

VIRGIN ISLANDS WATER AND POWER AUTHORITY
AMI PROJECT GENERAL CONTRACT TERMS/FEDERAL REQUIREMENTS TABLE OF
CONTENTS

CLAUSE NO.

1. DEFINITIONS
2. GENERAL STATEMENT OF RESPONSIBILITY OF CONTRACTOR
3. COMMENCEMENT, PROSECUTION AND COMPLETION OF WORK
4. LICENSES, PERMITS AND RESPONSIBILITY FOR WORK ETC.
5. ADDENDA
6. PURCHASE ORDER REQUIREMENT
7. ORDER DOCUMENTS
8. SITE
9. RESPECTIVE RESPONSIBILITIES OF THE PARTIES AT THE SITE
10. ACCESS TO WORK IN PROGRESS
11. PROGRESS REPORTS AND WORKING SCHEDULES
12. CHANGES
13. SUSPENSION OR INTERRUPTION OF WORK
14. A. TERMINATION FOR DEFAULT
B. TERMINATION FOR CONVENIENCE
15. DELAY AND DAMAGES
16. DELIVERY AND FORCE MAJEURE
17. CONTRACT PRICE
18. TERMS OF PAYMENT
19. EQUIPMENT AND CONSTRUCTION WARRANTIES
20. INTELLECTUAL PROPERTY
21. DELIVERY, TITLE, AND RISK OF LOSS

22. INSPECTION AND TESTS

23. COMPLIANCE WITH APPLICABLE LAW AND ACCEPTABLE PRACTICES

24. OTHER CONTRACTS

25. ASSIGNMENT

26. PATENT INFRINGEMENT

27. CUSTOMER DATA AND DEIDENTIFIED DATA

28. INSURANCE

29. PERFORMANCE BOND

30. PAYMENT BOND

31. INDEMNIFICATION FOR INJURY AND DAMAGE CLAIMS

32. DISPUTES

33. GOVERNING LAW AND VENUE

34. LIENS

35. RIGHT TO AUDIT

36. CONTINGENT FEES

37. GRATUITIES

38. NOTICE

39. ENFORCEMENT

40. EFFECTIVE DATE OF CONTRACT

41. ENTIRE AGREEMENT: MODIFICATION

42. OTHER REQUIREMENTS

43. STANDARD OF CARE

44. FALSE CLAIMS

45. NOTICE OF FEDERAL FUNDING

46. EQUAL EMPLOYMENT OPPORTUNITY

VIRGIN ISLANDS WATER AND POWER AUTHORITY

- 47. COMPLIANCE WITH THE COPELAND “ANTI- KICKBACK” ACT
- 48. COMPLIANCE WITH THE CONTRACT WORK HOURS AND SAFETY
STANDARDS ACT
- 49. CLEAN AIR ACT
- 50. FEDERAL WATER POLLUTION CONTROL ACT
- 51. SUSPENSION AND DEBARMENT
- 52. BYRD ANTI- LOBBYING AMENDMENT, 31 U.S.C. §1352
- 53. ACCESS TO RECORDS
- 54. DHS SEAL, LOGO, AND FLAGS
- 55. COMPLIANCE WITH FEDERAL LAW, REGULATIONS, AND EXECUTIVE
ORDERS
- 56. NO OBLIGATION BY FEDERAL GOVERNMENT
- 57. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENT OR RELATED
ACTS
- 58. PROCUREMENT OF RECOVERED MATERIALS

AMI PROJECT GENERAL CONTRACT TERMS

1. DEFINITIONS

As used herein, the following terms shall have the meanings set forth below:

- a. The term “**Affiliate**” shall mean any legal entity that directly or indirectly controls, is controlled by, or is under common control with a Party to this Agreement, where “control” means ownership of at least fifty percent (50%) of the equity having the power to vote on or direct the affairs of the entity.
- a. The term “**Authority**” shall mean the purchaser and owner of the Work, the Virgin Islands Water and Power Authority, or an authorized agent thereof. The term “**Services Work**” is a subset of the “Work” or “Scope of Work” and refers exclusively to labor, installation, maintenance, instruction, and any other activities required to design and implement the infrastructure described in the Specifications, Request for Proposal(s), Invitation or Bid of Contract and all requirements of these AMI Project General Contract Terms (including alterations made before the Contract was signed and changed provided for by Clause 9 hereof).
- b. The term “**Claim**” shall mean an unaffiliated third-party claim, action, cause of action, or demand for damages, costs, expenses (including reasonable attorney’s fees), and/or other relief.
- c. The term “**Confidential Information**” shall mean all information disclosed by a Party (“Disclosing Party”) to the other Party (“Receiving Party”), whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure. The Confidential Information of each Party includes the terms and conditions of this Agreement, as well as business and marketing plans, pricing, technology and technical information, trade secrets, product plans and designs, and business processes disclosed by such Party. However, Confidential Information does not include any information that: (i) is or becomes generally known to the public without breach of any obligation owed to the Disclosing Party, (ii) was known to the Receiving Party prior to its disclosure by the Disclosing Party without breach of any obligation owed to the Disclosing Party, (iii) is received from a third party without breach of any obligation owed to the Disclosing Party, or (iv) was independently developed by the Receiving Party without reference to the Disclosing Party’s Confidential Information.
- d. The term “**Contract**” shall mean the written agreement between the Authority and the Contractor, which includes SC-20-25 and all attachments thereto.
- e. The term “**Contractor**” shall mean Itron, the successful bidder who has been awarded the Contract for the performance of the Work, and shall include successors and assigns.
- f. The term “**Contracting Officer**” shall mean the Executive Director of the Authority and any other officer or employee who is properly designated and shall include, except as otherwise provided, the authorized representative of the Contracting Officer acting within the limits of her authority. The Contracting Officer shall not mean the Project Coordinator.
- g. The term “**Contractor Equipment**” means equipment listed on an Order Document for sale to Authority under this Agreement that is manufactured and branded by or on behalf of SUPPLIER.
- h. The term “**Customer Data**” shall mean all data about the Authority’s end users that Contractor acquires, develops, or derives in connection with the performance of services under this

Agreement. Customer Data may include Personally Identifiable Information relating to the Authority's end user, which is not generally available to the public. However, Customer Data does not include Deidentified Data.

- i. The term **"Defended Party"** shall mean a Party entitled to defense from the other Party under Section 7 ("Third-Party Claims") of these General Terms and Conditions.
- j. The term **"Defending Party"** shall mean a Party obligated to provide defense to the other Party under Section 7 ("Third Party Claims") of these General Terms and Conditions.
- k. The term **"Deidentified Data"** shall mean information that cannot reasonably be used to infer information about a Customer end user.
- l. The term **"Equipment"** shall mean Contractor Equipment and Third-Party Equipment.
- m. The term **"Documentation"** shall mean user manuals, training materials, product descriptions and specifications, technical manuals, supporting materials, and other documentation relating to products and services offered by Itron, which Itron has made available to Customer.
- n. The term **"Effective Date"** shall mean the date this Agreement is signed by both Parties.
- o. The term **"End User"** shall mean any person or entity that uses the products or services provided under this Agreement, but who is not a Party to this Agreement.
- p. The term **"Third-Party Equipment"** means equipment listed on an Order Document for sale to Authority under this Agreement that is not manufactured and branded by or on behalf of Contractor.
- q. The term **"Fees"** all amounts to be paid to Contractor by the Authority under this Agreement.
- r. The term **"Intellectual Property"** shall mean all worldwide rights, title and interest in or relating to any intellectual property or industrial property, whether protected, created or arising under the laws of any jurisdiction, including: (i) all patents, utility models and industrial design registrations and all applications for any of the foregoing (including all continuations, divisionals, continuations-in-part, provisionals, renewals, reissues, re-examinations, substitutions, additions, extensions, inventor's certificates and any foreign equivalents of any of the foregoing), (ii) all trademarks, service marks, brand names, trade dress, logos, corporate names, trade names, and other source of business identifiers and general intangibles of a like nature, in each case, together with all goodwill, registrations and applications for registration, extensions and renewals related to any of the foregoing, (iii) all copyrights and works of authorship, in each case, whether or not registered or published, and all registrations, applications, reversions, extensions and renewals for any of the foregoing, and all moral rights, however denominated, (iv) all Internet domain names, and (v) all trade secrets, and other know-how, ideas, technology, software, discoveries, improvements, formulae, confidential and proprietary information, technical information, techniques, inventions, designs, drawings, procedures, processes, methods and models, in each case, whether or not patentable or copyrightable.
- s. The term **"Order Document"** shall mean (i) any document attached hereto and identified as an Order Document on the Effective Date, and (ii) any other document identified as an Order Document that contains Fees and any related Statement of Work and supplemental terms and conditions applicable to specific products and/or services, references this Agreement, and is signed by the Parties after the Effective Date.

