

**Request for Proposal for Design and Manufacture  
of Rail Cars and Related Services  
Solicitation # 20CTRAIL-1  
Part 5: Draft Contract**

**CONTRACT  
BETWEEN  
THE STATE OF CONNECTICUT, DEPARTMENT OF TRANSPORTATION  
AND  
[CONTRACTOR]  
FOR DESIGN AND MANUFACTURE OF RAIL CARS AND RELATED SERVICES**

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ATTACHED SCHEDULES

SCHEDULE A -	DEFINITIONS
SCHEDULE B -	SCOPE OF WORK
SCHEDULE C -	TECHNICAL SPECIFICATION
SCHEDULE D -	PAYMENT SUMMARY
SCHEDULE E -	NOTICE TO EXECUTIVE BRANCH STATE CONTRACTORS AND PROSPECTIVE STATE CONTRACTORS OF CAMPAIGN CONTRIBUTION AND SOLICITATION LIMITATIONS

## CONTRACT FOR DESIGN AND MANUFACTURE OF RAILCARS AND RELATED SERVICES

THIS CONTRACT for Design and Manufacture of Rail Cars and Related Services ("Contract") concluded at Newington, Connecticut, by and between the State of Connecticut, Department of Transportation, with its principal place of business at 2800 Berlin Turnpike, Newington, CT 06131, Joseph Giulietti, Commissioner, acting herein by Richard W. Andreski, Public Transportation Bureau Chief, duly authorized ("CTDOT"), and [INSERT NAME], authorized to do business in the State of Connecticut, having a principal place of business located at \_\_\_\_\_, acting herein by [INSERT NAME], \_\_\_\_\_ (INSERT TITLE) \_\_\_\_\_, duly authorized. ("CONTRACTOR"). CTDOT and Contractor may be referred to each individually as a "Party" and collectively as the "Parties."

WHEREAS, CTDOT conducted a competitive solicitation and selected Contractor to design, manufacture, test, deliver and commission FRA-compliant, single-level, push-pull trailer cars and cab cars needed for the operation of passenger rail service in the State of Connecticut;

WHEREAS, CONTRACTOR agrees to perform all work to deliver the rail cars and supply all parts and services as set forth in the Contract; and

WHEREAS, pursuant to § 13b-36(a) of the General Statutes of Connecticut, as revised ("CGS") the Commissioner is authorized to enter into this Contract.

NOW, THEREFORE, CTDOT AND CONTRACTOR MUTUALLY AGREE AS FOLLOWS:

### Article 1. WORK AND PERFORMANCE REQUIREMENTS

- 1.1 The acronyms and definitions that apply to this Contract, including its attached Schedules, are set forth in Schedule A attached to this Contract.
- 1.2 Contractor shall perform all services and provide all goods and materials ("Work") set forth in the Scope of Work attached as Schedule B and in accordance with the Technical Specification attached at Schedule C, including any Option Work that may be exercised by CTDOT pursuant to Article 10.
- 1.3 Contractor shall, throughout the Term, comply with all applicable Federal and State laws, regulations, codes, standards, guidelines, and guidance ("Requirements"), including without limitation the following, each as may be revised from time to time:
  - (a) Federal Railroad Administration requirements set forth at Title 49 of the U.S. Code and U.S. Federal Regulations; and

- (b) Americans with Disabilities Act (ADA) and associated regulations and guidance promulgated under the ADA, including without limitation those issued by the U.S. Department of Transportation at 49 CFR Part 38.

In case of conflict between the Federal and State laws, regulations, codes, standards, guidelines, or guidance, the more stringent Requirement will prevail as the minimum with respect to the performance of Work under this Contract, except that in case of a conflict between a Federal statute or regulation and a State statute or regulation, the Federal statute or regulation shall prevail where the State statute or regulations is preempted by Federal law.

