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**CONTRACT NO. 500200**  
**(RFP-306664)**  
**ELECTRIC VEHICLE CHARGERS AND RELATED**  
**SERVICES**

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**CONTRACTOR:** Camber Operating Company, Inc.  
8605 Santa Monica Blvd PMB 97841  
West Hollywood, CA 90069-4109  
917-254-5633  
[bharney@getcamber.com](mailto:bharney@getcamber.com)

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**AWARD DATE:** September 26, 2024

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**CONTRACT TERM:** From Notice to Proceed to October 27, 2026

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**PRICE:** Not-to-Exceed \$4,259,770.00

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**LIQUIDATED DAMAGES:** \$312.77 Per Charger, Per Day

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**PROJECT MANAGER:** Rahul Nair  
914-329-6777  
[rahul.nair@capmetro.org](mailto:rahul.nair@capmetro.org)

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**CONTRACTS ADMINISTRATOR:** Tracee Metterle  
512-369-6525  
[tracee.metterle@capmetro.org](mailto:tracee.metterle@capmetro.org)

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PROCUREMENT DEPARTMENT  
CAPITAL METROPOLITAN TRANSPORTATION AUTHORITY  
2910 E. 5<sup>th</sup> STREET  
AUSTIN, TEXAS 78702

**CONTRACT 500200**  
**(RFP 306664)**

**ELECTRIC VEHICLE CHARGERS AND RELATED SERVICES**

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EXHIBIT A - REVISED-3

PRICING SCHEDULE  
RFP 306664

THE OFFEROR IS REQUIRED TO SIGN AND DATE EACH PAGE OF THIS SCHEDULE

1. IDENTIFICATION OF OFFEROR AND SIGNATURE OF AUTHORIZED AGENT

Company Name (Printed)	Camber Operating Company, Inc.		
Address	8605 Santa Monica Blvd PMB 97841		
City, State, Zip	West Hollywood, CA 90069-4109		
Phone, Email	917-254-5633		
The undersigned agrees, if this offer is accepted within the period specified, to furnish any or all supplies and/or services specified in the Schedule at the prices offered therein.			
Authorized Agent Name and Title (Printed)	Brendan Harney		
Signature and Date	<div>Signed by: Brendan Harney F87636D94771490...</div>		9/19/2024

2. ACKNOWLEDGEMENT OF AMENDMENTS

The offeror must acknowledge amendment(s) to this solicitation.

3. PROMPT PAYMENT DISCOUNT

# of Days	0	Percentage	0.00%
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Note, payment terms are specified in Exhibit E, Contractual Terms and Conditions.

4. DBE GOAL (TO BE COMPLETED UPON AWARD BY CAPITAL METRO)

The DBE participation commitment for this contract is the following percentage of the total contract:

TVM CERTIFICATION

5. AUTHORITY'S ACCEPTANCE (TO BE COMPLETED UPON AWARD BY CAPITAL METRO)

The Authority hereby accepts this offer.

Authorized Agent Name and Title (Printed)	Muhammad Abdullah, C.P.M. Vice President of Procurement & Chief Contracting Officer
Signature and Date	E-SIGNED by Muhammad Abdullah on 2024-10-24 14:43:19 GMT      October 24, 2024
Accepted as to:	The total of all Items in Exhibit A-Revised-3-Pricing Schedule, Section 15, Items 2 through 8 inclusive, for a Grand Total Amount of \$46,465,995.00.

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## 6. REQUIRED OFFER SUBMITTALS

Email Delivery of Final Proposal Revision (FPR) shall be submitted electronically via email with the subject heading clearly identified as RFP 306664, Electric Buses and Chargers, FPR Volume 1, FPR Volume 2, FPR Volume 3, and FPR Volume 4, to the following email addresses:

To: Procure.Help@capmetro.org  
Cc: tracee.metterle@capmetro.org

Mark X each box below, to indicate that the submittals have been included in the offer. See Exhibit C, Solicitation Instructions and Conditions, Section 4, PREPARATION OF PROPOSALS for a description of the required proposal format.

### Volume 1 Submittals:

- ☒ **Exhibit A - Revised-3 - Pricing Schedule (PDF and Excel, including itemized breakdown)**
- ☐ **Exhibit A-1 – Liquidated Damages per Unit, per Day**
- ☐ **Exhibit A-2 – Motor Vehicle Emission Requirements for New Motor Vehicles**
- ☐ **Exhibit A-3 – Transit Vehicle Manufacturer (TVM) Certification**
- ☐ **Exhibit A-4 – Non-Collusion Affidavit**
- ☐ **Exhibit A-5 – Compliance with Federal Motor Vehicle Safety Standards**
- ☐ **Exhibit A-6 – Revised-1 – Bus Testing Certification**
- ☒ **Exhibit A-7 – Service and Parts**
- ☒ **Exhibit B – Representations and Certifications**
- ☒ **Exhibit B-1 - Revised-1 - Buy America Certification**
- ☐ **Exhibit C-1 – Exceptions and Assumptions Form (submit only if applicable)**
- ☐ **Firm Financial Data, as described in Exhibit C, Section 5, Contents of Proposal**

### Volume 2 Submittals for 40-foot buses:

- ☐ **Exhibit G-1A – Revised-2 – Delivery Schedule**
- ☐ **Exhibit G-2A – Offeror Vehicle Technical Information**
- ☐ **Exhibit G-3A – Technical Submittal Required Documentation**
- ☐ **Exhibit G-4A – IT Security Vendor Assessment Form**
- ☐ **Exhibit C-1 – Exceptions and Assumptions Form (submit only if applicable)**

### Volume 2 Submittals for 60-foot buses:

- ☐ **Exhibit G-1B – Revised-2 – Delivery Schedule**
- ☐ **Exhibit G-2B – Offeror Vehicle Technical Information**
- ☐ **Exhibit G-3B – Technical Submittal Required Documentation**
- ☐ **Exhibit G-4B – IT Security Vendor Assessment Form**
- ☐ **Exhibit C-1 – Exceptions and Assumptions Form (submit only if applicable)**

### Volume 3 Submittal for 40-foot buses:

- ☐ **Exhibit G-5A – Form for Proposal Deviation**

### Volume 4 Submittal for 60-foot buses:

- ☐ **Exhibit G-5B – Form for Proposal Deviation**

Note: Failure to submit the required submittals along with the offer may result in rejection of the offer.

Signed by:  
  
Signature of Authorized Agent: \_\_\_\_\_  
F87636D94771490...

9/20/2024  
Date: \_\_\_\_\_

# **The remainder of Exhibit A – Pricing Schedule has been redacted.**

**For further information regarding Exhibit A, you may:**

- Reach out to the Contractor directly via the Contractor contact details provided on the cover page of this contract.

**OR**

- Submit a public information request directly to [PIR@capmetro.org](mailto:PIR@capmetro.org).

For more information regarding the Public Information Act and submitting public information requests, follow this link to our website: <https://www.capmetro.org/legal/>

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**EXHIBIT B – REVISED-1**  
**REPRESENTATIONS AND CERTIFICATIONS**  
**(FEDERALLY ASSISTED SUPPLY/SERVICE/CONSTRUCTION CONTRACTS)**  
**MUST BE RETURNED WITH THE OFFER**

**1. TYPE OF BUSINESS**

(a) The offeror operates as (mark one):

- ☐ An individual
- ☐ A partnership
- ☐ A sole proprietor
- ☒ A corporation
- ☐ Another entity \_\_\_\_\_

(b) If incorporated, under the laws of the State of:

Delaware

**2. PARENT COMPANY AND IDENTIFYING DATA**

(a) The offeror (mark one):

- ☐ is
- ☒ is not

owned or controlled by a parent company. A parent company is one that owns or controls the activities and basic business policies of the offeror. To own the offering company means that the parent company must own more than fifty percent (50%) of the voting rights in that company.

(b) A company may control an offeror as a parent even though not meeting the requirements for such ownership if the company is able to formulate, determine, or veto basic policy decisions of the offeror through the use of dominate minority voting rights, use of proxy voting, or otherwise.

(c) If not owned or controlled by a parent company, the offeror shall insert its own EIN (Employer's Identification Number) below:

(d) If the offeror is owned or controlled by a parent company, it shall enter the name, main office and EIN number of the parent company, below:

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**3. CERTIFICATION OF INDEPENDENT PRICE DETERMINATION**

(a) The offeror (and all joint venture members, if the offer is submitted by a joint venture) certifies that in connection with this solicitation:

(1) the prices offered have been arrived at independently, without consultation, communication, or agreement for the purpose of restricting competition, with any other offeror or with any other competitor;

(2) unless otherwise required by law, the prices offered have not been knowingly disclosed by the offeror and will not knowingly be disclosed by the offeror prior to opening of bids in the case of an invitation for bids, or prior to contract award in the case of a request for proposals, directly or indirectly to any other offeror or to any competitor; and

(3) no attempt has been made or will be made by the offeror to induce any other person or firm to submit or not to submit an offer for the purpose of restricting competition.

(b) Each signature on the offer is considered to be a certification by the signatory that the signatory:

(1) Is the person in the offeror's organization responsible for determining the prices being offered in this bid or proposal, and that the signatory has not participated and will not participate in any action contrary to paragraphs (a)(1) through (a)(3) of this provision; or

(i) Has been authorized, in writing, to act as agent for the following principals in certifying that those principals have not participated, and will not participate in any action contrary to paragraphs (a)(1) through (a)(3) of this provision \_\_\_\_\_ [insert full name of person(s) in the offeror's organization responsible for determining the prices offered in this bid or proposal, and the title of his or her position in the offeror's organization];

(ii) As an authorized agent, does certify that the principals named in subdivision (b)(2)(i) of this provision have not participated, and will not participate, in any action contrary to paragraphs (a)(1) through (a)(3) of this provision; and

(iii) As an agent, has not personally participated, and will not participate, in any action contrary to paragraphs (a)(1) through (a)(3) of this provision.

(c) If the offeror deletes or modifies paragraph (a)(2) of this provision, the offeror must furnish with its offer a signed statement setting forth in detail the circumstances of the disclosure.

**4. DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION**

(a) In accordance with the provisions of 2 C.F.R. (Code of Federal Regulations), part 180 and part 1200, subpart C, the offeror certifies to the best of the offeror's knowledge and belief, that it and its principals for this covered transaction:

(1) are not presently excluded or disqualified (which may include being debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency);

(2) have not within a three (3) year period preceding this offer been convicted of or had a civil judgment rendered against them for (i) the commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public or private agreement or transaction; (ii) violation of Federal or State antitrust statutes, including those proscribing price fixing between competitors, allocation of customers between competitors, and bid rigging; (iii) commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, receiving stolen property, making false claims, or obstruction of justice; or (iv) commission of any other offense indicating a lack of business integrity or business honesty that seriously and directly affects your present responsibility.



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(3) are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in (a)(2) above; and

(4) have not within a three (3) year period preceding this offer had one or more public transactions (Federal, State, or local) terminated for cause or default.

(b) Where the offeror is unable to certify to any of the statements above, the offeror shall attach a full explanation to its offer/bid/quote/qualifications statement.

(c) For any proposed subcontractor at any tier where the subcontract is expected to equal or exceed \$25,000:

(1) The offeror certifies that it has obtained a certification identical to (a) from such subcontractor.

(2) Where the prospective lower tier participant is unable to certify to (a), an explanation shall be attached to the offer.

(3) This certification (specified in paragraphs (c)(1) and (c)(2)), above, shall be included in all applicable subcontracts and a copy kept on file by the Prime Contractor. The Prime Contractor shall be required to furnish copies of the certifications to the Authority upon request.

**5. COMMUNICATIONS**

(a) All oral and written communications with the Authority regarding this solicitation shall be exclusively with, or on the subjects and with the persons approved by, the persons identified in this solicitation. Discussions with any other person not specified could result in disclosure of proprietary or other competitive sensitive information or otherwise create the appearance of impropriety or unfair competition and, thereby, compromise the integrity of the Authority's procurement system. If competition cannot be resolved through normal communication channels, the Authority's protest procedures shall be used for actual or prospective competitors claiming any impropriety in connection with this solicitation.

(b) By submission of this offer, the offeror certifies that it has not, and will not prior to contract award, communicate orally or in writing with any Authority employee or other representative of the Authority (including Board Members, the Authority's contractors or consultants) regarding this solicitation, except as described below:

Individual's Name	Date/Subject of Communication

(Attach continuation form, if necessary.)

**6. CONTINGENT FEE**

(a) Except for full-time, bona fide employees working solely for the offeror, the offeror represents as part of its offer that it (mark one):

- ☐ has  
☒ has not

employed or retained any company or persons to solicit or obtain this contract, and (mark one):

- ☐ has  
☒ has not

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paid or agreed to pay any person or company employed or retained to solicit or obtain this contract any commission, percentage, brokerage, or other fee contingent upon or resulting from the award of this contract.

- (b) The offeror agrees to provide information relating to (a) above, when any item is answered affirmatively.

**7. CODE OF ETHICS**

- (a) Statement of Purpose

The brand and reputation of Capital Metro is determined in large part by the actions or ethics of representatives of the agency. Capital Metro is committed to a strong ethical culture and to ethical behavior by all individuals serving Capital Metro as employees, members of the Board of Directors or volunteers. Individuals serving Capital Metro will conduct business with honesty and integrity. We will make decisions and take actions that are in the best interest of the people we serve and that are consistent with our mission, vision and this policy. The Code of Ethics (the "Code") documents Capital Metro's Standards of Ethical Conduct and policies for Ethical Business Transactions. Compliance with the Code will help protect Capital Metro's reputation for honesty and integrity. The Code attempts to provide clear principles for Capital Metro's expectations for behavior in conducting Capital Metro business. We have a duty to read, understand and comply with the letter and spirit of the Code and Capital Metro policies. You are encouraged to inquire if any aspect of the Code needs clarification.

- (b) Applicability

The Code applies to Capital Metro employees, contractors, potential contractors, Board Members and citizen advisory committee members. Violation of the Code of Ethics may result in discipline up to and including termination or removal from the Board of Directors.

- (c) Standards of Ethical Conduct

The public must have confidence in our integrity as a public agency and we will act at all times to preserve the trust of the community and protect Capital Metro's reputation. To demonstrate our integrity and commitment to ethical conduct we will:

- (1) Continuously exhibit a desire to serve the public and display a helpful, respectful manner.
- (2) Exhibit and embody a culture of safety in our operations.
- (3) Understand, respect and obey all applicable laws, regulations and Capital Metro policies and procedures both in letter and spirit.
- (4) Exercise sound judgment to determine when to seek advice from legal counsel, the Ethics Officer or others.
- (5) Treat each other with honesty, dignity and respect and will not discriminate in our actions toward others.
- (6) Continuously strive for improvement in our work and be accountable for our actions.
- (7) Transact Capital Metro business effectively and efficiently and act in good faith to protect the Authority's assets from waste, abuse, theft or damage.
- (8) Be good stewards of Capital Metro's reputation and will not make any representation in public or private, orally or in writing, that states, or appears to state, an official position of Capital Metro unless authorized to do so.
- (9) Report all material facts known when reporting on work projects, which if not revealed, could either conceal unlawful or improper practices or prevent informed decisions from being made.
- (10) Be fair, impartial and ethical in our business dealings and will not use our authority to unfairly or illegally influence the decisions of other employees or Board members.

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(11) Ensure that our personal or business activities, relationships and other interests do not conflict or appear to conflict with the interests of Capital Metro and disclose any potential conflicts.

(12) Encourage ethical behavior and report all known unethical or wrongful conduct to the Capital Metro Ethics Officer or the Board Ethics Officer.

(d) Roles and Responsibilities

It is everyone's responsibility to understand and comply with the Code of Ethics and the law. Lack of knowledge or understanding of the Code will not be considered. If you have a question about the Code of Ethics, ask.

It is the responsibility of Capital Metro management to model appropriate conduct at all times and promote an ethical culture. Seek guidance if you are uncertain what to do.

It is Capital Metro's responsibility to provide a system of reporting and access to guidance when an employee wishes to report a suspected violation and to seek counseling, and the normal chain of command cannot, for whatever reason, be utilized. If you need to report something or seek guidance outside the normal chain of command, Capital Metro provides the following resources:

(1) Anonymous Fraud Hotline – Internal Audit

(2) Anonymous Online Ethics Reporting System

(3) Contact the Capital Metro Ethics Officer, Vice-President of Internal Audit, the EEO Officer or Director of Human Resources

(4) Safety Hotline

The Capital Metro Ethics Officer is the Chief Counsel. The Ethics Officer is responsible for the interpretation and implementation of the Code and any questions about the interpretation of the Code should be directed to the Ethics Officer.

(e) Ethical Business Transactions

Section 1. Impartiality and Official Position

(1) A Substantial Interest is defined by Tex. Loc. Govt. Code, § 171.002. An official or a person related to the official in the first degree by consanguinity or affinity has a Substantial Interest in:

(i) A business entity if the person owns ten percent (10%) or more of the voting stock or shares of the business entity or owns either 10% or more or \$15,000 or more of the fair market value of the business entity OR funds received by the person from the business entity exceed 10% of the person's gross income for the previous year; or

(ii) Real property if the interest is an equitable or legal ownership with a fair market value of \$2,500 or more.

Capital Metro will not enter into a contract with a business in which a Board Member or employee or a Family Member of a Board Member or employee as defined in Section 8 has a Substantial Interest except in case of emergency as defined in the Acquisition Policy PRC-100 or the business is the only available source for essential goods and services or property.

(2) No Board Member or employee shall:

(i) Act as a surety for a business that has work, business or a contract with Capital Metro or act as a surety on any official bond required of an officer of Capital Metro.

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(ii) Represent for compensation, advise or appear on behalf of any person or firm concerning any contract or transaction or in any proceeding involving Capital Metro's interests.

(iii) Use his or her official position or employment, or Capital Metro's facilities, equipment or supplies to obtain or attempt to obtain private gain or advantage.

(iv) Use his or her official position or employment to unfairly influence other Board members or employees to perform illegal, immoral, or discreditable acts or do anything that would violate Capital Metro policies.

(v) Use Capital Metro's resources, including employees, facilities, equipment, and supplies in political campaign activities.

(vi) Participate in a contract for a contractor or first-tier subcontractor with Capital Metro for a period of one (1) year after leaving employment on any contract with Capital Metro.

(vii) Participate for a period of two (2) years in a contract for a contractor or first-tier subcontractor with Capital Metro if the Board Member or employee participated in the recommendation, bid, proposal or solicitation of the Capital Metro contract or procurement.

## Section 2. Employment and Representation

A Board Member or employee must disclose to his or her supervisor, appropriate Capital Metro staff or the Board Chair any discussions of future employment with any business which has, or the Board Member or employee should reasonably foresee is likely to have, any interest in a transaction upon which the Board Member or employee may or must act or make a recommendation subsequent to such discussion. The Board Member or employee shall take no further action on matters regarding the potential future employer.

A Board Member or employee shall not solicit or accept other employment to be performed or compensation to be received while still a Board Member or employee, if the employment or compensation could reasonably be expected to impair independence in judgment or performance of their duties.

A Board Member or employee with authority to appoint or hire employees shall not exercise such authority in favor of an individual who is related within the first degree, within the second degree by affinity or within the third degree by consanguinity as defined by the Capital Metro Nepotism Policy in accordance with Tex. Govt. Code, Ch. 573.

## Section 3. Gifts

It is critical to keep an arms-length relationship with the entities and vendors Capital Metro does business with in order to prevent the appearance of impropriety, undue influence or favoritism.

No Board Member or employee shall:

(1) Solicit, accept or agree to accept any benefit or item of monetary value as consideration for the Board Member's or employee's decision, vote, opinion, recommendation or other exercise of discretion as a public servant. [Tex. Penal Code §36.02(c)]

(2) Solicit, accept or agree to accept any benefit or item of monetary value as consideration for a violation of any law or duty. [Tex. Penal Code §36.02(a)(1)]

(3) Solicit, accept or agree to accept any benefit or item of monetary value from a person the Board Member or employee knows is interested in or likely to become interested in any Capital Metro contract or transaction if the benefit or item of monetary value could reasonably be inferred as intended to influence the Board Member or employee. [Tex. Penal Code §36.08(d)]

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(4) Receive or accept any gift, favor or item of monetary value from a contractor or potential contractor of Capital Metro or from any individual or entity that could reasonably be inferred as intended to influence the Board Member or employee.

Exception: Consistent with state law governing public servants, a gift does not include a benefit or item of monetary value with a value of less than \$50, excluding cash or negotiable instruments, unless it can reasonably be inferred that the item was intended to influence the Board Member or employee. A department may adopt more restrictive provisions if there is a demonstrated and documented business need. [Tex. Penal Code § 36.10(a)(6)]

Exception: A gift or other benefit conferred, independent of the Board Member's or employee's relationship with Capital Metro, that is not given or received with the intent to influence the Board Member or employee in the performance of his or her official duties is not a violation of this policy. The Capital Metro Ethics Officer or Board Ethics Officer must be consulted for a determination as to whether a potential gift falls within this exception.

Exception: Food, lodging, or transportation that is provided as consideration for legitimate services rendered by the Board Member or employee related to his or her official duties is not a violation of this policy.

If you are uncertain about a gift, seek guidance from the Ethics Officer.

#### Section 4. Business Meals and Functions

Board Members and employees may accept invitations for free, reasonable meals in the course of conducting Capital Metro's business or while attending a seminar or conference in connection with Capital Metro business as long as there is not an active or impending solicitation in which the inviting contractor or party may participate and attendance at the event or meal does not create an appearance that the invitation was intended to influence the Board Member or employee.

When attending such events, it is important to remember that you are representing Capital Metro and if you chose to drink alcohol, you must do so responsibly. Drinking irresponsibly may lead to poor judgment and actions that may violate the Code or other Capital Metro policies and may damage the reputation of Capital Metro in the community and the industry.

#### Section 5. Confidential Information

It is everyone's responsibility to safeguard Capital Metro's nonpublic and confidential information.

No Board Member or employee shall:

(1) Disclose, use or allow others to use nonpublic or confidential information that Capital Metro has not made public unless it is necessary and part of their job duties and then only pursuant to a nondisclosure agreement approved by legal counsel or with consultation and permission of legal counsel.

(2) Communicate details of any active Capital Metro procurement or solicitation or other contract opportunity to any contractor, potential contractor or individual not authorized to receive information regarding the active procurement or contract opportunity.

#### Section 6. Financial Accountability and Record Keeping

Capital Metro's financial records and reports should be accurate, timely, and in accordance with applicable laws and accounting rules and principles. Our records must reflect all components of a transaction in an honest and forthright manner. These records reflect the results of Capital Metro's operations and our stewardship of public funds.

A Board Member or employee shall:

(1) Not falsify a document or distort the true nature of a transaction.

(2) Properly disclose risks and potential liabilities to appropriate Capital Metro staff.

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- (3) Cooperate with audits of financial records.
- (4) Ensure that all transactions are supported by accurate documentation.
- (5) Ensure that all reports made to government authorities are full, fair, accurate and timely.
- (6) Ensure all accruals and estimates are based on documentation and good faith judgment.

## Section 7. Conflict of Interest

Employees and Board Members are expected to deal at arms-length in any transaction on behalf of Capital Metro and avoid and disclose actual conflicts of interest under the law and the Code and any circumstance which could impart the appearance of a conflict of interest. A conflict of interest exists when a Board Member or employee is in a position in which any official act or action taken by them is, may be, or appears to be influenced by considerations of personal gain rather than the general public trust.

Conflict of Interest [Tex. Loc. Govt. Code, Ch. 171 & 176, § 2252.908]

No Board Member or employee shall participate in a matter involving a business, contract or real property transaction in which the Board Member or employee has a Substantial Interest if it is reasonably foreseeable that an action on the matter would confer a special economic benefit on the business, contract or real property that is distinguishable from its effect on the public. [Tex. Loc. Govt. Code, § 171.004]

## Disclosure

A Board Member or employee must disclose a Substantial Interest in a business, contract, or real property that would confer a benefit by their vote or decision. The Board Member or employee may not participate in the consideration of the matter subject to the vote or decision. Prior to the vote or decision, a Board Member shall file an affidavit citing the nature and extent of his or her interest with the Board Vice Chair or Ethics Officer. [Tex. Loc. Govt. Code, § 171.004]

A Board Member or employee may choose not to participate in a vote or decision based on an appearance of a conflict of interest and may file an affidavit documenting their recusal.

## Section 8. Disclosure of Certain Relationships [Tex. Loc. Govt. Code, Ch. 176]

## Definitions

- (1) A Local Government Officer is defined by Tex. Loc. Govt. Code § 176.001(4). A Local Government Officer is:
  - (i) A member of the Board of Directors;
  - (ii) The President/CEO; or
  - (iii) A third party agent of Capital Metro, including an employee, who exercises discretion in the planning, recommending, selecting or contracting of a vendor.
- (2) A Family Member is a person related within the first degree by consanguinity or the second degree by affinity as defined by Tex. Govt. Code, Ch. 573.
- (3) A Family Relationship is a relationship between a person and another person within the third degree by consanguinity or the second degree by affinity as defined by Tex. Govt. Code, Ch. 573.
- (4) A Local Government Officer must file a Conflicts Disclosure Statement (FORM CIS) if:

**CAPITAL METROPOLITAN TRANSPORTATION AUTHORITY**

- (i) The person or certain Family Members received at least \$2,500 in taxable income (other than investment income) from a vendor or potential vendor in the last twelve (12) months through an employment or other business relationship;
  - (ii) The person or certain Family Members received gifts from a vendor or potential vendor with an aggregate value greater than \$100 in the last 12 months; or
  - (iii) The vendor (or an employee of the vendor) has a Family Relationship with the Local Government Officer.
- (5) A vendor doing business with Capital Metro or seeking to do business with Capital Metro is required to file a completed questionnaire (FORM CIQ) disclosing the vendor's affiliations or business relationship with any Board Member or local government officer or his or her Family Member.

**Section 9. Duty to Report and Prohibition on Retaliation**

Board Members and employees have a duty to promptly report any violation or possible violation of this Code of Ethics, as well as any actual or potential violation of laws, regulations, or policies and procedures to the hotline, the Capital Metro Ethics Officer or the Board Ethics Officer.

Any employee who reports a violation will be treated with dignity and respect and will not be subjected to any form of retaliation for reporting truthfully and in good faith. Any retaliation is a violation of the Code of Ethics and may also be a violation of the law, and as such, could subject both the individual offender and Capital Metro to legal liability.

**Section 10. Penalties for Violation of the Code of Ethics**

In addition to turning over evidence of misconduct to the proper law enforcement agency when appropriate, the following penalties may be enforced:

- (1) If a Board Member does not comply with the requirements of this policy, the Board member may be subject to censure or removal from the Board in accordance with Section 451.511 of the Texas Transportation Code.
- (2) If an employee does not comply with the requirements of this policy, the employee shall be subject to appropriate disciplinary action up to and including termination.
- (3) Any individual or business entity contracting or attempting to contract with Capital Metro which offers, confers or agrees to confer any benefit as consideration for a Board Member's or employee's decision, opinion, recommendation, vote or other exercise of discretion as a public servant in exchange for the Board Member's or employee's having exercised his official powers or performed his official duties, or which attempts to communicate with a Board Member or Capital Metro employee regarding details of a procurement or other contract opportunity in violation of Section 5, or which participates in the violation of any provision of this Policy may have its existing Capital Metro contracts terminated and may be excluded from future business with Capital Metro for a period of time as determined appropriate by the President/CEO.
- (4) Any individual who makes a false statement in a complaint or during an investigation of a complaint with regard to a matter that is a subject of this policy is in violation of this Code of Ethics and is subject to its penalties. In addition, Capital Metro may pursue any and all available legal and equitable remedies against the person making the false statement or complaint.

**Section 11. Miscellaneous Provisions**

- (1) This Policy shall be construed liberally to effectuate its purposes and policies and to supplement such existing laws as they may relate to the conduct of Board Members and employees.
- (2) Within sixty (60) days of the effective date for the adoption of this Code each Board Member and employee of Capital Metro will receive a copy of the Code and sign a statement acknowledging that they have read,

## CAPITAL METROPOLITAN TRANSPORTATION AUTHORITY

understand and will comply with Capital Metro's Code of Ethics. New Board Members and employees will receive a copy of the Code and are required to sign this statement when they begin office or at the time of initial employment.

(3) Board Members and employees shall participate in regular training related to ethical conduct, this Code of Ethics and related laws and policies.

## 8. PREVIOUS CONTRACTS AND COMPLIANCE REPORTS

The offeror represents as part of its offer that it (mark one):

- ☐ has  
☒ has not

participated in a previous contract or subcontract subject either to Executive Order 11246 and its related regulations; and it (mark one):

- ☐ has  
☒ has not

filed all required compliance reports.

## 9. AFFIRMATIVE ACTION COMPLIANCE

(a) The offeror represents as part of its offer that it has a workforce of (indicate below the number of employees including temporary, full-time, or part-time employees):

17

(b) The offeror:

☐ **has** developed an Affirmative Action Plan at each establishment as required by the rules and regulations of the Secretary of Labor (41 C.F.R. parts 60-1 and 60-2) and **has on file**. The offeror will submit the Affirmative Action Plan to the Authority within ten (10) days of the date of the Notice of Award (NOA).

☒ **has not** developed an Affirmative Action Plan at each establishment as required by the rules and regulations of the Secretary of Labor (41 C.F.R. parts 60-1 and 60-2) and **does not have on file**. The offeror will submit the Affirmative Action Plan to the Authority within one hundred and twenty (120) days of the date of the Notice to Proceed (NTP).

(c) The offeror:

- ☐ has  
☒ has not

previously had contracts subject to the written affirmative action programs requirement of the rules and regulations of the Secretary of Labor.

## 10. RESERVED

## 11. CLEAN AIR AND WATER CERTIFICATION

Applicable if the offer exceeds \$150,000, or the Authority believes that orders under an indefinite contract in any year will exceed \$150,000 or a facility to be used has been the subject of a conviction under the Air Act [42 U.S.C. § 7413(c)(1)] or the Water Act [33 U.S.C. § 1319(c)] and is listed by the Environmental Protection Agency (EPA) as a violating facility, and the acquisition is not otherwise exempt.

By submission of this offer, the offeror certifies that:



## CAPITAL METROPOLITAN TRANSPORTATION AUTHORITY

(a) any facility to be used in the performance of this proposed contract (mark one):

- ☐ is  
☒ is not

listed on the EPA List of Violating Facilities;

(b) it will immediately notify the Authority, before award, of the receipt of any communication from the EPA Administrator, or a designee of the EPA, indicating that any facility which it proposes to use for the performance of the contract is under consideration to be listed on the EPA List of Violating Facilities; and

(c) it will include a certification substantially the same as this certification, including this paragraph (c), in every subcontract not otherwise exempt by law.

## 12. **CERTIFICATION OF NON-SEGREGATED FACILITIES**

(a) By the submission of this offer, the offeror certifies that it does not and will not maintain or provide for its employees any segregated facilities at any of its establishments, and that it does not and will not permit its employees to perform their services at any location under its control, where segregated facilities are maintained.

(b) The offeror agrees that a breach of this certification is a violation of the Civil Rights and Equal Opportunity Clause in Exhibit E of the contract.

(c) **Definitions:** For the purpose of this Certification of Non-Segregated Facilities, the following definitions shall apply:

(1) "segregated facilities" means any waiting rooms, work areas, restrooms and washrooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees that are segregated by explicit directive or are in fact segregated on the basis of race, color, religion, sex, sexual orientation, gender identity or national origin, because of written or oral policies or employee custom. The term does not include separate or single-user restrooms or necessary dressing or sleeping areas provided to assure privacy between the sexes.

(2) "gender identity" refers to one's internal sense of one's own gender; it may or may not correspond to the sex assigned to a person at birth, and may or may not be made visible to others.

(3) "sexual orientation" refers to an individual's physical, romantic, and/or emotional attraction to people of the same and/or opposite gender; examples of sexual orientations include "straight" (or heterosexual), lesbian, gay, and bisexual.

(d) It further certifies that (except where it has obtained identical certifications from proposed subcontracts for specific time periods) it will:

(1) obtain identical certifications from proposed subcontractors before the award of subcontracts under which the subcontractor will be subject to the Equal Opportunity provision in Exhibit E of the contract; and

(2) retain such certifications in its files.

## 13. **CERTIFICATION OF RESTRICTIONS ON LOBBYING**

This Certification is applicable if the offer exceeds \$100,000.

(a) By submission of this offer, the offeror certifies to the best of the offeror's knowledge or belief that 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 any 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

**CAPITAL METROPOLITAN TRANSPORTATION AUTHORITY**

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.

(b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with 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.

(c) 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 and subcontractors shall certify and disclose accordingly.

(d) 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 Section 1352, Title 31, U.S.C. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 or not more than \$100,000 for each such failure.

**14. TEXAS ETHICS COMMISSION CERTIFICATION**

In accordance with Section 2252.908, Texas Government Code, upon request of the Authority, the selected contractor may be required to electronically submit a "Certificate of Interested Parties" with the Texas Ethics Commission in the form required by the Texas Ethics Commission, and furnish the Authority with the original signed and notarized document prior to the time the Authority signs the contract. The form can be found at [www.ethics.state.tx.us](http://www.ethics.state.tx.us). Questions regarding the form should be directed to the Texas Ethics Commission.

**15. CERTIFICATION REGARDING ISRAEL**

As applicable and in accordance with Section 2270.002 of the Texas Government Code, the Contractor certifies that it does not boycott Israel and will not boycott Israel during the term of this Contract.

**16. CERTIFICATION REGARDING FOREIGN TERRORIST ORGANIZATIONS**

Contractor certifies and warrants that it is not engaged in business with Iran, Sudan, or a foreign terrorist organization, as prohibited by Section 2252.152 of the Texas Government Code.