- t. The term **“Party”** shall mean either the Authority or Contractor, and the term **“Parties”** shall mean both the Customer and Contractor collectively.
- u. The term **“Personal Data”** or **“Personally Identifiable Information”** shall mean any data that can be used to identify an individual, including but not limited to names, addresses, phone numbers, email addresses, and other similar data, in accordance with applicable data protection laws.
- v. The term **“Site”** shall any location, whether on public property, private property, or property owned or controlled by the Authority, where the Work is required to be performed. This includes all areas where the Authority’s equipment, infrastructure, facilities, or utilities are situated or must be accessed for the purposes of performing the Work, including but not limited to rights-of-way, customer properties, Authority properties, and public spaces.
- w. The term **“Specifications”** shall mean the detailed description of, and requirements for, work to be performed, including all plans and drawings, which are a part of the Specifications.
- x. The term **“Statement of Work”** or **“SOW”** means any document identified as a Statement of Work and describing professional services to be provided by Itron that (i) is attached to an Order Document, or (ii) references this Agreement and is signed by the Parties.
- y. The term **“Work”** or **“Scope of Work”** shall mean all equipment, supplies and work required to design, construct, install, and/or deliver the infrastructure described in the Specifications, Statement of Work, or Contract and all requirements of these AMI Project General Contract Terms (including alterations made before the Contract was signed and changes provided for by Clause 9 hereof).

2. GENERAL STATEMENT OF RESPONSIBILITY OF THE CONTRACTOR

a. The Contractor shall perform the work in accordance with the terms of the Contract and as set forth in the Statement of Work. This work includes the necessary services, site preparation (excluding make-ready work), installation and testing, and the furnishing of labor, materials, equipment, tools, supervision, transportation and insurance, as described in the Contract. The obligation of the Contractor shall be deemed to carry with it the obligation to incur all items of necessary expense to perform the Work.

b. The Contractor shall be an independent contractor and shall have complete and undivided responsibility for complying with the Contract, including sole discretion for the means by which the Work is to be performed. Without any qualification of such undivided responsibility, the Contractor shall have the right to enter into such subcontracts, purchase orders, and other commitments with third parties for the performance of any part of the Work, as may in his opinion be advantageous or necessary for the expeditious or economical prosecution of the Work. The Contractor shall not assign the Contract or any of his/her duties or responsibilities thereunder without the Authority’s written consent, provided however, that Contractor may assign this Agreement without such consent in connection with a merger, acquisition, corporate reorganization or sale of all or substantially all of its relevant assets. This Agreement may only be assigned to entities not prohibited from participating in the federal government procurement contracting process.

c. Any provisions of the Contract which appear to give the Authority the right to direct the Contractor as to the means by which the Work is to be performed, or to exercise any control over the Work shall mean that the Contractor shall be obliged to follow the desires of the Authority only as to the end results and shall not in any way modify or relieve the Contractor of his/her complete and undivided responsibility for the means by which the Work is to be performed.

d. All supplies and/or equipment supplied, or services performed by Contractor under the Contract shall strictly comply with the terms, conditions, and requirements, and shall be done in a professional and workmanlike manner in accordance with the Contract.

e. The Contractor shall deliver the supplies and/or equipment and perform any services to be furnished in accordance with the scheduled delivery dates and any schedule of performance stated herein. It is understood and agreed by the Contractor that time is of the essence of each and every portion of the work for which a certain length of time or a completion date is fixed for performance. Receipt and acceptance by the Authority of revised schedules from the Contractor during the work shall not be deemed a waiver of the contract completion date, unless agreed to by the Authority in writing.

f. Contractor shall be responsible for the professional quality, technical accuracy and timely completion of its services furnished under the Contract. The contractor shall, without additional compensation, and at its own cost and expense, correct or revise any errors, omissions or other deficiencies in the services.

g. Contractor understands that this project is funded by FEMA and HUD CDBG-DR. Consequently, Contractor will endeavor to follow all requirements for federally funded projects.

3. COMMENCEMENT, PROSECUTION AND COMPLETION OF WORK

a. The Contractor agrees to commence the Work promptly after receipt of a written Notice to Proceed from the Authority and to complete it no later than the Contract completion date.

b. The Contractor shall furnish and maintain at the Site a competent resident supervisory representative who shall have the title of Project Manager: provided that the Authority shall have the right to require the removal from the Site of any employee of the Contractor of any subcontractor if in the judgment of the Contracting Officer such removal is necessary to protect the interests of the Authority.

c. The Contractor shall furnish and maintain during the performance of the Work, a competent resident supervisory representative who shall have the title of Project Manager: Provided that the Authority shall have the right to require the removal from the Site of any employee of the Contractor and/or of any subcontractor if in the judgment of the Contracting Officer such removal is necessary to protect the interest of the Authority.

d. The Contract completion date shall be the date specified in the Contract, unless the parties have agreed to an acceptable later date, except that the completion date may be extended under Clauses 9 or 12 hereof. The Work shall be deemed to be completed upon acceptance by the Contracting Officer following written notification from the Contractor that the Work has been performed in accordance with the Contract scope.

4. LICENSES, PERMITS AND RESPONSIBILITY FOR WORK, ETC.

The contractor shall comply with all federal and local laws, codes or regulations which apply to the performance of the Work. The contractor shall secure at its own expense all necessary licenses, certificates, and permits necessary to perform the Scope of Work.

5. ADDENDA

Addenda contain supplemental terms and conditions applicable to certain categories of products and services. Addenda incorporated into this Agreement on the Effective Date are identified on the Attachment Schedule

to these General Terms and Conditions. After the Effective Date, the Parties may add Addenda to this Agreement by written amendment signed by the Parties.

6. ORDER DOCUMENTS

Order Documents contain Fees, any related Statements of Work, and supplemental and/or modified terms and conditions applicable to specific products and/or services. Order Documents incorporated into this Agreement on the Effective Date are identified on the Attachment Schedule to these General Terms and Conditions. After the Effective Date, the Parties may add additional Order Documents. Any additional Order Documents must be signed by the Parties pursuant to Section 11 to be effective.