- 1.4 Upon prior written approval from CTDOT, Contractor may engage subcontractors to perform portions of the Work. In the event of subcontracting, Contractor shall impose onto its subcontractor(s) all requirements under this Contract related to such Work being subcontracted and, accordingly, include in its subcontracts all applicable "flow-down" provisions. Notwithstanding the ability to impose Work obligations onto its subcontractor(s), Contractor shall remain the responsible party for the successful completion of the Work to CTDOT's satisfaction under this Contract.
- 1.5 Contractor shall be responsible for paying any and all fines or damages (a) imposed for failure to comply with this Article 1, any applicable Requirements or (b) associated with any acts or omissions of Contractor, its employees, agents, representatives, and subcontractors with regard to their performance under this Contract. The cost of all such fines and damages are not transferable to CTDOT.
- 1.6 When directed by CTDOT, Contractor shall perform Change Order Work in accordance with written confirmation of the Change Order and all applicable requirements of this Contract.
- 1.7 If any portion of the Work performed by Contractor or its subcontractor(s) is not completed to CTDOT's satisfaction, and if upon notification by CTDOT, Contractor fails to complete or correct (or have its subcontractor(s) complete or correct within the timeframe designated by CTDOT in its notification to Contractor, CTDOT reserves the right to arrange for others to complete or correct such Work and, at CTDOT's discretion, all costs and expenses incurred by CTDOT in doing so shall be deducted from any monies due or to become due to Contractor from CTDOT or shall otherwise be reimbursed by Contractor and its surety.
- 1.8 Contractor shall perform any additional work required in order to correct deficiencies resulting from the acts or omissions of Contractor or its subcontractor(s) performing under the Contract, as determined by CTDOT in its sole reasonable discretion, without charge to CTDOT. Any investigation associated with such additional work shall be performed by Contractor at its sole cost and expense and shall not be considered Change Order Work.

- 1.9 When accessing the CTrail Shore Line East and Hartford Line territories, Contractor, and its subcontractors, shall comply with the requirements of host railroads, as applicable, including without limitation, obtaining a permit to enter, and requiring Personnel to complete safety training. Contractor shall require its subcontractor(s) to comply with all such requirements as may be imposed by the host railroad. The costs to Contractor or any subcontractor associated with such host railroad requirements are not transferable to CTDOT.

Article 2. COMMENCEMENT OF WORK AND TERM

- 2.1 This Contract shall not be effective until the date it is approved by the Attorney General (“Effective Date”). Once effective, the Contract itself is not an authorization for Contractor to begin performing Work. Contractor may begin to perform Work, or a portion of the Work, only after it has received from CTDOT a written NTP for the Work or a portion of the Work. Performance without a written NTP from CTDOT is prohibited and done so at Contractor’s own cost and risk.
- 2.2 The term of the Contract shall commence on the Effective Date and extend through all warranty periods applicable to the rail cars and its individual components and through the duration of any Option Work exercised by CTDOT (collectively, the “Term”).

Article 3. PERSONNEL

- 3.1 Contractor shall ensure that the Work is performed by qualified and experienced personnel, including its own personnel and the personnel of its subcontractors (collectively referred to for the purposes of this Article as “Personnel”). For purposes of this Article, “qualified” shall mean having satisfied the training requirements for a specified position and possessing the background, skills and experience necessary to fulfill the duties of the specified position as described in the respective section of the Scope of Work and Technical Specification referring to such specified position.
- 3.2 Contractor shall be and remain responsible for the performance of all of the Work, whether or not subcontracted, and shall utilize to the fullest extent the specialized expertise and experience of the Personnel designated to perform the Work.
- 3.3 Contractor shall ensure that Personnel designated to serve as liaison to CTDOT and/or provide support to CTDOT and its representatives (including its contracted maintenance provider and service operator(s)) are sufficiently fluent and versed in their speech, writing, and understanding of the English language so as to enable a facile and comprehensive language intercourse among Contractor, CTDOT, and their representatives, and to preclude misunderstandings and delays that might otherwise result.

- 3.4 CTDOT shall have the right to demand that Contractor immediately remove from Work under the Contract any Personnel or subcontractor, when CTDOT determines, in its reasonable discretion, such removal to be in the best interest of the State by sending written notice from the Rail Administrator to Contractor's designated project manager.
- (a) In a timely fashion, Contractor shall secure replacement Personnel or a replacement subcontractor who possesses expertise and experience that, at the sole discretion of CTDOT provide the skill and experience that is needed for the Work to be performed by the replacement Personnel or subcontractor. CTDOT reserves the right to approve all replacement Personnel and subcontractors prior to their commencement of any Work.
  - (b) Contractor shall be responsible for any additional costs and expenses caused by the need to replace Personnel or subcontractor(s). In no event shall any replacement of Personnel or subcontractor(s) result in an increase in compensation to be paid Contractor by CTDOT or a modification to the schedule set forth in the Scope of Work or the Milestones set forth in the Payment Summary attached at Schedule D.
- 3.5 Contractor shall fully comply with all applicable laws, rules, and regulations with respect to workers' compensation, social security, unemployment insurance, hours of labor, wages, working conditions, and other employer-employee related subjects. Contractor agrees to comply with, if applicable, the prevailing wage requirements under State of Connecticut law.
- 3.6 Contractor shall ensure that its Personnel and any subcontractor personnel adhere to established security and/or property entrance policies and procedures when onsite at any CTDOT location or premises.
- 3.7 Contractor shall implement and maintain a plan to promote affirmative action in its employment, hiring, and promotion and submit evidence of the affirmative action plan to CTDOT for review and approval.

