communications Management	Enterprise license
4	Trapeze PASS CERT	Client Registration and Certification	Enterprise license
5	Trapeze PASS MON	Back Office integration technology for mobile computing systems	Enterprise license
6	Trapeze PASS IVR	Confirm/Cancel	Enterprise license
7	Trapeze PASS WEB	Registration and Confirm/Cancel	Enterprise license
8	Trapeze PASS EDI	Electronic Data Interface for Medicaid Services	Enterprise license
9	Trapeze Mapmaker		Enterprise License
10	Trapeze Blockbuster	Advanced Runcutting for Fixed Route Services	Enterprise License
11	Trapeze PLAN	Fixed Route Ridership and Demographic Analysis	Enterprise License
12	Trapeze Malteze	Transit Database	Enterprise License

1. The licensed number of trips per day (for paratransit applications) and peak vehicles (for fixed route applications) will be determined in accordance with the terms of Exhibit A ("Contracted Products") of the Services Agreement.
2. Third Party Runtime licenses, if required to operate the Software are not included.
3. Proposed software solution is designed for the ***Windows 2000/XP*** operating environments, with an ODBC database infrastructure (Malteze) designed by and proprietary to Trapeze, configured for the Oracle 8/MS SQL database engine.
4. Third Party data, hardware and system/operating software are not included in License fees.
5. Trapeze will assist in reviewing hardware specifications, however the Licensee is responsible for purchasing hardware and the pre-requisite products.
6. Any components may be operated on any of the workstations within a configuration approved by Trapeze. Licenses for additional local or remote workstations may be purchased at the then current rates.
7. Access rights to the Malteze infrastructure or application interfaces for any components that are not Trapeze compliant/sanctioned are charged at the then current rate per application, unless otherwise approved by Trapeze.

EXHIBIT C

SOFTWARE MAINTENANCE AGREEMENT

SOFTWARE MAINTENANCE AGREEMENT

This Agreement effective on the date set forth above, between:

Name and Address of Licensor:
Trapeze Software Group, Inc, an Arizona corporation ("Trapeze"), with its principal place of business at:
8360 East Via de Ventura
Scottsdale, Arizona 85258
United States of America

Name and Address of Licensee
Miami Dade County, ("Licensee"), a political subdivision of the State of Florida, with its place of business at:
111 NW First St., Suite 510
Miami, Florida, 33128
United States of America

With the exception of the Services Agreement, this Agreement represents the complete and exclusive agreement between Trapeze and Licensee concerning long term support and maintenance services and all related matters and supersedes all prior agreements, negotiations, discussions or understandings between Trapeze and Licensee in any way relating to these matters. No other terms, conditions, representations, warranties or guaranties, whether written or oral, express or implied shall form a part of this Agreement or have any legal effect whatsoever. This Agreement may not be modified except by a later written agreement signed by both parties.

Trapeze and Licensee acknowledge having read and understood this Agreement and agree to be bound by its terms and conditions.

TRAPEZE SOFTWARE GROUP, INC.

Signature: _____
Name: Simon Parmar
Title: Chief Financial Officer

MIAMI-DADE COUNTY

Signature: _____
Name:
Title:

APPROVED AS TO FORM

_____
Trapeze Counsel

_____
Miami-Dade County Transit Counsel

TERMS AND CONDITIONS

NOW THEREFORE the parties agree as follows:

1. Definitions In this Agreement, unless the context requires otherwise, the capitalized words set out below shall have the following meanings:

"Agreement"	this software maintenance agreement effectively made as of the 6th day of December, 2005, between Trapeze and Licensee, setting out the terms and conditions by which Trapeze agrees to supply maintenance and support services to Licensee related to the use of the Software by Licensee, and the attached exhibits;
"Confidential Information"	all information obtained by the parties from each other under this Agreement, but does not include any information, which at the time of disclosure is generally known by the public.
"License Agreement"	the software license agreement effectively made as of December 6, 2005, between Trapeze and Licensee, and the attached exhibits, providing for the licensed use of certain Trapeze software products;
"New Product"	any update, new feature or major enhancement to the Software that Trapeze markets and licenses for additional fees separately from Upgrades;
"Services Agreement"	the Trapeze Software Implementation, Technical Support, and Maintenance Service (Contract # BW7961-3/11) between Trapeze and Licensee and dated December 6, 2005.
"Upgrades"	generic enhancements to the Software that Trapeze generally makes available as part of its long term software support program.

All other capitalized words or phrases in quotations marks as used in this Agreement shall have the same meaning as in the License Agreement.

2. Effect of Agreement The parties acknowledge and agree that this Agreement shall supersede, replace and take precedence over the following previous Software Maintenance Agreements:

   (a) Software Maintenance Agreement included as Attachment C-1 to Contract No. TA94-TSS dated June 22, 1998 for the Trapeze FX product.

   (b) Software Maintenance Agreement dated March 13, 2002, for the Trapeze PASS CT, PASS COM, PASS CERT, PASS MON, PASS IVR (Confirm/Cancel), PASS WEB, and Malteze (Medicaid Interface).

   (c) Software Maintenance Agreement dated June 5th, 2004 for the Trapeze Mapmaker product.

   (d) Software Maintenance Agreement dated July 5th, 2004 for workstations used for all Trapeze products licensed to Licensee as of July 5th, 2004.

3. Maintenance and Support Services Trapeze agrees to provide the following software maintenance and support services during the term of this Agreement:

   (a) Trapeze will maintain the Software so that it operates in conformity, in all material respects, with the descriptions and specifications for the Software set out in the Documentation.

   (b) If Licensee detects any errors or defects in the Software, Trapeze will provide reasonable support services through a telephone software support line from Monday to Friday, 8 a.m. to 8 p.m. EST. Upon registration by Licensee, Trapeze will also provide Licensee with access to its software support website.

   (c) Trapeze will provide written updates to Licensee detailing the Upgrades of the Software and New Products.

   (d) At Licensee's request, Trapeze shall provide Licensee with Upgrades of the Software at no additional charge.

   (e) Licensee shall be entitled to acquire a license to New Products for Trapeze's then current license fees. Software Upgrades and New Products will be provided with updated Documentation where available and appropriate.

   (f) Trapeze will respond promptly and appropriately to Licensee's support needs, in accordance with the following timelines:

Priority 1	A reported problem in the software, or one of its necessary components, has caused the software to cease functioning or has caused a complete system shutdown. Incidents that may result in downtime and prohibit our clients from carrying on procedures that are crucial to the operations are immediately addressed. **A problem of this level will be addressed immediately.**
Priority 2	A reported problem in the software or one of its necessary components that has caused a serious disruption of a major business function and cannot be temporarily solved by an alternative method or 'work around'. **A problem of this level is addressed through an interim build, if necessary.**

Priority 3 A reported problem in the software or one of its necessary components for which a temporary 'work around' is readily known and available.

A problem of this level is addressed through an interim build, if necessary.

Priority 4 A reported problem, question or request that is not included in the definitions of Priority 1, 2 or 3, and demands less immediate attention than said priorities.

A problem of this level is addressed through an interim build, if necessary.

Priority 5 A problem of cosmetic nature that may be corrected in the next release or standard upgrade.

4. Extras The support services shall not include, and Licensee shall pay additional fees for, any and all consulting, implementation, customization, education and training related services, where such services are not otherwise included in the Services Agreement.

5. Fee Licensee shall pay the annual maintenance fees to Trapeze as provided in the Services Agreement. Trapeze and Licensee agree that the annual maintenance fees for any maintenance years not provided for in the Services Agreement will be the result of the license fee, based on the peak number of vehicles or the peak number of vehicles as carried out by Licensee at the maintenance anniversary date, multiplied by the license fee percentage, all according to the standard Trapeze price list at that time.

6. Restricted Use All Documentation, Upgrades, New Products, and any other materials provided to Licensee under this Agreement will be subject to the same terms and rights of use as apply to the Software and Documentation under the License Agreement.

7. Remote Access Licensee shall at its expense and at Trapeze's request provide Trapeze with the right of remote access to Licensee's computers on which the Software is installed, so as to enable Trapeze to monitor the operation of the Software and provide maintenance and support services under this Agreement.

8. Extra Fees, Interest on Overdue Accounts and Taxes Trapeze will invoice Licensee for any services outside the scope of this Agreement (including installation, customization, training and other services) and related expenses on a monthly basis for such services performed and expenses incurred during each month. All such services shall be performed under a written work order to be agreed to by both parties. Overdue payments shall bear interest at the annual rate of fifteen percent (15%) on the amount outstanding from the date when payment is due until the date payment in full is received by Trapeze. Licensee will provide Trapeze with a copy of its tax exemption certificate.

9. Confidentiality The parties will not disclose Confidential Information to third parties, without the prior written consent of the other party.

10. Term The initial term of this Agreement shall be for a period of one (1) year commencing on the effective date of this Agreement, and it shall be automatically renewed as long as Licensee remains licensed by Trapeze to use the Software, unless earlier canceled in writing by either party at any time upon 90 days written notice. If this Agreement is terminated by Licensee or is not renewed annually, Licensee acknowledges there may be additional costs and fees associated with and the issuance of a new Software Maintenance Agreement.

11. Termination

(a) This Agreement shall automatically terminate if Trapeze or Licensee terminates the License Agreement.

(b) Either party has the right to terminate this Agreement if the other party fails to perform any obligation hereunder, and if such default has not been cured within fifteen (15) days after receipt of notice of such default.

(c) Either party may terminate this Agreement by written notice if the other party becomes insolvent or bankrupt.

(d) The obligations of each party pertaining to Confidential Information and taxes shall survive the termination of this Agreement.

12. Force Majeure Neither party shall be responsible for, and the performance of obligations shall automatically be postponed as a result of, delays beyond the effected party's reasonable control, provided that such party notifies the other party of its inability to perform with reasonable promptness and performs its obligations hereunder as soon as circumstances permit.

13. Limited Warranty Trapeze warrants that during the term of this Agreement, it will maintain the Software in accordance with the terms and conditions of this Agreement, based on the professional standards that it utilises for all of its customers in the transit industry within North America.

Except as explicitly stated in this Agreement, there are no conditions, warranties or other terms binding on the parties concerning the services contemplated under this Agreement. This Agreement excludes any condition, warranty or other term which might be implied or incorporated into this Agreement, whether by statute, regulation, common law, equity or otherwise, including any implied warranties or conditions of quiet usage, merchantability, merchantable quality and fitness for a particular purpose, or from the course of dealing or usage of trade (as allowed by law). In particular, Trapeze does not warrant that: (i) the Software will meet any or all of Licensee's particular requirements; (ii) that the operation of the software will operate error free or uninterrupted; or (iii) all programming errors in the software can be found in order to be corrected.

14. Exclusion of Claims and Liability

a) Trapeze and Licensee do not rely on and will have no remedy arising from any statement, representation, warranty or understanding (whether negligently or innocently made) of any person (whether party to this Agreement or not) other than as expressly set out in this Agreement. The only remedy available to Licensee for breach of warranty is for breach of contract under the terms of this Agreement. This does not preclude a claim for fraud.

b) Trapeze does not guarantee the privacy, security, authenticity or non-corruption of any information transmitted through the internet or any information stored in any system connected to the internet. Trapeze shall not be responsible for any claims, damages, costs or losses whatsoever arising out of or in any way related to Licensee's connection to or use of the internet.

c) Trapeze will not be liable to Licensee or any third party for any claims, expenses, damages, costs or losses whatsoever arising out of or in any way related to:

(i) Licensee's use of map or geographical data, owned by Licensee or any third party, in conjunction with the Software or otherwise; or

(ii) Licensee's use of the Software insofar as such Software may be used to store, transmit, display, disclose or otherwise use data or information which is considered private, confidential, proprietary or otherwise exempt from public disclosure under applicable law.

(d) Trapeze's entire liability and responsibility for any claims, damages, costs or losses whatsoever arising either jointly or solely from or in connection with this Agreement or the Software License Agreement, or the use of the Software (whether or not in the manner permitted by this Agreement), including claims for breach of contract, tort, misrepresentation, or otherwise, or the development, modification or maintenance of the Software will be absolutely limited to the amount of the license fees paid by Licensee.