**17. VERIFICATION REGARDING FIREARM ENTITIES AND FIREARM TRADE ASSOCIATIONS**

As applicable and in accordance with Section 2274.002 of the Texas Government Code, Contractor verifies that it does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association and will not discriminate during the term of the Contract against a firearm entity or firearm trade association.

**18. BOYCOTT OF ENERGY COMPANIES PROHIBITED**

Pursuant to Chapter 2274 of Texas Government Code, Contractor verifies that:

(a) it does not, and will not for the duration of the Contract, boycott energy companies, as defined in Section 2274.002 of the Texas Government Code, or

(b) the verification required by Section 2274.002 of the Texas Government Code does not apply to Contractor and this Contract. If circumstances relevant to this provision change during the course of the Contract, Contractor shall promptly notify the Authority.

## CAPITAL METROPOLITAN TRANSPORTATION AUTHORITY

**19. CRITICAL INFRASTRUCTURE PROHIBITION**

Pursuant to Chapter 2274 of Texas Government Code, Contractor certifies that, if this Contract or any contract between Contractor and Capital Metro relates to critical infrastructure, as defined in Chapter 2274 of the Texas Government Code, Contractor is not owned by or the majority of stock or other ownership interest of its firm is not held or controlled by:

- (a) individuals who are citizens of China, Iran, North Korea, Russia, or a Governor-designated country; or
- (b) a company or other entity, including a governmental entity, that is owned or controlled by citizens of or is directly controlled by the government of China, Iran, North Korea, Russia, or a Governor-designated country; or
- (c) headquartered in China, Iran, North Korea, Russia, or a Governor-designated country.

**20. CERTIFICATION OF PRIME CONTRACTOR PARTICIPATION**

- (a) The Prime Contractor shall perform no less than thirty percent (**30%**) of the work with his or her own organization. The on-site production of materials produced by other than the Prime Contractor's forces shall be considered as being subcontracted.
- (b) The organization of the specifications into divisions, sections, and articles, and the arrangement and titles of project drawings shall not control the Prime Contractor in dividing the work among subcontractors or in establishing the extent of work to be performed by any trade.
- (c) The offeror hereby certifies that the **Schedule C of Subcontractor Participation** form submitted with the Exhibit D, Disadvantaged Business Enterprise (DBE) portion of this offer represents no more than seventy percent (**70%**) of the work will be done by subcontractors.

**21. REPRESENTATION REGARDING CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT**

(a) *Prohibition.* This Contract is subject to the Public Law 115-232, Section 889, and 2 Code of Federal Regulations (CFR) Part 200, including §200.216 and §200.471 related to the prohibition of certain "covered telecommunications equipment and services", which includes:

(1) Telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities)

(2) For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).

(3) Telecommunications or video surveillance services provided by such entities or using such equipment.

(4) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

(b) *Procedures.* The Offeror shall review the list of excluded parties in the System for Award Management (SAM) (<https://www.sam.gov>) for entities excluded from receiving federal awards for "covered telecommunications equipment or services".

(c) *Representation.* The Offeror represents that—

## CAPITAL METROPOLITAN TRANSPORTATION AUTHORITY

(1) It

- ☐ will  
☒ will not

provide covered telecommunications equipment or services to the Authority in the performance of any contract, sub-contract or other contractual instrument resulting from this solicitation. The Offeror shall provide the additional disclosure information required at paragraph (e)(1) of this section if the Offeror responds "will" in paragraph (d)(1) of this section; and

(2) After conducting a reasonable inquiry, for purposes of this representation, the Offeror represents that—

- ☐ does  
☒ does not

use covered telecommunications equipment or services, or use any equipment, system, or service that uses covered telecommunications equipment or services. The Offeror shall provide the additional disclosure information required at paragraph (e)(2) of this section if the Offeror responds "does" in paragraph (d)(2) of this section.

(d) *Disclosures.*

(1) Disclosure for the representation in paragraph (d)(1) of this provision. If the Offeror has responded "will" in the representation in paragraph (d)(1) of this provision, the Offeror shall provide the following information as part of the offer:

(i) For covered equipment—

(A) The entity that produced the covered telecommunications equipment (include entity name, unique entity identifier, CAGE code, and whether the entity was the original equipment manufacturer (OEM) or a distributor, if known);

(B) A description of all covered telecommunications equipment offered (include brand; model number, such as OEM number, manufacturer part number, or wholesaler number; and item description, as applicable); and

(C) Explanation of the proposed use of covered telecommunications equipment and any factors relevant to determining if such use would be permissible under the prohibition in paragraph (b)(1) of this provision.

(ii) For covered services—

(A) If the service is related to item maintenance: A description of all covered telecommunications services offered (include on the item being maintained: Brand; model number, such as OEM number, manufacturer part number, or wholesaler number; and item description, as applicable); or

(B) If not associated with maintenance, the Product Service Code (PSC) of the service being provided; and explanation of the proposed use of covered telecommunications services and any factors relevant to determining if such use would be permissible under the prohibition in paragraph (b)(1) of this provision.

(2) Disclosure for the representation in paragraph (d)(2) of this provision. If the Offeror has responded "does" in the representation in paragraph (d)(2) of this provision, the Offeror shall provide the following information as part of the offer:

(i) For covered equipment—

(A) The entity that produced the covered telecommunications equipment (include entity name, unique entity identifier, CAGE code, and whether the entity was the OEM or a distributor, if known);

**CAPITAL METROPOLITAN TRANSPORTATION AUTHORITY**

(B) A description of all covered telecommunications equipment offered (include brand; model number, such as OEM number, manufacturer part number, or wholesaler number; and item description, as applicable); and

(C) Explanation of the proposed use of covered telecommunications equipment and any factors relevant to determining if such use would be permissible under the prohibition in paragraph (b)(2) of this provision.

(ii) For covered services—

(A) If the service is related to item maintenance: A description of all covered telecommunications services offered (include on the item being maintained: Brand; model number, such as OEM number, manufacturer part number, or wholesaler number; and item description, as applicable); or

(B) If not associated with maintenance, the PSC of the service being provided; and explanation of the proposed use of covered telecommunications services and any factors relevant to determining if such use would be permissible under the prohibition in paragraph (b)(2) of this provision.

**22. CERTIFICATION OF NO ORGANIZATIONAL CONFLICT OF INTEREST**

(a) Offeror certifies that there is no real or apparent organizational conflict of interest (“Organizational Conflict”). An Organizational Conflict exists when (a) the Offeror is unable, or potentially unable, to provide impartial and objective assistance or advice to the Authority due to other activities, relationships, contracts, or circumstances; (b) the Offeror has an unfair competitive advantage through receipt of or obtaining access to nonpublic information; or (c) during the performance of an earlier contract or the conduct of a procurement, the Offeror has established the ground rules for this procurement by developing specifications, evaluation factors, or similar documents.

(b) If the Offeror is unable to certify to the above (in (a)), the Offeror, certifies that it has attached an explanation disclosing any real or apparent Organizational Conflict. Such attachment includes all relevant facts concerning any past, present, or currently planned interests that may present an Organizational Conflict.

**23. FEDERAL TAX LIABILITY AND RECENT FELONY CONVICTIONS**

(a) Offeror certifies that it:

(1) Does not have any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability; and

(2) Was not convicted of the felony criminal violation under any Federal law within the preceding 24 months.

(b) If the Offeror is unable to certify to the above (in (a)), the Offeror certifies that it has attached an explanation stating to what part of (a) the Offeror is unable to certify.

(c) The Offeror certifies that it has required any subcontractors identified in its offer to certify to (a) or has attached a statement explaining why such identified subcontractor is unable to certify to (a).

**24. IF APPLICABLE: LIMITATION ON CERTAIN ROLLING STOCK PROCUREMENTS**

(a) *Prohibition.* This Contract is subject to Section 7613 of the National Defense Authorization Act for Fiscal Year 2020 (NDAA 2020), Public Law 116-92 (Dec. 20, 2019) and 49 U.S.C. § 5323(u) which prohibit using financial assistance made available under Chapter 53 of Title 49 U.S. Code to award a contract or subcontract to an entity for the procurement of rolling stock for use in public transportation if the manufacturer of the rolling stock:

(1) is incorporated in or has manufacturing facilities in the United States; and

(2) is owned or controlled by, is a subsidiary of, or is otherwise related legally or financially to a corporation based in a country that -

## CAPITAL METROPOLITAN TRANSPORTATION AUTHORITY

(i) is identified as a nonmarket economy country (as defined in section 771(18) of the Tariff Act of 1930 (19 U.S.C. 1677(18))) as of the date of enactment of this subsection;

(ii) was identified by the United States Trade Representative in the most recent report required by section 182 of the Trade Act of 1974 (19 U.S.C. 2242) as a foreign country included on the priority watch list defined in subsection (g)(3) of that section; and

(iii) is subject to monitoring by the Trade Representative under section 306 of the Trade Act of 1974 (19 U.S.C. 2416).

(a "Restricted Manufacturer"). For purposes of this provision, the term "otherwise related legally or financially" does not include a minority relationship or investment.

(b) *Procedures.* The Offeror shall review the relevant statutes to ascertain if the Offeror or any subcontractor or supplier is a Restricted Manufacturer.

(c) *Representation.* The Offeror represents that—

(1) It

☐ is  
☒ is not

a Restricted Manufacturer; and

(2) It has obtained representations from all relevant subcontractors or suppliers, and that the subcontractors or suppliers—

☐ are  
☒ are not

Restricted Manufacturers.

(d) *Disclosures.* Disclosure for the representation in paragraph (c) of this provision: If the Offeror has responded "is" in the representation in paragraph (c)(1) of this provision, the Offeror shall provide a statement providing all information reflecting the basis for its certification. If the Offeror has responded "are" in the representation in paragraph (c)(2) of this provision, the Offeror shall provide a statement identifying the subcontractor(s) or supplier(s) and all information reflecting the basis for the certification.

## 25. SIGNATURE BLOCK FOR ALL REPRESENTATIONS AND CERTIFICATIONS

(a) These representations and certifications concern a material representation of fact upon which reliance will be placed in awarding a contract. If it is later determined that the offeror knowingly rendered an erroneous or false certification, in addition to all other remedies the Authority may have, the Authority may terminate the contract for default and/or recommend that the offeror be debarred or suspended from doing business with the Authority in the future.

(b) The offeror shall provide immediate written notice to the Authority if, at any time prior to contract award, the offeror learns that the offeror's certification was, or a subsequent communication makes, the certification erroneous.

(c) Offerors must set forth full, accurate and complete information as required by this solicitation (including this attachment). Failure of an offeror to do so may render the offer nonresponsive.

(d) I understand that a false statement on this certification may be grounds for rejection of this submittal or termination of the awarded contract.

CAPITAL METROPOLITAN TRANSPORTATION AUTHORITY

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(e) A false statement in any offer submitted to the Authority may be a criminal offense in violation of Section 37.10 of the Texas Penal Code. In addition, under 18 U.S.C. §. 1001, a false statement may result in a fine of up to \$10,000 or imprisonment for up to five (5) years, or both.

Name of Offeror:

Camber Operating Company

Type/Print Name of Signatory:

Brendan Harney

Title of Signatory:

President

Signature:

Signed by:

*Brendan Harney*

F87636D94771490...

Date:

9/19/24

## CAPITAL METROPOLITAN TRANSPORTATION AUTHORITY

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**EXHIBIT B-1 – REVISED-1**  
**BUY AMERICA CERTIFICATION**

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The Buy America regulations require that all manufactured products used in FTA-funded projects be produced in the United States. A manufactured product is considered domestic if all of the manufacturing processes for the product take place in the United States and all of the components of the product are of U.S. origin as set forth in 49 C.F.R. § 661.5(d)(1). A component of a manufactured product "is considered of U.S. origin if it is manufactured in the United States, regardless of the origin of its subcomponents." 49 C.F.R. § 661.5(d)(2).

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 all 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. Separate requirements for ~~rolling stock~~ are set out at 49 U.S.C. 5323(j)(2)(C) and 49 C.F.R. § 661.11.

The offeror must submit the appropriate Buy America certification with its offer. Offers that are not accompanied by a completed Buy America certification may be rejected as nonresponsive.

When procuring ~~rolling stock~~, which includes train control, communication, traction power equipment, and ~~rolling stock~~ prototypes, the cost of the components and subcomponents produced in the U.S. must be:

- more than 70 percent for FY2020 and beyond

Final assembly for ~~rolling stock~~ also must occur in the U.S. Additionally, ~~rolling stock~~ procurements are subject to the pre-award and post-delivery Buy America audit provisions set forth in 49 U.S.C. § 5323(m) and 49 CFR part 663.

In accordance with 49 C.F.R. § 661.12, for the procurement of buses, other ~~rolling stock~~ and associated equipment, use the certification below.

[THIS SPACE INTENTIONALLY LEFT BLANK]



CAPITAL METROPOLITAN TRANSPORTATION AUTHORITY

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**BUY AMERICA CERTIFICATION – ROLLING STOCK  
REQUIRED PRICING PROPOSAL SUBMITTAL**

FAILURE OF OFFEROR / BIDDER TO FURNISH THIS EXECUTED DOCUMENT WITH ITS PROPOSAL/ BID MAY BE CONSTRUED BY CAPITAL METRO AS A NEGATIVE RESPONSE AND THE OFFER WILL NOT BE CONSIDERED.

**CERTIFICATE OF COMPLIANCE WITH BUY AMERICA ~~ROLLING STOCK~~  
REQUIREMENTS FOR PROCUREMENTS OVER \$150,000.00 INCLUDING  
BUSES, ~~ROLLING STOCK~~, AND ASSOCIATED EQUIPMENT, TRAIN CONTROL,  
COMMUNICATION, TRACTION POWER EQUIPMENT  
(as required by 49 C.F.R. § 661.13(b))**

This procurement is subject to the Federal Transit Administration (FTA) Buy America Requirements in 49 C.F.R. § 661.12, for the procurement of buses, ~~other rolling stock (including train control, communication, and traction power equipment)~~, and associated equipment use the following certifications below:

- 1) A waiver from the Buy America Provision may be sought by Capital Metro if grounds for the waiver exist.
- 2) The Bidder or Offeror hereby certifies that it will comply with the requirements of 49 U.S.C. 5323(j), and the applicable regulations of 49 C.F.R. § 661.11.

Date: \_\_\_\_\_  
Signature: \_\_\_\_\_  
Title: \_\_\_\_\_  
Company: \_\_\_\_\_

**OR**

The Bidder or Offeror hereby certifies that it cannot comply with the requirements of 49 U.S.C. § 5323(j), but may qualify for an exception to the requirement consistent with 49 U.S.C. § 5323(j)(2)(C), and the applicable regulations in 49 C.F.R. § 661.7.

Date: \_\_\_\_\_  
Signature: \_\_\_\_\_  
Title: \_\_\_\_\_  
Company: \_\_\_\_\_

CAPITAL METROPOLITAN TRANSPORTATION AUTHORITY

In accordance with 49 C.F.R. § 661.6, for the procurement of steel, iron, or manufactured products, use the certifications below:

**BUY AMERICA CERTIFICATION – PRODUCTS/CONSTRUCTION**

**REQUIRED PRICING PROPOSAL SUBMITTAL**

FAILURE OF OFFEROR / BIDDER TO FURNISH THIS EXECUTED DOCUMENT WITH ITS PROPOSAL/ BID MAY BE CONSTRUED BY CAPITAL METRO AS A NEGATIVE RESPONSE AND THE OFFER WILL NOT BE CONSIDERED.

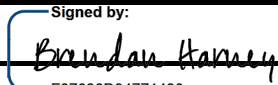
**BUY AMERICA CERTIFICATE FOR PROCUREMENTS OF  
STEEL AND MANUFACTURED PRODUCTS OVER \$150,000.00**

This procurement is subject to the Federal Transit Administration (FTA) Buy America Requirements in 49 C.F.R. § 661.5.

Section 165(a) of the Surface Transportation Act of 1982 permits FTA participation on this contract only if all iron, steel, cement, and manufactured products used in the contract are produced in the United States.

A waiver from the Buy America Provision may be sought by Capital Metro if grounds for the waiver exist.

The bidder or offeror hereby certifies that it will comply with the requirements of 49 U.S.C. § 5323(j)(1), and the applicable regulations in 49 C.F.R. part 661.

Date: September 19, 2024  
Signature:   
Title: President  
Company: Camber

**OR**

The bidder or offeror hereby certifies that it cannot comply with the requirements of 49 U.S.C. § 5323(j), but it may qualify for an exception to the requirement pursuant to 49 U.S.C. § 5323(j)(2), as amended, and the applicable regulations in 49 C.F.R. § 661.7.

Date: \_\_\_\_\_  
Signature: \_\_\_\_\_  
Title: \_\_\_\_\_  
Company: \_\_\_\_\_

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**EXHIBIT E – REVISED-23**  
**CONTRACTUAL TERMS AND CONDITIONS**  
**(SUPPLY CONTRACT)**

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**1. DEFINITIONS**

As used throughout this Contract, the following terms shall have the meaning set forth below:

- (a) “Applicable Anti-Corruption and Bribery Laws” means international, federal, state, provincial and local laws, rules, regulations, directives and governmental requirements currently in effect and as they become effective relating in any way to the Contractor’s provision of goods to the Authority, including without limitation “FCPA” or any applicable laws and regulations, including in the jurisdiction in which the Contractor operates and/or manufactures goods for the Authority, relating to anti-corruption and bribery.
- (b) “Authority,” “Capital Metro,” “Cap-Metro,” “CMTA” means Capital Metropolitan Transportation Authority.
- (c) “Bid” means the offer of the bidder, submitted on the prescribed form, stating prices for performing the supplies.
- (d) “Change Order” means a written order to the Contractor signed by the Contracting Officer, issued after execution of the Contract, authorizing a change in the term or scope of the Contract.
- (e) “Contract” or “Contract Documents” means this written agreement between the parties comprised of all the documents listed in the Table of Contents, Change Orders and/or Contract Modifications that may be entered into by the parties.
- (f) “Contract Award Date” means the date of the Contract award notice, which may take the form of a purchase order, signed Contract or Notice of Award, issued by the Authority.
- (g) “Contract Modification” means any changes in the terms or provisions of the Contract which are reduced to writing and fully executed by both parties.
- (h) “Contract Sum” means the total compensation payable to the Contractor under this Contract as originally contracted for or as subsequently adjusted by Contract Modification.
- (i) “Contract Term” means period of performance set forth in the paragraph entitled “Term” contained in Exhibit E.
- (j) “Contracting Officer” means a person with the authority to enter into, administer, and/or terminate contracts and make related determinations and finding on behalf of the Authority. The term includes certain authorized representatives of the Contracting Officer acting within the limits of their authority as delegated by the Contracting Officer.
- (k) “Contractor” means the entity that has assumed the legal obligation to deliver the supplies as identified in the Contract.
- (l) “Days” means calendar days. In computing any period of time established under this Contract, the day of the event from which the designated period of time begins to run shall not be included, but the last day shall be included unless it is a Saturday, Sunday, or Federal or State of Texas holiday, in which event the period shall run to the end of the next business day.
- (m) “FAR” means the Federal Acquisition Regulations codified in 48 C.F.R. Title 48.
- (n) “FCPA” means the United States Foreign Corrupt Practices Act, 15 U.S.C. §§ 78dd-1, et seq., as amended.
- (o) “Force Majeure Event” means strikes, lockouts, or other industrial disputes; explosions, epidemics, civil disturbances, acts of domestic or foreign terrorism, wars within the continental United States, riots or insurrections; embargos, natural disasters, including but not limited to landslides, earthquakes, floods or washouts; interruptions by government or court orders; declarations of emergencies by applicable federal, state or local authorities; and present or future orders of any regulatory body having proper jurisdiction.

(p) "FTA" means the Federal Transit Administration.

(q) "Intellectual Property Rights" means the worldwide legal rights or interests evidenced by or embodied in: (i) any idea, software, design, concept, personality right, method, process, technique, apparatus, invention, discovery, or improvement, including any patents, trade secrets, and know-how; (ii) any work of authorship, including any copyrights, moral rights or neighboring rights, and any derivative works thereto; (iii) any trademark, service mark, trade dress, trade name, or other indicia of source or origin; (iv) domain name registrations; and (v) any other proprietary or similar rights. The Intellectual Property Rights of a party include all worldwide legal rights or interests that the party may have acquired by assignment or license with the right to grant sublicenses.

(r) "Manufacturing Materials" mean any completed or partially completed supplies and materials, parts, dies, jigs, fixtures, plans, drawings, information, and contract rights specifically produced or specially acquired by the Contractor for the performance of the Contract.

(s) "Notice of Award" means formal notice of award of the Contract to the Contractor issued by the Contracting Officer.

(t) "Notice to Proceed" means written authorization for the Contractor to start the performance of the Contract.

(u) "Project Manager" means the designated individual to act on behalf of Capital Metro, to monitor and certify the technical progress of the Contractor's performance under the terms of this Contract.

(v) "Subcontract" means the contract between the Contractor and its Subcontractors.

(w) "Subcontractor" means Subcontractors of any tier.

(x) "Works" means any tangible or intangible items or things that have been or will be specifically, generated, prepared, created, or developed by the Contractor (or such third parties as the Contractor may be permitted to engage) at any time following the effective date of the Contract, for the exclusive use of, and ownership by, Authority under the Contract, including but not limited to any (i) works of authorship (such as literary works, musical works, dramatic works, choreographic works, pictorial, graphic and sculptural works, motion pictures and other audiovisual works, sound recordings and architectural works, which includes but is not limited to manuals, instructions, printed material, graphics, artwork, images, illustrations, photographs, computer software, scripts, object code, source code or other programming code, HTML code, data, information, multimedia files, text web pages or web sites, other written or machine readable expression of such works fixed in any tangible media, and all other copyrightable works), (ii) trademarks, service marks, trade dress, trade names, logos, or other indicia of source or origin, (iii) ideas, designs, concepts, personality rights, methods, processes, techniques, apparatuses, inventions, formulas, discoveries, or improvements, including any patents, trade secrets and know-how, (iv) domain names, (v) any copies, and similar or derivative works to any of the foregoing, and (vi) all documentation and materials related to any of the foregoing.

## 2. TYPE OF CONTRACT

This is a fixed price Contract for the supplies or services specified and stated elsewhere in the Contract.

## 3. TERM

The total term of the Contract shall be ~~five (5) years~~ from the Contract Notice to Proceed to October 27, 2026, ~~from the Contract Notice to Proceed~~, subject to Section 4., OPTION TO PURCHASE ADDITIONAL BUSES CHARGERS. A separate Notice to Proceed shall be required for the purchase of additional ~~buses~~ chargers. No services shall be performed under this Contract prior to issuance of a Notice to Proceed.

## 4. OPTION TO PURCHASE ADDITIONAL BUSES CHARGERS

(a) There are no extension options, the total term of this contract ~~shall not exceed five (5) years~~ is through October 27, 2026.

~~(b)~~ A separate written Notice to Proceed (fully executed Contract Modification) will be issued for the options in Exhibit A, Pricing Schedule, ~~Sections 8 through 13, and~~ Optional Items in Section 15. These ~~bus options and~~ optional items can be exercised at any time during the ~~sixty (60) month~~ contract period.

~~(e)(b)~~ **Bus Charger** Options will be subject to prices determined by using the most current U.S. Department of Labor, Bureau of Labor Statistics Producer Price Index ("PPI") ~~Table 6, Commodity Code 1413, "Truck and bus bodies".~~ PPI index PCU3353133531 for Electrical Equipment Manufacturing.

~~(d)(c)~~ Unit prices for ~~buses~~ **chargers** purchased under each option shall be determined by dividing the above referenced PPI at the time of the option award by the above referenced PPI at the time of the base award (contract date) and multiplying the percent change in PPI by the base award price.

~~(e)(d)~~ The unit prices shall remain fixed, as proposed, for the first delivery under this contract. Prices for orders of ~~buses or equipment~~ ordered after the base award shall be the base order price plus any escalation calculated using the US Department of Labor/Bureau of Labor Statistics Producer Price Index ("PPI") ~~Category 1413, "Truck and bus bodies."~~

#### FORMULA EXAMPLE:

##### Index Point Change Calculation

PPI Index:	
Future order month:	141.1
Less PPI Index:	
Base order month:	<u>137.6</u>
Index Point Change:	3.5

##### Index Percentage Change Calculation

Index Point Change:	3.5
Divided by PPI Index:	
Base Order Month:	<u>137.6</u>
Change:	.0254

Percent Change  
(Multiplied by 100): 2.54%

##### Price Increase Calculation

Base Order Price (example only):	\$250,000
Plus Percentage Change (\$250,000 x 2.54%) :	<u>\$ 6,350</u>
Revised Order Price:	\$256,350

(f) Notwithstanding anything else to the contrary herein contained, in the event that a price adjustment is required in respect of changes that are mandatory as a result of legislation or regulations that become effective after the date of the submission of the Contractor's proposal, such price adjustment shall be negotiated in good faith by the Authority and the Contractor and shall be made in accordance with Section 12 entitled Changes.

## 5. ORDERING

(a) Any supplies to be furnished under this Contract shall be ordered by issuance of written Notice to Proceed.

(b) All delivery orders are subject to the terms and conditions of this Contract. In the event of a conflict between an order and this Contract, the Contract shall control.

(c) Any order issued during the effective period of this Contract and not completed within that period shall be completed by the Contractor within the time specified in the order. The Contract shall govern the Contractor's and the Authority's rights and obligations with respect to that order to the same extent as if the order was completed during the Contract's effective period.

## 6. DELIVERY

- (a) Delivery shall be made to 9315 McNeil Road, Austin, TX 78758.
- (b) Delivery hours are limited to Monday through Friday excluding holidays, from 8:00 a.m. – 3:00 p.m., prevailing local time.
- (c) All deliveries shall be made F.O.B. destination. This term means free of expense to the Authority delivered and laid down in the area indicated by the Authority. The Contractor shall:
  - (1) pack and mark the shipment to comply with specifications; or if the specifications do not contain specific packing or marking instructions, pack and mark the shipment in accordance with prevailing commercial practices and in such a manner to assure delivery in good condition and as required by this Contract;
  - (2) prepare and distribute commercial bills of lading;
  - (3) deliver the shipment in good order and condition to the point of delivery specified in the Contract;
  - (4) be responsible for any loss of and/or damage to the goods occurring before receipt of the shipment by the Authority at the delivery point specified in the Contract;
  - (5) furnish a delivery schedule and designate the mode of delivering carrier; and
  - (6) pay and bear all charges to the specified point of delivery.
  - (7) All ~~buses and~~ chargers are to be delivered in ideal condition, complete, ready for operation or use, and in compliance with the scope and specifications and terms and conditions of the Contract. ~~Each bus must be delivered clean and the interior free of trash. Contractor's delivery drivers must report any and all vehicle related incidents while on route. Delivery of buses shall be determined by signed receipt of the Authority's designated agent at the point of delivery and may be preceded by a cursory inspection of the bus.~~ Delivery shall be completed within the time specified in notice to proceed and the contract, after delivery of the executed contract documents.

## 7. RETAINAGE-RESERVED

~~In lieu of a performance bond and to ensure proper performance of the standard warranty of the Contract, the Authority will retain three percent (3%) of the amount of each approved invoice for vehicles until the end of standard warranties warranty for cComplete bBus as defined in Exhibit F-4 — Revised-1, Warranty Provisions, Section 1.1.1. Sections 1.1.1 and 1.1.2.~~

## 8. INVOICING AND PAYMENT

- (a) Invoices may be submitted once per month for work completed and accepted by the Authority, and marked "Original" to:

Accounts Payable  
Capital Metropolitan Transportation Authority  
P.O. Box 6308  
Austin, Texas 78762-6308

Or via e-mail to: [ap\\_invoices@capmetro.org](mailto:ap_invoices@capmetro.org) (ap\_invoices@capmetro.org)

and shall conform to policies or regulations adopted from time to time by the Authority. Invoices shall be legible and shall contain, as a minimum, the following information:

- (1) the Contract and purchase order number (if any);
- (2) a complete itemization of all costs including quantities ordered and delivery order numbers (if any);
- (3) any discounts offered to the Authority under the terms of the Contract;
- (4) evidence of the acceptance of the ~~buses~~, commissioning of chargers, supplies, and services by the

Authority, including all post award Buy America requirements ~~prior to delivery of the first bus of each model ordered;~~  
and

~~(5) Vehicle Identification Number (VIN) and Capital Metro Unit Identification Number (Unit #); and~~

~~(6)(5)~~ any other information necessary to demonstrate entitlement to payment under the terms of the Contract.

(b) All undisputed invoices shall be paid within the time period allowed by law through the Texas Prompt Payment Act, Tex. Gov't. Code § 2251.021(b).

(c) The Contractor shall be responsible for all costs/expenses not otherwise specified in this Contract, including by way of example, all costs of equipment provided by the Contractor or Subcontractor(s), all fees, fines, licenses, bonds, or taxes required or imposed against the Contractor and Subcontractor(s), travel related expenses, and all other Contractor's costs of doing business.

(d) In the event an overpayment is made to the Contractor under this Contract or the Authority discovers that the Authority has paid any invoices or charges not authorized under this Contract, the Authority may offset the amount of such overpayment or unauthorized charges against any indebtedness owed by the Authority to the Contractor, whether arising under this Contract or otherwise, including withholding payment of an invoice, in whole or in part, or the Authority may deduct such amounts from future invoices. If an overpayment is made to the Contractor under this Contract which cannot be offset under this Contract, the Contractor shall remit the full overpayment amount to the Authority within thirty (30) calendar days of the date of the written notice of such overpayment or such other period as the Authority may agree. The Authority reserves the right to withhold payment of an invoice, in whole or in part, or deduct the overpayment from future invoices to recoup the overpayment.

## 9. INSURANCE

(a) The Contractor shall furnish proof of Capital Metro-stipulated insurance requirements specified below. All insurance policies shall be primary and non-contributing with any other valid and collectible insurance or self-insurance available to the Authority and shall contain a contract waiver of subrogation in favor of the Authority. The Contractor shall furnish to the Authority certificate(s) of insurance evidencing the required coverage and endorsement(s) and, upon request, a certified duplicate original of any of those policies. Prior to the expiration of a certificate of insurance, a new certificate of insurance shall be furnished to the Authority showing continued coverage. Each policy shall be endorsed to provide thirty (30) days written notice of cancellation or non-renewal to the Authority and the Authority shall be named as an Additional Insured under each policy except Professional Liability insurance if required by this Contract (not applicable to Workmen's Compensation coverage). All insurance policies shall be written by reputable insurance company or companies acceptable to the Authority with a current Best's Insurance Guide Rating of ~~A+~~ and ~~Class XIII~~ A- and Class VII or better. All insurance companies shall be authorized to transact business in the State of Texas. The Contractor shall notify the Authority in writing of any material alteration of such policies, including any change in the retroactive date in any "claims-made" policy or substantial reduction of aggregate limits, if such limits apply or cancellation thereof at least thirty (30) days prior thereto. The below requirements only represent the minimum coverage acceptable to the Authority and these requirements are not intended to represent the maximum risk or the maximum liability of the Contractor. The Contractor shall be responsible for setting its own insurance requirements, if any, for the kind and amounts of insurance to be carried by its Subcontractors in excess of the insurance required by the Authority.

The Contractor shall carry and pay the premiums for insurance of the types and in the amounts stated below.

### CAPITAL METRO MINIMUM COVERAGE REQUIREMENTS

#### Comprehensive General Liability Insurance:

(1) ~~Commercial General Liability Insurance Coverage~~ with limits of not less than One Million and No/100 Dollars (\$1,000,000) and Two Million and No/100 (\$2,000,000) Annual Aggregate. Combined Single Limit of Liability for Bodily Injury and Property Damage. ~~Such coverage as herein provided shall be extended for and endorsements included as follows:~~

~~(i) Extended Coverages.~~



~~a. Contractual Liability covering the Contractor's obligations herein.~~

~~b. Personal Injury Liability extended to claims arising from employees of the Contractor and the Authority.~~

~~(ii) Endorsements Included. The Authority named as ADDITIONAL INSURED.~~

Comprehensive General Liability Insurance Coverage with limits of not less than One Million Dollars and No/100 Dollars (\$1,000,000) with an aggregate of Two Million Dollars and No/100 Dollars (\$2,000,000) with coverage that includes:

Products and Completed Operations Liability

Independent contractors

Personal Injury Liability extended to claims arising from employees of Contractor and the Authority.

Contractual Liability pertaining to the liabilities assumed in the agreement.

(2) Workers' Compensation Insurance: **Statutory Workers' Compensation** coverage in the State of Texas. Employers Liability Insurance with minimum limits of liability of One Million and No/100 Dollars (\$1,000,000). The Contractor shall cause its insurer for Worker's Compensation Insurance to endorse the Contractor's policy to **waive subrogation** against Capital Metropolitan Transportation Authority, its directors, officers, employees, agents, successors and assigns for any and all claims incurred by the Contractor's employees which arise out of the work under this contract.

(3) Automobile Liability Insurance for vehicles covering all owned, hired and non-owned automobiles used in connection with work with limits not less than One Million and No/100 Dollars (\$1,000,000) Combined Single Limit of Liability for Bodily Injury and Property Damage. If the Contractor uses the delivery services of a common carrier, then the Automobile Liability insurance will not be required. If the Contractor uses personnel and vehicles provided by the Contractor, then Automobile Liability will be required. Such coverage as herein provided shall include the Authority as an ADDITIONAL INSURED.

~~(3)(4) Umbrella Liability Insurance with limits of not less than Five Million and No/100 Dollars (\$5,000,000).~~

~~(4)(5) All policies will contain Terrorism coverage.~~

(b) The limits of liability as required above may be provided by a single policy of insurance or by a combination of primary, excess or umbrella policies but in no event shall the total limits of liability available for any one occurrence or accident be less than the amount required above.