Article 4. INSPECTION AND SHIPPING OF RAIL CARS

- 4.1 Contractor understands and agrees that no Rail Car shall be shipped to CTDOT prior to CTDOT or its authorized representative inspecting the rail car and determining that each rail car is ready to be shipped, which shall be confirmed in a writing from CTDOT, which may be transmitted by electronic means. Such determination by CTDOT shall not be deemed as acceptance of the rail car or approval of the quality or sufficiency of Contractor's Performance. Nor shall such determination make CTDOT responsible in any way for the quality or sufficiency thereof or constitute a waiver of any warranties or guaranties, release Contractor from any liability, or limit any of CTDOT's remedies under this Contract.

- 4.2 Following a determination by CTDOT that a rail car is ready to ship, Contractor shall notify CTDOT of the date that each rail car will be shipped to CTDOT. Such notification shall be provided in writing at least five (5) working days prior to each such shipping.

Article 5. DELIVERY AND RECEIPT OF SPARE PARTS AND OTHER MATERIALS

- 5.1 Contractor shall notify CTDOT via email not less than fourteen (14) days prior to shipment of spare parts and other materials as specified in the Scope of Work that are to be shipped separately from the rail cars.
- 5.2 The spare parts and other materials shall be shipped to CT Rail Maintenance Facility.
- 5.3 Contractor shall prepare a receiving report using a form preapproved by CTDOT listing any missing parts or damage that may have occurred during shipment. The report shall be signed by both Contractor and CTDOT's contracted maintenance provider or other authorized CTDOT representative. All risk of loss and liability for any damage prior to receipt at CT Rail Maintenance Facility and CTDOT's sign-off on the receiving report shall be borne by Contractor.
- 5.4 On receipt of any such report which indicates a short shipment or damaged item, Contractor shall promptly replace any missing or damaged equipment and material to prevent delay to performance of the Work.

Article 6. DELIVERY AND RISK OF LOSS

- 6.1 Contractor shall deliver the rail cars to the CT Rail Maintenance Facility, in accordance with the schedule set forth in the Scope of Work. Rail cars may be delivered earlier than scheduled, with written concurrence from CTDOT, which will be granted at the sole discretion of CTDOT.
- 6.2 Delivery of the rail car(s) to the CT Rail Maintenance Facility will not constitute acceptance by CTDOT or its approval of the quality or sufficiency of Contractor's Performance.
- 6.3 All risk of loss to the rail car or any part thereof, prior to Contractor's delivery and CTDOT's Conditional Acceptance shall be borne by Contractor. Risk of loss and liability for any damage or vandalism to a rail car or any part thereof, including, but not limited to, that incurred during shipping or while on CTDOT property prior to CTDOT's Conditional Acceptance, will remain with the Contractor.
- 6.4 Only CTDOT's Conditional Acceptance of a rail car will transfer to CTDOT the risk of loss of the rail car, unless the loss or damage was due to the act(s) or omission(s) of the Contractor, and excepting Contractor's warranty obligations and such other requirements as contained within the Contract.