7. SITE

- a. The Site will be furnished to the Contractor by the Authority in its existing condition, except as otherwise provided herein. The Site includes any location where the Work is required to be performed, whether on public property, private property, or property owned or controlled by the Authority. This includes, but not limited to, areas where the Authority's infrastructure exists, such as meter bases at or near private, public, or commercial properties, transformers, substations, easements, rights-of-way necessary to complete the Work.
- b. The Contractor has taken all reasonable steps necessary to fully understand the physical conditions at the Site and difficulties that may be encountered in performing the Work due to such conditions. The Contractor acknowledges that the obligation to complete the Work includes assuming risks associated with physical conditions at the Site as they exist on the date of its bid. Notwithstanding the foregoing, the Authority is responsible for informing the Contractor of any existing underground utilities that are not visible during inspection or shown on the available site drawings; however, the Authority does not guarantee the exact location or elevation of such utilities.
- c. Information provided, Specifications, or any drawings regarding the Site are believed to be reasonably correct. Except as otherwise agreed in the SOW, the Authority does not warrant the completeness or accuracy of such information. It is the responsibility of the Contractor to verify all such information before proceeding with the Work.

8. RESPECTIVE RESPONSIBILITIES OF THE PARTIES AT THE SITE

- a. The Authority shall establish general reference points at the Site that will enable the Contractor to perform the Work with minimum interruption or delay. The Authority shall protect and preserve the established reference points and shall not alter their location without proper notice to the Contractor.
- b. The Contractor shall perform the Work at the Site in such manner that avoids damage to existing facilities or interruption with their continued operation. Likewise, The Authority shall ensure that its operation of any existing facilities do not unduly interfere with the Contractor's ability to perform the Work.
- c. The Contractor shall be responsible for locating all existing underground utilities, such as cables, conduit, water pipes, sanitary lines, etc., using hand excavation the Contractor must take care to protect these utilities from damage. Any Damage caused shall be immediately repaired by the Contractor at its own expense. Connections to existing equipment or infrastructure must be made only with the advance approval of the Contracting Officer.
- d. The Contractor shall be responsible for ensuring proper safety and protection measures for the health, life, and safety of personnel, the public, the Work, and all materials, machinery, equipment, tools, and supplies used in the performance of the Work. Additionally, the Contractor is responsible for protecting the property of others from damage during the execution of the Work.

- e. The Authority shall provide access to the Site at all times during the term of the Contract: Provided, however, that the Contractor shall be responsible for improving and or maintaining any access roads used in the performance of the Work. The Authority assumes no responsibility for the condition or maintenance of these roads.
- f. The Contractor acknowledges that the Work may require access to private and interaction with members of the public. The Contractor and all personnel involved in the Work must conduct themselves professionally at all times, maintaining proper decorum and refraining from any offensive, disruptive, or inappropriate behavior. Any interaction with property owners or members of the public must be respectful and minimize disruption. Failure to adhere to these standards may result in the removal of offending personnel from the Site and further corrective actions by the Authority.
- g. The Contractor shall take all reasonable precautions to avoid causing damage to any customer premises, including landscaping, structures, and other personal property. Should damage occur, the Contractor shall be responsible for promptly repairing or compensating for the damage to the satisfaction of the customer and the Authority

9. ACCESS TO WORK IN PROGRESS

- a. The work shall be performed at the Site or in the Contractor's office or at a location mutually satisfactory to both parties and such location shall not be changed without approval of the Project Coordinator
- b. Subject to federal security laws and regulations, the Authority and its representatives shall at all times have reasonable access to the facilities of the Contractor, his/her engineers, the manufacturing division and subcontractors, to ascertain the progress of the Work.
- c. The Authority and its representatives shall also have reasonable access at all times to work in progress at the Site, and the Contractor shall provide sufficient, safe and proper facilities for such access and inspection, it being understood that such access shall not unreasonably interfere with the orderly completion of the Work by the Contractor
- d. The Project Coordinator shall have access during the normal working hours where the Work is performed and to all of the data, calculations, models, test results, specimens and documents and any other matter related to the performance of the work scope of the contacts.

10. PROGRESS REPORTS AND WORKING SCHEDULES

The Contractor shall prepare weekly progress reports of the Work, or such reports as required by the Project Coordinator. When requested by the Authority, the Contractor shall furnish the underlying documents used in the preparation of any progress report including, if applicable, estimated material and equipment, procurement, manufacturing, shipping, installation and construction schedules: Provided that if, in the judgment of the Contractor, furnishing copies would involve inordinate expense the Authority may be provided access to such document instead.

11. CHANGES

The Contracting Officer may, at any time and without notice to the sureties, issue a written request for changes in the Work, provided that the changes are within the general scope of the Contract. Upon receiving such a request, the Contractor shall, within the time specified in the request but no later than thirty (30) days after receipt, submit an estimate of the effect of the requested changes, if any, upon the Contract price, the completion date, or other terms and conditions of the Contract.

No changes in the scope of Work shall be implemented, nor shall any related work proceed, until the Contracting Officer issues a written order. IF the Contractor proceeds with the changes to the scope of Work without first obtaining written authorization from the Contracting Officer, it shall be presumed, as a matter of law and that shall be prima facie evidence, that the Contractor is not entitled to additional compensation.

Compensation for changes to the scope of work, or extensions of the completion date due to changes, or other modifications of the Contract as a result of changes shall be set forth in formal Contract change orders. Provided however, that any disagreement between the parties regarding adjustments for changes shall not excuse the Contractor from continuing with the work as modified

12. SUSPENSION OR INTERRUPTION OF WORK

- a. The Contracting Officer may, in writing, order the Contractor to suspend all or any part of the Work for such period of time as he may determine to be appropriate for the convenience of the Authority.
- b. If without the fault or negligence of the Contractor the performance of all or any part of the Work is suspended or interrupted hereunder for any unreasonable period of time, the Contract price shall be adjusted for any increase in the cost of performing the Work excluding profit necessarily caused by such unreasonable period of suspension or interruption, and the Contract shall be modified in writing accordingly. Provided that a claim therefor shall be asserted in writing as soon as practicable after the termination of such adjustment or interruption; and provided further that no adjustment shall be made to the extent that performance by the Contractor would have been prevented by other causes, even if the Work had not been so suspended or interrupted.
- c. Paragraph b above shall not be construed to apply to specific periods of delay or suspension for which advance provision has been made such as anticipated weather conditions.

13. A. TERMINATION FOR DEFAULT

- (i) The Authority may terminate the Agreement if the Contractor commits a material breach or default of any of its covenants or obligations under the Contract and fails to remedy the same within thirty (30) days after receipt of written notice thereof. In such event, the Authority may take over the Work and prosecute same to completion by contract or otherwise and may seek to recover from the Contractor and his sureties any excess cost occasioned the Authority thereby, and for damages, inclusive of any excess cost occasioned by the Authority until such reasonable time as may be required for final completion of the Work. If the Contractor's right to proceed is terminated for default, the Contractor shall provide to the Authority all materials, data, reports, calculations, and information that have been compiled by Contractor specifically for the Authority in the performance of the Work and for which the Authority has previously paid.
- (ii) The Contractor may terminate the Agreement if the Authority commits a material breach or default of any of its covenants or obligations under the Contract and shall fail to commence to remedy the same within thirty (30) days after receipt of written notice thereof. In such event, the Authority may be liable for reasonable damages.
- (iii) Upon receipt of a termination notice, Contractor shall (a) promptly discontinue all Work to the extent directed; (b) secure the Work site to avoid damage or injury to persons or property; and (c) comply with Section 18 (Transition Support Services) of the Managed Software-as-a-Service Addendum (Attachment D).