(c) The Contractor, and all of its insurers shall, in regard to the above stated insurance, agree to waive all rights of recovery or subrogation against the Authority, its directors, officers, employees, agents, successors and assigns, and the Authority's insurance companies arising out of any claims for injury(ies) or damages resulting from the work performed by or on behalf of the Contractor under this Contract and/or use of any Authority premises or equipment under this Contract.

(d) Each insurance policy shall contain the following endorsements: PRIMARY AND NON-CONTRIBUTORY INSURANCE and WAIVER OF TRANSFER OF RIGHTS OF RECOVERY AGAINST OTHERS, which shall be evidenced on the Certificate of Insurance. The General Liability insurance shall include contractual endorsement(s) which acknowledge all indemnification requirements under the Agreement. All required endorsements shall be evidenced on the Certificate of Insurance. Proof that insurance coverage exists shall be furnished to The Authority by way of a Certificate of Insurance before any part of the Contract work is started.

(e) If any insurance coverage required to be provided by the Contractor is canceled, terminated, or modified so that the required insurance coverages are no longer in full force and effect, the Authority may terminate this Contract or obtain insurance coverages equal to the required coverage, the full cost of which will be the responsibility of the Contractor and shall be deducted from any payment due the Contractor.

(f) If any part of the Contract is sublet, the Contractor shall be liable for its Subcontractor's insurance coverages of the types and in the amounts stated above, and shall furnish the Authority with copies of such Certificates of



Insurance. No delay in the work caused by the Contractor's enforcement of its Subcontractor's insurance requirements shall be excusable delay in the Contract. In the event a Subcontractor is unable to furnish insurance in the limits required under the Contract, the Contractor shall endorse the Subcontractor as an ADDITIONAL INSURED on the Contractor's policies.

(g) All insurance required to be maintained or provided by the Contractor shall be with companies and through policies approved by The Authority. The Authority reserves the right to inspect in person, prior to the commencement of the Contract work, all of the Contractor's insurance policy required under this Contract.

(h) The Contractor must furnish proof of the required insurance within five (5) days of the award of the Contract. Certificate of Insurance must indicate the Contract number and description. The insurance certificate should be furnished to the attention of the Contracting Officer.

(i) The Contractor and its lower tier Subcontractors are required to cooperate with the Authority and report all potential claims (workers' compensation, general liability and automobile liability) pertaining to this Contract to the Authority's Risk Management Department at (512) 389-7549 within two (2) days of the incident.

## **10. INDEPENDENT CONTRACTOR**

The Contractor's relationship to the Authority in the performance of this Contract is that of an independent contractor. The personnel performing services under this Contract shall at all times be under the Contractor's exclusive direction and control and shall be employees of the Contractor and not employees of the Authority. The Contractor shall be fully liable for all acts and omissions of its employees, Subcontractors, and their suppliers and shall be specifically responsible for sufficient supervision and inspection to assure compliance in every respect with Contract requirements. There shall be no contractual relationship between any Subcontractor or supplier of the Contractor and the Authority by virtue of this Contract. The Contractor shall pay wages, salaries and other amounts due its employees in connection with this Contract and shall be responsible for all reports and obligations respecting them, such as Social Security, income tax withholding, unemployment compensation, workers' compensation and similar matters.

## **11. COMPOSITION OF CONTRACTOR**

If the Contractor hereunder is comprised of more than one legal entity, each such entity shall be jointly and severally liable hereunder.

## **12. CHANGES**

(a) The Authority may at any time, by a written order, make changes within the general scope of this Contract in any one or more of the following:

- (1) drawings, designs, or specifications, where the supplies to be furnished are to be specially manufactured for the Authority in accordance therewith;
- (2) method of shipment or packing; and
- (1) place of delivery.

(b) If any such change causes an increase or decrease in the Contractor's cost of, or the time required for, the performance of any part of the work under this Contract, whether changed or not changed by the order, an equitable adjustment shall be made in the Contract price or delivery schedule, or both, and the Contract shall be modified in writing accordingly.

(c) Any notice of intent to assert a claim for adjustment under this paragraph must be asserted by the Contractor within thirty (30) days from the date of receipt of the Authority's written order; provided, however, that later notice shall not bar the Contractor's claim if the Contractor can demonstrate that the Authority was not prejudiced by the delay in notification. In no event shall any claim be asserted after final payment.

(d) Failure to agree to any adjustment under this paragraph shall be a dispute concerning a question of fact within the meaning of the disputes paragraph of this Contract. However, nothing in this paragraph shall excuse the Contractor from proceeding with the Contract as changed pending resolution of the dispute.

**13. EXTRAS**

Except as otherwise provided in this Contract, no payment for extras shall be made unless such extras and the prices therefor have been authorized in writing by the Authority.

**14. RESERVED****15. EQUITABLE ADJUSTMENTS**

Any requests for equitable adjustments under any provision shall be governed by the following provisions:

(a) Upon written request, the Contractor shall submit a proposal, in accordance with the requirements and limitations set forth in this paragraph, for work involving contemplated changes covered by the request. The proposal shall be submitted within the time limit indicated in the request for any extension of such time limit as may be subsequently granted. The Contractor's written statement of the monetary extent of a claim for equitable adjustment shall be submitted in the following form:

(1) Proposals totaling \$5,000 or less shall be submitted in the form of a lump sum proposal with supporting information to clearly relate elements of cost with specific items of work involved to the satisfaction of the Contracting Officer, or his/her authorized representative.

(2) For proposals in excess of \$5,000, the claim for equitable adjustment shall be submitted in the form of a lump sum proposal supported with an itemized breakdown of all increases and decreases in the Contract.

(b) No proposal by the Contractor for an equitable adjustment shall be allowed if asserted after final payment under this Contract.

**16. INSPECTION**

(a) All supplies (which term throughout this paragraph includes without limitation raw materials, components, intermediate assemblies, and end products) shall be subject to inspection and test by the Authority or its authorized representative, to the extent practicable, at all times (including the period of manufacture) and places and, in any event, prior to acceptance.

(b) In the event any supplies or lots of supplies are defective in material or workmanship or otherwise not in conformity with the requirements of this Contract, the Authority shall have the right either to reject those supplies (with or without instructions as to their disposition) or to require their correction. Supplies or lots of supplies which have been rejected or required to be corrected shall be removed or, if permitted or required by the Authority, corrected in place by and at the expense of the Contractor promptly after notice and shall not thereafter be tendered for acceptance unless the former rejection or requirement of correction is disclosed. If the Contractor fails promptly to remove such supplies or lots of supplies which are required to be removed, or promptly to replace or correct such supplies or lots of supplies, the Authority either (i) may by contract or otherwise replace or correct such supplies and charge to the Contractor the cost occasioned the Authority thereby, or (ii) may terminate this Contract for default as provided in the termination paragraph of this Contract. Unless the Contractor corrects or replaces such supplies within the delivery schedule, the Authority may require the delivery of such supplies at a reduction in price that is equitable under the circumstances. Failure to agree to such reduction of price shall be a dispute concerning a question of fact within the meaning of the Disputes paragraph of this Contract.

(c) If any inspection or test is made by the Authority or its authorized representative on the premises of the Authority or a Subcontractor, the Contractor without additional charge shall provide all reasonable facilities and assistance for the safety and convenience of the Authority's inspectors in the performance of their duties. If the Authority's inspection or test is made at a point other than the premises of the Contractor or a Subcontractor, it shall be at the expense of the Authority, except as otherwise provided in this Contract; provided, that in case of rejection, the Authority shall not be liable for any reduction in value of samples used in connection with such inspection or test. All inspections and tests by the Authority shall be performed in such a manner as not to unduly delay the work. The Authority reserves the right to charge to the Contractor any additional cost of the Authority's inspection and test when supplies are not ready at the time such inspection and test is required by the Contract or when re-inspection or retest is necessitated by prior rejection. Acceptance or rejection of the supplies shall be made as promptly as practicable

after delivery, except as otherwise provided in this Contract; but failure to inspect and accept or reject supplies shall neither relieve the Contractor from responsibility for such supplies as are not in accordance with the Contract requirements nor impose liability on the Authority therefor.

(d) The inspection and test by the Authority of any supplies or lots thereof does not relieve the Contractor from any responsibility regarding defects or other failures to meet the Contract requirements that may be discovered prior to acceptance. Except as otherwise provided in this Contract, acceptance shall be conclusive except for latent defects, fraud, or such gross mistakes as amount to fraud.

## **17. MATERIALS**

All equipment, material, and articles incorporated into the supplies covered by this Contract shall be new and of the most suitable grade for the purpose intended unless otherwise specifically provided in this Contract. If applicable, references in the specifications to equipment, material, articles, or patented processes by trade name, make, or catalog number shall be regarded as establishing a standard of quality and shall not be construed as limiting competition. The Contractor may, at its option, use any equipment, material, article, or process that, in the judgment of the Contracting Officer is equal to that named in the specifications, unless otherwise specifically provided in this Contract.

## **18. SUSPENSION OF WORK**

(a) The Contracting Officer may order the Contractor in writing to suspend all or any part of the Contract for such period of time as it may determine to be appropriate for the convenience of the Authority.

(b) If the performance of all or any part of the Contract is, for an unreasonable period of time, suspended or delayed by an act of the Contracting Officer in the administration of this Contract, or by its failure to act within the time specified in this Contract (or, if no time is specified, within a reasonable time), an adjustment shall be made for any increase in cost of performance of this Contract (excluding profit) necessarily caused by such unreasonable suspension or delay, and the Contract modified in writing accordingly. Any adjustment shall be made in accordance with the paragraph entitled "Equitable Adjustments." However, no adjustment shall be made under this paragraph for any suspension or delay to the extent (1) that performance would have been suspended or delayed by any other cause, including the fault or negligence of the Contractor, or (2) for which an equitable adjustment is provided for or excluded under any other provision of this Contract.

(c) No claim under this paragraph shall be allowed (1) for any costs incurred more than twenty (20) days before the Contractor shall have notified the Contracting Officer in writing of the act or failure to act involved (but this requirement shall not apply to a claim resulting from a suspension order), and (2) unless the claim, in an amount stated, is asserted in writing as soon as practicable after the termination of such suspension or delay, but not later than the date of final payment. No part of any claim based on the provisions of this subparagraph shall be allowed if not supported by adequate evidence showing that the cost would not have been incurred but for a delay within the provisions of this paragraph.

## **19. RISK OF LOSS OR DAMAGE**

Except as otherwise provided in this Contract, the Contractor shall be responsible for the supplies covered by this Contract until they are delivered at the designated delivery point, regardless of the point of inspection. After delivery to the Authority at the designated point and prior to acceptance by the Authority or rejection and giving notice thereof by the Authority, the Authority shall be responsible for the loss, destruction of, or damage to the supplies only if such loss, destruction, or damage results from the negligence of officers, agents, or employees of the Authority acting within the scope of their employment. The Contractor shall bear all risks as to rejected supplies after notice of rejection, except that the Authority shall be responsible for the loss, destruction of, or damage to the supplies only if such loss, destruction, or damage results from the gross negligence of officers, agents, or employees of the Authority acting within the scope of their employment.

## **20. TERMINATION FOR DEFAULT**

(a) The Authority may, subject to the provisions of subparagraph (c) below, by written notice of default to the Contractor, terminate the whole or any part of this Contract in either one of the following circumstances:

(1) if the Contractor fails to make delivery of the supplies within the time specified herein or any extension thereof; or

(2) if the Contractor fails to perform any of the other provisions of this Contract and does not cure such failure within a period of ten (10) days (or such longer period as the Authority may authorize in writing) after receipt of notice from the Authority specifying such failure.

(b) In the event the Authority terminates this Contract in whole or in part as provided in paragraph (a) of this paragraph, the Authority may procure, upon such terms and in such manner as the Authority may deem appropriate, supplies similar to those so terminated, and the Contractor shall be liable to the Authority for any excess costs for such similar supplies; provided, that the Contractor shall continue the performance of this Contract to the extent, if any, it has not been terminated under the provisions of this paragraph.

(c) Except with respect to the defaults of Subcontractors, the Contractor shall not be liable for any excess costs if the failure to perform the Contract arises out of causes beyond the control and without the fault or negligence of the Contractor. Such causes may include, but are not restricted to Force Majeure Events; provided, however, in every case the failure to must be beyond the control and without the fault or negligence of the Contractor. If the failure to perform is caused by the default of a Subcontractor and if such default arises out of causes beyond the control of both the Contractor and Subcontractor and without the fault or negligence of either of them, the Contractor shall not be liable for any excess costs for failure to perform, unless the supplies to be furnished by the Subcontractor were obtainable from other sources in sufficient time to permit the Contractor to meet the required delivery schedule.

(d) If this Contract is terminated as provided in subparagraph (a), the Authority, in addition to any other rights provided in this subparagraph, may require the Contractor to transfer title and deliver to the Authority in the manner and to the extent directed by the Authority any Manufacturing Materials as the Contractor has specifically produced or specifically acquired for the performance of such part of this Contract as has been terminated; and the Contractor shall, upon direction of the Authority, protect and preserve property in possession of the Contractor in which the Authority has an interest. Payment for completed Manufacturing Materials delivered to and accepted by the Authority shall be at the Contract price. The Authority may withhold from amounts otherwise due the Contractor for such completed Manufacturing Materials such sum as the Authority determines to be necessary to protect the Authority against loss because of outstanding liens or claims of former lien holders.

(e) If, after notice of termination of this Contract under the provisions of this paragraph, it is determined by the Authority that the Contractor was not in default or that the default was excusable under the provisions of this paragraph, the rights and obligations of the parties shall be those provided in the paragraph entitled "Termination for Convenience" contained in this Exhibit E.

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

## **21. TERMINATION FOR CONVENIENCE**

(a) The Authority may, whenever the interests of the Authority so require, terminate this Contract, in whole or in part, for the convenience of the Authority. The Authority shall give written notice of the termination to the Contractor specifying the part of the Contract terminated and when termination becomes effective.

(b) The Contractor shall incur no further obligations in connection with the terminated orders, and, on the date set forth in the notice of termination, the Contractor will stop work to the extent specified. The Contractor also shall terminate outstanding orders and Subcontracts as they relate to the terminated order. The Contractor shall settle the liabilities and claims arising out of the termination of Subcontracts and orders connected with the terminated orders. The Authority may direct the Contractor to assign the Contractor's right, title, and interest under terminated orders or Subcontracts to the Authority. The Contractor must still complete any orders not terminated by the notice of termination and may incur such obligations as are necessary to do so.

(c) The Authority may require the Contractor to transfer title and deliver to the Authority in the manner and to the extent directed by the Authority: (1) any completed supplies; and (2) such partially completed supplies and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information and contract rights (hereinafter called "Manufacturing Materials") as the Contractor has specifically produced or specially acquired for the performance of the terminated part of this Contract. The Contractor shall, upon direction of the Authority, protect and preserve property in the

possession of the Contractor in which the Authority has an interest. If the Authority does not exercise this right, the Contractor shall use its best efforts to sell such supplies and Manufacturing Materials.

(d) The Authority shall pay the Contractor the following amounts:

(1) Contract prices for supplies accepted under the Contract;

(2) costs incurred in preparing to perform and performing the terminated portion of the work plus a fair and reasonable profit on such portion of the work (such profit shall not include anticipatory profit or consequential damages), less amounts paid or to be paid for accepted supplies; provided, however, that if it appears that the Contractor would have sustained a loss if the entire Contract would have been completed, no profit shall be allowed or included, and the amount of compensation shall be reduced to reflect the anticipated rate of loss;

(3) costs of settling and paying claims arising out of the termination of Subcontracts (these costs must not include costs paid in accordance with subparagraph (2) of this paragraph); and

(4) the reasonable settlement costs of the Contractor and other expenses reasonably necessary for the preparation of settlement claims and supporting data with respect to the terminated portion of the Contract and for the termination and settlement of Subcontracts thereunder, together with reasonable storage, transportation, and other costs incurred in connection with the protection or disposition of property allocable to the terminated portion of this Contract.

(5) The total sum to be paid the Contractor under this paragraph shall not exceed the total Contract price plus the reasonable settlement costs of the Contractor reduced by the amount of payments otherwise made, the proceeds of any sales of supplies and Manufacturing Materials under this paragraph, and the Contract price of orders not terminated.

## **22. PAYMENT TO SUBCONTRACTORS**

(a) Payments by contractors to subcontractors associated with Authority contracts are subject to the time periods established in the Texas Prompt Payment Act, Tex. Gov't Code § 2251.

(b) A false certification to the Authority under the provisions of the paragraph entitled "Invoicing and Payment" hereof may be a criminal offense in violation of Tex. Penal Code § 10.

## **23. CONTRACTOR CERTIFICATION**

The Contractor certifies that the fees in this Contract have been arrived at independently without consultation, communication, or agreement for the purpose of restricting competition, as to any matter relating to such fees with any other firm or with any competitor.

## **24. INTELLECTUAL; DATA PRIVACY PROPERTY PROVISIONS**

(a) As between the Contractor and the Authority, the Works and Intellectual Property Rights therein are and shall be owned exclusively by Capital Metro, and not the Contractor. The Contractor specifically agrees that all Works shall be considered "works made for hire" and that the Works shall, upon creation, be owned exclusively by the Authority. To the extent that the Works, under applicable law, may not be considered works made for hire, the Contractor hereby effectively transfers, grants, conveys, assigns, and relinquishes exclusively to the Authority all right, title and interest in and to all worldwide ownership rights in the Works, and all Intellectual Property Rights in the Works, without the necessity of any further consideration, and the Authority shall be entitled to obtain and hold in its own name all Intellectual Property Rights in and to the Works. Further, the Contractor agrees that any and all Authority data or compilations thereof produced under this Contract shall be and remain the sole property of the Authority. Upon the request of the Authority, but in any event upon termination of this Contract, the Contractor shall surrender to the Authority all such data and compilations.

(1) For the avoidance of doubt, it is understood that, in performing its obligations under the Contract, Contractor may use its own previously developed data, documentation, software, ideas, concepts, materials, or information, in whatever form, or develop new and unique products that will aid Contractor in performing its services to Authority as it relates solely to this Contract but are not created for the exclusive use, or ownership by, the Authority (collectively, "Contractor Works"). All Contractor Preexisting Works shall remain the sole, exclusive and unrestricted property of Contractor. Contractor shall supply to the Authority a non-exclusive, non-transferable license to the extent



required for the use by the Authority of the Services provided pursuant to this Contract for the time that the Services are provided solely for the purposes of the Contract.

(b) The Contractor, upon request and without further consideration, shall perform any acts that may be deemed necessary or desirable by the Authority to evidence more fully the transfer of ownership of all Works to the Authority to the fullest extent possible, including but not limited to the execution, acknowledgement and delivery of such further documents in a form determined by the Authority. In the event the Authority shall be unable for any reason to obtain the Contractor's signature on any document necessary for any purpose set forth in the foregoing sentence, the Contractor hereby irrevocably designates and appoints the Authority and its duly authorized officers and agents as the Contractor's agent and the Contractor's attorney-in-fact to act for and in the Contractor's behalf and stead to execute and file any such document and to do all other lawfully permitted acts to further any such purpose with the same force and effect as if executed and delivered by the Contractor.

(c) To the extent that any Contractor Works and/or third-party rights or limitations are embodied, contained, reserved or reflected in the Works, the Contractor shall either:

(1) grant to the Authority the irrevocable, perpetual, non-exclusive, worldwide, royalty-free right and license to:

(i) use, execute, reproduce, display, perform, distribute copies of, and prepare derivative works based upon such pre-existing rights and any derivative works thereof in connection with the sale, offering for sale, marketing, advertising, and promotion of the Authority's goods and services, and in all forms of media, media channels and/or publicity that may now exist or hereafter be created or developed, including but not limited to television, radio, print, Internet, and social media (e.g., Facebook, Twitter, YouTube, etc.) and

(ii) authorize others to do any or all of the foregoing, or

(2) where the obtaining of worldwide rights is not reasonably practical or feasible, provide written notice to the Authority of such pre-existing or third party rights or limitations, request the Authority's approval of such pre-existing or third party rights, obtain a limited right and license to use such pre-existing or third party rights on such terms as may be reasonably negotiated, and obtain the Authority's written approval of such pre-existing or third party rights and the limited use of same. The Contractor shall provide the Authority with documentation indicating a third party's written approval for the Contractor to use any pre-existing or third-party rights that may be embodied, contained, reserved or reflected in the Works. **THE CONTRACTOR SHALL INDEMNIFY, DEFEND AND HOLD THE AUTHORITY HARMLESS FROM AND AGAINST ANY AND ALL CLAIMS, DEMANDS, REGULATORY PROCEEDINGS AND/OR CAUSES OF ACTION, AND ALL LOSSES, DAMAGES, AND COSTS (INCLUDING ATTORNEYS' FEES AND SETTLEMENT COSTS) ARISING FROM OR RELATING TO, DIRECTLY OR INDIRECTLY, ANY CLAIM OR ASSERTION BY ANY THIRD PARTY THAT THE WORKS INFRINGE ANY THIRD-PARTY RIGHTS.** The foregoing indemnity obligation shall not apply to instances in which the Authority either:

(i) exceeded the scope of the limited license that was previously obtained by the Contractor and agreed to by the Authority, or

(ii) obtained information or materials, independent of the Contractor's involvement or creation, and provided such information or materials to the Contractor for inclusion in the Works, and such information or materials were included by the Contractor, in an unaltered and unmodified fashion, in the Works.

(d) The Contractor hereby warrants and represents to the Authority that individuals or characters appearing or depicted in any advertisement, marketing, promotion, publicity or media, of any type or form that may now exist or hereafter be created or developed by or on behalf of the Contractor for the use by or benefit of the Authority, have provided their written consent for the use, reproduction, display, performance, and distribution of, and/or preparation of derivative works to, their persona or personality rights, including name, biographical information, picture, portrait, likeness, performance, voice and/or identity ("Personality Rights"), and have been compensated for such Personality Rights, if appropriate. If such permission has been obtained for a limited time, the Contractor shall be responsible for any costs associated with claims resulting from such use, etc., of the Personality Rights after the expiration of those time limits. **THE CONTRACTOR AGREES TO DEFEND, INDEMNIFY AND HOLD THE AUTHORITY HARMLESS FROM ANY CLAIMS, INCLUDING BUT NOT LIMITED TO CLAIMS FOR INVASION OF PRIVACY, INFRINGEMENT OF THE RIGHT OF PUBLICITY, LIBEL, UNFAIR COMPETITION, FALSE ADVERTISING, INTENTIONAL OR NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS, COPYRIGHT OR TRADEMARK INFRINGEMENT,**

**AND/OR CLAIMS FOR ATTORNEY'S FEES, RESULTING FROM SUCH USE, ETC., OF THE PERSONALITY RIGHTS.**

(e) The Contractor hereby irrevocably and forever waives, and agrees never to assert, any Moral Rights in or to the Works which the Contractor may now have or which may accrue to the Contractor's benefit under U.S. or foreign copyright laws and any and all other residual rights and benefits which arise under any other applicable law now in force or hereafter enacted. The term "Moral Rights" shall mean any and all rights of paternity or integrity of the Works and the right to object to any modification, translation or use of the Works, and any similar rights existing under the judicial or statutory law of any country in the world or under any treaty, regardless of whether or not such right is denominated or referred to as a Moral Right.

(f) The Contract is intended to protect the Authority's proprietary rights pertaining to the Works, and the Intellectual Property Rights therein, and any misuse of such rights would cause substantial and irreparable harm to the Authority's business. Therefore, the Contractor acknowledges and stipulates that a court of competent jurisdiction should immediately enjoin any material breach of the intellectual property and confidentiality provisions of this Contract, upon a request by the Authority, without requiring proof of irreparable injury as same should be presumed.

(g) Upon the request of the Authority, but in any event upon termination of this Contract, the Contractor shall surrender to the Authority all documents and things pertaining to the Works, including but not limited to drafts, memoranda, notes, records, drawings, manuals, computer software, reports, data, and all other documents or materials (and copies of same) generated or developed by the Contractor or furnished by the Authority to the Contractor, including all materials embodying the Works, any Authority confidential information, or Intellectual Property Rights, regardless of whether complete or incomplete. This subparagraph is intended to apply to all Works made or compiled by the Contractor, as well as to all documents and things furnished to the Contractor by the Authority or by anyone else that pertains to the Works.

(h) The Contractor may have access to personally identifiable information ("PII") in connection with the performance of the Contract. PII shall be any information that identifies or describes a person or can be directly linked to a specific individual, including ridership and usage data. Examples of PII include, but are not limited to, name, address, phone or fax number, signature, date of birth, e-mail address, method of payment, ridership and travel pattern data. Customer Personally Identifiable Information, or Customer PII, means any PII relating to the Authority's customers. The Contractor shall take reasonable steps maintain the confidentiality, security, safety, and integrity of all Customer PII. Unless otherwise agreed to by the Authority in writing, Contractor will adhere to the following requirements concerning Customer PII:

(i)  
(2) The Contractor shall take reasonable steps to maintain the confidentiality of and will not reveal or divulge to any person or entity any Customer PII that becomes known to it during the term of this Agreement.

(3) The Contractor must maintain policies and programs that prohibit unauthorized disclosure of Customer PII by its employees and subcontractors and promote training and awareness of information security policies and practices. The Contractor must comply, and must cause its employees, representatives, agents, and sub-Contractors to comply, with such commercially and operationally reasonable directions as the Authority may make to promote the safeguarding or confidentiality of Customer PII.

(4) The Contractor must conduct background checks for employees or sub-Contractors that have access to Customer PII or systems hosting Customer PII.

(5) The Contractor must limit access to computers and networks that host Customer PII, including without limitation through user credentials and strong passwords, data encryption both during transmission and at rest, fire-wall rules, and network-based intrusion detection systems

Notwithstanding the above, the Parties hereby expressly acknowledge and agree that:

(1) Contractor may disclose, divulge, or reveal PII and Customer PII in a manner approved by the Authority to the extent necessary to fulfill the requirements of this Contract or as otherwise approved in writing by the Authority; and

(2) Unless provided otherwise in the Contract, Contractor shall not be responsible for any security for the transmission of data over the internet, payment processing or credit or debit card transactions or the data security or data privacy associated with the services of third-party vendors performing payment processing, hosting, or cloud vendor services.

This Section 24(h) will survive termination or expiration of this Agreement.

**25. FEDERAL, STATE, AND LOCAL TAXES**

The Contract Sum includes all applicable federal, state, and local taxes and duties. The Authority is exempt from taxes imposed by the State of Texas and local sales and use taxes under Texas Tax Code § 151.309, and any such taxes included on any invoice received by the Authority shall be deducted from the amount of the invoice for purposes of payment. The Contractor may claim exemption from payment of applicable State taxes by complying with such procedures as may be prescribed by the State Comptroller of Public Accounts. The Contractor bears sole and total responsibility for obtaining information pertaining to such exemption.

**26. EQUAL OPPORTUNITY**

During the performance of this Contract, the Contractor agrees that it will, in good faith, afford equal opportunity required by applicable federal, state, or local law to all employees and applicants for employment without regard to race, color, religion, sex, national origin, disability or any other characteristic protected by federal, state or local law.

**27. CONFLICT OF INTEREST**

(a) Reference is made to Exhibit B, Representations and Certifications, Code of Ethics, which is incorporated herein and made a part of this Contract. Capitalized terms used in this paragraph and not otherwise defined shall have the meanings as described to them in the Code of Ethics.

(b) The Contractor represents that no Employee has a Substantial Interest in the Contractor or this Contract, which Substantial Interest would create or give rise to a Conflict of Interest. The Contractor further represents that no person who has a Substantial Interest in the Contractor and is or has been employed by the Authority for a period of two (2) years prior to the date of this Contract has or will (1) participate, for the Contractor, in a recommendation, bid, proposal or solicitation on any Authority contract, procurement or personnel administration matter, or (2) receive any pecuniary benefit from the award of this Contract through an ownership of a Substantial Interest (as that term is defined in Paragraph II, subparagraphs (1) and (3) of the Code of Ethics) in a business entity or real property.

(c) The Contractor agrees to ensure that the Code of Ethics is not violated as a result of the Contractor's activities in connection with this Contract. The Contractor agrees to immediately inform the Authority if it becomes aware of the existence of any such Substantial Interest or Conflict of Interest, or the existence of any violation of the Code of Ethics arising out of or in connection with this Contract.

(d) The Authority may, in its sole discretion, require the Contractor to cause an immediate divestiture of such Substantial Interest or elimination of such Conflict of Interest, and failure of the Contractor to so comply shall render this Contract voidable by the Authority. Any willful violation of these provisions, creation of a Substantial Interest or existence of a Conflict of Interest with the express or implied knowledge of the Contractor shall render this Contract voidable by the Authority.

(e) In accordance with paragraph 176.006, Texas Local Government Code, "vendor" is required to file a conflict of interest questionnaire within seven business days of becoming aware of a conflict of interest under Texas law. The conflict of interest questionnaire can be obtained from the Texas Ethics Commission at [www.ethics.state.tx.us](http://www.ethics.state.tx.us). The questionnaire shall be sent to the Authority's Contract Administrator.

**28. GRATUITIES**

The Authority may cancel this Contract, without liability to the Contractor, if it is found that gratuities in the form of entertainment, gifts, or otherwise were offered or given by the Contractor or any agent or representative to any Authority official or employee with a view toward securing favorable treatment with respect to the performance of this Contract. In the event this Contract is canceled by the Authority pursuant to this provision, the Authority shall be entitled, in addition to any other rights and remedies, to recover from the Contractor a sum equal in amount to the cost incurred by the Contractor in providing such gratuities.



**29. REQUEST FOR INFORMATION**

(a) The Contractor shall not provide information generated or otherwise obtained in the performance of its responsibilities under this Contract to any party other than the Authority and its authorized agents except as otherwise provided by this Contract or after obtaining the prior written permission of the Authority.

(b) This Contract, all data and other information developed pursuant to this Contract shall be subject to the Texas Public Information Act. The Authority shall comply with all aspects of the Texas Public Information Act.

(c) The Contractor is instructed that any requests for information regarding this Contract and any deliverables shall be referred to the Authority.

(d) The requirements of Subchapter J, Chapter 552, Government Code, may apply to this Contract and the contractor or vendor agrees that the contract can be terminated if the contractor or vendor knowingly or intentionally fails to comply with a requirement of that subchapter.

(1) The requirement of Subchapter J, Chapter 552, Government Code as amended currently applies to expenditures of at least \$1 million in public funds for the purchase of goods or services.

**30. LIMITATION OF LIABILITY**

In no event shall the Authority or its officers, directors, agents or employees be liable in contract or tort, to the Contractor or its Subcontractors for special, indirect, incidental or consequential damages, resulting from the Authority's performance, nonperformance, or delay in performance of its obligations under this Contract, or the Authority's termination of the Contract with or without cause, or the Authority's suspension of the Services. This limitation of liability shall not apply to intentional tort or fraud. The Contractor shall include similar liability provisions in all its Subcontracts.

**31. LAWS, STATUTES AND OTHER GOVERNMENTAL REQUIREMENTS**

The Contractor agrees that it shall be in compliance with all laws, statutes, and other governmental requirements, regulations or standards prevailing during the term of this Contract.

**32. CLAIMS**

In the event that any claim, demand, suit, or other action is made or brought by any person, firm, corporation, or other entity against the Contractor, the Contractor shall give written notice thereof, to the Authority within three (3) working days after being notified of such claim, demand, suit, or action. Such notice shall state the date and hour of notification of any such claim, demand, suit, or other action; the name and address of the person, firm, corporation, or other entity making such claim or instituting or threatening to institute any type of action or proceeding; the basis of such claim, action, or proceeding; and the name of any person against whom such claim is being made or threatened. Such written notice shall be delivered either personally or by mail and shall be directly sent to the attention of the President/CEO, Capital Metropolitan Transportation Authority, 2910 E. 5<sup>th</sup> Street, Austin, Texas 78702.

**33. CONTRACTOR CONTACT/AUTHORITY DESIGNEE**

The Contractor shall provide the Authority with a telephone number to ensure immediate communication with a person (not a recording) anytime during Contract performance. Similarly, the Authority shall designate an Authority representative who shall be similarly available to the Contractor.

**34. LICENSES AND PERMITS**

The Contractor shall, without additional expense to the Authority, be responsible for obtaining any necessary licenses, permits, and approvals for complying with any federal, state, county, municipal, and other laws, codes, and regulations applicable to the performance of work or to the products to be provided under this Contract including, but not limited to, any laws or regulations requiring the use of licensed Subcontractors to perform parts of the work.

**35. INDEMNIFICATION**

(a) THE CONTRACTOR WILL INDEMNIFY, DEFEND AND HOLD THE AUTHORITY AND ITS OFFICERS, DIRECTORS, EMPLOYEES, AGENTS AND REPRESENTATIVES (THE AUTHORITY AND EACH SUCH PERSON OR ENTITY IS AN "INDEMNIFIED PARTY") HARMLESS FROM AND AGAINST AND PAY ANY AND ALL DAMAGES (AS DEFINED HEREIN) DIRECTLY OR INDIRECTLY RESULTING FROM, RELATING TO, ARISING OUT OF OR ATTRIBUTABLE TO ANY OF THE FOLLOWING:

(1) ANY BREACH OF ANY REPRESENTATION OR WARRANTY THAT THE CONTRACTOR HAS MADE IN THIS CONTRACT;

(2) ANY BREACH, VIOLATION OR DEFAULT BY OR THROUGH THE CONTRACTOR OR ANY OF ITS SUBCONTRACTORS OF ANY OBLIGATION OF THE CONTRACTOR IN THIS CONTRACT OR ANY OTHER AGREEMENT BETWEEN THE CONTRACTOR AND THE AUTHORITY;

(3) THE USE, CONDITION, OPERATION OR MAINTENANCE OF ANY PROPERTY, VEHICLE, FACILITY OR OTHER ASSET OF THE AUTHORITY TO WHICH THE CONTRACTOR HAS ACCESS OR AS TO WHICH THE CONTRACTOR PROVIDES SERVICES; OR

(4) ANY ACT OR OMISSION OF THE CONTRACTOR OR ANY OF ITS SUBCONTRACTORS OR ANY OF THEIR OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, CUSTOMERS, INVITEES, REPRESENTATIVES OR VENDORS.