(e) Trapeze will not be liable to the Licensee or any third party for losses or damages suffered by Licensee or any third party which fall within the following categories:

i) incidental or consequential damages, whether foreseeable or not;

ii) special damages even if Trapeze was aware of circumstances in which special damages could arise;

iii) loss of profits, anticipated savings, business opportunity, goodwill, or loss of information of any kind.

(f) Paragraphs (d) and (e) do not apply to claims arising out of death or personal injury caused by either party's gross negligence or fraudulent misrepresentation.

15. Assignment This Agreement is for the sole benefit of Licensee and may not be assigned by Licensee without the express written consent of Trapeze.

16. Applicable Law This Agreement shall be governed by and construed in accordance with the laws of state of Florida.

17. Notices All notices must be in writing and will be duly given if delivered personally or sent by registered or certified mail to the respective addresses of the parties appearing on page one of this Agreement. Any notice given will be deemed to have been received on the date it is delivered if delivered personally, or, if mailed, on the fifth business day next following its mailing. Either party may change its address for notices by giving notice of such change, as required in this section.

EXHIBIT D

SOFTWARE ESCROW AGREEMENT

Two-Party (Master) Agreement

Among

Trapeze Software, Inc. and Escrow Associates, LLC

Two-Party Escrow Agreement

This Technology Escrow Agreement ("Agreement") between Escrow Associates, LLC ("Escrow Associates") and Trapeze Software, Inc. ("Developer") is effective on this _____ day of_____ 200__ (the "Effective Date").

Recitals

Whereas Developer licenses technology to licensees (each a "Licensee") in the form of software object code (the "Software") pursuant to a license agreement ("License Agreement");

And whereas, the purpose of this Agreement is to protect Developer's ownership and confidentiality of the source code for the Software and relevant technical documentation (the "Deposit Materials") and to permit a Licensee's access and use of the Deposit Materials subject to the terms and conditions hereof;

And whereas, Developer hereby designates and appoints Escrow Associates as the escrow agent under this Agreement, and Escrow Associates hereby accepts such designation and appointment and agrees to carry out the duties of escrow agent pursuant to the terms and provisions of this Agreement. Escrow Associates is not a party to, and is not bound by, any agreement that might be evidenced by, or might arise out of, any prior or contemporaneous dealings between Developer and a Licensee other than as expressly set forth herein.

And whereas, the parties desire that this Agreement be an agreement supplementary (together with any modification, supplement, or replacement thereof agreed to by the parties) to the License Agreement pursuant to *The Bankruptcy and Insolvency Act* (Canada).

NOW, THEREFORE, for and in consideration of good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, intending to be legally bound hereby, covenant and agree as follows:

1. Deposit Materials

(a) Initial Deposit - Developer shall submit the initial Deposit Materials to Escrow Associates within sixty (60) days of the Effective Date, or sixty (60) days after development of the Deposit Materials is completed by Developer and accepted by a Licensee. Developer shall complete and deliver with all Deposit Materials a form as shown herein as Exhibit B, which shall then become part of this Agreement. Escrow Associates shall notify all applicable parties within ten (10) days of receipt of the initial Deposit Materials. Escrow Associates has no obligation with respect to the initial Deposit Materials for delivery, functionality, completeness, performance or initial quality.

(b) Deposit Material Updates - Developer shall submit updates to the initial Deposit Materials to Escrow Associates within sixty (60) days of the end of each calendar quarter in which any material modification, upgrade or new release of the Software occurs, in respect of all such modifications, upgrades or releases for such quarter. Developer shall complete and deliver with all updates to the Deposit Materials an amended Exhibit B form, which shall additionally become part of this Agreement. Escrow Associates shall notify all applicable parties within ten (10) days of receipt of updates to the Deposit Materials. Escrow Associates has no obligation with respect to the updates to the Deposit Materials for delivery, functionality, completeness, performance or initial quality.

(c) Duplication of Deposit Materials - Escrow Associates may duplicate the Deposit Materials only as necessary to comply with the terms of this Agreement. All duplication expenses shall be borne by the party requesting duplication.

(d) Deposit Material Verification - Escrow Associates may be retained by separate agreement or by alternative means, to conduct a test of the Deposit Materials soley to confirm that the Deposit Materials may be compiled into object code form that is the same as the Software then generally licensed by Developer, provided Developer has consented in writing in advance to such test and further provided that Developer has the right to attend and review such test.

2. Licensee(s) - From time to time, Developer may, at its sole discretion, add or remove Licensee(s) to this agreement utilizing the Exhibit C form herein, provided (i) Licensee is a party to a License Agreement with Developer that is in force and not in default, and (ii) all fees due are paid to Escrow Associates.

3. Term

(a) Term of Agreement – The term of this Agreement shall be for a period of one (1) year from the Effective Date. At the end of the initial and each subsequent term, this Agreement shall automatically renew for an additional one (1) year term unless terminated according to the terms herein.

(b) Termination of Agreement - This Agreement may be terminated as follows:

i. Developer provides written notice to Escrow Associates of its desire to terminate the agreement, or
ii. The Deposit Materials have been released in accordance with the terms hereof.

(c) Termination for Non-Payment - In the event that full payment of any or all fees due to Escrow Associates by Developer under this Agreement have not been received by Escrow Associates within thirty (30) days of the date payment is due, Escrow Associates will notify Developer of the delinquent fees. If the delinquent fees are not received within thirty (30) days of the delinquency notification, Escrow Associates shall notify Licensee of the option to remit payment of the fees. If the delinquent fees are not received within ninety (90) days of the delinquency notification, Escrow Associates shall have the right to terminate this Agreement and destroy the Deposit Materials.

(d) Return of Deposit Materials – Upon termination of this Agreement for any reason other than in the event all Deposit Materials have been released in accordance with the terms of Section 7 herein, Escrow Associates shall return the Deposit Materials to Developer via commercial courier to the address of Developer shown in this Agreement, provided that all fees due Escrow Associates are paid in full. If two (2) attempts to return Deposit Materials via commercial courier to Developer fail or Developer does not accept the Deposit Materials, Escrow Associates shall destroy the Deposit Materials.

4. Fees

(a) Payment - Upon receipt of signed Agreement or initial Deposit Materials, whichever comes first, Escrow Associates will submit an initial invoice to Developer for amount shown on Exhibit A attached hereto. If payment is not received, Escrow Associates shall have no obligation to perform its duties under this Agreement. Developer agrees to pay to Escrow Associates all additional fees for services rendered related to this Agreement as shown on Exhibit A. The fee for any service that is not expressly covered in Exhibit A shall be established by Escrow Associates upon request. All fees are due in advance of service and are non-refundable. Fees

stated in Exhibit A hereto are effective for an initial period of three (3) years from the effective date of the Agreement. .

(b) Currency - All fees are in Canadian dollars and payment must be rendered in Canadian dollars unless otherwise agreed to in advance by Escrow Associates.

5. Indemnification - With the exception of gross negligence, willful misconduct or intentional misrepresentation on behalf of Escrow Associates or breach by Escrow Associates of this Agreement, the party on whose behalf, or pursuant to whose direxT Escow Associates acts, shall indemnify and hold harmless Escrow Associates and each of its directors, officers, agents, employees, members and stockholders ("Escrow Associates Indemnitees") absolutely and forever, from and against any and all claims, actions, damages, suits, liabilities, obligations, costs, fees, charges, and any other expenses whatsoever, including reasonable attorneys' fees and costs, that may be asserted against any Escrow Associates Indemnitee in connection with the taking of such action.

6. Developer's Representations and Warranties

Developer owns, or has sufficient rights to, the Deposit Materials and all intellectual property rights therein to discharge its obligations hereunder.

7. Release of Deposit Materials

(a) "Release Condition" means: (i) the issuance of a final judgment of a court of competent jurisdiction or a final award of an arbitration panel finding that Developer has committed a material breach of its support obligations under the License Agreement, which breach remains uncured by Developer 30 days following such issuance; (ii) immediately prior to the liquidation, dissolution or winding up of the Developer.

(b) Developer Request for Release – If Developer notifies Escrow Associates in writing to release the Deposit Materials to one or more Licensees, Escrow Associates will release the Deposit Materials to such Licensees within ten (10) business days.

(c) Licensee Request for Release - If a Release Condition occurs, Escrow Associates will within ten (10) business days forward a complete copy of the request to Developer. Developer shall have thirty (30) days to make any and all objections to the release known to Escrow Associates in writing. If after thirty (30) days Escrow Associates has not received any written objection from Developer, Escrow Associates shall release the Deposit Materials to Licensee as instructed by Licensee.

(d) Developer Objection to Release - Should Developer object to the request for release by Licensee in writing, Escrow Associates shall notify Licensee in writing within ten (10) business days of Escrow Associates receipt of said objection and shall notify both parties that there is a dispute to be resolved pursuant to Section 8 (Arbitration) of this Agreement. Escrow Associates will continue to hold the Deposit Materials without release pending (i) written instructions from Developer; (ii) dispute resolution according to Section 8 (Arbitration); or (iii) final order from a court of competent jurisdiction.

(e) Grant of License to Deposit Materials –If a Licensee receives Deposit Materials in accordance with this Agreement, Licensee will have a non-exclusive, worldwide, perpetual, paid in full license, use the Deposit Materials for the sole purpose of supporting and maintaining the Software, solely for Licensee's internal use. Any modifications to the Deposit Materials shall

remain the property of Developer and form part of the Deposit Materials subject to the foregoing license.

(f) Restrictions on Use – The following restrictions shall apply to Deposit Materials delivered to Licensee: (i) Licensee shall not copy the Deposit Materials other than as necessary for installation of Licensee's equipment and for backup copies on Licensee's equipment, (ii) Licensee will keep the Deposit Materials in a secure, safe place when not in use, (iii) Licensee agrees to use the Deposit Materials under carefully controlled conditions in accordance with, and for the purposes of, this Agreement, (iv) Licensee shall be obligated to maintain the confidentiality of the released Deposit Materials in accordance with Section 9, and (v) Licensee agrees to treat, handle, and store the Deposit Materials in the same manner and with the same care as it treats its most sensitive and valuable trade secrets.

8. Arbitration - Except as expressly provided for herein, any dispute or claim arising out of or relating to this Agreement, or the breach thereof, shall be settled by a single arbitrator according to the *Arbitrations Act, 1990* (Ontario), who shall apply the law of the Province of Ontario. Judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. Developer and Licensee jointly agree to reimburse Escrow Associates for all reasonable costs incurred as a result of any Arbitration including reasonable attorney's fees. The arbitrator(s) shall award attorneys' fees and costs to the prevailing party. Notwithstanding the foregoing, each party agrees that the obligations of confidentiality hereunder are necessary and reasonable and expressly agrees that monetary damages would be inadequate to compensate the disclosing party for any breach of any such obligations. Each party therefore agrees and acknowledges that any such violation or threatened violation would cause irreparable injury and that, in addition to any other remedies that may be available hereunder, in law, in equity or otherwise, the party whose information is subject to such violation shall be entitled to obtain injunctive relief against any breach or threatened breach, without the necessity of proving actual damages.

9. Confidentiality - Except as permitted hereunder, Escrow Associates and each Licensee to whom the Deposit Materials are released shall hold in strictest confidence and not permit any third party to access to nor otherwise use, disclose, transfer or make available the Deposit Materials-unless consented to in writing by Developer.

10. Limitation of Liability– Except in the event of intentional misconduct, gross negligence or any breach of any obligation of confidentiality hereunder, under no circumstance shall any party be liable for any special, incidental, or consequential damages (including lost profits) arising out of this Agreement even if such party has been apprised of the possibility of such damages. In performing any of its duties hereunder, Escrow Associates shall not incur any liability with respect to any action taken or omitted in reliance upon any written notice, request, waiver, consent, receipt or other document which Escrow Associates, acting reasonably and in good faith believes to be genuine.