B. TERMINATION FOR CONVENIENCE

- (a) Upon ninety (90) days' prior written notice, the Authority may, at any time, terminate the Contract for its convenience and without cause.
- (b) Upon receipt of written notice of termination for convenience from the Authority, the Contractor shall:
 - i. cease operations as directed by the Authority in the notice;
 - ii. take actions reasonably necessary, or that the Authority may reasonably direct for the protection and preservation of the Work;
 - iii. except for Work directed to be performed prior to the effective date of the termination stated in the notice, terminate all existing subcontracts and purchase order and enter into no further subcontracts and purchase orders.
- (c) In the case of such termination, for the Authority's convenience, in addition to all other amounts due under this Agreement, the Authority shall be obligated to: (i) pay all undisputed fees and related reimbursable expenses due for services rendered prior to the effective date of termination for convenience in accordance with applicable payment terms (provided, however, that fees to be paid based on milestone achievement will be paid on a pro rata basis based on the percentage of applicable work completed as of the effective date of termination), plus the reasonable, actual, and substantiated costs associated with winding down the services (e.g., costs associated with terminating agreements or disengaging resources that were executed or engaged in reasonable reliance upon completing the terminated services), (ii) pay any agreed upon retroactive equipment price increases that were expressly agreed to in writing by the Parties prior to the effective date of termination, and (iii) purchase all equipment specifically ordered by Contractor for Authority prior to the effective date of termination, provided such orders were made with Authority's prior approval or are non-cancellable. Contractor shall be obligated to take reasonable steps and efforts to mitigate any costs or expenses that can reasonably be avoided in connection with such termination. All materials, supplies and equipment purchased in connection with the scope of work shall, if and when paid for by the Authority, become the property of the Authority. Any unused, prepaid subscription fees shall be applied to the Authority's obligation to pay Contractor's reasonable and substantiated wind-down costs, as described in subsection (i). To the extent the total prepaid amount exceeds such wind-down costs, no refund shall be due to the Authority. The Parties agree that this allocation of prepaid funds is intended to offset termination-related costs, and not to result in any additional refund obligation on the part of the Contractor.

14. FORCE MAJEURE, DELAY, AND DAMAGES

The Contractor shall not be liable (including liquidated damages) for any failure or delay in the completion of the Work resulting from any cause beyond his control and without his fault or negligence, including but not restricted to, compliance with any instructions or priority requests of the Federal Government or any agency thereof, or the Government of the Virgin Islands, acts of God, acts of the public enemy, acts or omissions of the Authority or its agents, acts of another contractor in the performance of a contract with the Authority, fires, floods, epidemics, unusually severe weather, strikes, lockouts, embargoes, wars, riots, or delays of subcontractors or suppliers arising from unforeseeable causes beyond the control and without the fault of or negligence of both the Contractor and such subcontractors and suppliers: Provided, that the Contractor shall within 10 days from the beginning of any such delay, unless the Contracting Officer shall grant a further period of time prior to the date of final settlement of the Contract, notify the Contracting Officer in writing of the delay and causes of delay: and provided, further, that the Contractor shall be excused for delays of suppliers only if the Contracting Officer shall determine that the materials or supplies to be furnished are not procurable in the open market, subject to an adjustment

in Fees for expedited manufacturing. Any excusable failure or delay hereunder shall extend the Contract completion date accordingly, upon agreement by the Authority, but shall not affect any of the other terms or conditions of the Contract.

If either Party is prevented from performing any of its obligations under this Agreement due to a Force Majeure Event, such obligations shall be suspended for the duration of the Force Majeure Event. If the Force Majeure Event continues for a period of one hundred eighty (180) consecutive days or more and materially affects the performance of this Agreement, either Party may terminate this Agreement upon thirty (30) days' prior written notice to the other Party. Termination under this section shall be the terminating party's sole remedy with respect to a Force Majeure Event.

15. DELIVERY AND TITLE TRANSFER

Unless the Authority agrees otherwise in writing, Contractor shall deliver the goods DDP ("delivered duty paid") and F.O.B. (Uniform Commercial Code term) Origin, Prepaid and add to the location identified by the Authority, except that the Authority may, at its option, take delivery of all or any part of the goods at Contractor's facility; provided however that it shall be the responsibility of the Contractor to ensure delivery of the equipment to the designated location and further provided that the Contractor shall deliver the equipment or supplies to a reputable shipping agency and insure the equipment or supplies for 120% of the value of the Contract or Purchase Order.

Title and risk of loss to goods shall transfer to the Authority at the Virgin Islands Port of Entry, prior to importation. The Authority shall be importer of record, and shall be responsible for all declarations, documentation and other requirements for customs clearance, including any applicable duties, taxes, or other fees. Contractor or its assigns shall take possession of goods after customs clearance, and shall be responsible for transport, warehousing, insurance and general safekeeping of goods until the Equipment is installed; however, legal title shall remain with the Authority. Contractor shall indemnify, reimburse and hold harmless the Authority for any loss or damage to the Equipment between the point when taking physical possession after customs clearance and completion of the installation process.

Contractor or its assigns shall take possession of goods after customs clearance, and shall be responsible for transport, warehousing, insurance, and general safekeeping of goods until the Equipment is installed; however, legal title shall remain with the Authority. Contractor shall indemnify, reimburse and hold harmless the Authority for any loss or damage to the Equipment between the point when taking physical possession after customs clearance and completion of the installation process.

Time of delivery or performance is of the essence, and the Authority's stated delivery or performance date and the date for performance of any other obligation of Contractor shall not be extended for any reason, including delays in manufacture or shipment that Contractor cannot control, except as provided in Section 15.

16. CONTRACT PRICE

The Work shall be performed for the Fees. This Fees shall be subject to change only in accordance with Clause 12 hereof.

17. TERMS OF PAYMENT

a. Payments will be in accordance with the following for equipment and supplies:

- i. Unless otherwise specified in the Contract, payment shall be made by the Authority to the Contractor within sixty (60) days after receipt and processing of a properly executed and duly certified invoice thereof with required supporting documentation.

- ii. Should the Contract contain a schedule of payments, such schedule will be appropriately adjusted for any delays in delivery or other performance.
- b. Payments will be made in accordance with the following for services work:
 - i. The total number of increments of progress payments for Services Work shall not exceed 6. Each increment of progress payments shall equal the Contract price for services work.
 - ii. Progress payments will be made within sixty (60) days after receipt of an itemized and duly certified invoice issued by the Contractor based upon completion of each increment of Services Work as listed under paragraphs 2 herein.
 - iii. In making such partial payments there shall be retained ten percent (10%) on the invoiced amount until final completion and acceptance of the Services Work: Provided, however, that the Contracting Officer at any time after fifty percent (50%) of the Services Work has been completed, may approve the payment of any of the remaining partial payments in full.
 - iv. All Services Work and materials covered by partial payments made shall thereupon become the sole property of the Authority, but the provisions shall not be construed as relieving the Contractor from the sole responsibility for all materials and work upon which payments have been made or the restoration of any damaged work or as a waiver of the right of the Authority to require the fulfillment of all the terms of the Contract.
 - v. Upon completion and acceptance of the Work, the amount due the Contractor under this Contract will be paid upon the presentation of a properly executed and duly certified invoice thereof. The Contractor shall furnish the Authority with a release, if required, of all claims against the Authority arising under and by virtue of the Contract, other than such claims, if any, as may be specifically accepted by the Contractor from the operation of the release in stated amounts to be set forth therein.
- c. The obligation of the Authority to make any of the payments required under the Contract shall, in the discretion of the Contracting Officer, be subject to (i) workmanship, (ii) any claims, which the Authority may have against the Contractor and (iii) satisfaction of payment obligations to subcontractors or third party's making claims against Contractor with regard to the performance of the Scope of Work. Any overpayment to the Contractor shall, unless otherwise adjusted, be repaid to the Authority upon demand.
- d. Upon presentation of a request for payment, Contractor shall provide a statement of payments made or owed to all subcontractor(s), which statement shall be independently verified by the subcontractor(s). The Authority reserves the right to withhold payments to Contractors that fail to satisfy subcontractor claims(s).