(b) "ACTION" MEANS ANY ACTION, APPEAL, PETITION, PLEA, CHARGE, COMPLAINT, CLAIM, SUIT, DEMAND, LITIGATION, MEDIATION, HEARING, INQUIRY, INVESTIGATION OR SIMILAR EVENT, OCCURRENCE OR PROCEEDING.

(c) "DAMAGES" MEANS ALL DIRECT OR INDIRECT DAMAGES, LOSSES, LIABILITIES, DEFICIENCIES, SETTLEMENTS, CLAIMS, AWARDS, INTEREST, PENALTIES, JUDGMENTS, FINES, OR OTHER COSTS OR EXPENSES OF ANY KIND OR NATURE WHATSOEVER, WHETHER KNOWN OR UNKNOWN, CONTINGENT OR VESTED, MATURED OR UNMATURED, AND WHETHER OR NOT RESULTING FROM THIRD-PARTY CLAIMS, INCLUDING COSTS (INCLUDING, WITHOUT LIMITATION, REASONABLE FEES AND EXPENSES OF ATTORNEYS, OTHER PROFESSIONAL ADVISORS AND EXPERT WITNESSES) RELATED TO ANY INVESTIGATION, ACTION, SUIT, ARBITRATION, APPEAL, CLAIM, DEMAND, INQUIRY, COMPLAINT, MEDIATION, INVESTIGATION OR SIMILAR EVENT, OCCURRENCE OR PROCEEDING.

(d) "THREATENED" MEANS A DEMAND OR STATEMENT HAS BEEN MADE (ORALLY OR IN WRITING) OR A NOTICE HAS BEEN GIVEN (ORALLY OR IN WRITING), OR ANY OTHER EVENT HAS OCCURRED OR ANY OTHER CIRCUMSTANCES EXIST THAT WOULD LEAD A PRUDENT PERSON OR ENTITY TO CONCLUDE THAT AN ACTION OR OTHER MATTER IS LIKELY TO BE ASSERTED, COMMENCED, TAKEN OR OTHERWISE PURSUED IN THE FUTURE.

(e) IF ANY ACTION IS COMMENCED OR THREATENED THAT MAY GIVE RISE TO A CLAIM FOR INDEMNIFICATION (A "CLAIM") BY ANY INDEMNIFIED PARTY AGAINST THE CONTRACTOR, THEN SUCH INDEMNIFIED PARTY WILL PROMPTLY GIVE NOTICE TO THE CONTRACTOR AFTER SUCH INDEMNIFIED PARTY BECOMES AWARE OF SUCH CLAIM. FAILURE TO NOTIFY THE CONTRACTOR WILL NOT RELIEVE THE CONTRACTOR OF ANY LIABILITY THAT IT MAY HAVE TO THE INDEMNIFIED PARTY, EXCEPT TO THE EXTENT THAT THE DEFENSE OF SUCH ACTION IS MATERIALLY AND IRREVOCABLY PREJUDICED BY THE INDEMNIFIED PARTY'S FAILURE TO GIVE SUCH NOTICE. THE CONTRACTOR WILL ASSUME AND THEREAFTER DILIGENTLY AND CONTINUOUSLY CONDUCT THE DEFENSE OF A CLAIM WITH COUNSEL THAT IS SATISFACTORY TO THE INDEMNIFIED PARTY. THE INDEMNIFIED PARTY WILL HAVE THE RIGHT, AT ITS OWN EXPENSE, TO PARTICIPATE IN THE DEFENSE OF A CLAIM WITHOUT RELIEVING THE CONTRACTOR OF ANY OBLIGATION DESCRIBED ABOVE. IN NO EVENT WILL THE CONTRACTOR APPROVE THE ENTRY OF ANY JUDGMENT OR ENTER INTO ANY SETTLEMENT WITH RESPECT TO ANY CLAIM WITHOUT THE INDEMNIFIED PARTY'S PRIOR WRITTEN APPROVAL, WHICH WILL NOT BE UNREASONABLY WITHHELD. UNTIL THE CONTRACTOR ASSUMES THE DILIGENT DEFENSE OF A CLAIM, THE INDEMNIFIED PARTY MAY DEFEND AGAINST A CLAIM IN ANY MANNER THE INDEMNIFIED PARTY REASONABLY DEEMS APPROPRIATE. THE CONTRACTOR WILL REIMBURSE THE INDEMNIFIED PARTY PROMPTLY AND PERIODICALLY FOR THE DAMAGES RELATING TO DEFENDING AGAINST A CLAIM AND WILL PAY PROMPTLY THE INDEMNIFIED PARTY FOR ANY DAMAGES THE INDEMNIFIED PARTY MAY SUFFER RELATING TO A CLAIM.

(f) **THE INDEMNIFICATION OBLIGATIONS AND RIGHTS PROVIDED FOR IN THIS CONTRACT DO NOT REQUIRE (AND SHALL NOT BE CONSTRUED AS REQUIRING) THE CONTRACTOR TO INDEMNIFY, HOLD HARMLESS, OR DEFEND ANY INDEMNIFIED PARTY (OR ANY THIRD PARTY) AGAINST ANY ACTION OR CLAIM (OR THREATENED ACTION OR CLAIM) CAUSED BY THE NEGLIGENCE OR FAULT, THE BREACH OR VIOLATION OF A STATUTE, ORDINANCE, GOVERNMENTAL REGULATION, STANDARD, OR RULE, OR THE BREACH OF CONTRACT OF ANY INDEMNIFIED PARTY, ITS AGENTS OR EMPLOYEES, OR ANY THIRD PARTY UNDER THE CONTROL OR SUPERVISION OF ANY INDEMNIFIED PARTY, OTHER THAN THE CONTRACTOR OR ITS AGENTS, EMPLOYEES, OR SUBCONTRACTORS OF ANY TIER.**

(g) **THIS PARAGRAPH WILL SURVIVE ANY TERMINATION OR EXPIRATION OF THIS CONTRACT.**

### **36. NOTICE OF LABOR DISPUTES**

(a) If the Contractor has knowledge that any actual or potential labor dispute is delaying or threatens to delay the timely performance of this Contract, the Contractor immediately shall give notice, including all relevant information, to the Authority.

(b) The Contractor agrees to insert the substance of this paragraph, including this subparagraph (b), in any Subcontract under which a labor dispute may delay the timely performance of this Contract; except that each Subcontract shall provide that in the event its timely performance is delayed or threatened by delay by any actual or potential labor dispute, the Subcontractor shall immediately notify the next higher tier Subcontractor or the Contractor, as the case may be, of all relevant information concerning the dispute.

### **37. PUBLICITY RELEASES**

All publicity releases or releases of reports, papers, articles, maps, or other documents in any way concerning this Contract or the work hereunder which the Contractor or any of its Subcontractors desires to make for purposes of publication in whole or in part, shall be subject to written approval by the Contracting Officer prior to release.

### **38. INTEREST OF PUBLIC OFFICIALS**

The Contractor represents and warrants that no employee, official, or member of the Board of the Authority is or will be pecuniarily interested or benefited directly or indirectly in this Contract. The Contractor further represents and warrants that it has not offered or given gratuities (in the form of entertainment, gifts or otherwise) to any employee, official, or member of the Board of the Authority with a view toward securing favorable treatment in the awarding, amending, or evaluating the performance of this Contract. For breach of any representation or warranty in this paragraph, the Authority shall have the right to terminate this Contract without liability and/or have recourse to any other remedy it may have at law or in equity.

### **39. MANUFACTURER'S WARRANTY**

Any and all standard manufacturer's warranties shall accrue to the benefit of the Authority. The manufacturer's warranties referenced herein shall be in addition to the contractual remedies set forth in this Contract and in addition to any and all other statutory remedies or warranties imposed on the Contractor for the benefit of the Authority.

### **40. RECORD RETENTION; ACCESS TO RECORDS AND REPORTS**

(a) The Contractor will retain, and will require its Subcontractors of all tiers to retain, complete and readily accessible records related in whole or in part to the Contract, including, but not limited to, data, documents, reports, statistics, sub-agreements, leases, Subcontracts, arrangements, other third-party agreements of any type, and supporting materials related to those records.

(b) If this is a cost-reimbursement, incentive, time and materials, labor hour, or price determinable Contract, or any combination thereof, the Contractor shall maintain, and the Authority and its representatives shall have the right to examine, all books, records, documents, and other evidence and accounting procedures and practices sufficient to reflect properly all direct and indirect costs of whatever nature claimed to have been incurred and anticipated to be incurred for the performance of this Contract.

- (c) If the Contractor submitted certified cost or pricing data in connection with the pricing of this Contract or if the Contractor's cost of performance is relevant to any change or modification to this Contract, the Authority and its representatives shall have the right to examine all books, records, documents, and other data of the Contractor related to the negotiation, pricing, or performance of such Contract, change, or modification for the purpose of evaluating the costs incurred and the accuracy, completeness, and currency of the cost or pricing data submitted. The right of examination shall extend to all documents necessary to permit adequate evaluation of the costs incurred and the cost or pricing data submitted, along with the computations and projections used therein.
- (d) The Contractor shall maintain all books, records, accounts and reports required under this paragraph for a period of at not less than three (3) 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 records shall be maintained until the disposition of all such litigation, appeals, claims or exceptions related thereto.
- (e) The Contractor agrees to provide sufficient access to the Authority and its contractors to inspect and audit records and information related to performance of this Contract as reasonably may be required.
- (f) The Contractor agrees to permit the Authority and its contractors access to the sites of performance under this Contract as reasonably may be required.
- (g) If an audit pursuant to this paragraph reveals that the Authority has paid any invoices or charges not authorized under this Contract, the Authority may offset or recoup such amounts against any indebtedness owed by it to Contractor, whether arising under this Contract or otherwise, over a period of time equivalent to the time period over which such invoices or charges accrued.
- (h) This paragraph will survive any termination or expiration of this Contract.

#### **41. EXCUSABLE DELAYS**

- (a) Except for defaults of Subcontractors at any tier, the Contractor shall not be in default because of any failure to perform this Contract under its terms if the failure arises from Force Majeure Events. In each instance, the failure to perform must be beyond the control and without the fault or negligence of the Contractor. "Default" includes failure to make progress in the work.
- (b) If the failure to perform is caused by the failure of a Subcontractor at any tier to perform or make progress, and if the cause of the failure was beyond the control of both the Contractor and Subcontractor and without the fault or negligence of either, the Contractor shall not be deemed to be in default, unless:
- (1) the subcontracted supplies were obtainable from other sources;
  - (2) the Authority ordered the Contractor in writing to purchase these supplies from the other source; and
  - (3) the Contractor failed to comply reasonably with this order.
- (c) Upon the request of the Contractor, the Authority shall ascertain the facts and extent of the failure. If the Authority determines that any failure to perform results from one or more of the causes above, the delivery schedule or period of performance shall be revised, subject to the rights of the Authority under this Contract.

#### **42. INTERPRETATION OF CONTRACT – DISPUTES**

All questions concerning interpretation or clarification of this Contract or the acceptable fulfillment of this Contract by the Contractor shall be immediately submitted in writing to the Authority's Contracting Officer for determination. All determinations, instructions, and clarifications of the Contracting Officer shall be final and conclusive unless the Contractor files with the Capital Metro President/CEO within two (2) weeks after the Authority notifies the Contractor of any such determination, instruction or clarification, a written protest, stating in detail the basis of the protest. The President/CEO shall consider the protest and notify the Contractor within two (2) weeks of the protest filing of his or her final decision. The President/CEO's decisions shall be conclusive subject to judicial review. Notwithstanding any disagreement the Contractor may have with the decisions of the President/CEO, the Contractor shall proceed with the Work in accordance with the determinations, instructions, and clarifications of the President/CEO. The Contractor shall be solely responsible for requesting instructions or interpretations and liable for any cost or expenses arising

from its failure to do so. The Contractor's failure to protest the Contracting Officer's determinations, instructions, or clarifications within the two-week period shall constitute a waiver by the Contractor of all of its rights to further protest.

#### **43. TOBACCO-FREE WORKPLACE**

- (a) Tobacco products include cigarettes, cigars, pipes, snuff, snus, chewing tobacco, smokeless tobacco, dipping tobacco and any other non-FDA approved nicotine delivery device.
- (b) The tobacco-free workplace policy refers to all Capital Metro owned or leased property. Note that this includes all buildings, facilities, work areas, maintenance facilities, parking areas and all Authority owned vehicles.
- (c) Tobacco use is not permitted at any time on Capital Metro owned or leased property, including personal vehicles parked in Capital Metro parking lots.
- (d) Littering of tobacco-related products on the grounds or parking lots is also prohibited.

#### **44. ORDER OF PRECEDENCE**

In the event of any inconsistency between the provisions of this Contract, the inconsistency shall be resolved by giving precedence in the following order:

1. Exhibit A – Revised-23 – Pricing Schedule
2. Exhibit E – Revised-23 – Contractual Terms and Conditions
3. Exhibit E-1 – Revised-42 – Addendum to Contractual Terms and Conditions, Federally Assisted
4. ~~Exhibit F-1 – Revised-4 – Capital Metro Battery Electric Bus Technical Specifications~~
5. Exhibit F-1B – Revised-42 – Technical Specifications for Chargers for Battery Electric Buses
6. Exhibit B – Revised-1 – Representations and Certifications
7. Exhibit B-1 – Revised-1 – Buy America Certification
8. Exhibit E-2 – Proprietary Rights and Data Security Addendum
9. Exhibit E-3 – IT Terms and Conditions - Services
10. Exhibit E-4 – IT Terms and Conditions - Hosted Solutions
11. Other provisions or attachments to the Contract

#### **45. ANTI-CORRUPTION AND BRIBERY LAWS**

The Contractor shall comply with all Applicable Anti-Corruption and Bribery Laws. The Contractor represents and warrants that it has not and shall not violate or cause the Authority to violate any such Anti-Corruption and Bribery Laws. The Contractor further represents and warrants that, in connection with supplies or services provided to the Authority or with any other business transaction involving the Authority, it shall not pay, offer, promise, or authorize the payment or transfer of anything of value, directly or indirectly to: (a) any government official or employee (including employees of government owned or controlled companies or public international organizations) or to any political party, party official, or candidate for public office or (b) any other person or entity if such payments or transfers would violate applicable laws, including Applicable Anti-Corruption and Bribery Laws. Notwithstanding anything to the contrary herein contained, the Authority may withhold payments under this Contract, and terminate this Contract immediately by way of written notice to the Contractor, if it believes, in good faith, that the Contractor has violated or caused the Authority to violate the Applicable Anti-Corruption and Bribery Laws. The Authority shall not be liable to the Contractor for any claim, losses, or damages related to its decision to exercise its rights under this provision.

#### **46. MISCELLANEOUS**

- (a) This Contract does not intend to, and nothing contained in this Contract shall create any partnership, joint venture or other equity type agreement between the Authority and the Contractor.
- (b) All notices, statements, demands, requests, consents or approvals required under this Contract or by law by either party to the other shall be in writing and may be given or served by depositing same in the United States mail, postage paid, registered or certified and addressed to the party to be notified, with return receipt requested; by personally delivering same to such party; an agent of such party; or by overnight courier service, postage paid and



addressed to the party to be notified; or by e-mail with delivery confirmation. Notice deposited in the U.S. mail in the manner hereinabove described shall be effective upon such deposit. Notice given in any other manner shall be effective only if and when received by the party to be notified.

**If to the Contractor:** As set forth in Exhibit B to this Contract

**If to the Authority:** Capital Metropolitan Transportation Authority  
**Attn:** ~~Sr. Director~~/Chief Contracting Officer  
2910 E. 5th Street  
Austin, Texas 78702

Address for notice can be changed by written notice to the other party.

(c) In the event the Authority finds it necessary to employ legal counsel to enforce its rights under this Contract, or to bring an action at law, or other proceeding against the Contractor to enforce any of the terms, covenants or conditions herein, the Contractor shall pay to the Authority its reasonable attorneys' fees and expenses, regardless of whether suit is filed.

(d) If any term or provision of this Contract or any portion of a term or provision hereof or the application thereof to any person or circumstance shall, to any extent, be void, invalid or unenforceable, the remainder of this Contract will remain in full force and effect unless removal of such invalid terms or provisions destroys the legitimate purpose of the Contract in which event the Contract will be terminated.

(e) This Contract represents the entire agreement between the parties concerning the subject matter of this Contract and supersedes any and all prior or contemporaneous oral or written statements, agreements, correspondence, quotations and negotiations. In executing this Contract, the parties do not rely upon any statement, promise, or representation not expressed herein. This Contract may not be changed except by the mutual written agreement of the parties.

(f) A facsimile signature shall be deemed an original signature for all purposes. For purposes of this paragraph, the phrase "facsimile signature" includes without limitation, an image of an original signature.

(g) Whenever used herein, the term "including" shall be deemed to be followed by the words "without limitation." Words used in the singular number shall include the plural, and vice-versa, and any gender shall be deemed to include each other gender. All Exhibits attached to this Contract are incorporated herein by reference.

(h) All rights and remedies provided in this Contract are cumulative and not exclusive of any other rights or remedies that may be available to the Authority, whether provided by law, equity, statute, or otherwise. The election of any one or more remedies the Authority will not constitute a waiver of the right to pursue other available remedies.

(i) The Contractor shall not assign the whole or any part of this Contract or any monies due hereunder without the prior written consent of the Contracting Officer. No assignment shall relieve the Contractor from any of its obligations hereunder. Any attempted assignment, transfer or other conveyance in violation of the foregoing shall be null and void.

(j) The failure of the Authority to insist upon strict adherence to any term of this Contract on any occasion shall not be considered a waiver or deprive the Authority thereafter to insist upon strict adherence to that term or other terms of this Contract. Furthermore, the Authority is a governmental entity and nothing contained in this Contract shall be deemed a waiver of any rights, remedies or privileges available by law.

(k) This Contract shall be governed by and construed in accordance with the laws of the State of Texas. Any dispute arising with respect to this Contract shall be resolved in the state or federal courts of the State of Texas, sitting in Travis County, Texas and the Contractor expressly consents to the personal jurisdiction of these courts.

(l) This Contract is subject to the Texas Public Information Act, Tex. Gov't Code, Chapter 552.

(m) The Contractor represents, warrants and covenants that: (a) it has the requisite power and authority to execute, deliver and perform its obligations under this Contract; and (b) it is in compliance with all applicable laws related to such performance.

- (n) The person signing on behalf of the Contractor represents for himself or herself and the Contractor that he or she is duly authorized to execute this Contract.
- (o) No term or provision of this Contract is intended to be, or shall be, for the benefit of any person, firm, organization, or corporation for a party hereto, and no such other person, firm, organization or corporation shall have any right or cause of action hereunder.
- (p) Capital Metro is a governmental entity and nothing in this Contract shall be deemed a waiver of any rights or privileges under the law.
- (q) Funding for this Contract after the current fiscal year is subject to revenue availability and appropriation of funds in the annual budget approved by the Authority's Board of Directors.
- (r) Time is of the essence for all delivery, performance, submittal, and completion dates in this Contract.

#### **47. FUNDING AVAILABILITY**

Funding after the current fiscal year of any contract resulting from this solicitation is subject to revenue availability and appropriation of funds in the annual budget approved by the Authority's Board of Directors.

#### **48. LIQUIDATED DAMAGES**

- (a) If the Contractor fails to deliver the ~~buses or~~ charging equipment within the time specified in this Contract, or any extension, the Contractor shall in place of actual damages, pay to the Authority the sum of \$312.77 per ~~bus or~~ charging equipment for each calendar day of delay as liquidated damages and not as a penalty. It is agreed that such liquidated damages represent an estimate of actual damages and are not intended as a penalty; and that such delay will cause the Authority to incur substantial economic damage in amounts which are difficult or impossible to ascertain with certainty. Liquidated damages do not limit the Authority's right to terminate this Contract for default or pursue other remedies available to the Authority elsewhere in this Contract. Liquidated damages may be deducted from any amounts due and owing Contractor under this Contract.
- (b) In the event the Authority terminates this Contract for Default under Exhibit E, Paragraph entitled "Termination for Default", Contractor shall be liable for liquidated damages accruing until such time as the Authority may reasonable obtain deliver of performance of similar services. The liquidated damages shall be in addition to excess cost under Exhibit E, Paragraph entitled "Termination for Default".
- (c) Contractor may not be charged with liquidated damages when the delay in performance is caused by a Force Majeure Event.
- (d) The Contractor shall insert the substance of this paragraph, including this subparagraph (d), altered to reflect the proper identification of the contracting parties in all Subcontracts issued pursuant to this Contract.

#### **49. ~~BUS PRE-DELIVERY TESTS AND INSPECTIONS~~RESERVED**

~~The pre-delivery tests and inspections shall be performed at or near the Contractor's plant; and they may be witnessed by the resident inspector. When the bus passes these tests and inspections, the resident inspector may authorize release of the bus.~~

~~The Contractor shall provide and maintain an inspection system acceptable to the Authority covering Material and/or Equipment under the Contract and shall tender to the Authority for acceptance only Materials and/or Equipment that has been inspected in accordance with the inspection system and has been found by the Contractor in conformity with Contract requirements. As part of the system, the Contractor shall prepare records evidencing all inspections made under the system and the outcome. The Authority has the right to inspect and test all Material and/or Equipment call for by the Contract, to the extent practicable, at all places and times, including the period of manufacture, and in any event before acceptance. The Authority shall not be obligated to perform any inspection and test for the benefit of the Contractor unless specifically set forth elsewhere in the Contract. When Material and/or Equipment is not~~

ready at the time specified by the Contractor for inspection or test, the Authority may charge the Contractor for the additional cost of inspection or test. Additionally, the Authority may charge the Contractor for any additional cost of inspection or test when prior rejection makes re-inspection or retest necessary. The Authority has the right either to reject or to require correction of nonconforming Material and/or Equipment when it is defective in material or workmanship or is otherwise not in conformity with Contract requirements. Inspection and tests by the Authority do not relieve the Contractor of responsibility for defects or other failures to meet Contract requirements discovered before acceptance.

#### **50. ACCEPTANCE OF BUS RESERVED**

(a) — Within 15 (fifteen) calendar days after arrival at the designated point of delivery, the Manufacturer shall demonstrate full integration and functionality of all add-on systems, such as but not limited to CAD/AVL and surveillance cameras (Reference Exhibit F1-C) and the bus shall undergo the Authority's inspection process. If the bus passes these tests, acceptance of the bus by the Authority occurs. Acceptance may occur earlier if the Authority notifies the Contractor of early acceptance or places the bus in revenue service. If the bus fails these tests, it shall not be accepted until the repair procedures defined in "Repairs After Non-Acceptance" have been carried out and the bus is re-tested until it passes.

(b) — If during inspection process Capital Metro determines that a Vehicle is suitable for operation in revenue service, but that it is not totally responsive to the Technical Specifications such that substantial delay might be incurred in implementing required corrective action(s), Capital Metro may at its sole discretion, issue a "Certificate of Conditional Acceptance" for the Vehicle for mutual execution by Capital Metro and the contractor. Such conditionally accepted Vehicle will then be available to Capital Metro for use in revenue service until such time as the contractor is able to initiate and execute the necessary corrective action(s). Capital Metro will withhold a corresponding amount from the invoice for any such issues until corrective measures are taken by the contractor and fully accepted by Capital Metro.

#### **51. RESERVED REPAIRS AFTER NON-ACCEPTANCE**

The Contractor, or its designated representative, shall perform the repairs after non-acceptance. If the Contractor fails or refuses to make the repairs within 5 (five) calendar days, then the Authority may contract the work out to a repair shop with reimbursement by the Contractor.

#### **52. REPAIRS BY CONTRACTOR RESERVED**

After non-acceptance of the bus, the Contractor must begin work within 5 (five) calendar days after receiving notification from the Authority of failure of acceptance tests. Authority shall make the bus available to complete repairs timely with the Contractor repair schedule. The Contractor shall provide, at its own expense, all spare parts, tools, and space required to complete the repairs. At the Authority's discretion, the Contractor may be required to remove the bus from the Authority's property while repairs are being fixed. If the bus is removed from the Authority's property, repair procedures must be diligently pursued by the Contractor's representatives, and the Contractor shall assume risk of loss while the bus is under its control.

#### **53. RESERVED REPAIRS BY THE AUTHORITY**

(a) — Parts Used. If the Authority performs the repairs after non-acceptance of the bus, it shall correct or repair the defect and any related defects using Contractor-specified parts available from its own stock or those supplied by the Contractor specifically for this repair. Monthly, reports of all repairs covered by this procedure should be submitted by the Authority to the Contractor for reimbursement or replacement of parts. The Contractor shall provide forms for these reports.

(b) — Contractor Supplied Parts. If the Contractor supplies parts for repairs that are being performed by the Authority after non-acceptance of the bus, these parts shall be shipped prepaid to the Authority from any source selected by the Contractor within five (5) calendar days after receipt of the request for said parts.

(c) — Return of Defective Components. The Contractor may request that parts covered by this provision be returned to the manufacturing plant. The total costs for this action shall be paid by the Contractor.



~~(d) Reimbursement for Labor. The Authority shall be reimbursed by the Contractor for labor.~~

~~(e) Reimbursement for Parts. The Authority shall be reimbursed by the Contractor for defective parts that must be replaced to correct the defect.~~

**54. PARTS AVAILABILITY GUARANTYRESERVED**

~~Contractor shall guarantee the availability of replacement parts for each vehicle supplied under the contract for a period of at least twelve (12) years from the date of Final Payment. Contractor shall not make exclusive agreements with Sub-suppliers that would preclude the Authority from purchasing components directly from Sub-suppliers. All spare parts supplied shall be interchangeable with original equipment without any modifications. Contractor must maintain an inventory list of body and structural parts available for delivery to the Authority within 48 hours of placement of an order during the warranty phase and seven (7) calendar days for all other parts. The inventory should consist of but not limited to skirt panels, front and rear body panels, front cap glazing, trim stripes, high voltage batteries, pedestrian deflectors, and all windows and windshields.~~

**55. ASSIGNABILITY**

The Authority reserves the right to assign any or all part of specified deliverables to another entity at its sole discretion, it being understood that, should the Authority choose to assign any or all of the specified deliverables to another entity, the Assignee shall comply with the piggybacking requirements set forth in 2 CFR Part 200 and FTA Circular 4220.1F Chapter V 7(2), Assignment of Contract Rights.

**56. PRE-AWARD AUDIT, INTERMEDIATE AND POST-DELIVERY AUDITRESERVED**

~~Capital Metro is required by the Federal Transit Administration (FTA) to perform a pre-award and post-delivery audit of rolling stock purchases according to the Federal Register dated October 1, 2001, Title 49, CFR Chapter VI, Part 663. Capital Metro will also perform an Intermediate Audit which will occur at the midpoint of production of the first bus and will be conducted in the same manner as the Post Delivery Audit. Successful completion of the audit is a prerequisite for acceptance and delivery of any vehicles. The contractor will be notified throughout the audit process as to the status and progress.~~

**57. RESERVED**

**58. AUSTIN TRANSIT PARTNERSHIP**

~~At the direction of Capital Metro, the services provided under the Contract may be performed on behalf of or in connection with Austin Transit Partnership (ATP) and ATP's projects, initiatives, and proposals.~~

**EXHIBIT E-1 – REVISED-12****ADDENDUM TO CONTRACTUAL TERMS AND CONDITIONS  
FEDERALLY ASSISTED SUPPLY OR SERVICE CONTRACT**

The Contractor clauses and provisions of this Exhibit apply to all Federally assisted supply and service contracts. These provisions supersede and take precedence over any other clause or provision contained within this contract which may be in conflict therewith.

**1. DISADVANTAGED BUSINESS ENTERPRISE (DBE)**

(a) It is the policy of the Authority and the U.S. Department of Transportation ("DOT" or "U.S. DOT") that Disadvantaged Business Enterprises (DBEs) as defined in 49 C.F.R. Part 26 shall have the maximum opportunity to participate in the performance of contracts financed in whole or in part with Federal funds under this Contract. Consequently, the DBE requirements of 49 C.F.R. Part 26 apply to this Contract and all subcontracts awarded under this Contract.

(b) The Contractor and its subcontractors shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Contract. The Contractor shall carry out applicable requirements of 49 C.F.R. Part 26, and the Authority's DOT approved Disadvantaged Business Enterprise (DBE) program in the award of subcontracts and administration of this Contract. Failure by the Contractor to carry out these requirements is a material breach of the Contract, which may result in the termination of this Contract or such other remedy, as the Authority deems appropriate, including but not limited to:

- (i) Withholding monthly progress payments,
- (ii) Assessing sanctions,
- (iii) Liquidating damages, and/or
- (iv) Disqualifying Contractor or subcontractor from future bidding as non-responsible.

(c) Contractor shall pay subcontractors for satisfactory performance of their contracts no later than 30 days from receipt of each payment the Authority makes to the Contractor.

(d) If this Contract contains a defined DBE goal, the Contractor shall use the specific DBEs listed in its bid/proposal/offer to perform the work and supply the materials for which each is listed unless the Contractor obtains the Authority's written consent. Accordingly, the Contractor may not terminate a DBE subcontractor listed in its bid/proposal/offer without the Authority's prior written consent. Contractor actions covered by this subsection include, but are not limited to, instances in which the Contractor seeks to perform work originally designated for a DBE subcontractor with: (i) its own forces or those of an affiliate; (ii) a non-DBE firm; or (iii) another DBE firm. Unless the Authority's consent is provided under this clause, the Contractor shall not be entitled to any payment for work or material unless it is performed or supplied by the listed DBE. If the Authority provides its written consent, the Contractor shall comply with 49 C.F.R. 26.53(f) in executing the termination; the Contractor shall also comply with 49 C.F.R. 26.53(g) and use the delineated good-faith efforts to find another DBE subcontractor to substitute for the original DBE subcontractor and maintain and provide relevant documentation regarding such efforts.

(e) Contractor shall make available upon request a copy of all DBE subcontracts.

(f) Contractor shall ensure that all subcontracts or agreements with DBEs to supply labor or materials require that the subcontract and all lower-tier subcontractors be performed in accordance with this clause.

(g) If subcontracts will be let, Contractor shall take the affirmative steps listed in 2 C.F.R. 200.321, which addresses contracting with small and minority businesses, women's business enterprises, and labor surplus area firms.

**2. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT – OVERTIME COMPENSATION**

(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 which he or she is employed on such work to work in excess of forty (40) hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half (1-1/2) times the basic rate of pay for all hours worked in excess of forty (40) hours in such workweek.

(b) Violation, Liability for Unpaid Wages, Liquidated Damages. In the event of any violation of the provisions set forth in paragraph (a) above, 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 (in the case of work done under the 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 provisions set forth in paragraph (a) above, in the sum of \$29 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty (40) hours without payment of the overtime wages required by the provisions set forth in paragraph (a) above.

(c) Withholding for Unpaid and Liquidated Damages. The Authority 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 Contractor, or any other Federally-assisted contract subject to the Contract Work Hours and Safety Standards Act which is held by the 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 provisions set forth in paragraph (b) of this clause.

(d) Payroll and Basic Records.

(1) The Contractor or Subcontractor shall maintain payroll records during the course of Contract work and shall preserve them for a period of three (3) years from the completion of the Contract for all laborers and mechanics working on the Contract. Such records shall contain the name and address of each such employee, social security number, correct classification, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. Nothing in this paragraph shall require the duplication of records required to be maintained for construction work by Department of Labor regulations at 29 C.F.R. 5.5(a)(3) implementing the Davis-Bacon Act.

(2) The records to be maintained under paragraph (d)(1) of this clause shall be made available by the Contractor or Subcontractor for inspection, copying, or transcription by authorized representatives of the Authority, the Federal Transit Administration (FTA), or the Department of Labor. The Contractor or Subcontractor shall permit such representatives to interview employees during working hours on the job.

(e) Subcontracts. The Contractor or subcontractor shall insert in any subcontracts the provisions set forth in paragraphs (a) through (d) above, and also a provision requiring the subcontractors to include these clauses in any lower tier subcontracts. The Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the provisions set forth in paragraphs (a) through (d) above.

### **3. CIVIL RIGHTS AND EQUAL OPPORTUNITY**

During the performance of this Contract, the Contractor for itself, its assignees and successors in interest (hereinafter referred to as the "Contractor"), agrees to comply with the following requirements:

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

(b) Race, Color, Religion, National Origin, Sex. In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e et seq., and Federal transit laws at 49 U.S.C. § 5332, 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. chapter 60, and Executive Order No. 11246, "Equal Employment Opportunity in Federal Employment," September 24, 1965,

42 U.S.C. § 2000e note, as amended by any later Executive Order that amends or supersedes it, referenced in 42 U.S.C. § 2000e note. 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, religion, national origin, or sex (including sexual orientation and gender identity). Such action shall include, but not be limited to, the following: employment, promotion, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

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

(d) Disabilities. In accordance with section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. § 12101 et seq., the Architectural Barriers Act of 1968, as amended, 42 U.S.C. § A-27 4151 et seq., and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against individuals on the basis of disability. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

(e) Information and Reports. The Contractor shall provide all information and reports required by the Regulations or directive issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Authority or the Federal Transit Administration (FTA) to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information is required or a Contractor is in the exclusive possession of another who fails or refuses to furnish this information, the Contractor shall so certify to the Authority, or FTA, as appropriate, and shall set forth what efforts it has made to obtain the information.

(f) Sanctions for Noncompliance. In the event of the Contractor's noncompliance with the provisions of this Contract, the Authority shall impose such Contract sanctions as it or the FTA may determine to be appropriate, including, but not limited to:

- (1) withholding of payments to the Contractor under the Contract until the Contractor complies; and/or
- (2) cancellation, termination or suspension of the Contract, in whole or in part.