11. Notices - Notices shall be deemed received on the third business day after being sent by first class mail, or on the following day if sent by commercial express mail. All notices under this Agreement shall be in writing and addressed and sent to the person(s) listed in the space provided below:

Developer

Company: Trapeze Software, Inc.
Contact: Mark Dennison
Title: Counsel
Address: 2800 Skymark Avenue
City, State, Zip: Mississauga, ON L4W 5A6

Telephone: (905) 629-8727 Fax: (905) 238-8408

Billing Contact: Jason Redman
Title: Controller
Address: 2800 Skymark Avenue
City, State, Zip: Mississauga, ON L4W 5A6
Telephone: (905) 886-• Fax: (905) 763-0527

Escrow Associates
Attn: Contracts Administration
1010 Huntcliff, Suite 1350
Atlanta, GA 30350 USA
Telephone: 800-813-3523
Fax: 770-518-2452
Email: info@escrowassociates.com

12. Miscellaneous

(a) Counterparts - This Agreement may be executed in any number of multiple counterparts, each of which is to be deemed an original, and all of such counterparts together shall constitute one and the same instrument. Execution of this Agreement may be evidenced by delivery of facsimile or electronic transmission of executed counterparts

(b) Entire Agreement - This Agreement supersedes all prior and contemporaneous letters, correspondences, discussions and agreements among the parties with respect to all matters contained herein, and it constitutes the sole and entire agreement among them with respect thereto.

(c) Limitation of Effect - This Agreement pertains strictly to the escrow services provided for herein and does not modify, amend or affect any other contract or agreement of one or more of the parties. The terms and provisions of the License Agreement, as the same may be physically modified by the terms and provisions hereof, shall continue in full force and effect and be binding upon and inure to the benefit of the parties hereto, their legal representatives, successors and assigns.

(d) Modification - This Agreement shall not be altered or modified without the express written consent of all parties.

(e) Bankruptcy Code - This Agreement shall be considered an agreement supplementary (together with any modification, supplement, or replacement thereof agreed to by the parties) to the License Agreement pursuant to The Bankruptcy and Insolvency Act (Canada).

(f) Survival of Terms - All obligations of the parties intended to survive the termination of this Agreement, including without limitation, are the provisions of paragraphs 3 (Term), 5 (Indemnification), 8 (Arbitration), 10 (Limitation of Liability), and 12 (Miscellaneous) which shall survive the termination of this Agreement for any reason.

(g) Governing Law - This Agreement shall be governed by the laws of the Province of Ontario. This Agreement shall be deemed to be made in the Province of Ontario and each party hereby consents to the exclusive jurisdiction of any state court located in Markham, Ontario and waives any objection thereto on the basis of personal jurisdiction or venue and agrees not to commence any action, suit or proceeding in any other jurisdiction.

(h) Time of the Essence - Time is of the essence in this Agreement.

(i) Successors and Assigns - This Agreement shall be binding upon and inure to the benefit of the successors, permitted assigns of the parties, and the wholly owned subsidiaries of the Developer, including Trapeze Software Group, Inc., provided, however, that: (A) Licensee shall have no right to assign any rights hereunder or with respect to the Deposit Materials except as permitted with respect to assignment of Licensees' rights under the License Agreement; and (B) Escrow Associates shall have no right to assign any rights or obligations hereunder except with the prior written consent of Developer.

(Signatures are on following page. Remainder of this page intentionally left blank.)

IN WITNESS WHEREOF, the parties have executed this Agreement by and through their duly authorized agents as of the Effective Date.

Developer

Signature: _____

Name: Simon Parmar

Title: Chief Financial Officer

Company: Trapeze Software, Inc.

Date: November 4, 2005

Contract Negotiated by: Mark Dennison

Negotiator Telephone: 905-629-8727

Escrow Associates, LLC

Signature: _____

Name: _____

Title: _____

Date: _____

Exhibit A
Schedule of Fees

Initialization Fee (First-year fee only. Includes all contract review, modification and set-up of account.)	$
Annual Maintenance Fee (Annual fee. Includes escrow deposit maintenance, all account activity notifications, unlimited escrow deposit material updates, online account information access, electronic depositing option and two (2) cubic ft. storage allowance.)	$
Licensee Options	
Standard Licensee Fee (Annual fee. Licensee enrolled via Exhibit C form.)	$
or	
Registered Licensee Fee (Annual fee. Licensee executes enrollment form and modifies contract terms via Rider C form.)	$

Exhibit B
Deposit Materials

Please complete an Exhibit B document for the Deposit Materials to be stored under this account. Enclose a copy of this Exhibit B with the Deposit Materials and retain a copy for your records. Contact us for details on electronic depositing, or ship the Deposit Materials via commercial courier to Escrow Associates at the following address:

Attn: Vault Manager
Escrow Associates, LLC
1010 Huntcliff, Suite 1350
Atlanta, GA 30350 USA
1-800-813-3523

Company Name: _____

Product Name & Version: _____

Media Description

Quantity	Type	Description / Label
____	CD-ROM	_____
____	DAT/DDS Tape	_____
____	Documentation	_____
____	Other	_____

Deposit Prepared by: _____

Date: _____

E-mail: _____

Escrow Associates has inspected and accepted the above Deposit Materials.

Signed: _____

Name: _____

Date: _____

Exhibit C
Standard Licensee Addition Form

Licensee #1

Company Name:

Contact:

Address:

City, State, Zip:

Telephone:

Fax:

E-mail:

Applicable Product(s):

(copy as necessary)

Rider C
Registered Licensee Addition Form

Whereas, Trapeze Software Inc. ("Developer") and Escrow Associates have entered into a two-party escrow agreement dated April 1, 2004 ("The Agreement").

Whereas, Developer, _____ ("Registered Licensee"), and Escrow Associates agree to modify the terms of The Agreement as follows:

1. Delete the fourth recital to the Agreement and replace it with the following:

And whereas, the parties desire that this Agreement be an agreement supplementary (together with any modification, supplement, or replacement thereof agreed to by the parties) to the License Agreement pursuant to 11 United States [Bankruptcy] Code, Section 365(n).

2. Delete section 7(a) of the Agreement and replace it with the following:

(a) "Release Condition" means: (a) a breach of any of the warranties in the License Agreement or Software Maintenance Agreement by Developer, which breach has continued for a period of fifteen (15) days after notice from Registered Licensee; (b) Developer becomes insolvent, or files or has filed against it any proceeding in bankruptcy or for reorganization under any federal bankruptcy law or similar state law, or has any receiver appointed for all or a substantial part of Developer's assets or business, or makes any assignment for the benefit of its creditors, or enters into any other proceeding for debt relief; (c) a cessation of normal business operations by the Developer during the term of this Agreement, except where such such cessation is caused by a force majeure event; (d) Developer institutes or has instituted against it any proceedings for liquidation, or begins the process of winding up its business or terminating its corporate charter; (e) Developer ceases to be actively engaged in the business of developing the licensed Software; (f) a failure or refusal by the Developer to provide the Software maintenance or support services required of it under the License Agreement or Software Maintenance Agreement, which failure has continued for a period of fifteen (15) days after notice from Registered Licensee; or (g) a notification from Developer of its decision not to continue support or maintenance services for the licensed Software.

3. Delete the first sentence of section 8 of the Agreement and replace it with the following:

Except as expressly provided for herein, any dispute or claim arising out of or relating to this Agreement, or the breach thereof, shall be settled by a single neutral arbitrator to be appointed upon the mutual agreement of the parties, who shall apply the law of the State of Florida.

4. Delete section 12(e) of the Agreement and replace it with the following:

Bankruptcy Code - This Agreement shall be considered an agreement supplementary (together with any modification, supplement, or replacement thereof agreed to by the parties) to the License Agreement pursuant to 11 United States [Bankruptcy] Code, Section 365(n).

5. Delete section 12(g) of the Agreement and replace it with the following:

(g) Governing Law - This Agreement shall be governed by the laws of the State of Florida. Each party hereby consents to the exclusive jurisdiction of the State and Federal Courts located in _____, and waives any objection thereto on the basis of personal jurisdiction or venue and agrees not to commence any action, suit or proceeding in any other jurisdiction.

NOW, THEREFORE, for and in consideration of good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, intending to be legally bound hereby, covenant and agree to The Agreement and the modifications herein:

Trapeze Software, Inc.

Signature: _____

Name: Simon Parmar

Title: Chief Financial Officer

Date: November 4, 2005

Escrow Associates, LLC

Signature: _____

Name: _____

Title: _____

Date: _____

Registered Licensee

Signature: _____

Name: _____

Title: _____

Company: _____

Address: _____

City, State, Zip: _____

Date: _____

Telephone: _____ Fax: _____

E-Mail: _____

Applicable Product(s): _____

EXHIBIT E

FEDERAL TRANSIT ADMINISTRATION REQUIREMENTS

FEDERAL TRANSIT ADMINISTRATION

1. FLY AMERICA REQUIREMENTS
49 U.S.C. § 40118
41 CFR Part 301-10

Applicability to Contracts

The Fly America requirements apply to the transportation of persons or property, by air, between a place in the U.S. and a place outside the U.S., or between places outside the U.S., when the FTA will participate in the costs of such air transportation. Transportation on a foreign air carrier is permissible when provided by a foreign air carrier under a code share agreement when the ticket identifies the U.S. air carrier's designator code and flight number. Transportation by a foreign air carrier is also permissible if there is a bilateral or multilateral air transportation agreement to which the U.S. Government and a foreign government are parties and which the Federal DOT has determined meets the requirements of the Fly America Act.

Flow Down Requirements

The Fly America requirements flow down from FTA recipients and subrecipients to first tier contractors, who are responsible for ensuring that lower tier contractors and subcontractors are in compliance.

Model Clause/Language

The relevant statutes and regulations do not mandate any specified clause or language. FTA proposes the following language.

Fly America Requirements

The Contractor agrees to comply with 49 U.S.C. 40118 (the "Fly America" Act) in accordance with the General Services Administration's regulations at 41 CFR Part 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. The Contractor shall submit, if a foreign air carrier was used, an appropriate certification or memorandum adequately explaining why service by a 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 Contractor agrees to include the requirements of this section in all subcontracts that may involve international air transportation.

2. BUY AMERICA REQUIREMENTS
49 U.S.C. 5323(j)
49 CFR Part 661

Applicability to Contracts
The Buy America requirements apply to the following types of contracts: Construction Contracts and Acquisition of Goods or Rolling Stock (valued at more than $100,000).

Flow Down
The Buy America requirements flow down from FTA recipients and subrecipients to first tier contractors, who are responsible for ensuring that lower tier contractors and subcontractors are in compliance. The $100,000 threshold applies only to the grantee contract, subcontracts under that amount are subject to Buy America.

Mandatory Clause/Language
The Buy America regulation, at 49 CFR 661.13, requires notification of the Buy America requirements in FTA-funded contracts, but does not specify the language to be used. The following language has been developed by FTA.

Buy America - The contractor agrees to comply with 49 U.S.C. 5323(j) and 49 C.F.R. Part 661, which provide that Federal funds may not be obligated unless steel, iron, and manufactured products used in FTA-funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 C.F.R. 661.7, and include final assembly in the United States for 15 passenger vans and 15 passenger wagons produced by Chrysler Corporation, and microcomputer equipment and software. Separate requirements for rolling stock are set out at 49 U.S.C. 5323(j)(2)(C) and 49 C.F.R. 661.11. Rolling stock must be assembled in the United States and have a 60 percent domestic content.

A bidder or offeror must submit to the FTA recipient the appropriate Buy America certification (below) with all bids or offers on FTA-funded contracts, except those subject to a general waiver. Bids or offers that are not accompanied by a completed Buy America certification must be rejected as nonresponsive. This requirement does not apply to lower tier subcontractors.

Certification requirement for procurement of steel, iron, or manufactured products.

Certificate of Compliance with 49 U.S.C. 5323(j)(1)

The bidder or offeror hereby certifies that it will meet the requirements of 49 U.S.C. 5323(j)(1) and the applicable regulations in 49 C.F.R. Part 661.5.

Date _____
Signature _____

Company Name _____

Title _____

Certificate of Non-Compliance with 49 U.S.C. 5323(j)(1)

The bidder or offeror hereby certifies that it cannot comply with the requirements of 49 U.S.C. 5323(j)(1) and 49 C.F.R. 661.5, but it may qualify for an exception pursuant to 49 U.S.C. 5323(j)(2)(A), 5323(j)(2)(B), or 5323(j)(2)(D), and 49 C.F.R. 661.7.

Date _____

Signature _____

Company Name _____

Title _____

Certification requirement for procurement of buses, other rolling stock and associated equipment.

Certificate of Compliance with 49 U.S.C. 5323(j)(2)(C).

The bidder or offeror hereby certifies that it will comply with the requirements of 49 U.S.C. 5323(j)(2)(C) and the regulations at 49 C.F.R. Part 661.11.