18. EQUIPMENT AND PROFESSIONAL SERVICES WARRANTIES

a. Professional Services (Systems Integration) Warranty

- i. The Contractor warrants that all professional services for the design, configuration and integration of the information systems provided under this Contract will be performed by qualified personnel, in a competent and professional manner, and in accordance with industry best practices. This warranty will remain in effect for a period of one hundred eighty (180) days following User Acceptance Testing.
- ii. As the Authority's sole and exclusive remedy for any material noncompliance by Contractor with the express warranties provided above, Contractor shall correct the noncompliance within a reasonable period of time under the circumstances, if the Authority gives Contractor written notice (which notice must describe the noncompliance in sufficient detail to enable Contractor to provide the required corrective action) within one hundred eighty (180) days of User Acceptance Testing. If Contractor, in its sole discretion, is unable to correct the noncompliance, the Authority's sole and exclusive remedy will be receiving a refund of Authority's cost to resolve the noncompliance up to 125% of the amount paid by the Authority for the nonconforming professional services.

b. Professional Services (Field Installation) Warranty

- j. The Contractor warrants that all professional services for the field installation of network devices or meters provided under this Contract will be performed by qualified personnel, in a competent and professional manner, and in accordance with industry best practices. This warranty will remain in effect for a period of one hundred eighty (180) days following the Commissioning of the network device or sixty (60) days following the Commissioning of the meter.
- iii. As the Authority's sole and exclusive remedy for any material noncompliance by Contractor with the express warranties provided above, Contractor shall correct the noncompliance within a reasonable period of time under the circumstances, if the Authority gives Contractor written notice (which notice must describe the noncompliance in sufficient detail to enable Contractor to provide the required corrective action) within the warranty period above of the applicable noncompliant professional services. If Contractor, in its sole discretion, is unable to correct the noncompliance, the Authority's sole and exclusive remedy will be receiving a refund of the costs reasonably incurred by the Authority for the correction of the nonconforming professional services.

c. Equipment Warranty

The warranty applicable to the Equipment provided under this Agreement as set forth in Attachment C – Equipment Addendum, which is incorporated herein by reference. All terms, conditions and limitations of the Equipment warranty shall be as specified in that Attachment.

d. General Warranty Terms

All warranties relating to products and services provided by Itron under this Agreement are set forth in the applicable Addendum or Order Document. Contractor shall not be responsible for issues caused by Customer's unauthorized modifications, use contrary to documentation, or failures in third-party networks outside of Contractor's

control; however, such disclaimer shall not relieve Contractor of responsibility for proper design, integration, and operation of the system as specified. The warranty disclaimers herein shall not apply to the failure of a product or service to meet the agreed specifications and do not relieve Contractor of responsibility for proper design, integration, and operation of the system as specified. EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT, CONTRACTOR DISCLAIMS ALL OTHER WARRANTIES, INCLUDING: (I) IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, (II) WARRANTIES OF TITLE AND NON-INFRINGEMENT, AND (III) WARRANTIES ARISING FROM STATUTE, OPERATION OF LAW, COURSE OF DEALING, PERFORMANCE, USAGE OR TRADE PRACTICE. TO THE EXTENT ANY IMPLIED WARRANTY CANNOT BE EXCLUDED, SUCH WARRANTY IS LIMITED IN DURATION TO THE EXPRESS WARRANTY PERIOD. ITRON DOES NOT WARRANT OR REPRESENT THAT PRODUCTS OR SERVICES WILL BE FREE FROM BUGS OR ERRORS OR THAT THEIR USE WILL BE UNINTERRUPTED. CONTRACTOR ASSUMES NO LIABILITY OR RESPONSIBILITY FOR ANY INTERRUPTION OR CESSATION OF TRANSMISSION VIA AUTHORITY OR THIRD-PARTY WIDE-AREA NETWORK (WAN), CELLULAR OR OTHER PUBLIC COMMUNICATIONS OR BROADBAND SYSTEMS (INCLUDING OUTAGES, DISCONTINUANCE, DEVICE NON-REACHABILITY, LOSS OR INACCURATE READING) OR FOR ANY CONSEQUENCES, LOSSES, OR DAMAGES ARISING FROM CHANGES MADE BY CUSTOMER TO THE CONTENT OR PROGRAMMING OF EQUIPMENT (UNLESS CAUSED BY A DEFECTIVE PRODUCT). THESE DISCLAIMERS WILL APPLY NOTWITHSTANDING ANY FAILURE OF THE ESSENTIAL PURPOSE OF ANY LIMITED REMEDY PROVIDED UNDER THIS AGREEMENT.

19. INTELLECTUAL PROPERTY

a. Reservation of Intellectual Property

Subject to the limited rights expressly granted by Itron to Customer under this Agreement, Itron reserves all of its Intellectual Property and, as between the Parties, Itron owns all rights, title and interest in and to its Confidential Information and the products, services and related deliverables provided by Itron under this Agreement. Subject to the limited rights expressly granted by Customer to Itron under this Agreement, Customer reserves all of its Intellectual Property and, as between the Parties, Customer owns all right, title and interest in and to its Confidential Information, including Customer Data. All rights, titles, and interests not specifically and expressly granted by either Party hereunder are hereby reserved. Nothing in this Agreement will be understood to preclude or limit Itron from developing or providing products, services, or related deliverables for itself or other customers, irrespective of the possible similarity of such products, services, or related deliverables to those delivered to Customer.

b. Customer Feedback

Customer hereby grants Itron a royalty-free, worldwide, irrevocable, perpetual license to use and incorporate into any products and services any suggestions, enhancement requests, recommendations or other feedback provided by Customer (“**Customer Feedback**”). As between the Parties, Itron will own all rights, title, and interest in and to any products, services, or enhancements developed by or on behalf of Itron based on any Customer Feedback.

20. INSPECTION AND TESTS

- a. The Authority shall have the right upon three (3) business days' notice, to inspect during regular business hours relevant records of the Contractor or its subcontractors whenever the Authority reasonably believes that this is necessary to assure it that equipment to be furnished hereunder is being produced and will be produced in full compliance with the requirement of the Contract or Purchase Order and on schedule. In addition, upon three (3) business days' notice, the Contractor shall provide, and shall cause its subcontractors to provide, reasonable access to factories and shops during local business hours for the Authority to inspect work in progress. The Authority shall have the right to be present and witness tests relating to the equipment purchased hereunder. The Authority, in addition, shall have the right to request additional tests to be performed at agreed upon times and places. Any special tests ordered in writing by the Authority will be paid for by the Authority. No inspection, failure to inspect or waiver of inspection by the Authority or anyone acting on its behalf shall relieve the Contractor of its obligation to furnish equipment and services fully in accordance with the requirements of the Contract or Purchase Order. All equipment is received subject to inspection and approval, notwithstanding prior payment, it being understood that payment does not constitute acceptance.
- b. The Authority shall have the right to inspect the Equipment, if any, at the Contractor's plant or other place of manufacture. The Authority may conduct a preliminary inspection of each delivery. In general, preliminary inspection is intended to screen for such things as damage or loss in transport, and proper labelling and packaging, and to confirm quantity and product type delivered against purchase order, pre-shipping instructions, and/or shipping manifest/bill of lading. No inspection, acceptance of any part or all the Equipment, or payment shall relieve Contractor from full responsibility for furnishing Equipment conforming to the requirements of this Contract, nor prejudice any claim, right, or privilege the Authority may have for defective or unsatisfactory Equipment, delays in delivery, or other non-compliance with this Contract by Contractor.