(g) Incorporation of Provisions. The Contractor shall include the provisions of paragraph (a) through (f) of this clause in every subcontract or procurement, including subcontracts or procurements for materials and leases of equipment, unless exempt by the applicable law or regulations, or directives issued pursuant thereto. The Contractor shall take such action with respect to any subcontract or procurement as the Authority or FTA may direct as a means of enforcing such revisions including sanctions for noncompliance: provided, however, that in the event a Contractor becomes involved in, or is threatened with, litigation with a Subcontractor or supplier as a result of such direction, the Contractor may request the Authority, and, in addition, the United States to enter into such litigation to protect the interests of the Authority and the United States.

#### **4. CLEAN AIR AND WATER ACT**

(a) Definitions:

- (1) "Air Act," as used in this clause, means the Clean Air Act (42 U.S.C. § 7401 et seq.).
- (2) "Clean Air Standards," as used in this clause means:

(i) any enforceable rules, regulations, guidelines, standards, limitations, orders, controls, prohibitions, work practices, or other requirements contained in, issued under, or otherwise adopted under the Air Act or Executive Order 11738.

(ii) an applicable implementation plan as described in Section 110(d) of the Air Act [42 U.S.C. § 7410(d)]; or

(iii) an approved implementation procedure under Section 112(d) of the Air Act [42 U.S.C. § 7412(d)].

(3) "Clean Water Standards," as used in this clause, means any enforceable limitation, control, condition, prohibition, standard, or other requirement promulgated under the Water Act or contained in a permit issued to a discharger by the Environmental Protection Agency or by a State under an approved program, as authorized by Section 402 of the Water Act (33 U.S.C. § 1342), or by local government to ensure compliance with pre-treatment regulations as required by Section 307 of the Water Act (33 U.S.C. § 1317).

(4) "Compliance," as used in this clause, means compliance with:

(i) Clean Air or Water Standards; or

(ii) a schedule or plan ordered or approved by a court of competent jurisdiction, the Environmental Protection Agency, or an air or water pollution control agency under the requirements of the Air Act or Water Act and related regulations.

(5) "Facility," as used in this clause, means any building, plant, installation, structure, mine, vessel or other floating craft, location, or site of operations, owned, leased, or supervised, by a Contractor or Subcontractor, sued in the performance of a contract or subcontract. When a location or site of operations includes more than one building, plant, installation, or structure, the entire location or site shall be deemed a facility except when the Administrator, or a designee of the Environmental Protection Agency, determines that independent facilities are co-located in one geographical area.

(6) "Water Act," as used in this clause, means Clean Water Act (33 U.S.C. § 1251 et seq.).

(b) The Contractor agrees:

(1) to comply with all Clean Air Standards and Clean Water Standards.

(2) that no portion of the work required by the Contract will be performed in a facility listed on the Environmental Protection Agency List of Violating Facilities on the date when this Contract was awarded unless and until the EPA eliminates the name of the facility from the listing;

(3) that it will report all violations to FTA and the Regional Office of the Environmental Protection Agency;

(4) to use best efforts to comply with clean air standards and clean water standards at the facility in which the Contract is being performed; and

(5) to insert the substance of this clause into any nonexempt Subcontract, including this paragraph (b)(4).

## **5. ENERGY POLICY AND CONSERVATION ACT**

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

## **6. OFFICIALS NOT TO BENEFIT**

No member of or delegate to Congress, or resident commissioner, shall be admitted to any share or part of this Contract or to any benefit arising from it. However, this clause does not apply to this Contract to the extent that this Contract is made with a corporation for the corporation's general benefit.

## **7. BUY AMERICA PROVISION**

(a) The Contractor agrees to comply with 49 U.S.C. 5323(j) and the FTA's implementing regulations found at 49 C.F.R. Part 661, which require that all steel, iron, and manufactured products used in FTA-funded projects are produced in the United States, unless FTA has granted a waiver or the product is subject to a general waiver. The provisions of that Act and its implementing regulations are hereby incorporated by reference into this Contract. The Contractor shall comply with the Buy America certification(s) submitted with its proposal/bid.

(b) If applicable, the Contractor also agrees to comply with 49 U.S.C. § 5323(m) and FTA's implementing regulation at 49 C.F.R. Part 663.

## **8. CARGO PREFERENCE - USE OF UNITED STATES FLAG VESSELS**

This clause only applies to contracts in which materials, equipment, or commodities may be transported by ocean vessel in carrying out the terms of the contract. As required by 46 C.F.R. Part 381, the Contractor agrees:

(a) to utilize privately owned United States flag commercial vessels to ship at least fifty percent (50%) of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners and tankers) involved, whenever shipping any equipment, materials, or commodities pursuant to this Contract, to the extent such vessels are available at fair and reasonable rates of United States flag commercial vessels; and

(b) to furnish within twenty (20) days following the date of loading for shipments originating with the United States, or within thirty (30) working days following the date of loading for shipments originating outside of 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 paragraph (a) above to the Authority, (through the prime Contractor in the case of a Subcontractor's bills-of-lading) and to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, D.C. 20590, marked with appropriate identification of the project; and

(c) to insert the substance of the provisions of this clause in all Subcontracts issued pursuant to this Contract.

## **9. FLY AMERICA**

The Contractor agrees that if Federal funds are used to fund international air transportation of any persons (and their personal effects) involved in or property acquired for the Contract, the transportation must be provided by U.S. flag air carriers to the extent service by these carriers is available, as required by the International Air Transportation Fair Competitive Practices Act of 1974, as amended, 49 U.S.C. 40118, in accordance with U.S. GAO regulations, "Uniform Standards and Procedures for Transportation Transactions," 4 C.F.R. Part 52, and U.S. GAO Guidelines for Implementation of the "Fly America Act" B-138942, 1981 U.S. Comp. Gen. LEXIS 2166. March 31, 1981.

## **10. AUDIT AND INSPECTION OF RECORDS**

(a) This clause is applicable if this Contract was entered into by means of negotiation and shall become operative with respect to any modification to this Contract whether this Contract was initially entered into by means of negotiation or by means of formal advertising.

(b) The Contractor shall maintain complete and readily accessible records and shall permit the Authority, the U.S. Department of Transportation, and the Comptroller General of the United States or any of their duly authorized representatives access to and the right to examine any directly pertinent books, documents, papers, and records of such Contractor, involving transactions related to the Contract, for the purpose of making audit, examination, excerpts and transcriptions. Such access requires the Contractor to provide timely and reasonable access for the purpose of interview and discussion related to such documents.

(c) The Contractor agrees to comply with the record-retention requirements in 2 C.F.R. 200.334 (previously 2 C.F.R. 200.333). Under such requirements, the Contractor shall maintain all books, documents, papers, and records required under the Contract for a period of at least three years after the date of termination or expiration of the Contract, or the disposition of all litigation, appeals, claims, or exceptions related to this Contract (whichever is later).



The rights of access in this clause are not limited to the required retention period(s) but last as long as the records are retained.

(d) The Contractor further agrees to include in all subcontracts a clause that requires the subcontractor:

(1) To maintain complete and readily accessible records and to permit the Authority, the U.S. Department of Transportation, and the Comptroller General of the United States or any of their duly authorized representatives access to and the right to examine any directly pertinent books, documents, papers, and records of such subcontractor, involving transactions related to the Contract, for the purpose of making audit, examination, excerpts, and transcriptions. The clause shall also require the subcontractor to provide timely and reasonable access for the purpose of interview and discussion related to such documents.

(2) To comply with the record-retention requirements in 2 C.F.R. 200.334 (previously 2 C.F.R. 200.333), the subcontractor shall maintain all books, documents, papers, and records required under the Contract for a period of at least three years after the date of termination or expiration of the Contract, or the disposition of all litigation, appeals, claims, or exceptions related to this Contract (whichever is later). The clause shall note that the rights of access in the clause are not limited to the required retention period(s) but last as long as the records are retained.

#### **11. RESTRICTIONS ON LOBBYING**

(a) The Contractor shall timely comply with the requirements of the lobbying restrictions set forth in Section 319 of Public Law 101-121, as implemented by the Department of Transportation in 49 C.F.R. Part 20, and as those authorities may be hereafter amended.

(b) If a Standard Form LLL, "Disclosure Form to Report Lobbying," is required to be completed by the Contractor or Subcontractor at any tier, such disclosure form shall be furnished to the Authority.

#### **12. ACCESS REQUIREMENTS TO INDIVIDUALS WITH DISABILITIES**

The Contractor shall comply with all applicable requirements of the Americans with Disabilities Act of 1990 (ADA), 42 U.S.C. § 12101, et seq. and 49 U.S.C. § 322; Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794; the Architectural Barriers Act of 1968, as amended 42 U.S.C. § 4151, et seq.; Federal Transit law, specifically 49 U.S.C. § 5332; Section 16 of the Federal Transit Act, as amended, 49 U.S.C. app. 1612; and the following regulations and any amendments thereto:

(a) U.S. DOT regulations, "Transportation Services for Individuals with Disabilities (ADA)," 49 C.F.R. Part 37;

(b) U.S. DOT regulations, "Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance," 49 C.F.R. Part 27;

(c) U.S. DOT regulations, "Transportation for Individuals with Disabilities: Passenger Vessels," 49 C.F.R. Part 39;

(d) Department of Justice (DOJ) regulations, "Nondiscrimination on the Basis of Disability in State and Local Government Services," 28 C.F.R. Part 35;

(e) DOJ Regulations, "Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities," 28 C.F.R. Part 36;

(f) Equal Employment Opportunity Commission (EEOC) "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630;

(g) Federal Communications Commission regulations, "Telecommunications Relay Services and Related Customer Premises Equipment for the Hearing and Speech Disabled," 47 C.F.R. Part 64, Subpart F;

(h) FTA regulations, "Transportation for Elderly and Handicapped Persons", 49 C.F.R. Part 609;

- (i) Joint U.S. Architectural and Transportation Barriers Compliance Board (U.S. ATBCB) and U.S. DOT regulations, "Americans with Disabilities (ADA) Accessibility Specifications for Transportation Vehicles," 49 C.F.R. Part 38;
- (j) U.S. ATBCB regulations, "Electronic and Information Technology Accessibility Standards," 36 C.F.R. Part 1194;
- (k) FTA Circular 4710.1, "Americans with Disabilities Act: Guidance;" and
- (l) Other Federal laws, regulations, and requirements pertaining to access for seniors or individuals with disabilities.

### **13. OPERATIONS SERVICE CONTRACTS**

If this is an operational service contract, the Contractor agrees to the following and agrees to include the substance of this clause in each subcontract that may involve operating public transit services:

- (a) Charter Service Operations. The Contractor agrees to comply with 49 U.S.C. § 5323(d), 5323(r), and 49 C.F.R. Part 604. The Contractor is prohibited from providing charter service using federally funded equipment or facilities if there is at least one (1) private charter operator willing and able to provide the service, except under one of the specified exceptions. 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; and
- (b) School Bus Operations. Pursuant to 49 U.S.C. § 5323(f) and 49 C.F.R. Part 605, the Contractor 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, the Contractor may not use federally funded equipment, vehicles, or facilities.

### **14. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS AND RELATED ACTS**

- (a) 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 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 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.
- (b) 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. Chapter 53, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5323(l) on the Contractor, to the extent the Federal Government deems appropriate.
- (c) The Contractor agrees to include the above two clauses in each Subcontract associated with this Contract. It is further agreed that the clauses shall not be modified, except to identify the Subcontractor who will be subject to the provisions.

### **15. PRIVACY ACT**

- (a) The Contractor agrees to comply with, and assures the compliance of its employees with, the information restriction 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 Contract.



(b) The Contractor agrees to include the above clause in each Subcontract associated with this Contract. It is further agreed that the clauses shall not be modified, except to identify the Subcontractor who will be subject to the provisions.

#### **16. NO OBLIGATION BY THE FEDERAL GOVERNMENT**

(a) Notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the 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 Contractor, or any other party (whether or not a party to that Contract) pertaining to any matter resulting from the underlying Contract.

(b) The Contractor agrees to include the above clause in each Subcontract associated with this Contract. The clause shall not be modified, except to identify the Subcontractor who will be subject to its provisions.

#### **17. NOTICE OF FEDERAL REQUIREMENTS**

(a) The 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 Capital Metro's Master Agreement with the FTA, as they may be amended or promulgated from time to time during the term of this Contract. The Contractor's failure to so comply shall constitute a material breach of this Contract.

(b) The Contractor is advised that Federal requirements applicable to this Contract as set forth in federal law, regulations, policies, and related administrative practices may change during the performance of this Contract. Any such changes shall also apply to this Contract and subcontracts at all tiers.

#### **18. INCORPORATION OF FTA TERMS – FTA CIRCULAR 4220.1F**

The preceding provisions include, in part, certain Standard Terms and Conditions required by the DOT, whether or not expressly set forth in the preceding Contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1F, dated November 1, 2008, 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 Contract. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any Authority requests, which would cause the Authority to be in violation of the FTA terms and conditions.

#### **19. SEISMIC SAFETY REGULATIONS**

To the extent applicable to Contractor's work, 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 C.F.R. 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.

#### **20. DRUG-FREE WORKPLACE PROGRAM**

(a) As used in this clause:

(1) "Alcohol" means ethyl alcohol and any beverage containing ethyl alcohol.

(2) "Controlled substance(s)" means a substance, including a drug and an immediate precursor listed in Schedules I through V of Subchapter A of the Texas Controlled Substances Act, Tex. Rev. Civ. Stat. Ann. Articles 481.032 - 481.036. These substances include, but are not limited to, marijuana, heroin, LSD, concentrated cannabis or cannabinoids, hashish or hash oil, morphine or its derivatives, mescaline, peyote, phencyclidine (PCP, Angel Dust), opium, opiates, methadone, cocaine, Quaaludes, amphetamines, "exotic/designer" drugs, benzodiazepines, Seconal, codeine, barbiturates, Phenobarbital, or Valium.

(3) "Safety sensitive task" means each category of work performed at a construction workplace which, if performed by a person impaired by the effects of alcohol or a controlled substance:

- (i) would pose a serious risk of death or personal injury to the employee or others in the vicinity; or
- (ii) could compromise the quality of the construction in such manner as would impose a significant public safety risk in the operation of the Authority's public transportation system.

(4) "Drug-free workplace" means a site for the performance of work done in connection with the Authority's construction contract at which employees are prohibited from using alcohol or from engaging in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance.

(5) "Employee" means an employee of a Contractor or Subcontractor who may be directly engaged in the performance of work under the Authority's construction contract.

(6) "Reasonable suspicion" means the presence or absence of specific criteria identified in the Contractor's drug-free workplace program (indicating the possibility that a person is under the influence of alcohol or a controlled substance) as observed by the Contractor's supervisory personnel with reasonable training in the identification of such criteria.

(b) The program shall provide for mandatory drug testing of employees who are to perform safety sensitive tasks under the following circumstances:

(1) All employees will be tested prior to assignment to the Authority's construction project to ascertain the use of controlled substances if the employee will be performing safety sensitive tasks; and

(2) When there is a reasonable suspicion that an employee is under the influence of alcohol or a controlled substance at the workplace; and

(3) When an employee has been involved in an accident or unsafe practice (as defined in the Contractor's safety program) at the workplace.

(c) The program may, at the Contractor's discretion, include mandatory employee drug testing under the following circumstances:

(1) As part of or as a follow-up to counseling or rehabilitation for controlled substance use; or

(2) As part of a voluntary employee drug testing program.

(d) A random testing procedure to detect the use of alcohol or a controlled substance by employees performing safety sensitive tasks is required as part of the Contractor's program for the purpose of preventing or deterring hazardous performance. The procedure shall require that, at a minimum, five percent (5%) of the Contractor's employees will be randomly tested within the Contract period or within each year of the Contract period, whichever period is shorter.

(e) All testing by or on behalf of the Contractor because of a requirement in the Authority's Contract shall be conducted only for employees engaged (or to be engaged) in safety sensitive tasks and only for use of alcohol or a controlled substance and shall be conducted in a manner and under written policies that minimize the intrusion on the employee's privacy and personal dignity. This provision shall not preclude the Contractor from adding its own additional testing requirements.

(f) The Contractor shall publish a statement notifying employees that the use of alcohol at the workplace or the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance by employees at any time is prohibited and specifying the actions that will be taken against employees for violations of such prohibition.

(g) The program must require each employee who will perform a safety sensitive task, prior to working under the Authority's Contract to:

(1) Acknowledge in writing the Contractor's drug-free workplace program; and

(2) Give advance written consent to any drug testing that may be conducted under the Contractor's program and the use of test results for decisions related to employment, disciplinary action, or continued employment. The Contractor will agree, in connection with the employee's consent that the results of testing for alcohol and controlled substances will not be voluntarily referred to any law enforcement agency. If the Contractor is subject to a collective

bargaining agreement:

(i) the procedure for obtaining the individual employee's acknowledgment and consent must be consistent with the Contractor's obligations under the collective bargaining agreement; and

(ii) employees shall have the right to be accompanied by a union representative when any specimen is obtained for testing.

(h) The Contractor will establish a drug-free awareness program to inform its employees about:

(1) The dangers of drug abuse in the workplace;

(2) The Contractor's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees who refuse to submit to required testing and for other violations of the drug-free workplace program including, but not limited to, being unable to remain employed at the workplace until approval to return is obtained from the Authority.

(i) The Contractor's drug-free workplace program shall, at a minimum, include:

(1) Policies and procedures for specimen collection, chain of custody for specimens, laboratory qualification standards, laboratory analysis procedures, quality control requirements, and test result reporting procedures which substantially conform to the material requirements of the Mandatory Guidelines for Federal Workplace Drug Testing Programs promulgated by the U.S. Department of Health and Human Services in effect on the date of award of the Authority's construction contract.

(2) Procedures for the Contractor's employees to report their use of prescription drugs used in the course of medical treatment or which have been prescribed and authorized for use by a licensed medical practitioner.

(3) The criteria the Contractor will use for "reasonable suspicion" testing.

(4) The levels of alcohol or controlled substances which will be used in conjunction with a determination that an employee is "under the influence" or is "impaired by the effects of" alcohol or controlled substance(s).

(j) The Contractor shall display a notice, prominently placed near each entrance to the workplace, stating that, by entering the premises, persons are consenting to an inspection of themselves and their property including, but not limited to, their clothing, vehicles, briefcases, lunch boxes, tool boxes, purses, and packages.

(k) The Contractor agrees to use its best efforts to establish and maintain a work environment free of use by employees of alcohol or controlled substances through implementation of paragraph (b) through (j) of this clause. The Contractor shall prepare and maintain records in sufficient detail to demonstrate compliance with the requirements of this clause including, but not limited to, certifications from Subcontractors and records of drug or alcohol tests conducted during performance of the Contract. Such records shall be subject to inspection and audit by the Authority, and the Contractor's noncompliance may authorize the Authority to withhold all or any portion of any payments due the Contractor until the Contractor demonstrates compliance.

(l) As applicable, the Contractor also agrees to establish and implement a drug and alcohol testing program that complies with 49 U.S.C. § 5331, 49 C.F.R. Part 655, and 49 C.F.R. Part 40, produce any documentation necessary to establish its compliance with such requirements, and permit any authorized representative of the U.S. DOT or its operating administrations, any state oversight agency, and/or the Authority, to inspect the facilities and records associated with the implementation of the drug and alcohol testing program and review the testing process. The Contractor agrees further to certify annually its compliance with Part 655 before issuance of the Notice to Proceed and annually thereafter and to submit, by March 1 of each year of the term of the Contract, a Management Information System (MIS) report covering the previous calendar year to Capital Metro, Attn: [Senior Director/Chief Contracting Officer of Procurement](#), 2910 East 5<sup>th</sup> Street, Austin, Texas 78702. To certify compliance the Contractor shall use the "Alcohol and Controlled Substances Testing" certification in the "Annual List of Certifications and Assurances for Federal Transit Administration Grants and Cooperative Agreements," which is published annually in the Federal Register.

(m) A Drug-Free Workplace Program clause identical to this clause (except for changes appropriate for designation of the parties), including this subparagraph (l) will be included in every Subcontract entered into in connection with

this Contract.

**21. RECYCLED PRODUCTS; 42 U.S.C. § 6962, 40 C.F.R. Part 247, Executive Order 12873, 2 C.F.R. 200.322**

(a) 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.

(b) Flow Down

These requirements flow down to all contractor and Subcontractor tiers.

(c) 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 C.F.R. Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 C.F.R. Part 247.

**22. TRANSIT EMPLOYEE PROTECTIVE AGREEMENTS; 49 U.S.C. § 5310, § 5311, and § 5333, 29 C.F.R. Part 215**

(a) 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.)

(b) Flow Down

These provisions are applicable to all contracts and Subcontracts at every tier.

(c) Transit Employee Protective Provisions

(1) The Contractor agrees to comply with applicable transit employee protective requirements as follows:

(i) 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.

(ii) 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.

(iii) 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.

(d) The Authority encourages the Contractor, to adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers, including policies that bar text messaging while driving company-owned or –rented vehicles, or government-owned, leased, or rented vehicles or privately-owned vehicles when on official Authority business or when performing any work for or on behalf of the Authority. See Executive Order 13513 “Federal Leadership on Reducing Text Messaging While Driving”, Oct. 1, 2009 (available at <http://edocket.access.gpo.gov/2009/E9-24203.htm> ) and DOT Order 3902.10 “Text Messaging While Driving”, Dec. 30, 2009, as implemented by Financial Assistance Policy Letter (No. FAP-2010-01, February 2, 2010, available at [https://www.transportation.gov/sites/dot.dev/files/docs/FAPL\\_2010-01.pdf](https://www.transportation.gov/sites/dot.dev/files/docs/FAPL_2010-01.pdf)). This includes, but is not limited to:

(1) Considering new rules and programs or re-evaluating existing programs to prohibit text messaging while driving;

(2) Conducting education, awareness, and other outreach for employees about the safety risks associated with texting while driving; and

(3) Encouraging voluntary compliance with the agency's text messaging policy while off duty.

(e) The Contractor is encouraged to insert the substance of this clause in all tier Subcontract awards.

## **23. DISTRACTED DRIVING, INCLUDING TEXT MESSAGING WHILE DRIVING**

(a) The Contractor agrees to comply with:

(1) Executive Order No. 13513, “Federal Leadership on Reducing Text Messaging While Driving,” October 1, 2009, 23 U.S.C. § 402 note, (74 Fed. Reg. 51225);

(2) U.S. DOT Order 3902.10, “Text Messaging While Driving,” December 30, 2009; and:

(i) Adopt and enforce policies that ban text messaging while driving in Contractor-owned or rented vehicles or, if applicable, Authority-owned vehicles; or while driving privately-owned vehicles when performing any Work for or on behalf of the Authority.

(ii) Conduct initiatives in a manner commensurate with the size of the business, such as,

(A) Establishment of new rules and programs or re-evaluation of existing programs to prohibit text messaging while driving; and



(B) Education, awareness, and other outreach to employees about the safety risks associated with texting while driving.

(3) The following U.S. DOT Special Provision pertaining to Distracted Driving:

(i) *Safety.* The Contractor agrees to adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers, including policies to ban text messaging while using an electronic device supplied by an employer, and driving a vehicle the driver owns or rents, a vehicle Contractor owns, leases, or rents, or a privately-owned vehicle when on official business in connection with the Contract, or when performing any work for or on behalf of the Contract;

(ii) *Contractor Size.* The Contractor agrees to conduct workplace safety initiatives in a manner commensurate with its size, such as establishing new rules and programs to prohibit text messaging while driving, re-evaluating the existing programs to prohibit text messaging while driving, and providing education, awareness, and other outreach to employees about the safety risks associated with texting while driving; and

(iii) *Extension of Provision.* The Contractor agrees to include these Special Provisions of this Contract in its sub-contract agreements, and encourage its sub-contractors to comply with this Special Provision.

(b) For purposes of this paragraph, the phrase “text messaging” means reading from or entering data into any handheld or other electronic device, including for the purpose of short message service texting, e-mailing, instant messaging, obtaining navigational information, or engaging in any other form of electronic data retrieval or electronic data communication operating a motor vehicle on an active roadway with the motor running, including while temporarily stationary because of traffic, a traffic light, stop sign, or otherwise; it does not include operating a motor vehicle with or without the motor running when one has pulled over to the side of, or off, an active roadway and has halted in a location where one can safely remain stationary.

## **24. VETERANS EMPLOYMENT**

Capital Metro is a recipient of Federal financial assistance on this Contract. The Contractor shall give a hiring preference, to the extent practicable, to veterans (as defined in Section 2108 of Title 5 C.F.R.) who have the requisite skills and abilities to perform the construction work required under the Contract. This subsection shall not be understood, construed or enforced in any manner that would require an employer to give a preference to any veteran over any equally qualified applicant who is a member of any racial or ethnic minority, female, an individual with a disability, or a former employee.

## **25. SEAT BELT**

Seat Belt Use. The Contractor agrees to implement Executive Order No. 13043, “Increasing Seat Belt Use in the United States,” April 16, 1997, 23 U.S.C. § 402 note, (62 Fed. Reg. 19217), by:

(a) Adopting and promoting on-the-job seat belt use policies and programs for its employees and other personnel that operate company-owned vehicles, company-rented vehicles, or personally operated vehicles; and

(b) Including a “Seat Belt Use” provision in each of its sub-contractor agreements related to the Contract.

## **26. PROHIBITION ON CONTRACTING FOR CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT**

(a) Pursuant to Public Law 115-232, Section 889, and 2 C.F.R. Part 200, including §200.216 and §200.471, the Authority is prohibited from using federal funds to:

- (1) Procure or obtain,
- (2) Extend or renew a contract to procure or obtain; or

(3) Enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that use "Covered Telecommunications Equipment or Services" as a substantial or essential component of any system, or as critical technology as part of any system.

(b) As described in Public Law 115-232, section 889, "Covered Telecommunications Equipment or Services" is:

(1) Telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities)

(2) For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).

(3) Telecommunications or video surveillance services provided by such entities or using such equipment.

(4) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

(c) Contractor shall not use or provide to the Authority Covered Telecommunications Equipment or Services in the performance of this Contract.

(d) Contractor shall insert the substance of this Paragraph in all subcontracts and other contractual instruments, including subcontracts for the acquisition of commercial items.

(e) Contractor shall notify the Authority immediately if Contractor cannot comply with the prohibition during the performance of this Contract.

## **27. BUS TESTING**

(a) The following applies to purchases or leases of any new bus model or any bus model with a major change in configuration or components to be acquired or leased with FTA funds.

(b) Contractor agrees to comply with the Bus Testing requirements under 49 U.S.C. § 5318(e) and FTA's implementing regulation at 49 C.F.R. Part 665 to ensure that the requisite testing is performed for all new bus models or any bus model with a major change in configuration or components, and that the bus model has achieved a passing score. Upon completion of the testing, the Contractor shall obtain a copy of the bus testing reports from the operator of the testing facility and make that report(s) publicly available prior to final acceptance of the first vehicle by the Authority.

## **28. TRAFFICKING IN PERSONS**

The Contractor agrees that it and its employees shall not, at any time during the performance of this Contract, do any of the following:

(a) Engage in severe forms of trafficking in persons, as defined Section 103 of the Trafficking Victims Protection Act of 2000 ("TVPA"), as amended, 22 U.S.C. § 7102;

(b) Procure a commercial sex act, as defined Section 103 of the TVPA, as amended, 22 U.S.C. § 7102; or

(c) Use forced labor, defined as labor obtained by recruitment, harboring, transportation, provision, or other means of obtaining of a person for labor or services through the use of force, fraud, or coercion for the purpose of subjection

to involuntary servitude, peonage, debt bondage, or slavery, in the performance of the Contract or permit the use of forced labor in the performance of any subcontract hereunder.

## **29. GOVERNMENT-WIDE SUSPENSION AND DEBARMENT**

(a) Contractor shall comply with the following requirements of 2 C.F.R. Part 180, Subpart C, as adopted and supplemented by U.S. DOT regulations at 2 C.F.R. Part 1200.

(b) Contractor shall not enter into any "covered transaction" (as defined in the above-referenced regulations) that is, or whose principal is, suspended, debarred, or otherwise excluded from participating in covered transactions, except as authorized by

(i) U.S. DOT regulations, "Nonprocurement Suspension and Debarment," 2 C.F.R. Part 1200;

(ii) U.S. OMB regulatory guidance, "Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)," 2 C.F.R. Part 180; and

(iii) Other applicable federal laws, regulations, or requirements regarding participation with debarred or suspended Recipients or Third Party Participants.

(c) Contractor shall review the U.S.GSA "System for Award Management – Lists of Parties Excluded from Federal Procurement and Nonprocurement Programs," if required by U.S. DOT regulations, 2 C.F.R. Part 1200.

(d) Contractor will ensure that all subcontracts include a provision necessary to flow down these suspension and debarment provisions to all lower-tier covered transactions.

## **30. PATENT RIGHTS AND RIGHTS IN DATA**

If the Federal award meets the definition of "funding agreement" under 37 C.F.R. 401.2 (a) and Contractor is a small business firm or nonprofit organization performing experimental, developmental, or research work under that "funding agreement," the Contractor agrees that the use of any data produced or delivered under the terms of the Contract including, but not limited to, engineering drawings and associated lists, specifications, process sheets and technical reports, shall be governed by the requirements of 37 C.F.R. Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by FTA. In addition, the Contractor agrees that it will not publish such data without the written consent of the Authority and, if appropriate, the Federal Government.

## **31. NATIONAL INTELLIGENT TRANSPORTATION SYSTEMS STANDARDS**

The Contractor agrees to conform to the National Intelligent Transportation Systems (ITS) Architecture requirements of 23 U.S.C. § 517(d), unless the Authority has obtained an exemption from the requirements and provided Contractor information regarding the exemption. The Contractor further agrees to follow FTA Notice, "FTA National ITS Architecture Policy on Transit Projects," 66 Fed. Reg. 1455, January 8, 2001, and all other applicable Federal guidance.

## **32. NOTIFICATION OF LEGAL MATTERS**

Contractor shall notify the Authority of any and all matters that Contractor knows or reasonably should know may affect the Federal Government's interests. This notification requirement includes, but is not limited to, current or prospective legal matters such as an actual or potential major dispute, breach, default, litigation, naming of the Authority or the Federal Government as a party to litigation, or a legal disagreement in any forum for any reason. Matters that may affect the Federal Government include but are not limited to, the Federal Government's interests in the Contract, the underlying Authority/FTA Agreement, and any amendments thereto, or the Federal Government's administration or enforcement of federal laws, regulations, and requirements. Contractor agrees to include this clause in every subcontract awarded at every tier. Contractor shall further notify the Authority of any potential fraud, waste, or abuse occurring on the contract or Project.



**33. FEDERAL TAX LIABILITY AND RECENT FELONY CONVICTION**

Contractor agrees that, prior to entering into any subcontract, Contractor will require the subcontractor to provide a certification on Federal Tax Liability and Recent Felony Convictions, which should be identical to the certification that Contractor provided the Authority. If the prospective subcontractor cannot certify as to the statements, Contractor shall not enter into the subcontract absent Authority and FTA approval. Contractor agrees to include this clause in every subcontract awarded at every tier.

**34. COVID-19 SAFETY REQUIREMENTS**

The Contractor agrees to comply with the Centers for Disease Control and Prevention ("CDC") Order of January 29, 2021, titled Requirement for Persons to Wear Masks While on Conveyances and at Transportation Hubs ("CDC Mask Order"), as has been and may later be amended, and any other subsequent orders that may be issued. In addition, the Contractor shall comply with all applicable Authority policies and procedures, including those of the Authority's service contractors. The Contractor agrees to include this clause in each subcontract to this Contract and to require subcontractors to include the clause in all lower-tier subcontracts.

**35. IF APPLICABLE: LIMITATION ON CERTAIN ROLLING STOCK PROCUREMENTS**

(a) Pursuant to Section 7613 of the National Defense Authorization Act for Fiscal Year 2020 (NDAA 2020), Public Law 116-92 (Dec. 20, 2019) and 49 U.S.C. § 5323(u), the Authority is prohibited from using financial assistance under Chapter 53 of title 49 U.S. Code to award a contract or subcontract to an entity for the procurement of rolling stock for use in public transportation if the manufacturer of the rolling stock:

(1) is incorporated in or has manufacturing facilities in the United States; and

(2) is owned or controlled by, is a subsidiary of, or is otherwise related legally or financially to a corporation based in a country that -

(i) is identified as a nonmarket economy country (as defined in section 771(18) of the Tariff Act of 1930 (19 U.S.C. 1677(18))) as of the date of enactment of this subsection;

(ii) was identified by the United States Trade Representative in the most recent report required by section 182 of the Trade Act of 1974 (19 U.S.C. 2242) as a foreign country included on the priority watch list defined in subsection (g)(3) of that section; and

(iii) is subject to monitoring by the Trade Representative under section 306 of the Trade Act of 1974 (19 U.S.C. 2416)

(a "Restricted Manufacturer").

(b) For purposes of this provision, the term "otherwise related legally or financially" does not include a minority relationship or investment.

(c) Contractor shall not provide the Authority with rolling stock under this Contract if the rolling stock is from a Restricted Manufacturer or otherwise in violation of this prohibition.

(d) Contractor shall insert this provision in all applicable subcontracts and other contractual instruments.

(e) Contractor shall notify the Authority immediately if Contractor or any of its subcontractors cannot comply with this provision during the performance of this Contract.