Article 7. DELAY IN PERFORMANCE

- 7.1 It is understood and agreed by Contractor that time is of the essence in the performance of the Work, of the character and quality specified in the Technical Specification and this Contract. Accordingly, Contractor must meet the delivery schedule for the rail cars and their associated deliverables in accordance with the Scope of Work and the Technical Specification. Upon the exercise of any rail car options set forth on the Scope of Work, the Parties will agree to a delivery schedule by way of exchange of mutual written consent by the authorized designees of the Parties.
- 7.2 In the event that any rail cars are not manufactured and delivered in accordance with the Technical Specification by the date(s) set forth in the Scope of Work, CTDOT may assess liquidated damages in the amount of Eight Hundred Dollars (\$800.00) per day per rail car not delivered to and Conditionally Accepted by CTDOT.
- 7.3 In the event of the following deliverables are not prepared and delivered in accordance with the Technical Specification by the dates set forth in the Scope of Work , CTDOT may assess liquidated damages in the amount of Two Thousand Dollars (\$2,000.00) per day, for each item listed below with reference to CDRL:
- (a) Operator’s Manual [CDRL 22-010]
  - (b) Service and Inspection Manual [CDRL 22-011]
  - (c) Troubleshooting Guide [CDRL 22-012]
  - (d) Running Maintenance Manual [CDRL 22-013]
  - (e) Heavy Maintenance Manual [CDRL 22-014]
  - (f) Integrated Schematic Manual [CDRL 22-015]
  - (g) Illustrated Parts Catalog [CDRL 22-016]
  - (h) Interactive Electronic Manuals [CDRL 22-017]
  - (i) Training Deliverables
    - (1) Introductory Familiarization and Inspection [Technical Specification Section 22.07]
    - (2) General Familiarization and Inspection [Technical Specification Section 22.07]
    - (3) Basic Training [Technical Specification Section 22.07]



- (4) Advanced Training [Technical Specification Section 22.07]
- (5) "As Deployed" [Technical Specification Section 22.07]

- 7.4 In the event that the specialized tools and diagnostic equipment (CDRL 20-004) are not manufactured and delivered in accordance with the dates set forth in the Technical Specification, CTDOT may assess liquidated damages in the amount of Two Thousand Dollars (\$2,000.00) per day.
- 7.5 During all Warranty Periods, and during the Post-Warranty Service and Support Period if that Option is exercised by CTDOT, in the event Contractor fails to deliver material so that it is received at CT Rail Maintenance Facility within twenty-four (24) hours of CTDOT's notification, CTDOT shall assess liquidated damages in the amount of One Thousand Dollars (\$1,000.00) per day for each day after the twenty-four (24) hour material delivery requirement. Once the material is available at the CT Rail Maintenance Facility, no additional liquidated damages shall be assessed for the respective material delivery.
- 7.6 When a delay in performance occurs due to reasonable causes beyond the control of Contractor, including but not limited to, Force Majeure events, the time for performance and completion of the work may be adjusted and extended as required to accommodate the delays and their effect.
  - (a) Contractor must notify CTDOT in writing within fourteen (14) days after becoming aware of the possibility of delay and any reasons for the delay and its estimated duration.
  - (b) Upon receipt of a written request and justification for any extension from Contractor, CTDOT may extend the time for performance of the Work, at CTDOT's sole discretion, for good cause shown by Contractor.
- 7.7 In the event that Contractor is rendered unable wholly or in part by a Force Majeure to carry out its obligations under this Contract, it is agreed that on notice to CTDOT setting forth the particulars of such Force Majeure, in writing, the obligations of Contractor to the extent affected by such Force Majeure shall be suspended during the continuance of any inability so caused, and such cause shall as far as possible be remedied with reasonable dispatch. Upon reengagement of Work, Contractor and CTDOT will formulate and agree upon an updated project schedule, taking into account the timeframe that has passed since the work stoppage, necessary time to resume or re-create any previously completed tasks due to damaged or missing equipment and any associated time periods for shipment and/or manufacture of equipment.

Article 8. ACCEPTANCE

- 8.1 CTDOT will commence to make arrangements for Conditional Acceptance

inspection and testing as expeditiously as possible after the delivery of each rail car. The Parties shall jointly perform Conditional Acceptance testing in accordance with the agreed-upon test plan pursuant to Technical Specification Chapter 19. On-site testing at the CT Rail Maintenance Facility shall occur on weekdays between the hours of 9 PM and 4 AM eastern time, unless otherwise specified by CTDOT. Contractor and CTDOT shall each ensure that it has a representative present during all onsite testing.