Date _____

Signature _____

Company Name _____

Title _____

Certificate of Non-Compliance with 49 U.S.C. 5323(j)(2)(C)

The bidder or offeror hereby certifies that it cannot comply with the requirements of 49 U.S.C. 5323(j)(2)(C) and 49 C.F.R. 661.11, but may qualify for an exception pursuant to 49 U.S.C. 5323(j)(2)(A), 5323(j)(2)(B), or 5323(j)(2)(D), and 49 CFR 661.7.

Date _____

Signature _____

Company Name _____

Title _____

---

3. CHARTER BUS REQUIREMENTS
49 U.S.C. 5323(d)
49 CFR Part 604

Applicability to Contracts
The Charter Bus requirements apply to the following type of contract: Operational Service Contracts.

Flow Down Requirements
The Charter Bus requirements flow down from FTA recipients and subrecipients to first tier service contractors.

Model Clause/Language
The relevant statutes and regulations do not mandate any specific clause or language. The following clause has been developed by FTA.

Charter Service Operations - The contractor agrees to comply with 49 U.S.C. 5323(d) and 49 CFR Part 604, which provides that recipients and subrecipients of FTA assistance are prohibited from providing charter service using federally funded equipment or facilities if there is at least one private charter operator willing and able to provide the service, except under one of the exceptions at 49 CFR 604.9. Any charter service provided under one of the exceptions must be "incidental," i.e., it must not interfere with or detract from the provision of mass transportation.

3. SCHOOL BUS REQUIREMENTS
49 U.S.C. 5323(F)
49 CFR Part 605

Applicability to Contracts
The School Bus requirements apply to the following type of contract: Operational Service Contracts.

Flow Down Requirements
The School Bus requirements flow down from FTA recipients and subrecipients to first tier service contractors.

Model Clause/Language
The relevant statutes and regulations do not mandate any specific clause or language. The following clause has been developed by FTA.

School Bus Operations - Pursuant to 69 U.S.C. 5323(f) and 49 CFR Part 605, recipients and subrecipients of FTA assistance may not engage in school bus operations exclusively for the transportation of students and school personnel in competition with private school bus operators unless qualified under specified exemptions. When operating exclusive school bus service under an allowable exemption, recipients and subrecipients may not use federally funded equipment, vehicles, or facilities.

---

4. CARGO PREFERENCE REQUIREMENTS
46 U.S.C. 1241
46 CFR Part 381

Applicability to Contracts
The Cargo Preference requirements apply to all contracts involving equipment, materials, or commodities which may be transported by ocean vessels.

Flow Down
The Cargo Preference requirements apply to all subcontracts when the subcontract may be involved with the transport of equipment, material, or commodities by ocean vessel.

Model Clause/Language
The MARAD regulations at 46 CFR 381.7 contain suggested contract clauses. The following language is proffered by FTA.

Cargo Preference - Use of United States-Flag Vessels - The contractor 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 contract 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 leading 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.) c. to include these requirements in all subcontracts issued pursuant to this contract when the subcontract may involve the transport of equipment, material, or commodities by ocean vessel.

5. SEISMIC SAFETY REQUIREMENTS
42 U.S.C. 7701 et seq. 49
CFR Part 41

Applicability to Contracts
The Seismic Safety requirements apply only to contracts for the construction of new buildings or additions to existing buildings.

Flow Down
The Seismic Safety requirements flow down from FTA recipients and subrecipients to first tier contractors to assure

compliance, with the applicable building standards for Seismic Safety, including the work performed by all subcontractors.

Model Clauses/Language

The regulations do not provide suggested language for third-party contract clauses. The following language has been developed by FTA.

Seismic Safety - The contractor agrees that any new building or addition to an existing building will be designed and constructed in accordance with the standards for Seismic Safety required in Department of Transportation Seismic Safety Regulations 49 CFR Part 41 and will certify to compliance to the extent required by the regulation. The contractor also agrees to ensure that all work performed under this contract including work performed by a subcontractor is in compliance with the standards required by the Seismic Safety Regulations and the certification of compliance issued on the project.

---

6. ENERGY CONSERVATION REQUIREMENTS

42 U.S.C. 6321 et seq.
49 CFR Part 18

Applicability to Contracts

The Energy Conservation requirements are applicable to all contracts.

Flow Down

The Energy Conservation requirements extend to all third party contractors and their contracts at every tier and subrecipients and their subagreements at every tier.

Model Clause/Language

No specific clause is recommended in the regulations because the Energy Conservation requirements are so dependent on the state energy conservation plan. The following language has been developed by FTA:

Energy Conservation - The contractor agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.

---

7. CLEAN WATER REQUIREMENTS
33 U.S.C. 1251

Applicability to Contracts
The Clean Water requirements apply to each contract and subcontract which exceeds $100,000.

Flow Down
The Clean Water requirements flow down to FTA recipients and subrecipients at every tier.

Model Clause/Language
While no mandatory clause is contained in the Federal Water Pollution Control Act, as amended, the following language developed by FTA contains all the mandatory requirements:

Clean Water - (1) 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. The Contractor agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

(2) The Contractor also agrees to include these requirements in each subcontract exceeding $100,000 financed in whole or in part with Federal assistance provided by FTA.

---

8. BUS TESTING
49 U.S.C. 5323(c)
49 CFR Part 665

Applicability to Contracts
The Bus Testing requirements pertain only to the acquisition of Rolling Stock/Turnkey.

Flow Down
The Bus Testing requirements should not flow down, except to the turnkey contractor as stated in Master Agreement.

Model Clause/Language
Clause and language therein are merely suggested. 49 CFR Part 665 does not contain specific language to be included in third party contracts but does contain requirements applicable to
subrecipients and third party contractors. Bus Testing Certification and language therein are merely suggested.

Bus Testing - The Contractor [Manufacturer] agrees to comply with 49 U.S.C. A 5323(c) and FTA's implementing regulation at 49 CFR Part 665 and shall perform the following:

1) A manufacturer of a new bus model or a bus produced with a major change in components or configuration shall provide a copy of the final test report to the recipient at a point in the procurement process specified by the recipient which will be prior to the recipient's final acceptance of the first vehicle.

2) A manufacturer who releases a report under paragraph 1 above shall provide notice to the operator of the testing facility that the report is available to the public.

3) If the manufacturer represents that the vehicle was previously tested, the vehicle being sold should have the identical configuration and major components as the vehicle in the test report, which must be provided to the recipient prior to recipient's final acceptance of the first vehicle. If the configuration or components are not identical, the manufacturer shall provide a description of the change and the manufacturer's basis for concluding that it is not a major change requiring additional testing.

4) If the manufacturer represents that the vehicle is "grandfathered" (has been used in mass transit service in the United States before October 1, 1988, and is currently being produced without a major change in configuration or components), the manufacturer shall provide the name and address of the recipient of such a vehicle and the details of that vehicle's configuration and major components.

CERTIFICATION OF COMPLIANCE WITH FTA'S BUS TESTING REQUIREMENTS
The undersigned [Contractor/Manufacturer] certifies that the vehicle offered in this procurement complies with 49 U.S.C. A 5323(c) and FTA's implementing regulation at 49 CFR Part 665.

The undersigned understands that misrepresenting the testing status of a vehicle acquired with Federal financial assistance may subject the undersigned to civil penalties as outlined in the Department of Transportation's regulation on Program Fraud Civil Remedies, 49 CFR Part 31. In addition, the undersigned understands that FTA may suspend or debar a manufacturer under the procedures in 49 CFR Part 29.

Date: _____

Signature: _____

Company Name: _____
Title: _____

---

9. PRE-AWARD AND POST DELIVERY AUDITS REQUIREMENTS
49 U.S.C. 5323
49 CFR Part 663

Applicability to Contracts
These requirements apply only to the acquisition of Rolling Stock/Turnkey.

Flow Down
These requirements should not flow down, except to the turnkey contractor as stated in Master Agreement.

Model Clause/Language
Clause and language therein are merely suggested. 49 C.F.R. Part 663 does not contain specific language to be included in third party contracts but does contain requirements applicable to subrecipients and third party contractors.

- Buy America certification is mandated under FTA regulation, "Pre-Award and Post-Delivery Audits of Rolling Stock Purchases," 49 C.F.R. 663.13.

-- Specific language for the Buy America certification is mandated by FTA regulation,

"Buy America Requirements--Surface Transportation Assistance Act of 1982, as amended,"

49 C.F.R. 661.12, but has been modified to include FTA's Buy America requirements codified at 49 U.S.C. A 5323(j).

Pre-Award and Post-Delivery Audit Requirements - The Contractor agrees to comply with 49 U.S.C. § 5323(l) and FTA's implementing regulation at 49 C.F.R. Part 663 and to submit the following certifications:

(1) Buy America Requirements: The Contractor shall complete and submit a declaration certifying either compliance or noncompliance with Buy America. If the Bidder/Offeror certifies compliance with Buy America, it shall submit documentation which lists 1) component and subcomponent parts of the rolling stock to be purchased identified by manufacturer of the parts, their country of origin and costs; and 2) the location of the final assembly point for the rolling stock, including a description of the activities that will take place at the final assembly point and the cost of final assembly.

(2) Solicitation Specification Requirements: The Contractor shall submit evidence that it will be capable of meeting the bid specifications.

(3) Federal Motor Vehicle Safety Standards (FMVSS): The Contractor shall submit 1) manufacturer's FMVSS self-certification sticker information that the vehicle complies with relevant FMVSS or 2) manufacturer's certified statement that the contracted buses will not be subject to FMVSS regulations.

BUY AMERICA CERTIFICATE OF COMPLIANCE WITH FTA REQUIREMENTS FOR BUSES, OTHER ROLLING STOCK, OR ASSOCIATED EQUIPMENT

(To be submitted with a bid or offer exceeding the small purchase threshold for Federal assistance programs, currently set at $100,000.)

Certificate of Compliance

The bidder hereby certifies that it will comply with the requirements of 49 U.S.C. Section 5323(j)(2)(C), Section 165(b)(3) of the Surface Transportation Assistance Act of 1982, as amended, and the regulations of 49 C.F.R. 661.11:

Date: _____

Signature: _____

Company Name: _____

Title: _____

Certificate of Non-Compliance

The bidder hereby certifies that it cannot comply with the requirements of 49 U.S.C. Section 5323(j)(2)(C) and Section 165(b)(3) of the Surface Transportation Assistance Act of 1982, as amended, but may qualify for an exception to the requirements consistent with 49 U.S.C. Sections 5323(j)(2)(B) or (j)(2)(D), Sections 165(b)(2) or (b)(4) of the Surface Transportation Assistance Act, as amended, and regulations in 49 C.F.R. 661.7.

Date: _____

Signature: _____

Company Name: _____

Title: _____

10. LOBBYING
31 U.S.C. 1352
49 CFR Part 19
49 CFR Part 20

Applicability to Contracts

The Lobbying requirements apply to Construction/Architectural and Engineering/Acquisition of Rolling Stock/Professional Service Contract/Operational Service Contract/Turnkey contracts.

Flow Down

The Lobbying requirements mandate the maximum flow down, pursuant to Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352(b)(5) and 49 C.F.R. Part 19, Appendix A, Section 7.

Mandatory Clause/Language

Clause and specific language therein are mandated by 49 CFR Part 19, Appendix A.

Modifications have been made to the Clause pursuant to Section 10 of the Lobbying Disclosure Act of 1995, P.L. 104-65 [to be codified at 2 U.S.C. § 1601, *et seq.*]

- Lobbying Certification and Disclosure of Lobbying Activities for third party contractors are mandated by 31 U.S.C. 1352(b)(5), as amended by Section 10 of the Lobbying Disclosure Act of 1995, and DOT implementing regulation, "New Restrictions on Lobbying," at 49 CFR § 20.110(d)

- Language in Lobbying Certification is mandated by 49 CFR Part 19, Appendix A, Section 7, which provides that contractors file the certification required by 49 CFR Part 20, Appendix A.

Modifications have been made to the Lobbying Certification pursuant to Section 10 of the Lobbying Disclosure Act of 1995.

- Use of "Disclosure of Lobbying Activities," Standard Form-LLL set forth in Appendix B of 49 CFR Part 20, as amended by "Government wide Guidance For New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96) is mandated by 49 CFR Part 20, Appendix A.