## EXHIBIT E-2

### PROPRIETARY RIGHTS AND DATA SECURITY ADDENDUM

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Capital Metro Transportation Authority (“the Authority”) has invested extensive time, money and specialized resources into developing, collecting and establishing its tangible and intangible proprietary assets. This Proprietary Rights and Data Security Addendum (this “Addendum”) identifies and acknowledges the Authority’s proprietary rights, establishes baseline commitments regarding data security and represents a set of standard terms applicable to service providers and business partners when they enter into contracts with the Authority. Capitalized terms used in this Addendum have the meanings set forth in the Agreement, unless differently defined in this Addendum. The Contractor is responsible for ensuring compliance with the terms of this Addendum by the Contractor’s employees, agents and contractors and all of the restrictions and obligations in this Addendum that apply to the Contractor also apply to the Contractor’s employees, agents and contractors. The term “including” or “includes” means including without limiting the generality of any description to which such term relates.

1. Definitions. The following terms will have the meanings described below in this Addendum.

**“Authority Data”** means all data, content or information, in any form or format, including interim, Processed, compiled, summarized, or derivative versions of such data, content or information, and any insights that may be learned from such data, content or information, that may exist in any system, database, or record that is either (i) provided by or on behalf of the Authority or its customers to the Contractor, or (ii) is obtained, developed, produced or Processed by the Contractor or its systems, in each of (i) and (ii) in connection with the relationship or arrangements established by the Agreement, but excluding any data or information that is expressly defined as owned by the Contractor in the Agreement.

**“Authority Electronic Property”** means (i) any websites controlled by the Authority, (ii) any Authority mobile device apps, (iii) any other kiosks, devices or properties for consumer interaction that are created, owned, or controlled by the Authority, and (iv) versions and successors of the foregoing, any form or format now known or later developed, that may be used by the Authority’s customers.

**“Data Law”** means, as in effect from time to time, any law, rule, regulation, declaration, decree, directive, statute or other enactment, order, mandate or resolution, which is applicable to either the Contractor or the Authority, issued or enacted by any national, state, county, municipal, local, or other government or bureau, court, commission, board, authority, or agency, relating to data security, data protection and/or privacy. Data Laws also include ISO 27001 and ISO 27002, the most current Payment Card Industry Data Security Standard (the **“PCI DSS”**); and other industry standard practices.

**“Personal Identifying Information”** means any data that identifies or could be used to identify a natural person, including name, mailing address, phone number, fax number, email address, Social Security number, credit card or other payment data, date of birth, driver’s license number, account number or user ID, PIN, or password.

**“Process”** or **“Processing”** means, with respect to Authority Data, to collect, access, use, process, modify, copy, analyze, disclose, transmit, transfer, sell, rent, store, or retain or destroy such data in any form. For the avoidance of doubt, “Process” includes the compilation or correlation of Authority Data with information from other sources and the application of algorithmic analysis to create new or derivative data sets from Authority Data.

**“Remediation Efforts”** means, with respect to any Security Incident, activities designed to remedy a Security Incident which may be required by a Data Law or by the Authority’s or the Contractor’s policies or procedures, or which may otherwise be necessary, reasonable or appropriate under the circumstances, commensurate with the nature of such Security Incident. Remediation Efforts may include: (i) development and delivery of legal notices to affected individuals or other third parties; (ii) establishment and operation of toll-free telephone numbers for affected individuals to receive specific information and assistance; (iii)

procurement of credit monitoring, credit or identity repair services and identity theft insurance from third parties that provide such services for affected individuals; (iv) provision of identity theft insurance for affected individuals; (v) cooperation with and response to regulatory, government and/or law enforcement inquiries and other similar actions; (vi) undertaking of investigations (internal or in cooperation with a governmental body) of such Security Incident, including forensics; (vii) public relations and other crisis management services; and (viii) cooperation with and response to litigation with respect to such Security Incident (including, but not limited to, class action suits or similar proceedings); and in each case of examples (i) through (viii), payment of legal costs, disbursements, fines, settlements and damages.

**“Security Policies”** means statements of direction for Security Requirements and mandating compliance with applicable Data Laws. Typically, Security Policies are high level instructions to management on how an organization is to be run with respect to Security Requirements.

**“Security Procedures”** means statements of the step-by-step actions taken to achieve and maintain compliance with Security Requirements.

**“Security Requirements”** means the security requirements set forth below in Section 7 of this Addendum.

**“Security Technical Controls”** means any specific hardware, software or administrative mechanisms necessary to implement, maintain, comply with and enforce the Security Requirements. Security Technical Controls specify technologies, methodologies, implementation procedures, and other detailed factors or other processes to be used to implement and maintain Security Policies and Procedures relevant to specific groups, individuals, or technologies.

2. Authority Marks, Patents and Copyrights. The Contractor will not: (i) use or register any domain name that is identical to or confusingly similar to any of trademarks, service marks, logos or other source identifiers owned or used by the Authority (the “Authority Marks”); or (ii) create, acquire, license, or support any internet keyword or search term that contains any Authority Marks or other intellectual property rights owned or licensed by the Authority.

3. Authority Data. As between the Contractor and the Authority (*i.e.*, without addressing rights of third parties), the Authority is the sole owner of all rights, title and interest in and to Authority Data. Except as expressly authorized in the Agreement, the Contractor may not use, edit, modify, create derivatives, combinations or compilations of, combine, associate, synthesize, re-identify, reverse engineer, reproduce, display, distribute, disclose, sell or Process any Authority Data. The Contractor will not use Authority Data in a manner that is harmful to the Authority.

4. Personal Identifying Information. The Contractor will comply with any Data Laws relating to the use, safeguarding, or Processing of any Personal Identifying Information, including any requirement to give notice to or obtain consent of the individual. In Processing any Personal Identifying Information, the Contractor will at all times comply with any posted privacy policy or other representations made to the person to whom the information is identifiable, and to communicate any limitations required thereby to any authorized receiving party (including any modifications thereto) in compliance with all Data Laws. The Contractor will ensure that any such receiving party abides by any such limitations, in addition to the requirements of the Agreement. Notwithstanding the foregoing, the Contractor represents and warrants that Personal Identifying Information will not be Processed, transmitted, or stored outside of the U.S.

5. No Implied Rights. No right, license, permission, or ownership or other interest of any kind in or to any Authority Data or other intellectual property rights owned or licensed by the Authority is or is intended to be given or transferred to or acquired by the Contractor except as expressly stated in writing in the Agreement.

6. Prohibited Internet Practices. The Contractor will not, and will not authorize or encourage any third party to, directly or indirectly: (i) use any automated, deceptive or fraudulent means to generate impressions, click-throughs, or any other actions in relation to advertisements or Internet promotions on

Authority Electronic Property or in relation to advertisements or Internet promotions of the Authority (or its products or services) on third party websites; or (ii) collect or Process data from an Authority Electronic Property other than as has been expressly authorized by the Authority in the Agreement or another written agreement with the Authority. Except as expressly allowed in the Agreement, the Contractor will not "screen-scrape" Authority Electronic Property or conduct any automated extraction of data from Authority Electronic Property or tracking of activity on Authority Electronic Property.

7. Security Requirements. The Contractor will apply reasonable physical, technical and administrative safeguards for Authority Data that is in the Contractor's possession or control in order to protect the same from unauthorized Processing, destruction, modification, or use that would violate the Agreement or any Data Law. The Contractor represents and warrants that the Security Policies, Security Procedures and Security Technical Controls as they pertain to the services being rendered to the Authority by the Contractor or its subcontractors and any Processing of Authority Data by the Contractor or its subcontractors will at all times be in material compliance with all Data Laws. In addition, the Contractor will require any of its employees, agents or contractors with access to Authority Data to adhere to any applicable Data Laws, and the Contractor represents and warrants that such employees, agents and contractors have not been involved in any violation of applicable Data Laws in the twenty-four months before the Effective Date. The Contractor will take into account the sensitivity of any Authority Data in the Contractor's possession in determining reasonable controls used to safeguard such Authority Data.

8. Data Segregation and Access. The Contractor will physically or logically segregate stored Authority Data from other data and will ensure that access to Authority Data is restricted to only authorized personnel through security measures. The Contractor will establish and maintain appropriate internal policies, procedures and systems that are reasonably designed to prevent the inappropriate use or disclosure of Authority Data.

9. PCI Compliance. If the Contractor Processes payment card data, cardholder data, or sensitive authentication data on behalf of the Authority or if the Contractor otherwise can impact the security of said data belonging to the Authority, the Contractor is responsible for the security of said data. The Contractor represents and warrants that it has performed an assessment to confirm that the material aspects of the Contractor's Security Policies, Security Procedures and Security Technical Controls (as they pertain to the services being rendered to the Authority by the Contractor or its subcontractors and any Processing of Authority Data by the Contractor or its subcontractors) comply with the PCI DSS and the Contractor will repeat this assessment each year during the Term. The Contractor will provide certification of compliance with this requirement upon request from the Authority.

10. Security Reviews and Audits. The Contractor will, upon request, provide the Authority with reports of any audits performed on the Contractor's Security Policies, Security Procedures or Security Technical Controls. At a minimum, such reports will include any certifications of the Contractor's agents and contractors. Additionally, the Contractor will respond within a reasonable time period to any inquiries from the Authority relating to the Contractor's and its agents' and contractors' Security Policies, Security Procedures and Security Technical Controls. The Contractor will, upon the Authority's request, provide the Authority or its representatives access to the Contractor's and its agents' and contractors' systems, records, processes and practices that involve Processing of Authority Data so that an audit may be conducted. the Authority will not exercise such audit right more frequently than once per twelve (12) month period and the Authority will bear the full cost and expense of any such audit, unless such audit discloses a Security Incident or a breach of this Addendum or the Agreement, in which case the Contractor will bear the full cost and expense of such audit and a further audit may be conducted by the Authority or its representatives within the current twelve (12) month period.

11. Security Incidents. The Contractor will promptly notify the Authority upon discovering or otherwise learning of a Security Incident. Following any Security Incident, the Contractor will consult in good faith with the Authority regarding Remediation Efforts that may be necessary and reasonable. The Contractor will (i) at the Authority's direction undertake Remediation Efforts at the Contractor's sole expense and reimburse the Authority for its reasonable costs and expenses in connection with any Remediation Efforts

it elects to undertake, (ii) ensure that such Remediation Efforts provide for, without limitation, prevention of the recurrence of the same type of Security Incident, and (iii) reasonably cooperate with any Remediation Efforts undertaken by the Authority.

12. Liability for Security Incidents and/or Data Misuse. The Contractor will indemnify, defend and hold harmless the Authority and its officers, directors, employees, agents and contractors (each an "Authority Indemnitee") from and against any Losses incurred by such Authority Indemnitee as a result of any claim, demand, suit, action, investigation, allegation or any other proceeding (collectively, "**Claims**") arising out of or relating to: (i) any Security Incident and/or (ii) the Contractor's or its employees', agents' or contractors' breach of any of the terms, conditions or obligations relating to data security, privacy, or Authority Data set forth in the Agreement or this Addendum. However, if the Contractor can demonstrate through clear and convincing evidence that the Authority was the sole cause of a Security Incident and the Contractor was fully compliant with its obligations, then this Section will not apply to such Security Incident. For the purposes of this Section, Losses will include, without limitation, the cost of Remediation Efforts. The Contractor's obligations in this Section are in addition to any indemnification or similar obligations that the Contractor may have under the Agreement. The rights and remedies of the Authority under this Addendum will not be subject to any limitation or exclusion of actions or remedies or any other similar limiting provisions stated in the Agreement. Without limiting the foregoing: (a) there will be no limitations or exclusions on the Contractor's liability arising under this Addendum, the Agreement or otherwise relating to Claims pertaining to privacy, security, or confidentiality or relating to unauthorized use of Authority Data, and (b) the Contractor will be liable for all obligations under this Section and for reimbursement of Losses for Remediation Efforts regardless of whether such amounts are characterized by any person, court or other third party as direct, indirect, consequential, special, or punitive damages.

13. Notice to the Authority Customers and Employees. Any notifications to any of the Authority's customers or employees regarding Security Incidents will be handled exclusively by the Authority and the Contractor may not under any circumstances contact the Authority's customers or employees relating to such Security Incident unless the Contractor is under a legal obligation to do so, in which event (i) the Contractor must notify the Authority in writing promptly after concluding that the Contractor has the legal obligation to notify such customers or employees and explain in such notice to the Authority the basis for the legal obligation and (ii) the Contractor will limit the notices to any of the Authority's customers and employees to those required by the legal obligation or as pre-approved by the Authority. The Contractor will reasonably cooperate in connection with notices to the Authority's customers and employees regarding a Security Incident and the Contractor will assist with sending such notices if so requested by the Authority.

14. Equitable Relief. The Contractor acknowledges that the Authority may have no adequate remedy at law if there is a breach or threatened breach of any of the obligations set forth in this Addendum and, accordingly, that the Authority may, in addition to any legal or other remedies available to the Authority, seek injunctive or other equitable relief to prevent or remedy such breach without requirement of a bond or notice. The Contractor will not object or defend against such action on the basis that monetary damages would provide an adequate remedy.

**EXHIBIT E-3**  
**IT TERMS AND CONDITIONS - SERVICES**  
**(ADDITIONAL TERMS AND CONDITIONS FOR THE PERFORMANCE OF INFORMATION**  
**TECHNOLOGY (IT) SERVICES)**

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- 1.1 Definitions. Unless otherwise specified in this Contract (or an Exhibit hereto), the following definitions shall apply, if applicable:
- 1.1.1 “Acceptance” shall have the meaning set forth in Section 1.4 of this Exhibit.
  - 1.1.2 “Applicable Laws” means any and all applicable statutes, laws, treaties, rules, codes, ordinances, regulations, permits, interpretations, or orders of any Federal, state, or local governmental authority having jurisdiction over the Project, this Contract, and the parties all as in effect as of the date of this Contract and as amended during the Service Term of this Contract.
  - 1.1.3 “Authority Data” means all data, content and information (i) submitted by or on behalf of the Authority or Customers to the Contractor, (ii) obtained, developed, produced or processed by the Contractor in connection with this Contract, or (iii) to which the Contractor has access in connection with this Contract, and all derivative versions of such data, content and information, and any derivative versions thereof, in any form or format.
  - 1.1.4 “Authority Electronic Property” means (i) any websites, servers, hardware, equipment, routers and other system components, software or networks owned or controlled by the Authority, (ii) any Authority mobile device apps, (iii) any interfaces to the Authority’s information technology systems, (iv) any other kiosks, devices or properties for consumer interaction that are created, owned, or controlled by the Authority, and (v) versions and successors of the foregoing, any form or format now known or later developed, that may be used by Customers.
  - 1.1.5 “Confidential Information” shall have the meaning set forth in Section 2.2 of this Exhibit.
  - 1.1.6 “Contractor’s Certification” shall have the meaning set forth in Section 1.4.3 of this Exhibit.
  - 1.1.7 “Contractor Technology” means all software and hardware as applicable, and any technology, information, content and data, together with Intellectual Property Rights related thereto, owned or used by the Contractor in the performance of the Services.
  - 1.1.8 “Deliverable(s)” means all information, data, materials, devices (including equipment and hardware), software, systems, integrations with any software and hardware, interfaces to any software and hardware, system or operating environment (including Authority Electronic Property) and other items to be delivered by the Contractor to the Authority as part of the Services, as specified in the Project Plan.
  - 1.1.9 “Documentation” means the documentation provided to the Authority including, but not limited to, user manuals, system administration manuals, maintenance manuals, diagrams and operator instructions related to the Services furnished by the Contractor to the Authority in any format, including paper and electronic.
  - 1.1.10 “Intellectual Property Rights” means any and all intellectual property rights, including without limitation, invention, patents, patent and patent applications (including all reissues, divisions, renewals, continuations, continuations-in-part, extensions, provisionals, and reexaminations) and all rights therein provided by international treaties or conventions and all improvements to the inventions disclosed in each such registration, patent or application, trademarks, service marks, trade dress, logos, slogans, configurations, trade names, corporate names, and business names, whether or not registered, including all common law rights, and registrations and applications for registration thereof, and all rights therein provided by international treaties or conventions, works of authorship and

copyrights (registered or otherwise) and registrations and applications for registration thereof, and all rights therein provided by international treaties or conventions, all internet uniform resource locators, and domain names, including any domain name application or registration, all industrial designs and any registration or application thereof anywhere in the world, data and database rights, trade secrets, proprietary know-how and show-how, whether or not reduced, all rights to obtain and rights to apply for patents, and to register trademarks and copyrights, and any similar or equivalent rights to any of the foregoing anywhere in the world.

- 1.1.11 “Malware” means any malicious data, code, script, active content, program, or other malicious software that could damage, destroy, alter or disrupt any computer program, data, firmware or hardware.
- 1.1.12 “Project” means the project from pre-production launch to pre-final notice related to any Deliverables and Services as described in more detail in this Exhibit.
- 1.1.13 “Project Plan” means the project plan for the delivery, implementation, customization, configuration and/or installation of any software, hardware and any Deliverables and Services required for the Project, as provided or approved by the Authority.
- 1.1.14 “Remediation Efforts” means, with respect to any Security Incident, activities designed to remedy a Security Incident, which may be required by Applicable Law or by the Authority’s or the Contractor’s policies or procedures or under the Security Requirements, or which may otherwise be necessary, reasonable or appropriate under the circumstances, commensurate with the nature of such Security Incident.
- 1.1.15 “Security Incident(s)” means: (i) the loss or misuse of Authority Data; (ii) the inadvertent, unauthorized, or unlawful processing, alteration, corruption, sale, rental, or destruction of Authority Data; (iii) unauthorized access to internal resources; (iv) programmatic manipulation of a system or network to attack a third party; (v) elevation of system privileges without authorization; (vi) unauthorized use of system resources; (vii) denial of service to a system or network; or (viii) any potential or confirmed exposure (which may stem from an act or omission to act) that would result in any of the events described in (i) through (viii).
- 1.1.16 “Security Requirements” means industry best practices and other reasonable physical, technical and administrative safeguards, procedures, protocols, requirements and obligations related to facility and network security in order to protect Authority Data from unauthorized access, processing, destruction, modification, distribution and use, as approved in writing by the Authority.
- 1.1.17 “Service Term” means the term of the contract as set forth in Exhibit A to the Contract.
- 1.1.18 “Services” means collectively all services to be performed by the Contractor for or on behalf of the Authority, as described in the Project Plan and this Exhibit.
- 1.1.19 “Technical Specifications” means the technical specifications, functional specifications, descriptions, designs, standards, instructions, and business requirements of the Authority related to the S, as may be further described in this Contract. Unless otherwise agreed upon in writing by the Authority, the Technical Specifications shall be outlined in detail in Exhibit H to this Contract.
- 1.1.20 “Updates” means all bug fixes, error corrections, patches, updates, upgrades or new releases or version of any software created or acquired by the Contractor and used in provision of the Services during the Service Term.

## 1.2 Contractor Requirements.

- 1.2.1 Unless specified in the applicable Project Plan, the Contractor will shall furnish, at its own expense, all resources, personnel, equipment, tools, and supplies necessary for the timely performance of the Services and the Deliverables. The Contractor may use any means necessary and appropriate to perform the Services and the Deliverables under this

Contract; provided, however, that in no event shall the Contractor take any action that may subject either it or the Authority to civil or criminal liability.

- 1.2.2 The parties agree that the Contractor will not be tasked or responsible for establishing and managing Security Requirements necessary to protect Authority Data integrity in performance of the Services. The Authority agrees that it will be solely responsible for and ensure that all desired Security Requirements necessary to protect Authority Data integrity are established, implemented and managed internally. If requested, however, by the Authority, the Contractor will reasonably cooperate with and assist the Authority and the Authority's other Product contractors to implement security protocols (e.g., firewalls, SSI, McAfee anti-virus, configuring the system for Cisco ICE, configuring the system for the NetScaler application firewall, monthly Microsoft security patches, etc.) and take appropriate actions with respect to any software, hardware and all Authority Data and Authority Electronic Property disclosed or provided to the Contractor so as to enable the Contractor to satisfy its obligations under this Contract and to help prevent the loss, alteration or unauthorized use of the Authority Data and the Authority Electronic Property, to the extent within the Contractor's access, possession or control. The Contractor agrees that it will, and it will cause its personnel and contractors to timely comply with the Authority's privacy policies and safety and network security policies, as the same may be provided to the Contractor's, at all times while on-site at the Authority's facilities or remotely accessing the Authority's systems or facilities. In event that the Contractor utilizes computers, laptops or other devices comprising development software, applications or tools in its performance of the Services, Contractor is required to consult in advance of use thereof with Authority and review security measures installed on such computers or devices and sign-off that it will ensure its computers and devices are consistently maintained during the term of this Agreement per Authority with all patches and upgrades at all times to minimize potential induced security issues from such Contractor devices.
- 1.2.3 The Contractor will perform formal classroom training and provide necessary related documentation, equipment, tools, training aids and other materials, required or requested for the operation and use of the Deliverables and any software and/or hardware, upon initial deployment and during the Service Term, as reasonably requested by the Authority. Such training will be performed on the operating environment at the Authority's facilities (unless otherwise agreed upon by the parties in the Project Plan).
- 1.2.4 The Contractor and/or its designated third party auditor(s) will perform all audits necessary to ensure data integrity and adherence to the requirements of the Project. As part of its routine audits, the Contractor will, on a regular basis, test the integrity of Authority Data backed up by the Authority's or its Project contractors.
- 1.2.5 The Contractor will use commercially reasonable efforts to reasonably assist the Authority, if requested, to adopt and implement all facility and network security, disaster recovery plans and back-up plans as to protect against theft and unauthorized access, disclosure and use of the Authority Data, the Authority Electronic Property and the Authority's Confidential Information, to the extent within the Contractor's access, possession or control, and to ensure the integrity and continuity of the performance of Services and the Project under this Contract and consult and cooperate with the Authority and any contractors it designates, in its performance of these obligations.
- 1.2.6 The Contractor, as well as its agents, representatives, and employees, shall comply with all of the Authority rules, regulations, and guidelines then in effect when on-site at the Authority and all Applicable Laws.
- 1.2.7 The Contractor will promptly notify the Authority upon discovering or otherwise learning of any Security Incident involving Authority Data. Following any Security Incident, the Contractor will consult in good faith with the Authority regarding Remediation Efforts that may be necessary and reasonable.



- 1.2.8 Any notifications to Customers or any employees of the Authority regarding Security Incidents will be handled exclusively by the Authority and the Contractor may not under any circumstances contact Customers or employees of the Authority relating to such Security Incident unless the Contractor is under a legal obligation to do so, in which event (i) the Contractor must notify the Authority in writing promptly after concluding that the Contractor has the legal obligation to notify such Customers or employees and explain in such notice to the Authority the basis for the legal obligation and (ii) the Contractor will limit the notices to such Customers and employees to those required by the legal obligation or as pre-approved by the Authority. The Contractor will reasonably cooperate in connection with notices to Customers and any employees of the Authority regarding a Security Incident and the Contractor will assist with sending such notices if so requested by the Authority.

1.3 Project Plan and Milestone Deadlines.

- 1.3.1 The Contractor shall provide Services necessary to assess and evaluate the Authority's business requirements and information technology systems in order to create, deploy, configure, customize, migrate, deliver and/or implement the Services and any software and/or hardware and, if required by the Authority, any Authority Data to be migrated, interfaced to or used in conjunction with the Deliverables. Unless otherwise provided or specified by the Authority, the Contractor will prepare for the Authority's review and approval a Project Plan setting forth in detail (i) the scope of the Project and the Services required to complete the Project, (ii) the milestones and schedule for completing all tasks and requirements for the Project (including the creation, deployment, configuration, customization, migration, delivery and/or implementation of any software, hardware, systems and any Authority Data), (iii) all Authority Electronic Property required for the Contractor to perform the Services, if any, (iv) all Deliverables, and (v) all acceptance criteria, testing and post-implementation tasks. No Project Plan will be effective until approved in writing by the Authority's designated project manager.
- 1.3.2 This is a fast track Project with completion deadlines that cannot reasonably be extended. For this reason, it is the desire of the Authority to recognize any likely budget overruns as soon as possible, and by this Contract it is employing the Contractor to perform design monitoring, estimating, value analysis and other functions to help the Authority meet the Project budget. At any time that the Contractor develops concerns about the integrity of the budget for the Project, the Contractor shall promptly advise the Authority of the concerns through a variance report, which shall, at a minimum, state: (i) the Contractor's concern; (ii) the apparent cause of the concern, delay, or budgetary issue; (iii) in the event of a concern about a delay, specifically demonstrate the negative impact of the delay to the critical path for the Project Plan; (iv) define any cost impacts to the Project; and (v) provide the Contractor's proposed resolution to the concern. If any estimate submitted to the Authority exceeds previously approved estimates or the Authority's budget, the Contractor shall make appropriate recommendations to the Authority.
- 1.3.3 If, using reasonable project monitoring techniques, the Contractor determines that it is unlikely or fails to meet a completion date or a cost estimate due under the Project Plan for any reason regardless of which party is at fault, in addition to any other rights and remedies that may be available to the Authority, at no additional cost to the Authority and at the Authority's option, the Contractor shall provide all necessary additional personnel at its own cost to accelerate performance as may be required or necessary to complete the activities required under the Project Plan within a re-adjusted time frame agreed to by both parties in a Change Order. The completion date shall be considered met if completed in accordance with the terms of this Contract within ten (10) working days of the originally estimated completion date. The Contractor will provide the Authority with prior written notice for any delays impacting delivery or other Services completion under the Project Plan in the form of a proposed Change Order.
- 1.3.4 The Contractor shall use its best efforts, after obtaining explicit consent from the Authority, to re-sequence the Services to overcome and/or mitigate, to the greatest practicable

extent, the effect of any delays regardless of the cause of such delays. Without limiting the foregoing, the Contractor shall diligently prosecute its Services in order to meet the proposed start date despite a dispute with the Authority relating in any way to this Contract including, without limitation, any and all the Contractor's claims for modifications to the payments due to the Contractor. The Contractor and the Authority shall cooperate to resolve all disputes and to adjust the Project Plan accordingly by Contract modification in a timely manner (not to exceed two (2) weeks from the date of notice).

- 1.3.5 Should the Contractor not progress in its performance of Services at a rate commensurate with the Service Term of this Contract, or fail to meet any scheduled date under the Project Plan, the Authority may, in its sole discretion, direct the Contractor to accelerate the Services by employing additional personnel and equipment or providing overtime to existing personnel as is necessary to complete by the start date. Notwithstanding any dispute, controversy, or question that might arise in the interpretation of any provision of this Contract, the performance of any Services, the delivery of any material, the payment of any monies to the Contractor, or otherwise, the Contractor agrees that it will not directly or indirectly stop or delay any Services or part thereof on its part required to be performed, nor will it stop or delay the delivery of any materials on its part required to be furnished for the Deliverables, pending the determination of such dispute or controversy so long as the Authority pays the Contractor for undisputed amounts in accordance with the Contract.

1.4 Acceptance.

- 1.4.1 Unless otherwise defined or specified in an Exhibit to this Contract, the provisions set forth in this Section 1.4 shall apply to determine the Authority's Acceptance of the Services performed and associated Deliverables.
- 1.4.2 Implementation shall be completed in a timely manner and appropriate tests conducted by the Authority to facilitate Acceptance of each Deliverable as more fully set forth in this Exhibit and the Project Plan; provided, however, that the Authority may upon written request require that the Contractor perform testing with cooperation of the Authority.
- 1.4.3 Unless otherwise specified in the Project Plan, within thirty (30) days after installation and testing are completed, the Contractor shall certify in writing that any software, hardware, integration and implementation related to the Services conforms to the Technical Specifications and is capable of being put into full commercial productive use in accordance with the Technical Specifications and otherwise meets the functional and business requirements set forth in this Contract (the "Contractor's Certification"). The Contractor Certification shall not be issued by the Contractor unless the Contractor has completed all tasks required for the delivery, installation, configuration, deployment (including Authority Data migration) and operational testing of any Deliverables, as applicable, and such items are ready for final testing and launch for production use by the Authority.
- 1.4.4 The Deliverables shall be finally accepted by the Authority when all action items opened from the beginning of the Project through the Warranty Period are closed and each component is fully installed and operational on the Authority's facilities, network, transportation vehicles or operating environment properly configured by the Contractor, and in conformity with the requirements outlined in this Contract ("Acceptance"). The final invoice will not be issued by the Contractor until final Acceptance by the Authority. The Authority reserves the right to modify the Acceptance plan during the implementation process if it is evident that anything related to Acceptance has been missed or are not appropriate for the successful provisioning of any solution.
- 1.4.5 If there is any objection to Acceptance, the Authority will provide the Contractor with a written notice (the "Defect Notice") reasonably identifying any claimed discrepancies between the actual performance and the requirements set forth in this Contract within reasonable time after the issuance of the Contractor's Certification.

- 1.4.6 Upon receiving a Defect Notice from the Authority, the Contractor shall confer with the Authority and jointly review each asserted discrepancy to determine if the claimed discrepancy is valid. The Contractor shall promptly correct the discrepancy and resubmit for Acceptance by the Authority for review and testing on the same basis as initially submitted. If, in the reasonable professional judgment of the Contractor such discrepancy is not valid, the Contractor shall so notify the Authority in writing.
- 1.4.7 In the event that the Authority, upon final review, does not accept the Deliverables or any hardware or software or only makes a partial acceptance thereof, the Authority may elect to: (i) accept delivery of the Deliverables "AS IS" at a negotiated equitable reduction in the price and payment schedule for the Services and any Deliverables; or (ii) terminate the Project and receive a refund of all fees paid in advance to the Contractor, which in such event. The Contractor shall immediately repay all fee advances paid by the Authority under the Project Plan and the Authority may retain all holdbacks.
- 1.5 Additional Representations and Warranties. In addition to all other representations, warranties, and covenants included in this Contract, Contractor represents, warrants, and covenants, for itself, its employees, subcontractors and agents that:
- 1.5.1 it is not contractually prohibited from engaging in the Services or providing the Deliverables, and that it is not a party to any contract or under any obligation which conflicts with the terms of this Contract or which prohibits Contractor from carrying out its responsibilities under this Contract;
- 1.5.2 it is fully able to furnish the Services as contemplated by this Contract;
- 1.5.3 there are no contracts to which it is a party which would prevent its timely and complete performance of the terms and conditions of the Contract, and the Contractor agrees not to enter into any such contract during the pendency of this Contract;
- 1.5.4 it is experienced in the type of engineering necessary for completion of the Project, and it understands the complexity involved in this type of project and the necessity of coordination of its Services Authority project stakeholders within which the Project will be performed;
- 1.5.5 any software provided or utilized in the Services will not contain any Malware;
- 1.5.6 the Services and all Deliverables will comply with all Applicable Laws at all times from the date of Acceptance; and
- 1.5.7 with respect to the Services and all Deliverables there is, and on the date of Acceptance will be, no claim, litigation or proceeding pending or threatened against the Contractor with respect such Services or Deliverables, or any component thereof, alleging infringement or misappropriation of any patent, copyright, trade secret, trademark or any other personal or proprietary right of any third party in any country.
- 1.6 Additional Warranty Remedies. The Authority is entitled to all warranties implied by law or regulation. These warranties shall survive any inspection, testing, acceptance and payment by the Authority for the Services and are in addition to, and shall not be construed as restricting or limiting the warranties of the Contractor, express or implied, that are provided by law or exist by operation of law. For any breach of the warranties contained in this Section, the Authority's remedy, in addition to all remedies available at law or in equity, shall be:
- 1.6.1 For the Services. The satisfactory re-performance of the Services within ten (10) days (or such other reasonable period of time approved by the parties in writing) following the Authority's notice to the Contractor that the Services were not performed satisfactorily in accordance with the Project Plan.
- 1.6.2 For the Deliverables. The correction of errors or otherwise in the Deliverables that cause breach of the warranty. If the Contractor is unable to provide such error corrections or otherwise make the Deliverables operate as warranted within the periods specified in this Contract, the Authority shall be entitled to terminate this Contract with respect to the

affected feature and recover a prorated amount paid to the Contractor based on each feature, which prorated amount will be calculated based on a useful life of five years from the date of final Acceptance. If, however, the loss of functionality cause by such error impacts the overall performance of any Deliverables, then the Authority shall be entitled to terminate this Contract and recover all amounts paid to the Contractor by the Authority.

1.7 Intellectual Property Rights.

1.7.1 As between the Contractor and the Authority (i.e., without addressing rights of third parties), the Authority is the sole owner of all rights, title and interest in and to any Authority Data and Authority Electronic Property and all Deliverables (excluding the Contractor Technology included in or embodied in the Deliverables), together with all improvements, derivative works or enhancements to any of the foregoing and all Intellectual Property Rights related thereto ("Authority IP"). Except as expressly authorized in this Exhibit in the performance of the Services solely for the benefit of the Authority or Customers, the Contractor may not use, edit, modify, create derivatives, combinations or compilations of, combine, associate, synthesize, re-identify, reverse engineer, reproduce, display, distribute, disclose, sell or Process any Authority Data or Authority Electronic Property. The Contractor will not use any Authority Data or Authority Electronic Property in a manner that is harmful to the Authority. To the extent possible, the Deliverables (excluding any Contractor Technology embodied therein) shall be a work made for hire specifically commissioned for the Authority. In order to protect and preserve the Authority's rights, the Contractor hereby irrevocably and unconditionally assigns and transfers to the Authority all right, title and interest in and to the Authority IP that the Contractor may acquire without further consideration.

1.7.2 The Contractor grants to the Authority a non-exclusive, perpetual, royalty free, fully paid up, irrevocable, and transferable license, with the right to sublicense, in and to any Contractor Technology embodied in the Deliverables for the Authority and service providers to exercise and exploit its and their ownership rights in the Deliverables in any manner. The foregoing license does not authorize the Authority to separate any Contractor Technology from the Deliverable in which it is incorporated for creating a standalone product for marketing to others.

2. Proprietary Information and Non-Disclosure.

2.1 The Contractor acknowledges and agrees that this Contract creates a relationship of confidence and trust on the part of the Contractor for the benefit of the Authority. During the Term of this Contract, the Contractor may acquire certain "Confidential Information" (as defined herein) from or regarding the Authority employees, agents and representatives or documents, or otherwise as a result of performing the Services of the Contractor hereunder.