- 8.2 CTDOT will advise Contractor of any defects by reason of which CTDOT cannot make its Conditional Acceptance of the rail car in a written notice of rejection. Upon CTDOT's issuance of a notice of rejection, which may be transmitted by electronic means, the rail car(s) will be turned back to Contractor for appropriate corrective action(s). After Contractor has completed its corrective work, CTDOT and Contractor shall re-commence its Conditional Acceptance inspection and testing of the rail car.
- 8.3 If, during Conditional Acceptance inspection, CTDOT determines that a rail car(s) is suitable for operation in revenue service, but that it is not compliant with one or more Technical Specification requirement(s) and requires corrective action(s), CTDOT may, at its discretion, issue a certificate of conditional acceptance" for the rail car(s), which shall be signed by CTDOT and Contractor. Such Conditionally Accepted rail cars shall then be available to CTDOT for use in revenue service until such time as Contractor is able to perform the necessary corrective action(s).
- 8.4 The warranty period for the respective rail car and its parts shall commence upon Conditional Acceptance, except for those parts requiring corrective action.
- 8.5 CTDOT will determine Final Acceptance of each rail car, provided any deficiencies noted during Conditional Acceptance are corrected to CTDOT's satisfaction as determined at its sole discretion.

#### Article 9. CORRECTION OF DEFICIENCIES

- 9.1 In addition to the Conditional Acceptance process, if CTDOT determines that a deficiency exists in the rail cars or any of the spare parts or other materials and deliverables accepted by CTDOT under this Contract, CTDOT shall promptly notify Contractor of the deficiency, in writing, within ten (10) days. Upon timely notification of the existence of such a deficiency, or if Contractor independently discovers a deficiency in accepted material, Contractor shall promptly submit to CTDOT in writing within ten (10) days his recommendation for corrective actions, together with supporting information in sufficient detail for CTDOT to determine what corrective action, if any, shall be undertaken.
- 9.2 Within ten (10) days after receipt of Contractor's recommendations for corrective action and adequate supporting information, CTDOT shall give Contractor written

notice not to correct any deficiency, or to correct or partially correct any deficiency within a reasonable amount of time and at a specified location.

- 9.3 Contractor shall promptly comply with any timely written direction by CTDOT to correct or partially correct a deficiency, at no increase in cost to CTDOT. Contractor shall also prepare and furnish to CTDOT data and reports applicable to any correction required under this section (including revision and updating of all other affected data called for under this Contract) at no increase in the Contract price.
- 9.4 In the event of timely notice of a decision not to correct or only to partially correct, Contractor shall promptly submit a technical and cost proposal to amend the Contract to permit acceptance of the affected material in accordance with the revised requirements, and an equitable reduction in the pricing set forth in Schedule D Payment Summary shall promptly be negotiated by the parties and reflected in a Change Order.
- 9.5 If Contractor becomes aware at any time before acceptance by CTDOT (whether before or after tender to CTDOT) that a deficiency exists in any material, he shall promptly correct the deficiency or, if he elects to invoke the procedures in section 11.1 above, Contractor shall promptly communicate information concerning the deficiency to CTDOT, in writing, together with detailed recommendation for corrective action.
- 9.6 In no event shall CTDOT be responsible for extension or delays in the scheduled deliveries or periods of performance under this Contract as a result of Contractor's obligations to correct deficiencies, nor shall there be any adjustment of the delivery schedule or period of performance as a result of such correction of deficiencies, except as may be agreed to by CTDOT, in a Change Order.
- 9.7 It is hereby specifically recognized and agreed by the parties hereto that this clause shall not be construed as obligating CTDOT to increase the pricing set forth in Schedule D Payment Summary.
- 9.8 When CTDOT returns material to Contractor for correction or replacement pursuant to this section, Contractor shall be liable for transportation charges up to an amount equal to the cost of transportation by the usual commercial method of shipment from the designated destination point under this Contract to Contractor's plant, in addition to any charges provided for by section 9.9 below. Contractor shall also bear the responsibility and the risk of loss for the material while in transit.
- 9.9 When compliance with this Article by Contractor involves shipment of corrected or replacement material from Contractor to CTDOT, Contractor shall be liable for transportation charges up to an amount equal to the cost of transportation by the usual commercial method of shipment from the Contractor's plant to the

designated destination point under this Contract, in addition to any charges provided for by section 9.8. above. Contractor shall also bear the responsibility and the risk of loss for the material while in transit.