Byrd Anti-Lobbying Amendment, 31 U.S.C. 1352, as amended by the Lobbying Disclosure Act of 1995, P.L. 104-65 [to be codified at 2 U.S.C. § 1601, et seq.] - Contractors who apply or bid for an award of $100,000 or more shall file the certification required by 49 CFR part 20, "New Restrictions on Lobbying." Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to the recipient.

APPENDIX A, 49 CFR PART 20--CERTIFICATION REGARDING LOBBYING

Certification for Contracts, Grants, Loans, and Cooperative Agreements

(To be submitted with each bid or offer exceeding $100,000)

The undersigned [Contractor] certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member 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.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for making lobbying contacts to 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 this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form--LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions [as amended by "Government wide Guidance for New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96). Note: Language in paragraph (2) herein has been modified in accordance with Section 10 of the Lobbying Disclosure Act of 1995 (P.L. 104-65, to be codified at 2 U.S.C. 1601, *et seq.*)]

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31, U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

[Note: Pursuant to 31 U.S.C. § 1352(c)(1)-(2)(A), any person who makes a prohibited expenditure or fails to file or amend a required certification or disclosure form shall be subject to

a civil penalty of not less than $10,000 and not more than $100,000 for each such expenditure or failure.]

The Contractor, _____, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. A 3801, *et seq., apply* to this certification and disclosure, if any.

_____ Signature of Contractor's Authorized Official

_____ Name and Title of Contractor's Authorized Official

_____ Date

---

11. ACCESS TO RECORDS AND REPORTS
49 U.S.C. 5325
18 CFR 18.36 (i)
49 CFR 633.17

Applicability to Contracts
Reference Chart "Requirements for Access to Records and Reports by Type of Contracts"

Flow Down
FTA does not require the inclusion of these requirements in subcontracts.

Model Clause/Language
The specified language is not mandated by the statutes or regulations referenced, but the language provided paraphrases the statutory or regulatory language.

Access to Records - The following access to records requirements apply to this Contract:

1. Where the Purchaser is not a State but a local government and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 C.F.R. 18.36(i), the Contractor agrees to provide the Purchaser, the FTA Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions. Contractor also agrees, pursuant to 49 C.F.R. 633.17 to provide the FTA Administrator or his authorized representatives including any PMO Contractor access to Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311.

2. Where the Purchaser is a State and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 C.F.R. 633.17, Contractor agrees to provide the Purchaser, the FTA Administrator or his authorized representatives, including any PMO Contractor, access to the Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311. By definition, a major capital project excludes contracts of less than the simplified acquisition threshold currently set at $100,000.

3. Where the Purchaser enters into a negotiated contract for other than a small purchase or under the simplified acquisition threshold and is an institution of higher education, a hospital or other non-profit organization and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 C.F.R. 19.48, Contractor agrees to provide the Purchaser, FTA Administrator, the Comptroller General of the United States or any of their duly authorized representatives with access to any books, documents, papers and record of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions.

4. Where any Purchaser which is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 U.S.C. 5325(a) enters into a contract for a capital project or improvement (defined at 49 U.S.C. 5302(a)1) through other than competitive bidding, the Contractor shall make available records related to the contract to the Purchaser, the Secretary of Transportation and the Comptroller General or any authorized officer or employee of any of them for the purposes of conducting an audit and inspection.

5. The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

6. The Contractor agrees to maintain all books, records, accounts and reports required under this contract for a period of not less than three years after the date of termination or expiration of this contract, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case Contractor agrees to maintain same until the Purchaser, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. Reference 49 CFR 18.39(i)(11).

7. FTA does not require the inclusion of these requirements in subcontracts.

Requirements for Access to Records and Reports by Types of Contract

Contract Characteristics	Operational Service Contract	Turnkey	Construction	Architectural Engineering	Acquisition of Rolling Stock	Professional Services
I State Grantees						
a. Contracts below SAT ($100,000)	None	Those imposed on state pass thru to Contractor	None	None	None	None
b. Contracts above $100,000/Capital Projects	None unless[1] non-competitive award		Yes, if non-competitive award or if funded thru[2] 5307/5309/5311	None unless non-competitive award	None unless non-competitive award	None unless non-competitive award
II Non State Grantees						
a. Contracts below SAT ($100,000)	Yes[3]	Those imposed on non-state Grantee pass thru to Contractor	Yes	Yes	Yes	Yes
b. Contracts above $100,000/Capital Projects	Yes[3]		Yes	Yes	Yes	Yes

Sources of Authority:
[1] 49 USC 5325 (a)
[2] 49 CFR 633.17
[3] 18 CFR 18.36 (i)

---

12. FEDERAL CHANGES
49 CFR Part 18

Applicability to Contracts
The Federal Changes requirement applies to all contracts.

Flow Down
The Federal Changes requirement flows down appropriately to each applicable changed requirement.

Model Clause/Language
No specific language is mandated. The following language has been developed by FTA.

Federal Changes - Contractor shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Agreement (Form FTA MA(10) dated October, 2003) between Purchaser and FTA, as they may be amended or promulgated from time to time during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this contract.

---

13. BONDING REQUIREMENTS

Applicability to Contracts
For those construction or facility improvement contracts or subcontracts exceeding $100,000, FTA may accept the bonding policy and requirements of the recipient, provided that they meet the minimum requirements for construction contracts as follows:

a. A bid guarantee from each bidder equivalent to five (5) percent of the bid price. The "bid guarantees" shall consist of a firm commitment such as a bid bond, certifies check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of his bid, execute such contractual documents as may be required within the time specified.

b. A performance bond on the part to the Contractor for 100 percent of the contract price. A "performance bond" is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.

c. A payment bond on the part of the contractor for 100 percent of the contract price. A "payment bond" is one executed in connection with a contract to assure payment, as required by law, of all persons supplying labor and material in the execution of the work provided for in the contract. Payment bond amounts required from Contractors are as follows:

(1) 50% of the contract price if the contract price is not more than $1 million;

(2) 40% of the contract price if the contract price is more than $1 million but not more than $5 million; or

(3) $2.5 million if the contract price is more than $5 million.

d. A cash deposit, certified check or other negotiable instrument may be accepted by a grantee in lieu of performance and payment bonds, provided the grantee has established a procedure to assure that the interest of FTA is adequately protected. An irrevocable letter of credit would also satisfy the requirement for a bond.

Flow Down
Bonding requirements flow down to the first tier contractors.

Model Clauses/Language
FTA does not prescribe specific wording to be included in third party contracts. FTA has prepared sample clauses as follows:

Bid Bond Requirements (Construction)

(a) Bid Security

A Bid Bond must be issued by a fully qualified surety company acceptable to (Recipient) and listed as a company currently authorized under 31 CFR, Part 223 as possessing a Certificate of Authority as described thereunder.

(b) Rights Reserved

In submitting this Bid, it is understood and agreed by bidder that the right is reserved by (Recipient) to reject any and all bids, or part of any bid, and it is agreed that the Bid may not be withdrawn for a period of [ninety (90)] days subsequent to the opening of bids, without the written consent of (Recipient).

It is also understood and agreed that if the undersigned bidder should withdraw any part or all of his bid within [ninety (90)] days after the bid opening without the written consent of (Recipient), shall refuse or be unable to enter into this Contract, as provided above, or refuse or be unable to furnish adequate and acceptable Performance Bonds and Labor and Material Payments Bonds, as provided above, or refuse or be unable to furnish adequate and acceptable insurance, as provided above, he shall forfeit his bid security to the extent of (Recipient's) damages occasioned by such withdrawal, or refusal, or inability to enter into an agreement, or provide adequate security therefor.

It is further understood and agreed that to the extent the defaulting bidder's Bid Bond, Certified Check, Cashier's Check, Treasurer's Check, and/or Official Bank Check (excluding any income generated thereby which has been retained by (Recipient) as provided in [Item x "Bid Security" of the Instructions to Bidders]) shall prove inadequate to fully recompense (Recipient) for the damages occasioned by default, then the undersigned bidder agrees to indemnify (Recipient) and pay over to (Recipient) the difference between the bid security and (Recipient's) total damages, so as to make (Recipient) whole.

The undersigned understands that any material alteration of any of the above or any of the material contained on this form, other than that requested, will render the bid unresponsive.

Performance and Payment Bonding Requirements (Construction)

The Contractor shall be required to obtain performance and payment bonds as follows:

(a) Performance bonds

1. The penal amount of performance bonds shall be 100 percent of the original contract price, unless the (Recipient) determines that a lesser amount would be adequate for the protection of the (Recipient).

2. The (Recipient) may require additional performance bond protection when a contract price is increased. The increase in protection shall generally equal 100 percent of the increase in contract price. The (Recipient) may secure additional protection by directing the Contractor to increase the penal amount of the existing bond or to obtain an additional bond.

(b) Payment bonds

1. The penal amount of the payment bonds shall equal:

(i) Fifty percent of the contract price if the contract price is not more than $1 million.

(ii) Forty percent of the contract price if the contract price is more than $1 million but not more than $5 million; or

(iii) Two and one half million if the contract price is more than $5 million.

2. If the original contract price is $5 million or less, the (Recipient) may require additional protection as required by subparagraph 1 if the contract price is increased.

Performance and Payment Bonding Requirements (Non-Construction)

The Contractor may be required to obtain performance and payment bonds when necessary to protect the (Recipient's) interest.

(a) The following situations may warrant a performance bond:

1. (Recipient) property or funds are to be provided to the contractor for use in performing the contract or as partial compensation (as in retention of salvaged material).

2. A contractor sells assets to or merges with another concern, and the (Recipient), after recognizing the latter concern as the successor in interest, desires assurance that it is financially capable.

3. Substantial progress payments are made before delivery of end items starts.

4. Contracts are for dismantling, demolition, or removal of improvements.

(b) When it is determined that a performance bond is required, the Contractor shall be required to obtain performance bonds as follows:
1. The penal amount of performance bonds shall be 100 percent of the original contract price, unless the (Recipient) determines that a lesser amount would be adequate for the protection of the (Recipient).

2. The (Recipient) may require additional performance bond protection when a contract price is increased. The increase in protection shall generally equal 100 percent of the increase in contract price. The (Recipient) may secure additional protection by directing the Contractor to increase the penal amount of the existing bond or to obtain an additional bond.

(c) A payment bond is required only when a performance bond is required, and if the use of payment bond is in the (Recipient's) interest.

(d) When it is determined that a payment bond is required, the Contractor shall be required to obtain payment bonds as follows:

1. The penal amount of payment bonds shall equal:

(i) Fifty percent of the contract price if the contract price is not more than $1 million;

(ii) Forty percent of the contract price if the contract price is more than $1 million but not more than $5 million; or

(iii) Two and one half million if the contract price is increased.

Advance Payment Bonding Requirements

The Contractor may be required to obtain an advance payment bond if the contract contains an advance payment provision and a performance bond is not furnished. The (recipient) shall determine the amount of the advance payment bond necessary to protect the (Recipient).

Patent Infringement Bonding Requirements (Patent Indemnity)

The Contractor may be required to obtain a patent indemnity bond if a performance bond is not furnished and the financial responsibility of the Contractor is unknown or doubtful. The (recipient) shall determine the amount of the patent indemnity to protect the (Recipient).

Warranty of the Work and Maintenance Bonds

1. The Contractor warrants to (Recipient), the Architect and/or Engineer that all materials and equipment furnished under this Contract will be of highest quality and new unless otherwise specified by (Recipient), free from faults and defects and in conformance with the Contract Documents. All work not so conforming to these standards shall be considered defective. If required by the [Project Manager], the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

2. The Work furnished must be of first quality and the workmanship must be the best obtainable in the various trades. The Work must be of safe, substantial and durable construction in all respects. The Contractor hereby guarantees the Work against defective materials or faulty workmanship for a minimum period of one (1) year after Final Payment by (Recipient) and shall replace or repair any defective materials or equipment or faulty workmanship during the period of the guarantee at no cost to (Recipient). As additional security for these guarantees, the Contractor shall, prior to the release of Final Payment [as provided in Item X below], furnish separate Maintenance (or Guarantee) Bonds in form acceptable to (Recipient) written by the same corporate surety that provides the Performance Bond and Labor and Material Payment Bond for this Contract. These bonds shall secure the Contractor's obligation to replace or repair defective materials and faulty workmanship for a minimum period of one (1) year after Final Payment and shall be written in an amount equal to ONE HUNDRED PERCENT (100%) of the CONTRACT SUM, as adjusted (if at all).