21. COMPLIANCE WITH APPLICABLE LAWS AND ACCEPTED PRACTICES

- a. The Contractor shall comply strictly with all federal and local laws, codes, and regulations
- b. Should any amendments or additions to territorial laws, codes, or regulations subsequent to the date of advertisement for bids affect any designs or requirements set forth in the Work so as to increase the Contract price or extend the Contract completion date, such amendments or additions shall be deemed to be changes within the meaning of Clause 9 hereof.
- c. The Contractor represents that all of the equipment and construction materials shall be of suitable grade, used for the purpose intended and that the Work shall be in accordance with acceptable United States engineering, construction, and commercial practices.

22. OTHER CONTRACTS

The Authority may undertake or award other contracts for work on the same site. The Contractor shall fully cooperate with such other contractors and the Authority. The Contractor shall not commit or permit any act which will interfere with the performance of work by any other contractor or by the Authority.

23. PATENT INFRINGEMENT

- a. The Contractor shall indemnify, in accordance with Section 28 herein, and hold the Authority harmless from damages arising out of any claims that the possession or use of the materials or equipment manufactured or furnished by the Contractor, its subsidiaries or any of its suppliers infringe on Letters Patent of the United States of America in accordance with the following:

- b. In the event that the use of the Work or any part thereof shall be enjoined by judicial decree, the Contractor shall (i) replace, at its own expense, any materials, or equipment or part thereof, the use of which shall have been enjoined with non-infringing materials or equipment with equivalent capacity and performance, or (ii) procure for the Authority the right to continue to use the materials or equipment or part thereof, or (iii) in the case of equipment or part thereof, modify the same so as to avoid such claims; and
- c. The Contractor will have no obligation under this Section 23 for any claim arising from or related to: (a) the combination, operation or use of any product or service provided by the Contractor with any product or service not provided by the Contractor, (b) any modification to products or services made either without the Contractor's prior written consent or by a person other than the Contractor or an authorized representative of the Contractor, (c) failure to use updated or modified products or services as provided by the Contractor, (d) any use of any release of Contractor software or any firmware other than the most current release made available to the Authority unless such use results from Contractor's failure to provide timely updates, (e) any use of products or services not in accordance with this Contract and applicable documentation, (f) the Contractor's compliance with any designs, specifications, or instructions provided by the Authority, or (g) any use of any wireless or satellite data services.

24. CUSTOMER DATA AND DEIDENTIFIED DATA

Each Party shall comply with applicable data protection laws relating to Customer Data and implement and establish reasonable security measures for the protection and retention of Customer Data. To the extent Customer Data includes Personally Identifiable Information, and Contractor processes such Customer Data on behalf of the Authority as part of the services provided by contractor under this Agreement, the Parties will comply with the Itron Data Processing Agreement (the "**Data Processing Agreement**"). The Data Processing Agreement is available at <https://www.itron.com/legal/privacy/contracts>, is incorporated herein by reference, and will remain in force during the term of this Agreement.

The Authority hereby grants Itron a non-exclusive, royalty-free, perpetual, worldwide license to copy, modify, use, sublicense, distribute, display, create derivative works of all Customer Data for the purposes of: (i) providing products and services to Customer, (ii) testing, troubleshooting, and optimizing performance and quality of Contractor's products and services, and (iii) generating, storing, distributing, and using Deidentified Data for any lawful purpose. Contractor will use reasonable methods, such as anonymization and aggregation, that are designed to ensure that Deidentified Data cannot be associated with any consumer or household, and shall use Deidentified Data only for analysis, reporting, program management, to maintain, improve, and develop its products and services, and other lawful purposes. Itron shall not attempt to reidentify any such Deidentified Data except as necessary to determine that its deidentification processes satisfy the requirements of this Section. Contractor's use of Deidentified Data shall not conflict with Contractor's obligations under this Agreement.

The Authority warrants that: (a) it has the legal right and authority to grant Contractor the license rights described above, and (b) Contractor's exercise of such rights in accordance with this Agreement will not violate any applicable laws or regulations or cause a breach of any agreement or obligation between the Authority and any third-party.

25. INSURANCE

The Insurance requirements are as set forth in the attached Exhibit A

26. PERFORMANCE BOND

- a. The Contractor shall furnish a performance bond in an amount equal to 100% of the Contract Value.
- b. Bonds in amounts of \$1,000.00 or less will be in multiples of \$100 and in amounts exceeding \$5,000.00 in multiples of \$1,000: Provided, however, that the amount of the bond shall be fixed by the Authority at the lowest sum that fulfills all conditions of the Contract.
- c. Bonds shall remain in effect until the Authority's final acceptance of the Work (completion of the Contract).
- d. The surety on any bond furnished in pursuance of this Contract must be authorized to do business in the Virgin Islands (See Treasury Department Circular 570 dated June 1, 1965.) and have a minimum Best's rating of A-.
- e. If any surety becomes unacceptable to the Authority, or if any such surety fails to furnish reports as to its financial condition from time to time as requested by the Authority, the Contractor shall promptly furnish such additional security as may be required from time to time to protect the interests of the Authority and of persons supplying labor or materials in the prosecution of the Work.
- f. Performance Bonds exceeding \$75,000.00 must comply with this paragraph, unless modified with the approval of the Governing Board

27. PAYMENT BOND

- a. The Contractor shall furnish a Payment Bond in an amount equal to 100% of the Contract Value, guaranteeing payment to all laborers, suppliers, and subcontractors for materials provided and services performed under this Contract.
- b. The Payment Bond shall remain in effect throughout the duration of the Work and until all subcontractors, laborers, and suppliers have been paid in full. The Contractor is responsible for maintaining the bond and ensuring that it covers any changes or modifications to the Contract that affect the Contract Value.
- c. The surety on the Payment Bond must be authorized to do business in the Virgin Islands and must have a minimum Best's rating of A-, as per the standards outlined in Treasury Department Circular 570.
- d. In the event any claim or lien is filed against the Site or the Work due to the Contractor's failure to pay for labor, materials, or services, the Contractor shall promptly satisfy or discharge the claim. If the Contractor fails to do so, the Authority may invoke the Payment Bond to resolve the claim, and the Contractor shall be liable for any costs, expenses, or legal fees incurred by the Authority in enforcing the bond.
- e. Failure by the Contractor to provide the Payment Bond or maintain its validity throughout the project may result in suspension of payments under the Contract or termination of the Contract at the Authority's discretion.

28. INDEMNIFICATION FOR INJURY AND DAMAGE CLAIMS

- a. Contractor shall indemnify, defend, and hold the Authority and its servants, employees and agents harmless against any and all third-party claims, damages, injuries, suits, actions, causes

- of action for damages or alleged damages, orders, judgments, expenses, costs, and attorney's fees, arising after the commencement of the contract, brought for damages or alleged damages arising out of any injury or loss of life, claim or demand of any person or property in any way connected with or arising out of the performance of the work. It is the intention and express agreement of the parties that the Authority shall not be liable for any bodily or personal injuries, loss of life or damage, to Contractor, its servants, employees, agents, invitees, or to Contractor's subcontractors, subcontractor employees, agents, or invitees, or to any other person, or property of Contractor, irrespective of how the same may be caused, whether from action of the elements, or acts of negligence of the Authority, its employees or agents, the Contractor, its servants, employees, agents, or invitees, or the Contractor's subcontractors, subcontractor employee, agents and invitees. It is the intention of the parties that this paragraph shifts the cost of all insurance, whether benefiting the Contractor or the Authority, or both, to the Contractor.
- b. If the Authority is sued for acts arising out of those set out in (a) above, the Contractor shall promptly accept the tender of defense made by the Authority, as a condition of this contract.
 - c. It is further the intention of the parties, that Contractor, its servants, employees, agents, and its carrier will not look to or require the Authority to contribute to any settlement.
 - d. Notwithstanding any other provisions of this Agreement to the contrary, neither the Authority or Contractor shall be liable whether in contract, tort (including negligence), strict liability, products liability, indemnity, contribution, or any other cause of action for punitive, special, indirect, incidental or consequential losses or damages, including loss of profits, use, opportunity, revenues, financing, bonding capacity, or business interruptions; provided that the limitation of liability set forth in this Section shall not apply to Contractor's: (i) indemnity obligations with respect to Third-Party Claims, (ii) willful misconduct, and/or (iii) gross negligence. "Third-Party Claim" means a claim by any person other than (i) a Party or (ii) person providing or receiving indemnity under this Contract.
 - e. The terms and conditions discussed herein are separate and distinct from Liquidated damages terms.