2.2 "Confidential Information" as used herein, shall mean and include, without limitation:

2.2.1 Any information concerning the Authority or the Project, which is provided by the Authority or any Project team members to the Contractor, such as accounting and financial data, product, marketing, development, pricing and related business plans and budgets, and all of the information and plans related to the Project, which are not published;

2.2.2 All Authority Data and Authority Electronic Property; and

2.2.3 All Deliverables (including without limitation all work in progress) and any Contractor Technology included or embodied therein.

2.3 The Contractor acknowledges and agrees that all such Confidential Information is and shall be deemed the sole, exclusive, confidential and proprietary property and trade secrets of the Authority at all times during the Service Term of this Contract and following any expiration or termination hereof. The Contractor agrees to hold in confidence without disclosing or otherwise using any Confidential Information, except as such disclosure or use may be required in connection with and limited to the Services of the Contractor hereunder.

- 2.4 The Contractor acknowledges and agrees that the Authority would not have entered into this Contract unless the Authority was assured that all such Confidential Information would be held in confidence by the Contractor in trust for the sole benefit of the Authority.
- 2.5 The Contractor shall not improperly use or disclose any proprietary information or trade secrets of any third party and will not bring on to the premises of the Authority any unpublished documents or any property belonging to any third party unless consented to in writing by the third party.
- 2.6 The Contractor's obligation of confidentiality hereunder shall not apply to information that: (i) is already in the Contractor's possession without an obligation of confidentiality; (ii) is rightfully disclosed to the Contractor's by a third party with no obligation of confidentiality; or (iii) is required to be disclosed by court or regulatory order, provided the Contractor's gives the Authority prompt notice of any such order.
- 2.7 The Authority shall have the perpetual and unrestricted right to use, copy, and incorporate into other works all reports, materials, presentations and other work product prepared by the Contractor and delivered to the Authority.
- 2.8 Upon any termination or expiration of this Contract, the Contractor agrees to deliver to the Authority any and all Confidential Information except that the Contractor may keep one file copy of any Confidential Information pertinent to its rights and obligations surviving the expiration or termination of this Contract, which copy shall be held in confidence in accordance with this Section.
3. Use of Authority's Name. The Contractor agrees not to make any written use of or reference to the Authority's name for any marketing, public relation, advertising, display or other business purpose or make any use of the Authority Data or Authority Electronic Property for any activity unrelated to the express business purposes and interests of the Authority under this Contract, without the prior written consent of the Authority.
4. Specific Performance. The Contractor acknowledges and agrees that the remedy at law for the breach of provisions of this Contract (particularly with respect to ownership of intellectual property and Confidential Information) may be inadequate and that the Authority may be entitled to injunctive relief without bond, in addition to any other rights or remedies which the Authority may have for such breach.
5. Indemnification. In addition to general indemnification set forth elsewhere in the Contract, the following indemnification obligations shall apply:
- 5.1 The Contractor shall indemnify, defend and hold harmless the Authority and its affiliates and their trustees, directors, officers, employees, Customers and agents from and against any and all Damages of any nature or kind to the extent arising out of, caused by, or resulting from: (i) any bodily injury or death of any person incurred by the Authority or any third party resulting from the negligence or willful misconduct of the Contractor or its employees, contractors or representatives; (ii) any failure of the Services or Deliverables to conform with Applicable Laws or the Technical Specifications or other requirements set forth in this Contract; (iii) any Security Incident; and (iv) any actual or alleged violation, infringement or misappropriation of any copyright, patent, trademark, trade secret, product name, right of privacy or persona or other intellectual property right and proprietary right of a third party related to the Services and Deliverables regardless of whether or not such claim, damage, loss, or expense is caused in part by any indemnitee. In particular, the Contractor acknowledges that the Contractor's obligation to indemnify the Authority extends to any liability arising out of any actual negligence by the Contractor in the delivery of any products or services under this Contract. Notwithstanding the foregoing, the Contractor shall not be liable to an indemnitee for any losses incurred by such indemnitee to the extent such claim is attributable solely to that indemnitee's sole negligence.
- 5.2 If the Deliverables are held to infringe or it is believed by the Authority to infringe the rights of others, the Contractor's will, at its expense and upon the Authority's request, to: (i) modify the infringing item to be non-infringing so long as the utility or performance of the Deliverables are

not materially impaired and the Deliverables continue to conform to the Technical Specifications and the Authority's original requirements in all respects, subject to the Authority's approval; or (ii) obtain for the Authority a license to continue using the infringing item.

5.3 The indemnity obligations contained in this Section shall survive the termination, suspension, abandonment and/or completion of this Contract.

6. Approval. Any approval given by the Authority shall not relieve the Contractor of its obligations and other duties under this Contract or be construed as an assumption or waiver by the Authority.
7. Waivers. No failure by the Authority to insist upon the performance by the Contractor of any provision of this Contract, and no failure of the Authority to exercise any right or remedy consequent upon a breach or other default, and no payment by the Authority or its use of the Project during the continuance of any breach or other default, shall constitute a waiver of the Contractor's breach or default or of any provision of this Contract.
8. UCITA. Neither the Uniform Computer Information Transactions Act nor any state laws incorporating such Act apply to this Contract or the transactions contemplated hereunder.

**EXHIBIT E-4**  
**IT TERMS AND CONDITIONS - HOSTED SOLUTIONS**  
**(ADDITIONAL TERMS AND CONDITIONS FOR THE PERFORMANCE OF INFORMATION**  
**TECHNOLOGY (IT) PRODUCTS AND SERVICES-HOSTED SOLUTIONS)**

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- 1.1 Definitions. Unless otherwise specified in this contract (or an Exhibit or Exhibit hereto), the following definitions shall apply, if applicable:
- 1.1.1 "Acceptance" shall have the meaning set forth in Section 1.4.5 of this Exhibit.
  - 1.1.2 "Applicable Laws" means any and all applicable statutes, laws, treaties, rules, codes, ordinances, regulations, permits, interpretations, or orders of any Federal, state, or local governmental authority having jurisdiction over the Project, this contract, and the parties all as in effect as of the date of this contract and as amended during the Service Term of this contract.
  - 1.1.3 "Application" means the technical system, platform, application and/or subscription services to be provided by the Contractor, as may be further described in the Technical Specifications.
  - 1.1.4 "Authority Data" means all data, content and information (i) submitted by or on behalf of the Authority or Customers to the Contractor or loaded into the System, (ii) obtained, developed, produced or processed by the Contractor or by the Application or System in connection with this contract, or (iii) to which the Contractor has access in connection with this contract, and all derivative versions of such data, content and information, and any derivative versions thereof, in any form or format.
  - 1.1.5 "Authority Electronic Property" means (i) any websites controlled by the Authority, (ii) any Authority mobile device apps, (iii) any interfaces to the Authority's information technology systems, (iv) any other kiosks, devices or properties for consumer interaction that are created, owned, or controlled by the Authority, and (v) versions and successors of the foregoing, any form or format now known or later developed, that may be used by Customers.
  - 1.1.6 "Confidential Information" shall have the meaning set forth in Section 2.2 of this Exhibit.
  - 1.1.7 "Contractor's Certification" shall have the meaning set forth in Section 1.4.4 of this Exhibit.
  - 1.1.8 "Contractor Technology" means (i) the System, (ii) the Application, and (ii) any technology, information, content and data, together with Intellectual Property Rights related thereto, owned or used by the Contractor in the performance of the Services.
  - 1.1.9 "Customer" means any purchaser of products or services from the Authority.
  - 1.1.10 "Deliverables" means all information, data, materials, devices (including equipment and hardware), software (including the Application) and other items to be delivered by the Contractor to the Authority, as specified in the Project Plan.
  - 1.1.11 "Documentation" means the documentation provided to the Authority, including user manuals and operator instructions related to the Application furnished by the Contractor to the Authority in any format, including paper and electronic.
  - 1.1.12 "Intellectual Property Rights" means any and all intellectual property rights, including without limitation, invention, patents, patent and patent applications (including all reissues, divisions, renewals, continuations, continuations-in-part, extensions, provisionals, and reexaminations) and all rights therein provided by international treaties or conventions and all improvements to the inventions disclosed in each such registration, patent or application, trademarks, service marks, trade dress, logos, slogans, configurations, trade names, corporate names, and business names, whether or not registered, including all



common law rights, and registrations and applications for registration thereof, and all rights therein provided by international treaties or conventions, works of authorship and copyrights (registered or otherwise) and registrations and applications for registration thereof, and all rights therein provided by international treaties or conventions, all internet uniform resource locators, and domain names, including any domain name application or registration, all industrial designs and any registration or application thereof anywhere in the world, data and database rights, trade secrets, proprietary know-how and show-how, whether or not reduced, all rights to obtain and rights to apply for patents, and to register trademarks and copyrights, and any similar or equivalent rights to any of the foregoing anywhere in the world.

- 1.1.13 “Malware” means any malicious data, code script, active content program, or other malicious software that could damage, destroy, alter or disrupt any computer program, data, firmware or hardware.
- 1.1.14 “Process” or “Processing” means, with respect to any Authority Data, to migrate, collect, access, use, process, modify, copy, analyze, disclose, transmit, transfer, sell, rent, store, or retain or destroy such data in any form. For the avoidance of doubt, “Process” includes the compilation or correlation of any Authority Data with information from other sources and the application of algorithmic analysis to create new or derivative data sets from any Authority Data.
- 1.1.15 “Project” means the project related to the Application and the Authority’s information technology systems as described in more detail in this Exhibit.
- 1.1.16 “Project Plan” means the project plan for the implementation, customization, configuration and/or installation or hosting of the Application and the Services and Deliverables required for the Project, as approved by the Authority in writing.
- 1.1.17 “Remediation Efforts” means, with respect to any Security Incident, activities designed to remedy a Security Incident which may be required by Applicable Law or by the Authority’s or the Contractor’s policies or procedures or under the Security Requirements, or which may otherwise be necessary, reasonable or appropriate under the circumstances, commensurate with the nature of such Security Incident.
- 1.1.18 “Security Incident” means: (i) the loss or misuse of Authority Data; (ii) the inadvertent, unauthorized, or unlawful processing, alteration, corruption, sale, rental, or destruction of Authority Data; (iii) unauthorized access to internal resources; (iv) programmatic manipulation of a system or network to attack a third party; (v) elevation of system privileges without authorization; (vi) unauthorized use of system resources; (vii) denial of service to a system or network; or (viii) any potential or confirmed exposure (which may stem from an act or omission to act) that would result in any of the events described in (i) through (viii).
- 1.1.19 “Service Levels” shall have the meaning set forth in Section 3.1 of this Exhibit.
- 1.1.20 “Security Requirements” means industry best practices and other reasonable physical, technical and administrative safeguards, procedures, protocols, requirements and obligations related to facility and network security in order to protect Authority Data and the Authority’s information technology systems from unauthorized processing, destruction, modification, distribution and use, as approved in writing by the Authority.
- 1.1.21 “Service Term” means (i) the term of the contract as set forth in Exhibit A to the contract, or (ii) with respect to any hosted service related to the Application, the specific term or period for subscription services set forth in Exhibit A of this contract.
- 1.1.22 “Services” means all services to be performed by the Contractor for or on behalf of the Authority or Customers, as described in the Project Plan and this Exhibit.
- 1.1.23 “System” means an application, network, database or system provided or used to perform the Services by the Contractor.

- 1.1.24 "Technical Specifications" means the technical specifications, functional specifications, descriptions, designs, standards, instructions, and business requirements of the Authority related to the Application and the Authority's information technology systems, as may be further described in this contract. Unless otherwise agreed upon in writing by the Authority, the Technical Specifications shall be outlined in detail in Exhibit H to this contract.
- 1.1.25 "Termination Assistance Services" means the Contractor's cooperation with the Authority in order to assist in the transfer of Authority Data to the Authority and to facilitate the transition to an alternative software or service for the Application at such time when the Authority may obtain authorization and/or funding for such replacement.
- 1.1.26 "Updates" means all bug fixes, error corrections, patches, updates, upgrades or new releases or version of the Application during the Service Term.

1.2 Contractor Requirements.

- 1.2.1 Unless specified in the applicable Project Plan, the Contractor will shall furnish, at its own expense, all resources, personnel, equipment, tools, and supplies necessary for the full access and use of the Application and the timely performance of the Services and the Deliverables. The Contractor may use any means necessary and appropriate to perform the Services and the Deliverables under this contract; provided, however, that in no event shall the Contractor take any action that may subject either it or the Authority to civil or criminal liability.
- 1.2.2 The Contractor will establish and manage all Security Requirements necessary to protect Authority Data integrity and permit appropriate access to the Application and the Authority Electronic Property. The Contractor will enable and stop access as users enter and leave the Application. The Contractor will cooperate with and assist the Authority and its other Project contractors to implement security protocols (e.g., firewalls, SSI, etc.) and take appropriate actions with respect to the Application and all Authority Data stored therein and the Authority Electronic Property so as to enable the Contractor to satisfy its obligations under this contract and to help prevent the loss, alteration or unauthorized access to the Application and all Authority Data stored therein, or the Authority Electronic Property, to the extent within the Contractor's control. The Contractor will, upon the Authority's request, for each year of the Term of this contract under the Project Plan, provide to the Authority copies of monthly firewall logs and third party audit reports, summaries of test results and other equivalent evaluations with regard to security and confidentiality in connection with the Services that the Contractor provides to the Authority. The Contractor will use commercially reasonable efforts in accordance with the Security Requirements to secure the Application and all Authority Data stored therein against access by parties external to the Project and by unauthorized users, and against damage, disruption and other activity aimed at data availability or the services or other trespass or illegal actions. The Contractor will employ computer anti- Malware protections and other reasonable commercial means to ensure a safe computing environment. The Contractor agrees that it will, and it will cause its personnel and contractors to timely comply with the Authority's privacy policies and safety and network security policies, as the same may be provided to the Contractor, at all times while on-site at the Authority's facilities or remotely accessing the Authority's systems or facilities (including Authority Electronic Property). The Contractor and/or its designated third party auditor(s) will perform all audits necessary to ensure the Authority's Data integrity and adherence to the Security Requirements of the Project. As part of its routine audits, the Contractor will, on a regular basis, test the integrity of Authority Data backed up by the Authority or its Project Contractors.
- 1.2.3 The Contractor shall adopt and implement all facility and network security, disaster recovery plans and back-up plans as to protect against data loss, theft and unauthorized access, disclosure and use of the Application, Authority Data, Authority Electronic Property and the Authority's Confidential Information and to ensure the integrity and continuity of the performance of Services and the Project under this contract. The Contractor will use best efforts in accordance with industry best practices and standards for this requirement

and consult and cooperate with the Authority and its other contractors who operate or access the Authority's data center and network systems (including Authority Electronic Property) in the performance of the Services.

- 1.2.4 The Contractor and/or its designated third party auditor(s) will perform all audits necessary to ensure data integrity and adherence to the requirements of the Project. As part of its routine audits, the Contractor will, on a regular basis, test the integrity of Authority Data backed up by the Authority's or its Project contractors.
- 1.2.5 The Contractor, as well as its agents, representatives, and employees, shall comply with all of the Authority's rules, regulations, and guidelines then in effect when on-site at the Authority and all Applicable Laws.
- 1.2.6 The Contractor will promptly notify the Authority upon discovering or otherwise learning of any Security Incident involving Authority Data. Following any Security Incident, the Contractor will consult in good faith with the Authority regarding remediation Efforts that may be necessary and reasonable.
- 1.2.7 Any notifications to Customers or any employees of the Authority regarding Security Incidents will be handled exclusively by the Authority and the Contractor may not under any circumstances contact Customers or employees of the Authority relating to such Security Incident unless the Contractor is under a legal obligation to do so, in which event (i) the Contractor must notify the Authority in writing promptly after concluding that the Contractor has the legal authority to notify such Customers or employees and explain in such notice to the Authority the basis for the legal obligation and (ii) the Contractor will limit the notices to Customers and any employees of the Authority regarding a Security Incident and the Contractor will assist with sending such notices if so requested by the Authority.

1.3 Project Plan and Milestone Deadlines.

- 1.3.1 The Contractor shall provide Services necessary to assess and evaluate the Authority's business requirements and information technology systems in order to create, deploy, configure, customize, migrate, deliver and/or implement the Application and any Authority Data to be migrated, interfaced to or used in conjunction with the Application unless otherwise provided or specified by the Authority, the Contractor will prepare for the Authority's review and approval a Project Plan setting forth in detail (i) the scope of the Project and the Services required to complete the Project, (ii) the milestones and schedule for completing all tasks and requirements for the Project (including the creation, deployment, configuration, customization, migration, and implementation of the Application and any Authority Data, (iii) all Authority Electronic Property required for access and use of the Authority and any Authority Data hosted by the Contractor, (iv) all Deliverables and (v) all acceptance criteria, testing and post-implementation tasks. No Project Plan will be effective until approved in writing by the Authority's designated project manager.
- 1.3.2 This is a fast track Project with completion deadlines that cannot reasonably be extended. For this reason, it is the desire of the Authority to recognize any likely budget overruns as soon as possible, and by this contract it is employing the Contractor to perform design monitoring, estimating, value analysis and other functions to help the Authority meet the Project budget. At any time that the Contractor develops concerns about the integrity of the budget for the Project, the Contractor shall promptly advise the Authority of the concerns through a variance report, which shall, at a minimum, state: (i) the Contractor's concern; (ii) the apparent cause of the concern, delay, or budgetary issue; (iii) in the event of a concern about a delay, specifically demonstrate the negative impact of the delay to the critical path for the Project Plan; (iv) define any cost impacts to the Project; and (v) provide the Contractor's proposed resolution to the concern. If any estimate submitted to the Authority exceeds previously approved estimates or the Authority's budget, the Contractor shall make appropriate recommendations to the Authority.

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- 1.3.3 If, using reasonable project monitoring techniques, the Authority determines, in its sole discretion, that it is unlikely or fails to meet a completion date or a cost estimate due under the Project Plan for any reason regardless of which party is at fault, in addition to any other rights and remedies that may be available to the Authority, at no additional cost to the Authority and at the Authority's option, the Contractor shall provide all necessary additional personnel at its own cost to accelerate performance as may be required or necessary to complete the activities required under the Project Plan within a re-adjusted time frame agreed to by both parties in a change order. The completion date shall be considered met if completed in accordance with the terms of this contract within ten (10) working days of the originally estimated completion date. The Contractor will provide the Authority with prior written notice for any delays impacting Application module/track delivery or other Services completion under the Project Plan in the form of a proposed change order.
- 1.3.4 The Contractor shall use its best efforts after obtaining explicit consent from the Authority to re-sequence the Services to overcome and/or mitigate, to the greatest practicable extent, the effect of any delays regardless of the cause of such delays. Without limiting the foregoing, the Contractor shall diligently prosecute its Services in order to meet the proposed start date for the Application despite a dispute with the Authority relating in any way to this contract, including without limitation any and all the Contractor's claims for modifications to the payments due to the Contractor. The Contractor and the Authority shall cooperate to resolve all disputes and to adjust the Project Plan accordingly by Contract modification in a timely manner (not to exceed two (2) weeks from the date of notice).
- 1.3.5 Should the Contractor not progress in its performance of Services at a rate commensurate with the Service Term of this contract, or fail to meet any scheduled date under the Project Plan, the Authority may, in its sole discretion, direct the Contractor to accelerate the Services by employing additional personnel and equipment or providing overtime to existing personnel as is necessary to complete the Application by the start date, or any portion of the Application by the milestone date specified in the Project Plan. Such the Authority-ordered acceleration shall be at the cost of the Contractor.
- 1.4 Acceptance.
- 1.4.1 Unless otherwise defined or specified in an Exhibit to this contract, the provisions set forth in this Section 1.4 shall determine the Authority's Acceptance of the Application.
- 1.4.2 Implementation of the Application shall be completed in a timely manner and appropriate tests conducted by the Contractor with the cooperation of the Authority to facilitate Acceptance of the Application as more fully set forth in the Project Plan; provided, however, that the Authority may upon written request require that the Contractor perform testing with cooperation of the Authority.
- 1.4.3 When each component of the Application has been developed and tested by the Contractor as being ready for operational testing, the Contractor shall notify the Authority in writing. The Authority shall provide reasonable assistance to commence operational testing.
- 1.4.4 Unless otherwise specified in the Project Plan, within thirty (30) days after operational testing, the Contractor shall certify in writing that the Application component conforms to the Technical Specifications and is capable of being put into full commercial productive use in accordance with the Technical Specifications and otherwise meets the functional and business requirements set forth in this contract ("the Contractor's Certification"). The Contractor Certification shall not be issued by the Contractor unless the Contractor has completed all tasks required for the installation, configuration, deployment (including data migration) and hosting or operational testing of the Application and such instance is ready for final testing and launch for production use by the Authority and Customers.
- 1.4.5 The Application shall be finally accepted by the Authority when (i) each component of the Application is fully operational and properly configured by the Contractor, as applicable, and/or (ii) when the instance of the Application is properly configured and made available

to the Authority for production use on the Contractor's hosted environment, each in conformity with the Security Requirements and Technical Specifications outlined in this contract ("Acceptance").

- 1.4.6 If there is any objection to Acceptance, the Authority will provide the Contractor with a written notice (the "Defect Notice") reasonably identifying any claimed discrepancies between the actual performance of the Application component and the requirements set forth in this contract within thirty (30) days after the issuance of the Contractor's Certification.
- 1.4.7 Upon receiving a Defect Notice from the Authority, the Contractor shall confer with the Authority and jointly review each asserted discrepancy to determine if the claimed discrepancy is valid. The Contractor shall either promptly correct the discrepancy and resubmit the Application component for acceptance by the Authority on the same basis as initially submitted or terminate this contract. If, in the reasonable professional judgment of the Contractor such discrepancy is not valid, the Contractor shall so notify the Authority in writing.
- 1.4.8 The written explanation of the Contractor set forth herein shall be deemed accepted by the Authority within thirty (30) days after the Authority's receipt of the written explanation and Acceptance shall be deemed to have occurred unless the Contractor receives from the Authority written notice rejecting such explanation and detailing exactly how the Application component does not conform with the Technical Specifications and/or Security Requirements. If the Application is not accepted by the Authority following two (2) attempts by the Contractor to provide an undisputed the Contractor's Certification, the Authority may terminate this Contract with respect to that particular component or the entire Application, at its sole discretion.
- 1.4.9 The foregoing Acceptance procedure shall apply with respect to the Authority's Acceptance of the overall turn-key system comprising all components of the Application (including migrated Authority Data, if applicable) in a condition ready for immediate use and operation by the Authority (i) in its facilities and/or the operating environment if a component of the Application is installed, or (ii) via the Contractor's hosted servers for the instance of the Application is hosted, as applicable, on or before the start date set forth in the Project Plan.
- 1.4.10 In the event that the Authority, upon final review, does not accept the Application or only makes a partial acceptance of the Application, the Authority may elect to: (i) accept delivery of the Application "AS IS" at a negotiated equitable reduction in the price and payment schedule for both the Application and any Services; or (ii) terminate the Project and receive a refund of all fees paid in advance to the Contractor, which in such event, the Contractor shall immediately repay all fee advances paid by the Authority under the Project Plan and the Authority may retain all holdbacks.
- 1.5 Training. The Contractor will perform all training required for access and use of the Application upon initial deployment and during the Service Term, as reasonably requested by the Authority. The Contractor will at a minimum provide the Authority with sufficient training and instruction on the use and operation of the Application. Such training will be performed at the Authority's facilities (unless otherwise agreed upon by the parties in the Project Plan).
- 1.6 Application Support and Performance.
  - 1.6.1 The Contractor shall (i) promptly notify the Authority of any errors in the Application of which it learns from any source; (ii) respond to user identified Application errors in no more than 4 hours after notification, and implement corrected Application copies or corrections or bypasses such that the Application performs in all material respects in accordance with the Documentation, within one (1) business day thereafter; (iii) provide to all authorized users on a 24 hours per day, 7 days per week basis, all reasonably necessary telephone or web consultation requested by them in connection with their use and operation of the Application; and (iv) treat any Application dumps, Authority Data, tapes or any other

documentation provided from users to resolve a reported problem as Confidential Information of the Authority.

- 1.6.2 The Contractor will periodically release maintenance Updates with minimum impact and downtime to the Authority and after business hours. At no additional cost to the Authority, the Contractor will provide access to all maintenance Updates and all new features and functionalities of the Application that are provided by the Contractor to any of its other customers. In each case, the Contractor will provide the Authority with prior written notice (by as much time as practicable but in no event less than one (1) day(s) of the release by the Contractor of any Updates, and will implement such Updates (including any configuration or integration thereto) for access and use by the Authority at no additional cost to the Authority. If the Authority requests the Contractor to test such Updates, the Contractor will promptly test such update to the Authority at no additional cost. If any Update is installed, such Update will thereupon be deemed to be part of the relevant Application upon delivery subject to Acceptance by the Authority. All such Updates, where reasonably necessary, will be accompanied by updated Documentation. The Contractor covenants that each upgrade and will be backwards compatible with all parts of the Application.
- 1.6.3 The Contractor will use commercially reasonable efforts to maintain the Application with a high level of quality and performance consistent with industry standards and the state of the art technology.
- 1.6.4 To the greatest extent possible, the Contractor will schedule maintenance during times least disruptive to the Authority's use of the Application. Scheduled maintenance is a period in which the Authority is notified in advance, during which the Contractor may suspend availability of all or part of the Application in order to carry out maintenance activities. Scheduled Maintenance will be scheduled after normal business hours ("Maintenance Window"). To the extent possible, the Contractor will perform maintenance without suspending the Application (i.e., hot) and will coordinate with the Authority by written notice to schedule maintenance requiring downtime at such hours and date least disruptive to its business.
- 1.6.5 The Authority will be notified by e-mail not less than three (3) calendar days in advance of any period of Scheduled Maintenance that will require suspension of all or the majority of the Application for a period of one (1) hour or more. The Authority will be notified by email not less than seven (7) calendar days in advance of any period of Scheduled Maintenance that will require suspension of all or the majority of the Application for a period of more than one (1) hour. The Contractor will schedule any period of Scheduled Maintenance that requires suspension of all or a major part of the Application for more than three (3) hours during a Maintenance Window on a Friday night, or Saturday or Sunday morning.
- 1.7 Additional Representations and Warranties. In addition to all other representations, warranties, and covenants included in this contract, Contractor represents, warrants, and covenants, for itself, its employees, subcontractors and agents that:
  - 1.7.1 it is not contractually prohibited from engaging in the Services or providing the Deliverables, and that it is not a party to any contract or under any obligation which conflicts with the terms of this Contract or which prohibits Contractor from carrying out its responsibilities under this contract;
  - 1.7.2 it is fully able to furnish the Services as contemplated by this contract;
  - 1.7.3 there are no contracts to which it is a party which would prevent its timely and complete performance of the terms and conditions of the contract, and the Contractor agrees not to enter into any such contract during the pendency of this contract;
  - 1.7.4 it is experienced in the type of software engineering necessary for completion of the Project, and it understands the complexity involved in this type of project and the necessity of coordination of its Services with stakeholders within which the Project will be performed;

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- 1.7.5 there are no contracts to which it is a party which would prevent its timely and complete performance of the terms and conditions of the contract, and the Contractor agrees not to enter into any such contract during the pendency of this contract;
- 1.7.6 the Application will not contain any Malware at all times during which the Application is made available for access and use by the Authority's user or Customers, or any Authority Data is processed using the Application. Any patches, Updates, upgrades or error corrections to the Application provided by the Contractor likewise will not contain any Malware;
- 1.7.7 the Application will not contain any security mechanisms, including, but not limited to, copy protect mechanisms, encryptions, time-activated disabling devices or other codes, instructions or devices which may disable the modules or other software or erase or corrupt data;
- 1.7.8 the Application will comply with all Applicable Laws at all times from the date of Acceptance to the expiration of the applicable Warranty Period;
- 1.7.9 With respect to the Application, (i) all modules and other materials (other than third party software and hardware approved by the Authority) will be original; (ii) there is, and on the date of Acceptance will be, no claim, litigation or proceeding pending or threatened against the Contractor with respect to the Application, or any component thereof, alleging infringement or misappropriation of any patent, copyright, trade secret, trademark or any other personal or proprietary right of any third party in any country; and (iii) the Application, and any use thereof, shall not infringe upon any Intellectual Property Right of any third party in any country; and
- 1.7.10 The System will not contain or otherwise be developed using any Open Source Software (as defined below) in a manner that subjects the Authority to any license obligations of such Open Source Software. "Open Source Software" means any software licensed under terms requiring that other software combined or used or distributed with such software: (i) be disclosed or distributed in source code form, or (ii) be licensed on terms inconsistent with the terms of this Contract.
- 1.8 Additional Warranty Remedies. The Authority is entitled to all warranties implied by law or regulation. These warranties shall survive any Acceptance and payment by the Authority for the Services and are in addition to, and shall not be construed as restricting or limiting the warranties of the Contractor, express or implied, that are provided by law or exist by operation of law. For any breach of the warranties contained in this Section, the Authority's remedy, in addition to all remedies available at law or in equity, shall be:
- 1.8.1 For Application. The correction of errors that cause breach of the warranty. If the Contractor is unable to provide such error corrections or otherwise make the Application operate as warranted within the periods specified in this contract, the Authority shall be entitled to terminate this contract with respect to the affected module/track and recover a prorated amount paid to the Contractor based on each module, which prorated amount will be calculated based on a useful life of five years from the date of final Acceptance. If, however, the loss of functionality cause by such error impacts the overall turn-key system performance of the Application, then the Authority shall be entitled to terminate this contract with respect to all modules/tracks and recover all amounts paid to the Contractor by the Authority. The Contractor shall not be responsible or liable for any errors that are determined to be attributable to the Authority's failure to comply with any user requirements under the applicable Technical Specifications, or any Force Majeure event.
- 1.8.2 For Deliverables. The correction of errors that cause breach of the warranty by re-performing the Services necessary to create the Deliverables and by providing Deliverables conforming with the Technical Requirements at no cost to the Authority.
- 1.8.3 For Services. The re-performance of any Services not conforming to the warranty at no cost to the Authority.
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## 2. Intellectual Property Rights.

- 2.1 The Contractor will not (i) use or register any trademark, service mark or domain name that is identical to or confusingly similar to any trademark, service mark, logo or other name owned or used by the Authority, including domain names and trade dress; or (ii) create, acquire, license or support any internet keyword or search term that contains any such marks or other Intellectual Property Rights owned or licensed by the Authority, except as expressly provided in the Project Plan and only in the performance of the Services for the benefit of the Authority. All use thereof inures solely to the benefit of the Authority and is subject to the Authority's quality control and standard guidelines.
- 2.2 As between the Contractor and the Authority (i.e., without addressing rights of third parties), the Authority is the sole owner of all rights, title and interest in and to any Authority Data and Authority Electronic Property and all Deliverables (excluding any Contractor Technology embodied in the Deliverables), together with all improvements, derivative works or enhancements to any of the foregoing and all Intellectual Property Rights related thereto ("Authority IP"). Except as expressly authorized in this Exhibit in the performance of the Services solely for the benefit of the Authority or Customers, the Contractor may not use, edit, modify, create derivatives, combinations or compilations of, combine, associate, synthesize, re-identify, reverse engineer, reproduce, display, distribute, disclose, sell or process any Authority Data or Authority Electronic Property. The Contractor will not use any Authority Data or Authority Electronic Property in a manner that is harmful to the Authority. To the extent possible, the Deliverables (excluding any Contractor Technology embodied therein) shall be a work made for hire specifically commissioned for the Authority. In order to protect and preserve the Authority's rights, the Contractor hereby irrevocably and unconditionally assigns and transfers to the Authority all right, title and interest in and to the Authority IP that the Contractor may acquire without further consideration.
- 2.3 As between the parties, and except for the licenses granted or as otherwise provided in this contract, the Contractor retains all right, title and interest in and to the System and all Contractor Technology and all Intellectual Property Rights related thereto. The Contractor grants to the Authority a non-exclusive, perpetual, royalty free, fully paid up, irrevocable, and transferable license, with the right to sublicense, in and to any Contractor Technology embodied in the Deliverables for the Authority and its Customers and service providers to exercise and exploit its and their ownership rights in the Deliverables in any manner. The foregoing license does not authorize the Authority to separate any Contractor Technology from the Deliverable in which it is incorporated for creating a standalone product for marketing to others.
- 2.4 The Contractor further agrees to perform all obligations set forth in the Authority's Proprietary Rights and Data Security Exhibit attached to this Exhibit.

## 3. Proprietary Information and Non-Disclosure.

- 3.1 The Contractor acknowledges and agrees that this contract creates a relationship of confidence and trust on the part of the Contractor for the benefit of the Authority. During the term of this contract, the Contractor may acquire certain "Confidential Information" (as defined herein) from or regarding the Authority employees, agents and representatives or documents, or otherwise as a result of performing the Services of the Contractor hereunder.
- 3.2 "Confidential Information" as used herein, shall mean and include, without limitation:
- 3.2.1 Any information concerning the Authority or the Project, which is provided by the Authority or any Project team members to the Contractor, such as accounting and financial data, product, marketing, development, pricing and related business plans and budgets, and all of the information and plans related to the Project, which are not published;
- 3.2.2 All Authority Data; and
- 3.2.3 The Deliverables (including without limitation all work in progress) other than any Contractor Technology embodied in the Deliverables.