9.10 If Contractor fails or refuses to

- (a) Correct the material, or
- (b) Replace the material - and if Contractor fails to furnish timely disposition instructions, CTDOT may dispose of non-conforming supplies for Contractor's account in a reasonable manner, in which case CTDOT is entitled to reimbursement from Contractor or from the proceeds for the reasonable expenses of care and disposition, as well as for excess costs incurred or to be incurred; and
- (c) Obtain applicable data and reports; and charge to the Contractor the cost occasioned to CTDOT thereby.

9.11 Any supplies or parts thereof corrected or furnished in replacement and any services re-performed pursuant to this Article shall also be subject to all the provisions of the section to the same extent as supplies or services initially accepted.

9.12 Contractor shall be liable for reasonable cost of disassembly/reassembly of larger items necessary to remove the supplies to be inspected and/or returned for correction or replacement.

#### Article 10. OPTION WORK

10.1 CTDOT may, at its sole discretion, exercise any Options for additional rail cars or services as specified in the Scope of Work.

10.2 CTDOT shall have the right to exercise any option for additional rail cars up until the date that eighty percent (80%) of the rail cars currently under production (whether Base rail cars or Option rail cars, as applicable) are delivered to CTDOT. Contractor shall notify CTDOT in writing six (6) months prior to the expected date for such 80% completion.

10.3 CTDOT shall have the right to exercise the Post-Warranty Service and Support option up until twelve (12) months prior to the expiration of the warranty period of the first Conditionally Accepted rail car. Payment for the Post-Warranty Service and Support option, as set forth in the Payment Summary, shall be invoiced and paid in monthly installments.

10.4 The unit price for the additional rail cars purchased at CTDOT's option, if any, as set forth in the Payment Summary, shall be adjusted if exercised after twelve (12)

months from issuance of NTP. No price adjustment shall be allowed if the Option is exercised within the first twelve (12) months following issuance of NTP for the base order.

- (a) The price adjustment shall be based on the U.S. Department of Labor, Bureau of Labor Statistics, Producer Price Index as published in the monthly periodical "PPI Detailed Report" for NAICS 33651 Railroad Rolling Stock Manufacturing. The option prices will be adjusted according to the following equation:

$$\text{(Proposal Option Price)} \times \frac{\text{(PPI at time of NTP for Option)}}{\text{(PPI at time of NTP for Base Order)}} = \text{Adjusted Option Price}$$

The Producer Price Index (33651) used for the Price Adjustment calculation shall be in its originally published, unadjusted form.

#### Article 11. CHANGE ORDERS

- 11.1 CTDOT reserves the right to modify the Scope of Work and Technical Specification, including without limitation to address work required to be performed on an emergency basis, and accordingly, may, at any time during the Term, issue a Change Order to the Contractor to effectuate the modification. CTDOT shall address the Change Order to the Contractor's authorized designee and may transmit the Change Order by electronic means.
- 11.2 As soon as possible after the Contractor receives a Change Order, but in no event later than fifteen (15) business days thereafter, the Contractor shall, at Contractor's own cost and expense, provide CTDOT with a written statement either confirming that the Change Order has no price impact on the Contract or providing an explanation for the price increase or decrease, and if applicable, needed schedule adjustment, involved in implementing the Change Order with all supporting documentation required by CTDOT. Such written statement and supporting documentation should be addressed to the Engineer and may be submitted by electronic means. If the Contractor fails to respond in writing to CTDOT within the fifteen (15) business day time period, then Contractor shall be obligated to comply with the Change Order but without the benefit of any price increase adjustment. The Parties may agree to a reasonable adjustment in such response time period by the exchange of mutual written consent by the authorized designees of the Parties.
- 11.3 If the Contractor identifies needed modifications to the Scope of Work, then the Contractor shall prepare and submit to CTDOT a written request for a Change Order for the proposed modification, including an explanation for the requested modifications and a statement of the price impact, if any, and if applicable, needed

schedule adjustment. Such written request should be addressed to the Engineer and may be submitted by electronic means. If such request is approved by CTDOT, CTDOT will issue a written confirmation of the Change Order in accordance with section 11.4.

11.4 The Change Order will not be effective and the Contractor shall not commence performance of the work required under the Change Order (the "Change Order Work") until CTDOT issues to the Contractor a written confirmation of the Change Order signed by the Rail Administrator or his/her authorized designee. Such written confirmation may be transmitted by electronic means.