29. DISPUTES

The Parties shall attempt in good faith to resolve any dispute, controversy, or claim arising out of or relating to this Agreement, or the breach, termination, or invalidity hereof (each, a "**Dispute**") in accordance with this Section 32. A Party shall send written notice to the other Party of any Dispute ("**Dispute Notice**"). The Parties shall first attempt in good faith to resolve any Dispute set forth in the Dispute Notice by negotiation and consultation between themselves. In the event that such Dispute is not resolved on an informal basis within thirty (30) business days after one Party delivers the Dispute Notice to the other Party, either Party may, by written notice to the other Party ("**Executive Dispute Notice**"), refer such Dispute to the executives of each Party designated by such Party in a written notice to the other Party ("**Executive**"). If the Executives cannot resolve any Dispute during the time period ending thirty (30) business days after the date of the Executive Dispute Notice (the last day of such time period hereinafter referred to as the "Escalation Date"), the Parties may submit the Dispute to any mutually-agreed-to mediation service for mediation by providing to the mediation service a joint written request for mediation and—jointly or individually—a written summary the Dispute and the relief requested in the Dispute. If the Parties decide to mediate the Dispute, they shall cooperate with one another in selecting a mediation service and shall cooperate with the mediation service and with one another in selecting a neutral mediator and in scheduling the mediation proceedings. The Parties agree that, if they mediate the Dispute, the mediator's fees and expenses and the costs incidental to the mediation will be shared equally between the Parties. Either Party may proceed in accordance with the

provisions of Section 33 (“**Governing Law and Venue**”) if (i) the Parties mediate the Dispute and cannot resolve the Dispute for any reason within sixty (60) business days after the Escalation Date, or (ii) no mediation occurs, and the Parties cannot resolve the Dispute for any reason within ten (10) business days after the Escalation Date. Notwithstanding the foregoing, nothing in this Section 14 shall be construed as preventing a Party from seeking available equitable relief, including specific performance, and injunctive relief in a court of competent jurisdiction.

30. GOVERNING LAW AND VENUE

This Agreement and all related documents, including all Addenda, Order Documents and Statements of Work hereto, and all matters arising out of or relating to this Agreement, whether sounding in contract, tort, or statute are governed by, and construed in accordance with, the laws of the United States Virgin Islands (including its statutes of limitations), without giving effect to the conflict of laws provisions thereof to the extent such principles or rules would require or permit the application of the laws of any jurisdiction other than those of the United States Virgin Islands. The Parties agree that the United Nations Convention on Contracts for the International Sale of Goods does not apply to this Agreement. Each Party irrevocably and unconditionally agrees that it will not commence any action, litigation, or proceeding of any kind whatsoever against any other Party in any way arising from or relating to this Agreement and all contemplated transactions, including, but not limited to, contract, equity, tort, fraud, and statutory claims, in any forum other than the Superior Court of the Virgin Islands or the District Court of the Virgin Islands.

31. LIENS

- a. The Contractor shall indemnify and hold the Authority harmless from all laborers’, materialmen’s, and mechanics’ liens on the Work, the Site, or the Authority’s interest therein, arising out of the services, labor, equipment, and materials furnished by the Contractor (or any of its subcontractors) under the Contract. The Contractor shall ensure that the Work and the Site remain free and clear of all liens and encumbrances resulting from the performance of the Work. For the avoidance of doubt, this Section 32 (a) does not apply to liens from third parties that have not been engaged by the Contractor or its subcontractors.
- b. Final payment for the Work, as provided in Clause 14, shall not be due until the Contractor has supplied the Authority with a complete release of all laborers’, materialmen’s, and mechanics’ liens arising out of the services, labor, and materials furnished by the Contractor (or any of its subcontractors) under the Contract. The Contractor shall also provide an affidavit stating that, to the best of its knowledge and information, the releases cover all labor and materials for which a lien could be filed. However, if any subcontractor refuses to provide a release, the Contractor may furnish a bond satisfactory to the Authority to indemnify it against any such lien. If any lien remains unsatisfied after all payments have been made, the Contractor shall promptly refund to the Authority all amounts that the Authority has paid to discharge such liens, including all related costs and expenses, such as attorney's fees. This refund shall be made within thirty (30) days after the Authority submits an invoice for the payment.

32. RIGHT TO AUDIT

Each Party has the right to to engage an outside reputable certified public accountant reasonably acceptable to the other Party, to audit the books and records of the other Party or Contractor’s Subcontractors (the “Audited Party”) for the purpose of verifying accuracy of invoicing and payments under the agreement. The Auditing Party shall provide thirty (30) days’ prior written notice of the audit to the Audited Party; provided that not more than one (1) audit is conducted every twelve (12) months during each calendar year; and, provided further, that such audit shall be conducted during the Audited Party’s normal business hours and shall not interfere with the Audited Party’s normal operations; and in no event shall such audit last for more than thirty (30) consecutive days. The Auditing Party shall solely bear the cost of

any such audit; provided, however, that (1) with respect to any audit by Contractor, if such audit reveals an underpayment by the Authority to Contractor of any amount of compensation under this Agreement, then the Authority shall promptly pay to Itron such underpayment and, if such underpayment equals or exceeds the greater of five percent (5%) of the amounts owed or \$50,000, the Authority shall also bear the cost of such audit, and (2) with respect to any audit by the Authority, if such audit reveals an overpayment to Contractor of any compensation under this Agreement, then Contractor shall promptly pay to the Authority such overpayment and, if such overpayment equals or exceeds the greater of five percent (5%) of the amounts owed or \$50,000, the Contractor shall also bear the cost of such audit

33. CONTINGENT FEES

The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure this Contract nor is there any agreement or understanding for a commission, percentage, brokerage, or contingent fees, in connection with obtaining this contract. For breach or violation of this provision the Authority shall have the right to annul this Contract without liability or, in its discretion, to deduct from the Contract price, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.

34. GRATUITIES

The Authority may, by written notice to the Contractor, terminate this Contract if it is found by the Authority, after notice and hearing, that gratuities (in the form of entertainment, gifts, or otherwise) were offered or given by the Contractor, or any agent or representative thereof, to any officer or employee of the Authority with a view towards securing the Contract or securing favorable treatment with respect to the performance of such Contract. The Authority's findings hereunder shall be conclusive.

In the event this Contract is terminated pursuant to this paragraph, the Authority shall be entitled (i) to pursue the same remedies against the Contractor as it could pursue in the event of a breach of the Contract by the Contractor, and (ii) as a penalty, in addition to any other damages to which the Authority is entitled by law, to exemplary damages in an amount (as determined by the Authority) which shall not be less than three nor more than ten times the costs incurred or paid by the Contractor in providing any such gratuities to any such officer or employee.