---

14. CLEAN AIR
42 U.S.C. 7401 et seq
40 CFR 15.61
49 CFR Part 18

Applicability to Contracts
The Clean Air requirements apply to all contracts exceeding $100,000, including indefinite quantities where the amount is expected to exceed $100,000 in any year.

Flow Down
The Clean Air requirements flow down to all subcontracts which exceed $100,000.

Model Clauses/Language
No specific language is required. FTA has proposed the following language.

Clean Air - (1) 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. The Contractor agrees to report each violation to the Purchaser and understands and agrees that the

Purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

(2) The Contractor also agrees to include these requirements in each subcontract exceeding $100,000 financed in whole or in part with Federal assistance provided by FTA.

---

15. RECYCLED PRODUCTS
42 U.S.C. 6962
40 CFR Part 247
Executive Order 12873

Applicability to Contracts
The Recycled Products requirements apply to all contracts for items designated by the EPA, when the purchaser or contractor 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. New requirements for "recovered materials" will become effective May 1, 1996. These new regulations apply to all procurement actions involving items designated by the EPA, where the procuring agency purchases $10,000 or more of one of these items in a fiscal year, or when the cost of such items purchased during the previous fiscal year was $10,000.

Flow Down
These requirements flow down to all to all contractor and subcontractor tiers.

Model Clause/Language
No specific clause is mandated, but FTA has developed the following language.

Recovered Materials - The contractor agrees to comply with all the requirements of Section 6002 of the Resource Conservation and Recovery Act (RCRA), as amended (42 U.S.C. 6962), including but not limited to the regulatory provisions of 40 CFR Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 CFR Part 247.

---

16. DAVIS-BACON AND COPELAND ANTI-KICKBACK ACTS

Background and Application
The Davis-Bacon and Copeland Acts are codified at 40 USC 3141, *et seq.* and 18 USC 874. The Acts apply to grantee construction contracts and subcontracts that "at least partly are financed by a loan or grant from the Federal Government." 40 USC 3145(a), 29 CFR 5.2(h), 49 CFR 18.36(i)(5). The Acts apply to any construction contract over $2,000. 40 USC 3142(a), 29 CFR 5.5(a). 'Construction,' for purposes of the Acts, includes "actual construction, alteration and/or repair, including painting and decorating." 29 CFR 5.5(a). The requirements of both Acts are incorporated into a single clause (*see* 29 CFR 3.11) enumerated at 29 CFR 5.5(a) and reproduced below.

The clause language is drawn directly from 29 CFR 5.5(a) and any deviation from the model clause below should be coordinated with counsel to ensure the Acts' requirements are satisfied.

Clause Language

Davis-Bacon and Copeland Anti-Kickback Acts

(1) **Minimum wages** - (i) All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR Part 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classifications and wage rates conformed under paragraph (1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(ii)(A) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

(1) Except with respect to helpers as defined as 29 CFR 5.2(n)(4), the work to be performed by the classification requested is not performed by a classification in the wage determination; and

(2) The classification is utilized in the area by the construction industry; and

(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination; and

(4) With respect to helpers as defined in 29 CFR 5.2(n)(4), such a classification prevails in the area in which the work is performed.

(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii) (B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on

which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.
(v)(A) The contracting officer shall require that any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefor only when the following criteria have been met:

(1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(2) The classification is utilized in the area by the construction industry; and

(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination with 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(v) (B) or (C) of this section, shall be paid to all workers performing work in the
classification under this contract from the first day on which work is performed in the classification.

(2) **Withholding** - The [***insert name of grantee***] shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the contract, the [***insert name of grantee***] may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(3) **Payrolls and basic records** - (i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the

construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii)(A) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the [***insert name of grantee***] for transmission to the Federal Transit Administration. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under section 5.5(a)(3)(i) of Regulations, 29 CFR part 5. This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal Stock Number 029-005-00014-1), U.S. Government Printing Office, Washington, DC 20402. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors.

(B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:
(1) That the payroll for the payroll period contains the information required to be maintained under section 5.5(a)(3)(i) of Regulations, 29 CFR part 5 and that such information is correct and complete;

(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (a)(3)(ii)(B) of this section.

(D) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

(iii) The contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the Federal Transit Administration or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

(4) **Apprentices and trainees** - (i) Apprentices - Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable

ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator of the Wage and Hour Division of the U.S. Department of Labor determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Bureau of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the Bureau, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) Trainees - Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) Equal employment opportunity - The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

(5) **Compliance with Copeland Act requirements** - The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

(6) **Subcontracts** - The contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the Federal Transit Administration may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

(7) **Contract termination: debarment** - A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

(8) **Compliance with Davis-Bacon and Related Act requirements** - All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

(9) **Disputes concerning labor standards** - Disputes arising out of the labor standards provisions of this contract shall

not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

(10) **Certification of eligibility** - (i) By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

17. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

Background and Application

The Contract Work Hours and Safety Standards Act is codified at 40 USC 3701, *et seq.* The Act applies to grantee contracts and subcontracts "financed at least in part by loans or grants from ... the [Federal] Government." 40 USC 3701(b)(1)(B)(iii) and (b)(2), 29 CFR 5.2(h), 49 CFR 18.36(i)(6). Although the original Act required its application in any construction contract over $2,000 or non-construction contract to which the Act applied over $2,500 (and language to that effect is still found in 49 CFR 18.36(i)(6)), the Act no longer applies to any "contract in an amount that is not greater than $100,000." 40 USC 3701(b)(3) (A)(iii).

The Act applies to construction contracts and, in very limited circumstances, non-construction projects that employ "laborers or mechanics on a public work." These non-construction applications do not generally apply to transit procurements because transit procurements (to include rail cars and buses) are deemed "commercial items." 40 USC 3707, 41 USC 403 (12). A grantee that contemplates entering into a contract to procure a developmental or unique item should consult counsel to determine if the Act applies to that procurement and that additional language required by 29 CFR 5.5(c) must be added to the basic clause below.

The clause language is drawn directly from 29 CFR 5.5(b) and any deviation from the model clause below should be coordinated with counsel to ensure the Act's requirements are satisfied.

Clause Language

Contract Work Hours and Safety Standards

(1) **Overtime requirements** - No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) **Violation; liability for unpaid wages; liquidated damages** - In the event of any violation of the clause set forth in paragraph (1) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of $10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.

(3) **Withholding for unpaid wages and liquidated damages** - The (***write in the name of the grantee***) shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.

(4) **Subcontracts** - The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraphs (1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this section.

---

18. [RESERVED]

---

19. NO GOVERNMENT OBLIGATION TO THIRD PARTIES

Applicability to Contracts
Applicable to all contracts.

Flow Down
Not required by statute or regulation for either primary contractors or subcontractors, this concept should flow down to all levels to clarify, to all parties to the contract, that the Federal Government does not have contractual liability to third parties, absent specific written consent.

Model Clause/Language
While no specific language is required, FTA has developed the following language.

No Obligation by the Federal Government.

(1) The Purchaser and Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this contract and shall not be subject to any obligations or liabilities to the Purchaser, Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

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

---

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

Applicability to Contracts
These requirements are applicable to all contracts.

Flow Down
These requirements flow down to contractors and subcontractors who make, present, or submit covered claims and statements.

Model Clause/Language
These requirements have no specified language, so FTA proffers the following language.

Program Fraud and False or Fraudulent Statements or Related Acts.

(1) 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 C.F.R. Part 31, apply to its actions pertaining to this Project. Upon execution of the underlying contract, 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 the underlying contract or the FTA assisted project for which this contract 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.

(2) 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 contract 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. § 5307, 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 Contractor, to the extent the Federal Government deems appropriate.

(3) The Contractor agrees to include the above two clauses 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. TERMINATION
49 U.S.C. Part 18
FTA Circular 4220.1E

Applicability to Contracts
All contracts (with the exception of contracts with nonprofit organizations and institutions of higher education,) in excess of $10,000 shall contain suitable provisions for termination by the grantee including the manner by which it will be effected and the basis for settlement. (For contracts with nonprofit organizations and institutions of higher education the threshold is $100,000.) In addition, such contracts shall describe conditions under which the contract may be terminated for default as well as conditions where the contract may be terminated because of circumstances beyond the control of the contractor.

Flow Down
The termination requirements flow down to all contracts in excess of $10,000, with the exception of contracts with nonprofit organizations and institutions of higher learning.

Model Clause/Language
FTA does not prescribe the form or content of such clauses. The following are suggestions of clauses to be used in different types of contracts:

a. Termination for Convenience (General Provision) The (Recipient) may terminate this contract, in whole or in part, at any time by written notice to the Contractor when it is in the Government's best interest. The Contractor shall be paid its costs, including contract close-out costs, and profit on work performed up to the time of termination. The Contractor shall promptly submit its termination claim to (Recipient) to be paid the Contractor. If the Contractor has any property in its possession belonging to the (Recipient), the Contractor will account for the same, and dispose of it in the manner the (Recipient) directs.

b. Termination for Default [Breach or Cause] (General Provision) If the Contractor does not deliver supplies in accordance with the contract delivery schedule, or, if the contract is for services, the Contractor fails to perform in the manner called for in the contract, or if the Contractor fails to comply with any other provisions of the contract, the (Recipient) may terminate this contract for default. Termination shall be effected by serving a notice of termination on the contractor setting forth the manner in which the Contractor is in default. The contractor will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner of performance set forth in the contract.

If it is later determined by the (Recipient) that the Contractor 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 the Contractor, the (Recipient), after setting up a new delivery of performance schedule, may allow the Contractor to continue work, or treat the termination as a termination for convenience.

c. Opportunity to Cure (General Provision) The (Recipient) in its sole discretion may, in the case of a termination for breach or default, allow the Contractor [an appropriately short period of time] 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 Contractor fails to remedy to (Recipient)'s satisfaction the breach or default of any of the terms, covenants, or conditions of this Contract within [ten (10) days] after receipt by Contractor of written notice from (Recipient) setting forth the nature of said breach or default, (Recipient) shall have the right to terminate the Contract without any further obligation to Contractor. Any such termination for default shall not in any way operate to preclude (Recipient) from also pursuing all available remedies against Contractor and its sureties for said breach or default.

d. Waiver of Remedies for any Breach In the event that (Recipient) elects to waive its remedies for any breach by Contractor of any covenant, term or condition of this Contract, such waiver by (Recipient) shall not limit (Recipient)'s remedies for any succeeding breach of that or of any other term, covenant, or condition of this Contract.

e. Termination for Convenience (Professional or Transit Service Contracts) The (Recipient), by written notice, may terminate this contract, in whole or in part, when it is in the Government's interest. If this contract is terminated, the Recipient shall be liable only for payment under the payment provisions of this contract for services rendered before the effective date of termination.

f. Termination for Default (Supplies and Service) If the Contractor fails to deliver supplies or to perform the services within the time specified in this contract or any extension or if the Contractor fails to comply with any other provisions of this contract, the (Recipient) may terminate this contract for default. The (Recipient) shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of the default. The Contractor will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner or performance set forth in this contract.

If, after termination for failure to fulfill contract obligations, it is determined that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the Recipient.

g. Termination for Default (Transportation Services) If the Contractor fails to pick up the commodities or to perform the services, including delivery services, within the time specified in this contract or any extension or if the Contractor fails to comply with any other provisions of this contract, the (Recipient) may terminate this contract for default. The (Recipient) shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of default. The Contractor will only be paid the contract price for services performed in accordance with the manner of performance set forth in this contract.

If this contract is terminated while the Contractor has possession of Recipient goods, the Contractor shall, upon direction of the (Recipient), protect and preserve the goods until surrendered to the Recipient or its agent. The Contractor and (Recipient) shall agree on payment for the preservation and protection of goods. Failure to agree on an amount will be resolved under the Dispute clause.

If, after termination for failure to fulfill contract obligations, it is determined that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the (Recipient).

h. Termination for Default (Construction) If the Contractor refuses or fails to prosecute the work or any separable part, with the diligence that will insure its completion within the time specified in this contract or any extension or fails to complete the work within this time, or if the Contractor fails to comply with any other provisions of this contract, the (Recipient) may terminate this contract for default. The (Recipient) shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of the default. In this event, the Recipient may take over the work and compete it by contract or otherwise, and may take possession of and use any materials, appliances, and plant on the work

site necessary for completing the work. The Contractor and its sureties shall be liable for any damage to the Recipient resulting from the Contractor's refusal or failure to complete the work within specified time, whether or not the Contractor's right to proceed with the work is terminated. This liability includes any increased costs incurred by the Recipient in completing the work.