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- 3.3 The Contractor acknowledges and agrees that all such Confidential Information is and shall be deemed the sole, exclusive, confidential and proprietary property and trade secrets of the Authority at all times during the Service Term and following any expiration of termination hereof. The Contractor agrees to hold in confidence without disclosing or otherwise using any Confidential Information, except as such disclosure or use may be required in connection with and limited to the Services of the Contractor hereunder.
- 3.4 The Contractor acknowledges and agrees that the Authority would not have entered into this contract unless the Authority were assured that all such Confidential Information would be held in confidence by the Contractor in trust for the sole benefit of the Authority.
- 3.5 During the Service Term, the Contractor shall not improperly use or disclose any proprietary information or trade secrets of any third party and will not bring on to the premises of the Authority any unpublished documents or any property belonging to any third party unless consented to in writing by the third party.
- 3.6 The Contractor's obligation of confidentiality hereunder shall not apply to information that: (i) is already in the Contractor's possession without an obligation of confidentiality; (ii) is rightfully disclosed to the Contractor by a third party with no obligation of confidentiality; or (iii) is required to be disclosed by court or regulatory order, provided the Contractor gives the Authority prompt notice of any such order.
- 3.7 Upon any termination or expiration of this contract, the Contractor agrees to deliver to the Authority any and all Confidential Information except that the Contractor may keep one file copy of any Confidential Information pertinent to its rights and obligations surviving the expiration or termination of this contract, which copy shall be held in confidence in accordance with this Section.
4. Hosted Services. With respect to the Application and/or any Authority Data hosted or Processed by the Contractor, the following terms will apply:
- 4.1 Unless otherwise designated in the contract or agreed upon in writing by the Authority, the Contractor will use commercially reasonable efforts to make the Application available 24 hours per day 7 days a week. The Contractor represents that access to the Application for The Authority and its Customers will be maintained at an availability standard of 99.99% as measured over the course of a calendar month, excluding Standard Exceptions (the "Service Levels"). "Standard Exceptions" to the 99.99% service-availability standard shall mean scheduled maintenance, maintenance downtime to resolve extraordinary technical problems with the Application or the host operating environment, force majeure (including state or federally declared natural disasters in the Contractor's physical locations), or technical difficulties attributable to any non-Contractor computer hardware, or technical difficulties attributable to the Authority's interface with the Application unless such technical difficulties are the direct fault of the Contractor. The Contractor agrees to measure and provide a detailed report to the Authority, on a monthly basis, showing the Contractor's provision of the Application as compared to the Service Levels.
- 4.2 Unless otherwise approved in writing by the Authority, the Contractor must host the Application in the United States of America ("U.S.A.") at the location(s) specified by the Contractor, must provide services under this contract with resources (e.g., hardware and software) located in the U.S.A, and must not transfer or process any Authority Data outside of the U.S.A.
- 4.3 In the event of the expiration or termination of the Service Term, upon the Authority's written request, the Contractor will provide Termination Assistance Services for a period of time commencing on the effective date of termination or expiration of this Contract and ending on a date designated in advance by the Authority.
- 4.4 The Contractor will promptly notify the Authority upon discovering or otherwise learning of a Security Incident. Following any Security Incident, the Contractor will consult in good faith with the Authority regarding Remediation Efforts that may be necessary and reasonable. The Contractor will (i) at the Authority's direction undertake Remediation Efforts at the Contractor's
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sole expense and reimburse the Authority for its reasonable costs and expenses in connection with any Remediation Efforts that it elects to undertake, (ii) ensure that such Remediation Efforts provide for, without limitation, prevention of the recurrence of the same type of Security Incident, and (iii) reasonably cooperate with any Remediation Efforts undertaken by the Authority.

- 4.5 In addition to any other indemnification obligations set forth in this Exhibit and the contract, the Contractor will indemnify, defend and hold harmless all the Authority Indemnitees from and against any and all losses, damages, liabilities, judgments, awards, penalties, interest, fines, costs and fees or expenses of whatever kind, including reasonable attorneys' fees ("Losses") incurred by such the Authority Indemnitee as a result of any claim, demand, suit, action, investigation, allegation or any other proceeding (collectively, "Claims") arising out of or relating to: (i) any Security Incident and/or (ii) the Contractor's or its employees', agents' or contractors' breach of any of the terms, conditions or obligations relating to data security, privacy, or any Authority Data set forth in the contract or this Exhibit. However, if the Contractor can demonstrate through clear and convincing evidence that the Authority was the sole cause of a Security Incident and the Contractor was fully compliant with the Contractor's obligations, then this Section will not apply to such Security Incident. For the purposes of this Section, Losses will include, without limitation, the cost of Remediation Efforts. The Contractor's obligations in this Section are in addition to any indemnification or similar obligations that the Contractor may have under the contract. The rights and remedies of the Authority under this Exhibit will not be subject to any limitation or exclusion of actions or remedies or any other similar limiting provisions stated in the contract. Without limiting the foregoing: (a) there will be no limitations or exclusions on the Contractor's liability arising under this Exhibit, the contract or otherwise relating to Claims pertaining to privacy, security, or confidentiality or relating to unauthorized use of Authority Data, and (b) the Contractor will be liable for all obligations under this Section and for reimbursement of Losses for Remediation Efforts regardless of whether such amounts are characterized by any person, court or other third party as direct, indirect, consequential, special, or punitive damages.
- 4.6 Any notifications to Customers or any employees of the Authority regarding Security Incidents will be handled exclusively by the Authority and the Contractor may not under any circumstances contact Customers or employees of the Authority relating to such Security Incident unless the Contractor is under a legal obligation to do so, in which event (i) the Contractor must notify the Authority in writing promptly after concluding that the Contractor has the legal obligation to notify such Customers or employees and explain in such notice to the Authority the basis for the legal obligation and (ii) the Contractor will limit the notices to such Customers and employees to those required by the legal obligation or as pre-approved by the Authority. The Contractor will reasonably cooperate in connection with notices to Customers and any employees of the Authority regarding a Security Incident and the Contractor will assist with sending such notices if so requested by the Authority.
5. Rights to Access and Use Application. The Contractor hereby grants to the Authority, Customers (but only in their capacity as Customers), and third-party service providers providing services to the Authority (but only in their capacity as the Authority's service providers) a non-exclusive, worldwide, royalty-free license to access and use the Application during the Service Term. Such license shall be enterprise-wide for an unlimited number of users or transactions, unless limitations on use are expressly agreed upon by the Authority in this contract. The Authority may allow its contractors and service providers to access and use the Application in the course of performing services for the Authority, including application development services, data processing and facilities management services.
6. Use of Authority's Name. The Contractor agrees not to make any written use of or reference to the Authority's name for any marketing, public relation, advertising, display or other business purpose or make any use of Authority Data for any activity unrelated to the express business purposes and interests of the Authority under this contract, without the prior written consent of the Authority, which consent will not be unreasonably withheld.

7. Specific Performance. The Contractor acknowledges and agrees that the remedy at law for the breach of provisions of this contract (particularly with respect to ownership of intellectual property and Confidential Information) may be inadequate and that the Authority may be entitled to injunctive relief without bond, in addition to any other rights or remedies which the Authority may have for such breach.
8. Indemnification. In addition to general indemnification set forth elsewhere in the contract, the following indemnification obligations shall apply:
  - 8.1 The Contractor shall, to the proportionate extent that they are responsible, indemnify, defend and hold harmless the Authority and its trustees, directors, officers, employees, Customers and agents from and against any and all Claims and Losses of any nature or kind to the extent arising out of, caused by, or resulting from: (i) any failure of the Application or the Services to conform with Applicable Laws or the Technical Specifications or Security Requirements set forth in this Contract; (ii) any Security Incident; and (iii) any actual or alleged violation, infringement or misappropriation of any Intellectual Property Rights of a third party related to the Services and the Application, regardless of whether or not any such Claim or Loss is caused in part by any indemnitee. In particular, the Contractor acknowledges that the Contractor's obligation to indemnify the Authority extends to any liability arising out of any actual negligence by the Contractor in the delivery of any products or services under this contract. Notwithstanding the foregoing, the Contractor shall not be liable to an indemnitee for any losses incurred by such indemnitee to the extent such claim is attributable solely to that indemnitee's sole negligence.
  - 8.2 Either party shall promptly advise the other party in writing of any action, administrative or legal proceeding, or investigation to which this indemnification may apply. The Contractor shall, at its expense, assume on behalf of the indemnitees and conduct with due diligence and in good faith the defense thereof with counsel satisfactory to the Authority; provided, however, that the Authority shall have the right, at its option, to be represented therein by advisory counsel of its own selection and at its own expense. This indemnification shall not be limited to damages, compensation, or benefits payable under insurance policies, workers' compensation acts, disability benefit acts, or other employees/benefit acts.
  - 8.3 If the Application or any use thereof by the Authority or Customers is held to infringe or it is believed by the Authority to infringe the rights of third parties, the Contractor's will, at its expense and upon the Authority's request, to: (i) modify the Application (and each affected module) to be non-infringing so long as the utility or performance of the Application is not materially impaired and the Application continues to conform to Applicable Laws, the Technical Specifications and the Authority's original requirements in all respects, subject to the Authority's approval; or (ii) obtain for the Authority a license to continue using the infringing Application (or affected component thereof).
  - 8.4 The indemnity obligations contained in this Section shall survive the termination, suspension, abandonment and/or completion of this contract.
9. Approval. Any approval given by the Authority shall not relieve the Contractor of its obligations and other duties under this contract or be construed as an assumption or waiver by the Authority.

CAPITAL METROPOLITAN TRANSPORTATION AUTHORITY  
**EXHIBIT F-1B - REVISED-12**: TECHNICAL SPECIFICATIONS  
CHARGERS for BATTERY ELECTRIC BUSES

EXHIBIT F-1B: TECHNICAL SPECIFICATIONS  
CHARGERS for BATTERY ELECTRIC BUSES

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## 1. Overview

### 1.1. Contents

The technical specifications contained herein define requirements for Capital Metropolitan Transportation Authority's heavy-duty, battery electric bus chargers, to include Depot Plug-In Chargers, Depot Overhead Chargers, and On-Route Overhead Chargers to be compatible with both 40-foot and 60-foot bus lengths, including commissioning, training, manuals.

### 1.2. Buy America Requirements

The charger units shall meet Buy America Requirements.

### 1.3. Future Proofing

Proposers are invited to include in their proposal any suggested or recommended improvements to the charging equipment, systems or ancillary aspects described in these technical specifications, especially with regard to future proofing the bus charger systems, and the Authority's operations. **The proposer shall ensure that the data from the charging system can be utilized by an external program such as power BI or alternate.**

## 2. Depot Plug-In Chargers

### 2.1. Depot Plug-In Charger Design Requirements

- a) The depot plug-in charging stations must comply with all applicable local, state, and federal codes.
- b) The chargers shall be capable of connecting to 3-phase, 60-Hz electrical supply at a range of voltages.
- c) Charging system must be able to dispense a rated continuous output of at least 125 kW to 150kW.
- d) Operational power factor shall exceed 95%.
- e) Standby power consumption must be minimized.
- f) The Charging Equipment shall be capable of operating continuously without performance or safety degradations.
- g) The connectors shall not be energized except when mated with the bus mounted receptacle.
- h) Access doors shall be lockable with handle and three-point latching.
- i) Chargers equipped with robust cable management hardware sufficient to store charging cables safely and effectively, regardless of length, while providing operators ease of connection to the bus.
- j) Chargers equipped with local operator panel for automatic or manual operation.
- k) Chargers shall be capable of setting operational limitations on charging.
- l) Chargers shall be self-restarting after loss of power.
- m) Controls shall include features to prevent progressive charging system damage resulting from any one or more operating issues, or out of limit operating conditions.
- n) If electronics enclosures are located outdoors, they must be rated at NEMA 3R or above.
- o) Each charger will include an electrical disconnect switch to facilitate isolation from other chargers in the same bank of chargers.
- p) Charging equipment with multiple dispensers shall be capable of providing power to all connected buses to provide battery and cabin temperature preconditioning.
- q) If multiple dispensers cannot be powered simultaneously, charging equipment provides a means of sequencing among the dispensers during and after charging to provide battery and cabin temperature preconditioning as well as to continually restore any charge that may be lost in the bus while the dispenser was unpowered.



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- r) Charging equipment is capable of scheduled completion of charges and temperature preconditioning activities where the schedule is settable and changeable by the Authority.

## 2.2. Depot Plug-In Charger Supporting Materials

The Proposers shall provide the following supporting materials with the proposal:

- a) Complete charging equipment specifications for the equipment being proposed.
- b) Provide information and options for power supply requirements for individual chargers.
- c) Provide mounting and installation manuals for all necessary components including civil, electrical, mechanical infrastructure requirements.
- d) The bid package shall contain a complete description of the Charging Equipment including:
  - 1) Compliance with charge standards, electrical safety standards, and UL Classification,
  - 2) Charger efficiency,
  - 3) Charger dimensions,
  - 4) Connector type,
  - 5) Number of connectors,
  - 6) Connector cable length,
  - 7) Electrical disconnect switch for each charger,
  - 8) Charge method (AC or DC),
  - 9) Rated power output,
  - 10) Standby power consumption,
  - 11) Enclosure IP and/or NEMA ratings,
  - 12) Country of origin,
  - 13) A graph showing continuous current output versus voltage throughout the operating range,
  - 14) Details on:
    - Charging instructions,
    - Automatic and manual control capabilities,
    - Maintenance requirements; and
    - Warranty terms.
  - 15) The charger manufacturer shall describe all transit bus models that charger has been validated for and note any exceptions.
  - 16) If the chargers can support multiple dispenser outputs, the Proposer must clearly describe the total number of potential dispenser outputs, the power level for each dispenser, charge sequencing logic for multiple buses connected to the same charger, and any additional charging hardware cost for each dispenser. If separated charging stanchions are available or provided, Proposers shall describe their layout, installation, and operation requirements.
  - 17) The Proposer shall propose a method for control of the charging cycle to manage the use of power from the utility grid for reduction of peak demand charges and general fleet charging management. The proposed solution shall be able to be control by an Open Charge Point Protocol (OCPP)-compliant system.
  - 18) Proposers shall describe any automatic or “smart” charging features including programmable charging capability, networking multiple chargers, charge monitoring, remote charge management, vehicle-to-grid capability, and charge data collection and reporting. Describe whether these features are provided as a standard offering or as an option to the proposal submission. If certain features are provided as an option clearly describe costs. Describe both upfront costs and any necessary subscription service costs.

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- 19) Proposers shall describe the cable management hardware being offered including functionality, specifications, dimensions, drawings, installation requirements, and component replacement costs. If optional cable management systems are available, provide additional details costs for those system(s).

### 3. On-Route Overhead Charges

#### 3.1. On-Route Overhead Charger Design Requirements

- a) The overhead Conductive charging stations must comply with all applicable local, state, and federal codes.
- b) The chargers shall be capable of connection to 3-phase, 60-Hz electrical supply.
- c) The overhead pantograph support structural element shall be designed so that it can attach to horizontal ground as a free-standing structural element.
- d) Charging system must be able to dispense a rated continuous output of 450 kW or higher.
- e) The Charging Equipment shall be capable of operating continuously without performance or safety degradations.
- f) The Charging Equipment shall be capable of safely and effectively making connection and operating in snow and freezing environmental conditions, without manual intervention.
- g) Each charging interface shall be capable of operating continuously.
- h) To ensure proper bus alignment, charger shall utilize communication links in accordance with SAE J3105 standards to determine bus identity and when bus is in properly aligned for extension of pantograph. Charger must be able to operate in a multi-lane environment safely and effectively with other pantographs mounted 12 feet away and simultaneous approaching buses.
- i) Rated for wind and seismic loadings as determined ASCE 7, with an importance factor of 1.0, while supporting a retracted or operationally extended pantograph.
- j) Operational power factor shall exceed 95%.
- k) Standby power consumption must be minimized.
- l) The connectors shall not be energized except when mated with the bus mounted receptacle.
- m) Access doors shall be lockable with handle and three-point latching.
- n) Chargers equipped with local operator panel for automatic or manual operation.
- o) Chargers capable of setting operational limitations on charging.
- p) Chargers shall be self-restarting after loss of power.
- q) Controls shall include features to prevent progressive charging system damage resulting from any one or more operating issues, or out of limit operating conditions.
- r) If electronics enclosures are located outdoors, they must be rated at NEMA 3R or above.
- s) Each charger will include an electrical disconnect switch to facilitate isolation from other chargers in the same bank of chargers.

#### 3.2. On-Route Overhead Charger Supporting Materials

The Proposers shall provide the following supporting materials with the proposal:

- a) Proposer shall provide complete charging equipment specifications for the equipment being proposed.
- b) Proposer shall provide information and options for power supply requirements for individual chargers.
- c) Proposer shall provide mounting and installation manuals for all necessary components including civil, electrical, mechanical infrastructure requirements.
- d) If Proposer has multiple options above the required power level, those options should be clearly described, including costs for each.

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- e) The bid package shall contain a complete description of the Charging Equipment including:
- 1) Compliance with charge standards, electrical safety standards, and UL Classification,
  - 2) Charger efficiency,
  - 3) Charger dimensions,
  - 4) Connector type,
  - 5) Rated power output,
  - 6) Standby power consumption,
  - 7) A graph showing continuous current output versus voltage throughout the full operating range,
  - 8) IP and/or NEMA Ratings,
  - 9) Country of origin,
  - 10) Details on:
    - Charging instructions,
    - Automatic and manual control capabilities,
    - Electrical disconnect switch description,
    - Maintenance requirements; and
    - Warranty terms.
  - 11) Charger manufacturer shall describe all transit bus models that charger has been validated for and note any exceptions.
  - 12) The Proposer must describe the methods for ensuring that Charging Equipment is capable of safely and effectively making connection and operating in snow and freezing environment.
  - 13) The Proposer must describe any bus-side connector requirements or recommendations.
  - 14) Proposer must describe software and connectivity options, web tools, APIs, etc. to facilitate data transmission to back offices and remote management of the charger.

## 4. Data Logging and Telematics

### 4.1. Data Logging and Telematics Requirements

- a) Proposer shall provide The Authority access to all data generated by the Chargers at no additional charge for the five years from date of acceptance.
- b) Proposer shall provide the Authority sufficient means to Access all the data from chargers including but not limited to faults, logs and other messages that is being produced by the system.
- c) The Proposer shall provide the Authority with the ability to physically connect to the monitoring system to view, retrieve, and analyze charger data. Proposer shall provide connectors for the Authority's use for the purpose of adding third-party data monitoring equipment. Proposers shall provide diagrams identify the location and pinouts of such connectors. The hardware for data collection and transmission shall be located behind a hinged and lockable panel with connection to the device(s) easily accessible.
- d) Data shall also be made available to the Authority via web tools and/or APIs.
- e) The Proposer shall be capable of providing a management and analytic software platform, or database repository, to monitor, log, track and analyze Charger data.
- f) The system shall be capable of collecting and providing reports to the Authority for the purpose of analyzing charger performance. Data collected and provided shall include but not be limited to energy consumption of the chargers and power output when charging as well as fault and diagnostic codes. The Authority prefers that at least that the following summary reports be readily available and accessible for analytics and diagnostics: All charging sessions, with charger ID, bus ID, timestamp, duration of charge, DC output energy (kWh), AC input energy (kWh), max power output (kW), and idle energy consumption.

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- g) The charger system shall have sufficient onboard storage to buffer data during brief loss of connection to the mobile data network.
- h) The Proposer shall provide cloud-based storage for at least one year's worth of collected information.
- i) Proposer shall provide the Authority access to the collected data at no additional charge.
- j) High resolution, high frequency data is preferred. The Authority favors systems that can provide second by second data over systems that only provide aggregated data.
- k) The chargers shall include instrumentation capable of metering and logging data and transmitting it to cloud storage, including but not limited to:
  - Measures and displays kWh consumed and real-time load in kW within 1% accuracy,
  - Records energy (kWh) for both the DC output and AC input,
  - Records fault codes and timestamp
  - Maintains interval data storage in a first-in, first-out format,
  - Data is recorded and stored at 10 second intervals during charging sessions and 15-minute intervals during idle periods.
- j) The proposer shall propose a solution for charge management option to allow for specific charge times, schedules, and power delivery levels to the bus based on energy demand.

## 5. Inspection, Acceptance, and Commissioning

### 5.1. Inspection, Acceptance, and Commissioning Requirements

- a) Inspections will be carried out by the Authority to determine compliance with Requirements that may be beyond the scope of jurisdictional inspections. The Authority, or its identified 3rd party authority, will prepare a punch list as a result of physical inspections, start-up tests, and functional demonstrations. The completion schedule will be agreed upon by the Authority and the Proposer.
- b) The Proposer shall provide an acceptance testing and commissioning plan for all supplied equipment that shall include detailed instructions and requirements for testing and commissioning the charging system (i.e., dispensers, power converters, mounting hardware and equipment, and all required wires, cables, and connections). The Proposer shall include in the plan a list of activities to be performed by a third-party vendor during installation that would require technical support and provide details on how the Proposer will provide technical support for these activities.
- c) At the time of acceptance testing and commissioning, Proposer shall submit a written report to the Authority listing all incidents and unusual system performance issues, as well as documenting correct function per the approved commissioning plan. Acceptance testing and commissioning involves ensuring that the charging solution integrates with and charges with a pilot bus or the electric buses being ordered, respectively. In addition, the Proposer must demonstrate the successful operation of any data monitoring and charge management services. The Authority personnel may observe any testing in progress.

### 5.2. Inspection, Acceptance, and Commissioning Supporting Documents

The Proposers shall provide the following supporting materials with the proposal:

- a) Acceptance Test and Commissioning Plan

### 5.3. Charging System Acceptance Requirements

- a) The charging systems will be considered complete and accepted for ownership by the Authority upon the Authority's issue of notice of Final Acceptance to the Proposer. The Authority's Final Acceptance will be issued immediately upon the Proposer's demonstration to the Authority that the

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depot charging systems designed, delivered, assembled, and installed/constructed by the Proposer are fully compliant with all Requirements, and all punch list items are complete. Minimum requirements for completion of the charging system are as follows:

- The design, delivery, assembly, installation of complete and fully functional depot charging systems.
- Successful completion of all necessary inspections as required by Authority Having Jurisdiction (AHJs) and receipt of all necessary operating approvals as required by AHJs.
- Proposer to complete acceptance testing. Successful testing of charging system performance by completing the tests outlined below.
- Charger output is dependent on delivery of power as requested by the vehicle within the limitations of the charger design.

#### 5.4. Performance Tests

##### 5.4.1. Depot Plug-In Charger Performance Test Requirements

The Depot Plug-In Charger performance test requirements include:

- a) At a minimum, the Proposer shall demonstrate five (5) successful charge initiations and a minimum of one (1) hour of continuous bulk charging with the bus on each of the depot chargers. Completely charging a bus to full SOC is preferred.

##### 5.4.2. Commissioning certificate to be supplied by the contractor upon successful commissioning and acceptance of the charging system(s). Demonstrate charging at rated power or maximum power the bus will accept, whichever is lower, for 15 minutes. On-Route Overhead Chargers Performance Test Requirements

The On-Route Overhead Charger performance test requirements include:

- a) At a minimum, the Proposer shall demonstrate twenty (20) successful charge initiations with the bus on each of the overhead conductive chargers.
- b) Commissioning certificate to be supplied by the contractor upon successful commissioning and acceptance of the charging system(s).
- c) Demonstrate charging at rated power or maximum power the bus will accept, whichever is lower, for 15 minutes. Completely charging a bus to full SOC is preferred.
- d) If possible, the Proposer shall also demonstrate that all combinations of any two concurrent charging operations in the same vicinity successfully initiate and maintain a charge event.

#### 5.5. Functional Tests Requirements

##### 5.5.1. Noise Measurements.

Tests shall be conducted by the Proposer in the presence of the Authority representatives to ensure airborne noise generated by the depot charging system while operating at full capacity does not exceed 60 dBA when measured 25 feet from charging system equipment in any direction. The Proposer shall also ensure compliance with the exterior noise requirements defined in local laws and ordinances.

##### 5.5.2. Emergency Shutdown System.

Tests of manual shutdown devices on the charging systems shall be conducted to determine their effectiveness in accordance with the emergency stop requirements of SAE J1772 or J3015, as applicable. To the extent possible without inflicting damage to charging or bus equipment, all automated emergency stop conditions shall also be simulated to determine their effectiveness in accordance with the emergency stop requirements of SAE J1772 or J3015, as applicable.

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5.5.3. Remote Monitoring Provisions.

All remote monitoring, control, and data logging functionality shall be verified by the Proposer. Deficiencies shall be recorded and corrected by the Proposer to the satisfaction of the Authority. Any or all open items, resulting from these tests shall be addressed and completed to the satisfaction of the Authority.

5.5.4. Ancillary Items.

The operation and function of ancillary items of the charging system shall be tested in the presence of the Authority representatives. Deficiencies shall be recorded and corrected by the Proposer to the satisfaction of the Authority. Ancillary items shall include but not be limited to: depot charging system lighting; doors; locks; control panels; switches; and security systems.

Punch lists, resulting from Inspections of charging system carried out by the Authority representatives, are addressed, and completed to the satisfaction of the Authority:

- The Proposer has presented the Authority all required deliverables per the Contract terms – including, but not limited to, product information / verification forms, installation / start-up checklists, functional performance tests, final customer experience report, operator and maintenance manuals, system manuals and diagrams, and parts manuals.
- The Proposer has completed all Contract specified Operational Training.
- The Proposer and the Authority have agreed to a schedule of Maintenance Training to be provided by the Proposer.

5.6. Final Commissioning.

For each of the chargers in the charging systems provided, a final commissioning will be completed on the electric buses upon their arrival on the Authority's property. Manuals, Diagrams, Training, and Recommended Spare Parts

5.7. Operating Manuals Requirements

- a) Proposer shall provide the Authority with three identically bound sets of operating manuals for the depot plug-in and end of line on route overhead charging systems. Operating manuals shall include step-by-step instructions to properly start, utilize, control, and shut down depot charging systems components. The operating manuals shall include instruction in the proper utilization of the depot charging systems and procedures to be observed. The target audience for the operating manuals shall be the Authority fleet servicing personnel charged with opening, undertaking, and closing the fleet refueling process.
- b) The Proposer shall also provide the Authority with operating manuals in electronic (PDF) format. The operating manuals in electronic format shall be duplicate in content and organization to the bound sets of operating manuals for the on-route and depot charging systems.
- c) The Authority shall have final approval for content of delivered operating manuals.

5.8. Diagrams Requirements

- a) Proposer shall provide single-line electrical diagrams for the installed charger bank in both PDF and CAD formats. Diagrams shall include (but not limited to) all of the chargers, conductors, switches, and show the connection to primary electrical service.

5.9. Maintenance Manuals Requirements

- a) Proposer shall provide the Authority with three identically bound sets of maintenance manuals for the depot plug-in and fast lane charging systems. Maintenance manuals shall include step by step instructions to properly maintain all depot plug-in and fast lane charging systems and equipment/components. In addition to Process and Instrumentation Drawings (P&ID's) and detailed



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descriptions of system function and operation, maintenance manuals shall, at minimum, include information on proper trouble shooting steps, system logic, preventive maintenance, and repair procedures for all major components and systems. Maintenance manuals shall include all applicable wiring and logic diagrams.

- b) The target audience for the maintenance manuals shall be the Authority personnel charged with maintenance of the Authority facilities.
- c) The Proposer shall also provide the Authority with maintenance manuals in electronic text-selectable (PDF) format. The maintenance manuals in electronic format shall be duplicate in content and organization to the bound sets of maintenance manuals for the on-route and depot charging systems.
- d) The Authority shall have final approval for content of delivered maintenance manuals.

#### 5.10. Parts Manuals Requirements

- a) Proposer shall provide the Authority with three identically bound sets of parts manuals for the depot charging systems. Parts manuals shall include the P&ID's, graphical parts breakdowns (parts diagrams) and associated parts lists for all major systems, assemblies, components, and subcomponents of the on-route and depot charging systems. The parts diagrams shall be organized and clearly associated with parts lists using unique identifiers. Parts lists shall minimally define serviceable parts by system, assembly, noun name of part, the major component the part relates to, original equipment manufacturer (OEM), the OEM part number, life expectancy (in years or usage), unique part number and quantity per associated assembly.
- b) The Proposer shall also provide the Authority with parts manuals in electronic (PDF) format. The parts manuals in electronic format shall be duplicate in content and organization to the bound sets of parts manuals for the on-route and depot charging systems. Electronic manuals shall be compatible with the Authority's parts catalog documentation software. Manuals shall be text selectable. Parts list and associated parts graphics are preferred to be received in Excel format to facilitate seamless integration or parts lists with the Authority's system and its relational database.
- c) The Authority shall have final approval for the content of delivered parts manuals.

#### 5.11. Training Requirements

- a) Proposer shall provide 40 hours of training for the Authority's maintenance personnel upon initial system installation and for future maintenance of the system. The training plan shall consist of the following details: description of the courses, suggested attendees, course length, and suggested timing.
- b) The Authority reserves the right to modify the proposed training plan to meet the needs of the Authority.
- c) The instructor must be capable of training 10 of the Authority's personnel simultaneously in each course.
- d) The Proposer must provide a one hour bi-annual webinar for new Authority employees and a refresher course within 60 days before expiration of the warranty.
- e) The Proposer shall provide the training syllabus and all training material for review and approval by the Authority Project Manager prior to commencement of training. Proposer shall provide all necessary equipment to facilitate the training. The Authority will specify the time and location for delivery for the on-site training courses at a later date after consulting with the Proposer for availability.
- f) Proposer shall provide training video in video format for future training of Authority personnel.



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## 5.12. Recommended Spare Parts List Requirements

- a) The Proposer shall provide the Authority with a list of recommended spare parts for the depot plug-in and fast lane charging systems. Recommended spare parts lists shall, at minimum, define serviceable parts by system, assembly, noun name of part, the major component the part relates to, original equipment manufacturer (OEM), the OEM part number, life expectancy (in years or usage), unit price, unique part number and quantity per associated assembly.
- b) The Proposer shall provide the Authority with a list of recommended spare parts to have on-hand for the first year of maintenance and repair after Final Commissioning.
- c) The Proposer shall also provide the Authority with a list of recommended spare parts for the charging systems in electronic (PDF and Excel) format. The list of recommended spare parts for the charging systems in electronic format shall be duplicate in content and organization to the hard copy of the recommended list of spare parts for the charging systems.

## 6. Updates and Changes

### 6.1. Updates Requirements

For a period of 5 years or for the duration of time when the product cycle is updated, whichever is longer, following the Authority's final acceptance of the charging systems, Proposer shall provide the Authority with all updates to maintenance manuals, parts lists, and procedures for all systems, equipment, or components of the charging system as issued by the Proposer and/or supplier to the Proposer.

### 6.2. System Changes

Changes to chargers, including hardware, software, and firmware, must be coordinated with the Authority to minimize disruptions to service. Additionally, Proposer must provide evidence to the Authority that the change has been successfully tested with the same model of buses provided by the Proposer to The Authority. If this is not possible, Proposer must submit a test plan to the Authority and the Authority must approve the test plan before work to implement the change at the Authority can commence. If initial validation or verification must be done on the Authority equipment, then the upgrades may only be made to a single charging unit and verified for a period of 7-days in service before rolling upgrades out to remainder of chargers in the fleet. If upgrades experience any issues during install or the 7-day period, then the chargers must be reverted back to the last working version until the issues are resolved at the factory.

## 7. Warranty

### 7.1. Warranty Requirements

The Proposer shall provide a minimum one (1) year parts and labor warranty, including planned service, on the depot plug-in, and on-route overhead charging systems which shall commence upon the date of final acceptance, successful completion of commissioning and approval by the agency, of each charging system as issued by the Authority. Proposers should clearly define all terms of the warranty in their response and include the costs of a one-year warranty in the Cost Proposal. The Proposer is also asked to propose a six-year extended warranty in the pricing section. The proposer is also invited list other available warranty options in the proposal narrative, clearly defining all terms.

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## 7.2. Voiding the Warranty

The warranty shall not apply to any depot charging system failure or damage resulting from accident, misuse, or negligence for which the Proposer is not responsible. Normal use shall include conditions prevalent in the normal (day to day) operational and maintenance procedures.

## 7.3. Warranty Repairs

The contractor shall have a duration of 18 hrs. from a fault reported by the system to respond to the event and 72 hrs. from time of report to address the issue. The malfunctioning system or component must be properly functioning within 72 hours of receiving notice of a charging system issue from the Authority.

~~If during the warranty period, any replacement, repair, or modification on a charging system component, made necessary by defective design, materials, or workmanship is not completed within 48 hours, the warranty period for the entire charging system shall be extended by the number of days equal to the delay period.~~

The charger systems base warranties as provided by the charger manufacturer shall be in effect. Extended Warranty options and Service Level Agreements shall be made available to the Authority to consider and the Authority shall be able to separately enter into these options and agreements outside the scope of this contract.

## 7.4. Pass-Through Warranty

Should the Contractor elect to not administer warranty claims on certain components and wish to transfer this responsibility to the sub-suppliers, or to others, the Contractor shall request this waiver.

Contractor shall state in writing that the Authority's warranty reimbursements will not be impacted. The Contractor also shall state in writing any exceptions and reimbursement including all costs incurred in transport of vehicles and/or components. At any time during the warranty period, the Contractor may request approval from the Authority to assign its warranty obligations to others, but only on a case-by-case basis approved in writing by the Authority. Otherwise, the Contractor shall be solely responsible for the administration of the warranty as specified. Warranty administration by others does not eliminate the warranty liability and responsibility of the Contractor.

## 7.5. Superior Warranty

The Contractor shall pass on to the Authority any warranty offered by a component Supplier that is superior to that required herein. The Contractor shall provide a list to the Authority noting the conditions and limitations of the Superior Warranty not later than the start of production. The Superior Warranty shall not be administered by the Contractor.

Charger Quality, Training and warranty:

The contractor shall ensure all quality, warranty and training pertaining to chargers shall be followed as laid out by the original contract.

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## 8. Timeline

### 8.1. Timeline Requirements

Estimated lead time for delivery of the proposed chargers or charging assemblies and estimated lead time for delivery of charging assembly component elements (if available) is requested with the responses to this request.