The rights and remedies of the Authority under this provision shall not be exclusive and are in addition to any other remedies provided by law or under this Contract.

35. NOTICE

Any notice which shall be required to be given under the Contract shall be in writing in duplicate, mailed in a postage prepaid wrapper, registered and addressed, in the case of the Contractor to his home office, and in the case of the Authority to the Contracting Officer.

36. ENFORCEMENT

The failure of either party to enforce at any time any of the provisions of the Contract or any rights in respect thereto, or to exercise any option herein provided, shall not be construed to constitute a waiver of such provision, right or option or in any way effect the validity of the contract or the obligation and responsibilities of the parties thereto. The exercise by either party of any of its right or options herein shall not preclude or prejudice either party from exercising any other right it may have.

37. ENTIRE AGREEMENT: MODIFICATION

The Contract constitutes the entire agreement between the parties. The Contract may not be amended or modified except by an instrument in writing signed by duly authorized representatives of the parties.

38. OTHER REQUIREMENTS

All of the reports, information, data, studies, reports, memoranda documents, etc. ("Written Deliverables"), prepared or assembled by Contractor pursuant to the Work are confidential and Contractor agrees that they shall not be made available to any individual or organization without the prior written approval of the Authority, subject to Contractor's Intellectual Property rights.

All Written Deliverables generated by Contractor specifically for the Authority under the Contract including work product are to become the property of and shall be delivered to the Authority, subject to Contractor's Intellectual Property rights. Contractor to retain a once reproducible copy of these documents generated by the Contractor, except to the extent Contractor retains Intellectual Property ownership. Contractor retains Intellectual Property ownership in the content of Written Deliverables not specifically prepared for the Authority.

The contractor shall remove from the Work any person assigned thereto who is deemed by the Authority to be objectionable and shall indemnify and hold harmless the Authority regarding any claim arising out of such action. The contractor shall not remove or reassign its Project Manager in charge of the Work, or its other key personnel designated in the Contract without the prior approval of the Authority unless such person is no longer employed by the Contractor.

39. STANDARD OF CARE

The standard of care applicable to Consultant's services will be the degree of skill and diligence normally practiced by professionals or consultants performing the same or similar services.

40. FALSE CLAIMS

Contractor warrants that it shall not, with respect to this Contract, make or present any claim upon or against the Government of the Virgin Islands, the Virgin Islands Water and Power Authority, or any officer, department, board, commission, or other agency thereof, knowing such claim to be false, fictitious or fraudulent. The contractor acknowledges that making such a false, fictitious, or fraudulent claim is an offense under Virgin Island law.

41. NOTICE OF FEDERAL FUNDING

Contractor acknowledges that this Contract is funded, in whole or in part, by federal funds, including FEMA and HUD CBDG funding. Contractor warrants that it shall not, with respect to this Contract, make or present any claim knowing such claim to be false, fictitious or fraudulent. Contractor acknowledges that making such a false, fictitious, or fraudulent claim is a federal offense.

42. EQUAL EMPLOYMENT OPPORTUNITY

- a. The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, or national origin. Such action

shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; laying off or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

- b. The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive considerations for employment without regard to race, color, religion, sex, or national origin.
- c. The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the contractor's commitments under this section and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- d. The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- e. The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- f. In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions as may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- g. The contractor will include the portion of the sentence immediately preceding paragraph (a) and the provisions of paragraphs (a) through (g) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, That in the event a contractor becomes involved in, or is threatened with litigation with a subcontractor or vendor as a result of such direction by the administering agency the contractor may request the United States to enter onto such litigation to protect the interests of the United States."

43. COMPLIANCE WITH THE COPELAND "ANTI- KICKBACK" ACT

- 1. Contractor. The contractor shall comply with 18 U.S.C. § 874, 40 U.S.C. § 3145. and the requirements of 29 C.F.R. pt. 3 as may be applicable, which are incorporated by reference into this contract.

2. Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clause above and such other clauses as the FEMA 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 of these contract clauses.
3. Breach. A breach of the contract clauses above may be grounds for termination of the contract, and for debarment as a contractor and subcontractor as provided in 29 C.F.R. § 5.12.”

44. COMPLIANCE WITH CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

- a. 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 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.
- b. 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 therefore shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such district or to such territory), 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 (a) 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 (a) of this section.
- c. Withholding for unpaid wages and liquidated damages. FEMA or such other authorized Federal agency 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 the 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 (b) of this section.
- d. Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (a) through (d) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (a) through (d) of this section.

45. CLEAN AIR ACT

- a. The contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.S. 7401 et. seq.

- b. The contractor agrees to report each violation to the local Department of Planning & Natural Resources (“DPNR”) and the Authority and understands and agrees that DPNR and the Authority will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional office.
- c. The contractor agrees to include these requirements in each subcontract exceeding \$150, 000 financed in whole or in part with Federal assistance provided by FEMA.

46. FEDERAL WATER POLLUTION CONTROL ACT

- a. 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.
- b. The contractor agrees to report each violation to the Department of Planning and Natural Resources (“DPNR”) and the Authority and understands and agrees that DPNR and the Authority will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency regional office.
- c. The contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.

47. SUSPENSION AND DEBARMENT

- a. This contract is a covered transaction for the purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such the contractor is required to verify that none of the contractor, its principals (defined at 2 C.F.R. § 180.995), or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).
- b. The contractor must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.
- c. This certification is a material representation of fact relied upon by Contractor. If it is later determined that the contractor did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to the Government of the Virgin Islands, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.
- d. The Contractor agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The Contractor further agrees to include a provision requiring such compliance in its lower tier covered transactions.”

48. BYRD ANTI-LOBBYING AMENDMENT, 31 U.S.C. § 1352

Contractors who apply or bid for an award of \$100,000 or more shall file the required certification. 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 or 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 any lobbying with non- Federal funds that takes place in connection with obtaining any federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.

49. ACCESS TO RECORDS

- a. The contractor agrees to provide the Government of the Virgin Islands, the Authority, the FEMA Administrator, the Comptroller General of the United States, or any of their authorized representative's 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.
- b. 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.
- c. The contractor agrees to provide the FEMA Administrator or his authorized representative's access to construction or other work sites pertaining to the work being completed under the contract.

50. DHS SEAL, LOGO, AND FLAGS

The contractor shall not use the Authority, or DHS seals(s), logos, crests, or reproductions of flags or likeness of DHS agency officials without specific FEMA or Authority preapproval.

51. COMPLIANCE WITH FEDERAL LAW, REGULATIONS, AND EXECUTIVE ORDERS

This is an acknowledgement that FEMA financial assistance will be used to fund the contract only. The contractor will comply with all applicable federal law, regulations, Executive Orders, FEMA policies, procedures, and directives.

52. NO OBLIGATION BY FEDERAL GOVERNMENT

The Federal Government is not a party to this contract and is not subject to any obligations or liabilities to the non-Federal entity, contractor, or any other party pertaining to any matter resulting from the contract.

53. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENT OR RELATED ACTS

The contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the contractor's action pertaining to this contract.

54. PROCUREMENT OF RECOVERED MATERIALS

- a. In the performance of this contract, the Contractor shall make the maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired-
 - i. Competitively within a timeframe providing for compliance with the contract performance schedule;
 - ii. Meeting contract performance requirements; or

- iii. At a reasonable price.
- b. Information about this requirement, along with the list of EPA-designated items, is available at EPA's Comprehensive Procurement Guidelines web site,
<https://www.epa.gov/smm/comprehensive-procurement-guidelines-cpg-program>.”