The Contractor's right to proceed shall not be terminated nor the Contractor charged with damages under this clause if-

1. the delay in completing the work arises from unforeseeable causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include: acts of God, acts of the Recipient, acts of another Contractor in the performance of a contract with the Recipient, epidemics, quarantine restrictions, strikes, freight embargoes; and

2. the contractor, within [10] days from the beginning of any delay, notifies the (Recipient) in writing of the causes of delay. If in the judgment of the (Recipient), the delay is excusable, the time for completing the work shall be extended. The judgment of the (Recipient) shall be final and conclusive on the parties, but subject to appeal under the Disputes clauses.

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 convenience of the Recipient.

i. Termination for Convenience or Default (Architect and Engineering) The (Recipient) may terminate this contract in whole or in part, for the Recipient's convenience or because of the failure of the Contractor to fulfill the contract obligations. The (Recipient) shall terminate by delivering to the Contractor a Notice of Termination specifying the nature, extent, and effective date of the termination. Upon receipt of the notice, the Contractor shall (1) immediately discontinue all services affected (unless the notice directs otherwise), and (2) deliver to the Contracting Officer all data, drawings, specifications, reports, estimates, summaries, and other information and materials accumulated in performing this contract, whether completed or in process.

If the termination is for the convenience of the Recipient, the Contracting Officer shall make an equitable adjustment in the contract price but shall allow no anticipated profit on unperformed services.

If the termination is for failure of the Contractor to fulfill the contract obligations, the Recipient may complete the work by contact or otherwise and the Contractor shall be liable for any additional cost incurred by the Recipient.

If, after termination for failure to fulfill contract obligations, it is determined that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the Recipient.

j. Termination for Convenience of Default (Cost-Type Contracts) The (Recipient) may terminate this contract, or any portion of it, by serving a notice or termination on the Contractor. The notice shall state whether the termination is for convenience of the (Recipient) or for the default of the Contractor. If the termination is for default, the notice shall state the manner in which the contractor has failed to perform the requirements of the contract. The Contractor shall account for any property in its possession paid for from funds received from the (Recipient), or property supplied to the Contractor by the (Recipient). If the termination is for default, the (Recipient) may fix the fee, if the contract provides for a fee, to be paid the contractor in proportion to the value, if any, of work performed up to the time of termination. The Contractor shall promptly submit its termination claim to the (Recipient) and the parties shall negotiate the termination settlement to be paid the Contractor.

If the termination is for the convenience of the (Recipient), the Contractor shall be paid its contract close-out costs, and a fee, if the contract provided for payment of a fee, in proportion to the work performed up to the time of termination.

If, after serving a notice of termination for default, the (Recipient) determines that the Contractor has an excusable reason for not performing, such as strike, fire, flood, events which are not the fault of and are beyond the control of the contractor, the (Recipient), after setting up a new work schedule, may allow the Contractor to continue work, or treat the termination as a termination for convenience.

22. GOVERNMENT-WIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

Background and Applicability

In conjunction with the Office of Management and Budget and other affected Federal agencies, DOT published an update to 49 CFR Part 29 on November 26, 2003. This government-wide regulation implements Executive Order 12549, *Debarment and Suspension*, Executive Order 12689, *Debarment and Suspension*, and 31 U.S.C. 6101 note (Section 2455, Public Law 103-355, 108 Stat. 3327).

The provisions of Part 29 apply to all grantee contracts and subcontracts at any level expected to equal or exceed $25,000 as well as any contract or subcontract (at any level) for Federally required auditing services. 49 CFR 29.220(b). This represents a change from prior practice in that the dollar threshold for application of these rules has been lowered from $100,000 to $25,000. These are contracts and subcontracts referred to in the regulation as "covered transactions."

Grantees, contractors, and subcontractors (at any level) that enter into covered transactions are required to verify that the entity (as well as its principals and affiliates) they propose to contract or subcontract with is not excluded or disqualified. They do this by (a) Checking the Excluded Parties List System, (b) Collecting a certification from that person, or (c) Adding a clause or condition to the contract or subcontract. This represents a change from prior practice in that certification is still acceptable but is no longer required. 49 CFR 29.300.

Grantees, contractors, and subcontractors who enter into covered transactions also must require the entities they contract with to comply with 49 CFR 29, subpart C and include this requirement in their own subsequent covered transactions (i.e., the requirement flows down to subcontracts at all levels).

Clause Language

The following clause language is suggested, not mandatory. It incorporates the optional method of verifying that contractors are not excluded or disqualified by certification.

Suspension and Debarment

> This contract is a covered transaction for purposes of 49 CFR Part 29. As such, the contractor is required to verify that none of the contractor, its principals, as defined at 49 CFR 29.995, or affiliates, as defined at 49 CFR 29.905, are excluded or disqualified as defined at 49 CFR 29.940 and 29.945.
>
> The contractor is required to comply with 49 CFR 29, Subpart C and must include the requirement to comply with 49 CFR 29, Subpart C in any lower tier covered transaction it enters into.
> By signing and submitting its bid or proposal, the bidder or proposer certifies as follows:
>
> The certification in this clause is a material representation of fact relied upon by **{insert agency name}**. If it is later determined that the bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available to **{insert agency name}**, 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 49 CFR 29, Subpart C while this offer is valid and throughout the period of any contract 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.

---

23. PRIVACY ACT
5 U.S.C. 552

Applicability to Contracts

When a grantee maintains files on drug and alcohol enforcement activities for FTA, and those files are organized so that information could be retrieved by personal identifier, the Privacy Act requirements apply to all contracts.

Flow Down
The Federal Privacy Act requirements flow down to each third party contractor and their contracts at every tier.

Model Clause/Language
The text of the following clause has not been mandated by statute or specific regulation, but has been developed by FTA.

Contracts Involving Federal Privacy Act Requirements - The following requirements apply to the Contractor and its employees that administer any system of records on behalf of the Federal Government under any contract:

(1) The Contractor agrees to comply with, and assures the compliance of its employees with, the information restrictions and other applicable requirements of the Privacy Act of 1974,

5 U.S.C. § 552a. Among other things, the Contractor agrees to obtain the express consent of the Federal Government before the Contractor or its employees operate a system of records on behalf of the Federal Government. The Contractor understands that the requirements of the Privacy Act, including the civil and criminal penalties for violation of that Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of the underlying contract.

(2) The Contractor also agrees to include these requirements in each subcontract to administer any system of records on behalf of the Federal Government financed in whole or in part with Federal assistance provided by FTA.

---

24. CIVIL RIGHTS REQUIREMENTS
29 U.S.C. § 623, 42 U.S.C. § 2000
42 U.S.C. § 6102, 42 U.S.C. § 12112
42 U.S.C. § 12132, 49 U.S.C. § 5332
29 CFR Part 1630, 41 CFR Parts 60 et seq.

Applicability to Contracts
The Civil Rights Requirements apply to all contracts.

Flow Down
The Civil Rights requirements flow down to all third party contractors and their contracts at every tier.

Model Clause/Language
The following clause was predicated on language contained at 49 CFR Part 19, Appendix A, but FTA has shortened the lengthy text.

Civil Rights - The following requirements apply to the underlying contract:

(1) Nondiscrimination - In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and 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, creed, national origin, sex, age, or disability. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

(2) Equal Employment Opportunity - The following equal employment opportunity requirements apply to the underlying contract:

(a) Race, Color, Creed, National Origin, Sex - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375,

"Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, 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. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

(b) Age - In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § § 623 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.

(c) Disabilities - In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the Contractor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

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

---

25. BREACHES AND DISPUTE RESOLUTION
49 CFR Part 18
FTA Circular 4220.1E

Applicability to Contracts

All contracts in excess of $100,000 shall contain provisions or conditions which will allow for administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as may be appropriate. This may

include provisions for bonding, penalties for late or inadequate performance, retained earnings, liquidated damages or other appropriate measures.

Flow Down

The Breaches and Dispute Resolutions requirements flow down to all tiers.

Model Clauses/Language

FTA does not prescribe the form or content of such provisions. What provisions are developed will depend on the circumstances and the type of contract. Recipients should consult legal counsel in developing appropriate clauses. The following clauses are examples of provisions from various FTA third party contracts.

Disputes - Disputes arising in the performance of this Contract which are not resolved by agreement of the parties shall be decided in writing by the authorized representative of (Recipient)'s [title of employee]. This decision shall be final and conclusive unless within [ten (10)] days from the date of receipt of its copy, the Contractor mails or otherwise furnishes a written appeal to the [title of employee]. In connection with any such appeal, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the [title of employee] shall be binding upon the Contractor and the Contractor shall abide be the decision.

Performance During Dispute - Unless otherwise directed by (Recipient), Contractor shall continue performance under this Contract while matters in dispute are being resolved.

Claims for Damages - Should either party to the Contract 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 therefor shall be made in writing to such other party within a reasonable time after the first observance of such injury of damage.

Remedies - Unless this contract provides otherwise, all claims, counterclaims, disputes and other matters in question between the (Recipient) and the Contractor arising out of or relating to this agreement or its breach will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within the State in which the (Recipient) is located.

Rights and Remedies - The duties and obligations imposed by the Contract Documents 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 the (Recipient), (Architect) or Contractor shall constitute a waiver of any right or duty afforded any of them under the Contract, 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.

26. PATENT AND RIGHTS IN DATA

37 CFR Part 401
~~**49 CFR Parts 18 and 19**~~

Applicability to Contracts

Patent and rights in data requirements for federally assisted projects ONLY apply to research projects in which FTA finances the purpose of the grant is to finance the development of a product or information. These patent and data rights requirements do not apply to capital projects or operating projects, even though a small portion of the sales price may cover the cost of product development or writing the user's manual.

Flow Down

The Patent and Rights in Data requirements apply to all contractors and their contracts at every tier.

Model Clause/Language

The FTA patent clause is substantially similar to the text of 49 C.F.R. Part 19, Appendix A, Section 5, but the rights in data clause reflects FTA objectives. For patent rights, FTA is governed by Federal law and regulation. For data rights, the text on copyrights is insufficient to meet FTA's purposes for awarding research grants. This model clause, with larger rights as a standard, is proposed with the understanding that this standard could be modified to FTA's needs.

CONTRACTS INVOLVING EXPERIMENTAL, DEVELOPMENTAL, OR RESEARCH WORK.

A. **Rights in Data** - This following requirements apply to each contract involving experimental, developmental or research work:

(1) The term "subject data" used in this clause means recorded information, whether or not copyrighted, that is delivered or specified to be delivered under the contract. The term includes graphic or pictorial delineation in media such as drawings or photographs; text in specifications or related performance or design-type documents; machine forms such as punched cards, magnetic tape, or computer memory printouts; and information retained in computer memory. Examples include, but are not limited to: computer software, engineering drawings and associated lists, specifications, standards, process sheets, manuals, technical reports, catalog item identifications, and related information. The term "subject data" does not include financial reports, cost analyses, and similar information incidental to contract administration.

(2) The following restrictions apply to all subject data first produced in the performance of the contract to which this Attachment has been added:

(a) Except for its own internal use, the Purchaser or Contractor may not publish or reproduce subject data in whole or in part, or in any manner or form, nor may the Purchaser or Contractor authorize others to do so, without the written consent of the Federal Government, until such time as the Federal Government may have either released or approved the release of such data to the public; this restriction on publication, however, does not apply to any contract with an academic institution.

(b) In accordance with 49 C.F.R. § 18.34 and 49 C.F.R. § 19.36, the Federal Government reserves a royalty-free, non-exclusive and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use, for "Federal Government purposes," any subject data or copyright described in subsections (2)(b)1 and (2)(b)2 of this clause below. As used in the previous sentence, "for Federal Government purposes," means use only 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.

1. Any subject data developed under that contract, whether or not a copyright has been obtained; and

2. Any rights of copyright purchased by the Purchaser or Contractor using Federal assistance in whole or in part provided by FTA.

(c) When FTA awards Federal assistance for experimental, developmental, or research work, it is FTA's general intention to increase transportation knowledge available to the public, rather than to restrict the benefits resulting from the work to participants in that work. Therefore, unless FTA determines otherwise, the Purchaser and the Contractor performing experimental, developmental, or research work required by the underlying contract to which this Attachment is added agrees to permit FTA to make available to the public, either FTA's license in the copyright to any subject data developed in the course of that contract, or a copy of the subject data first produced under the contract for which a copyright has not been obtained. If the experimental, developmental, or research work, which is the subject of the underlying contract, is not completed for any reason whatsoever, all data developed under that contract shall become subject data as defined in subsection (a) of this clause and shall be delivered as the Federal Government may direct. This subsection (c) , however, does not apply to adaptations of automatic data processing equipment or programs for the Purchaser or Contractor's use whose costs are financed in whole or in part with Federal assistance provided by FTA for transportation capital projects.

(d) Unless prohibited by state law, upon request by the Federal Government, the Purchaser and the Contractor agree 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 Purchaser or Contractor 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. Neither the Purchaser nor the Contractor shall 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.

(e) 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.

(f) Data developed by the Purchaser or Contractor and financed entirely without using Federal assistance provided by the Federal Government that has been incorporated into work required by the underlying contract to which this Attachment

has been added is exempt from the requirements of subsections (b), (c), and (d) of this clause, provided that the Purchaser or Contractor identifies that data in writing at the time of delivery of the contract work.

(g) Unless FTA determines otherwise, the Contractor agrees to include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.

(3) Unless the Federal Government later makes a contrary determination in writing, irrespective of the Contractor's status (i.e., a large business, small business, state government or state instrumentality, local government, nonprofit organization, institution of higher education, individual, etc.), the Purchaser and the Contractor agree to take the necessary actions to provide, through FTA, those rights in that invention due the Federal Government as described in

U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 C.F.R. Part 401.

(4) The Contractor also agrees to include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.

B. **Patent Rights** - The following requirements apply to each contract involving experimental, developmental, or research work:

(1) General - If any invention, improvement, or discovery is conceived or first actually reduced to practice in the course of or under the contract to which this Attachment has been added, and that invention, improvement, or discovery is patentable under the laws of the United States of America or any foreign country, the Purchaser and Contractor agree to take actions necessary to provide immediate notice and a detailed report to the party at a higher tier until FTA is ultimately notified.

(2) Unless the Federal Government later makes a contrary determination in writing, irrespective of the Contractor's status (a large business, small business, state government or state instrumentality, local government, nonprofit organization, institution of higher education, individual), the Purchaser and the Contractor agree to take the necessary actions to provide, through FTA, those rights in that invention due the Federal Government as described in U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 C.F.R. Part 401.

(3) The Contractor also agrees to include the requirements of this clause in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.

---

27. TRANSIT EMPLOYEE PROTECTIVE AGREEMENTS

49 U.S.C. § 5310, § 5311, and § 5333
29 CFR Part 215

Applicability to Contracts

The Transit Employee Protective Provisions apply to each contract for transit operations performed by employees of a Contractor recognized by FTA to be a transit operator. (Because transit operations involve many activities apart from directly driving or operating transit vehicles, FTA determines which activities constitute transit "operations" for purposes of this clause.)

Flow Down

These provisions are applicable to all contracts and subcontracts at every tier.

Model Clause/Language

Since no mandatory language is specified, FTA had developed the following language:

Transit Employee Protective Provisions. (1) The Contractor agrees to the comply with applicable transit employee protective requirements as follows:

(a) General Transit Employee Protective Requirements - To the extent that FTA determines that transit operations are involved, the Contractor agrees to carry out the transit operations work on the underlying contract in compliance with

terms and conditions determined by the U.S. Secretary of Labor to be fair and equitable to protect the interests of employees employed under this contract and to meet the employee protective requirements of 49 U.S.C. A 5333(b), and U.S. DOL guidelines at 29 C.F.R. Part 215, and any amendments thereto. These terms and conditions are identified in the letter of certification from the U.S. DOL to FTA applicable to the FTA Recipient's project from which Federal assistance is provided to support work on the underlying contract. The Contractor agrees to carry out that work in compliance with the conditions stated in that U.S. DOL letter. The requirements of this subsection (1), however, do not apply to any contract financed with Federal assistance provided by FTA either for projects for elderly individuals and individuals with disabilities authorized by 49 U.S.C. § 5310(a)(2), or for projects for nonurbanized areas authorized by 49 U.S.C. § 5311. Alternate provisions for those projects are set forth in subsections (b) and (c) of this clause.
(b) Transit Employee Protective Requirements for Projects Authorized by 49 U.S.C. § 5310(a)(2) for Elderly Individuals and Individuals with Disabilities - If the contract involves transit operations financed in whole or in part with Federal assistance authorized by 49 U.S.C. § 5310(a)(2), and if the U.S. Secretary of Transportation has determined or determines in the future that the employee protective requirements of 49 U.S.C. § 5333(b) are necessary or appropriate for the state and the public body subrecipient for which work is performed on the underlying contract, the Contractor agrees to carry out the Project in compliance with the terms and conditions determined by the U.S. Secretary of Labor to meet the requirements of 49 U.S.C. § 5333(b), U.S. DOL guidelines at 29 C.F.R. Part 215, and any amendments thereto. These terms and conditions are identified in the U.S. DOL's letter of certification to FTA, the date of which is set forth Grant Agreement or Cooperative Agreement with the state. The Contractor agrees to perform transit operations in connection with the underlying contract in compliance with the conditions stated in that U.S. DOL letter.

(c) Transit Employee Protective Requirements for Projects Authorized by 49 U.S.C. § 5311 in Nonurbanized Areas - If the contract involves transit operations financed in whole or in part with Federal assistance authorized by 49 U.S.C. § 5311, the Contractor agrees to comply with the terms and conditions of the Special Warranty for the Nonurbanized Area Program agreed to by the U.S. Secretaries of Transportation and Labor, dated May 31, 1979, and the procedures implemented by U.S. DOL or any revision thereto.

(2) The Contractor also agrees to include the any applicable requirements in each subcontract involving transit operations financed in whole or in part with Federal assistance provided by FTA.

---

28. DISADVANTAGED BUSINESS ENTERPRISE (DBE)
49 CFR Part 26

For assistance with a contract clause incorporating the requirements of the new DBE rule in 49 CFR Part 26, contact the FTA HelpLine at www.ftahelpline.com.

---

29. [RESERVED]

---

30. INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS
FTA Circular 4220.1E

Applicability to Contracts
The incorporation of FTA terms applies to all contracts.

Flow Down
The incorporation of FTA terms has unlimited flow down.

Model Clause/Language
FTA has developed the following incorporation of terms language:

Incorporation of Federal Transit Administration (FTA) Terms - The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1E, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any (name of grantee) requests which would cause (name of grantee) to be in violation of the FTA terms and conditions.

31. DRUG AND ALCOHOL TESTING
49 U.S.C. §5331
49 CFR Parts 653 and 654

Applicability to Contracts
The Drug and Alcohol testing provisions apply to Operational Service Contracts.

Flow Down Requirements
Anyone who performs a safety-sensitive function for the recipient or subrecipient is required to comply with 49 CFR 653 and 654, with certain exceptions for contracts involving maintenance services. Maintenance contractors for non-urbanized area formula program grantees are not subject to the rules. Also, the rules do not apply to maintenance subcontractors.

Model Clause/Language
Introduction
FTA's drug and alcohol rules, 49 CFR 653 and 654, respectively, are unique among the regulations issued by FTA. First, they require recipients to ensure that any entity performing a safety-sensitive function on the recipient's behalf (usually subrecipients and/or contractors) implement a complex drug and alcohol testing program that complies with Parts 653 and 654. Second, the rules condition the receipt of certain kinds of FTA funding on the recipient's compliance with the rules; thus, the recipient is not in compliance with the rules unless every entity that performs a safety-sensitive function on the recipient's behalf is in compliance with the rules. Third, the rules do not specify how a recipient ensures that its subrecipients and/or contractors comply with them.

How a recipient does so depends on several factors, including whether the contractor is covered independently by the drug and alcohol rules of another Department of Transportation operating administration, the nature of the relationship that the recipient has with the contractor, and the financial resources available to the recipient to oversee the contractor's drug and alcohol testing program. In short, there are a variety of ways a recipient can ensure that its subrecipients and contractors comply with the rules.

Therefore, FTA has developed three model contract provisions for recipients to use "as is" or to modify to fit their particular situations.

Explanation of Model Contract Clauses
Under Option 1, the recipient ensures the contractor's compliance with the rules by requiring the contractor to participate in a drug and alcohol program administered by the recipient. The advantages of doing this are obvious: the recipient maintains total control over its compliance with 49 CFR 653 and 654. The disadvantage is that the recipient, which may not directly employ any safety-sensitive employees, has to implement a complex testing program. Therefore, this may be a practical option only for those recipients which have a testing program for their employees, and can add the contractor's safety-sensitive employees to that program.

Under Option 2, the recipient relies on the contractor to implement a drug and alcohol testing program that complies with 49 CFR 653 and 654, but retains the ability to monitor the contractor's testing program; thus, the recipient has less control over its compliance with the drug and alcohol testing rules than it does under option 1. The advantage of this approach is that it places the responsibility for complying with the rules on the entity that is actually performing the safety-sensitive function. Moreover, it reserves to the recipient the power to ensure that the contractor complies with the program. The disadvantage of Option 2 is that without adequate monitoring of the contractor's program, the recipient may find itself out of compliance with the rules.

Under option 3, the recipient specifies some or all of the specific features of a contractor's drug and alcohol compliance program. Thus, it requires the recipient to decide what it wants to do and how it wants to do it. The advantage of this option is that the recipient has more control over the contractor's drug and alcohol testing program, yet it is not actually administering the testing program. The disadvantage is that the recipient has to specify and understand clearly what it wants to do and why.

Drug and Alcohol Testing
Option 1

The contractor agrees to:

(a) participate in (grantee's or recipient's) drug and alcohol program established in compliance with 49 CFR 653 and 654.

Drug and Alcohol Testing
Option 2

The contractor agrees to establish and implement a drug and alcohol testing program that complies with 49 CFR Parts 653 and 654, produce any documentation necessary to establish its compliance with Parts 653 and 654, and permit any authorized representative of the United States Department of Transportation or its operating administrations, the State Oversight Agency of (name of State), or the (insert name of grantee), to inspect the facilities and records associated with the implementation of the drug and alcohol testing program as required under 49 CFR Parts 653 and 654 and review the testing process. The contractor agrees further to certify annually its compliance with Parts 653 and 654 before (insert date) and to submit the Management Information System (MIS) reports before (insert date before March 15) to (insert title and address of person responsible for receiving information). To certify compliance the contractor shall use the "Substance Abuse Certifications" in the "Annual List of Certifications and Assurances for Federal Transit Administration Grants and Cooperative Agreements," which is published annually in the Federal Register.

Drug and Alcohol Testing
Option 3

The contractor agrees to establish and implement a drug and alcohol testing program that complies with 49 CFR Parts 653 and 654, produce any documentation necessary to establish its compliance with Parts 653 and 654, and permit any authorized representative of the United States Department of Transportation or its operating administrations, the State Oversight Agency of (name of State), or the (insert name of grantee), to inspect the facilities and records associated with the implementation of the drug and alcohol testing program as required under 49 CFR Parts 653 and 654 and review the testing process. The contractor agrees further to certify annually its compliance with Parts 653 and 654 before (insert date) and to submit the Management Information System (MIS) reports before (insert date before March 15) to (insert title and address of person responsible for receiving information). To certify compliance the contractor shall use the "Substance Abuse Certifications" in the "Annual List of Certifications and Assurances for Federal Transit Administration Grants and Cooperative Agreements," which is published annually in the Federal Register. The Contractor agrees further to [Select a, b, or c] (a) submit before (insert date or upon request) a copy of the Policy Statement developed to implement its drug and alcohol testing program; OR (b) adopt (insert title of the Policy Statement the recipient wishes the contractor to use) as its policy statement as required under 49 CFR 653 and 654; OR (c) submit for review and approval before (insert date or upon request) a copy of its Policy Statement developed to implement its drug and alcohol testing program. In addition, the contractor agrees to: (to be determined by the recipient, but may address areas such as: the selection of the certified laboratory, substance abuse professional, or Medical Review Officer, or the use of a consortium).