11.5 The Contractor shall promptly perform and complete the Change Order Work in accordance with any time frames or deadlines set forth in CTDOT's written confirmation of the Change Order.

## Article 12. INVOICING AND PAYMENT

12.1 Work performed is eligible for invoicing and payment only when Contractor successfully completes, to CTDOT's satisfaction, the Work, and submits valid, properly prepared invoices, containing a level of detail as set forth below that can be approved for processing, all in accordance with the following requirements:

- (a) In no event shall the amount set forth in any invoice submitted by Contractor exceed the agreed-upon amount set forth on the Milestone Table on the Payment Summary attached at Schedule D;
- (b) Contractor shall prepare a written certification at the time of completion of each Milestone or Work item certifying the successful completion of the applicable Milestone or Work item and forward it to CTDOT with the applicable invoice;
- (c) Documentation must be on file with Contractor and forwarded to CTDOT with each invoice to support Contractor's invoice;
- (d) Contractor's invoices shall reference the CORE I.D.# provided by CTDOT and, as applicable, the payment item, any applicable Option item or Change Order item, and be accompanied by a completed form titled "Invoice Summary and Processing (ISP) form" (available from CTDOT's website [www.ct.gov/dot](http://www.ct.gov/dot) as a fillable .xls file) and be submitted to the address and in the manner as stated on the ISP form;
- (e) All invoices must meet or exceed generally accepted accounting standards and must be in a format acceptable to CTDOT; and

- (f) Contractor's invoices may not be submitted more frequently than monthly.
- 12.2 CTDOT shall pay all undisputed portions of the invoices submitted by Contractor in US dollars within sixty (60) calendar days from date of CTDOT's receipt of the properly prepared invoice.
- 12.3 If an audit should disclose any payment to Contractor that exceeds 100% of Contractor's invoiced amount, this excess shall be returned to CTDOT within sixty (60) days from the date that CTDOT notifies Contractor of the excess payment.
- 12.4 An invoice, or portion thereof, submitted by Contractor may be rejected by CTDOT for any or all of the following reasons:
- (a) The amount invoiced is inconsistent with the Milestone Table or the Payment Summary;
  - (b) The invoice is for performance of Work under the Contract that is in dispute or for which Contractor has failed to otherwise comply with applicable Contract provision(s);
  - (c) The item or services presented in the invoice have not been accepted by CTDOT as successfully completed in accordance with the Scope of Work;
  - (d) The quantity of items delivered by Contractor is less than the quantity ordered by CTDOT;
  - (e) The items or services delivered by Contractor, and being invoiced, do not meet the quality requirements set forth in this Contract;
  - (f) Contractor has not submitted satisfactory supporting documentation or other evidence required by CTDOT for processing of invoices, as set forth in section 12.1 or
  - (g) The invoice is not properly prepared or does not contain a level of detail as set forth in section 12.1.

If CTDOT rejects an invoice in its entirety pursuant to this section 12.4, CTDOT will use best efforts to notify Contractor by way of Official Notice within ten (10) business days of CTDOT's receipt of the invoice, but failure to so notify Contractor within such timeframe shall in no way obligate CTDOT to pay any disputed amounts invoiced it has rejected pursuant to section 12.4. If CTDOT dispute(s) any item(s) or amount(s) on an invoice, it shall provide a written statement to Contractor as to the error or objection and pay any undisputed item(s) or amount(s) item no later than the date upon which payment is due. Within thirty (30) days thereafter, Contractor shall provide CTDOT with additional documentation to demonstrate the accuracy of the invoice or it will correct the invoice. The objection will be considered resolved unless CTDOT provides additional written objection to be Contractor within thirty (30) days of receipt of Contractor's additional

documentation or revised invoice

- 12.5 If CTDOT objects to any invoice or portion thereof, it shall pay the undisputed amount and provide a written statement to Contractor as to its objection no later than the date upon which payment is due. Within thirty (30) Days thereafter, Contractor shall provide CTDOT with additional documentation to demonstrate the accuracy of the invoice or it will correct the invoice. The objection will be considered resolved unless CTDOT provides additional written objection to be Contractor within thirty (30) Days of receipt of Contractor's additional documentation or revised invoice.
- 12.6 Payment for Milestones is conditioned on Contractor completing performance of the Work for the Milestone in the sequential order listed on the Milestone Table, unless otherwise as specified therein or as CTDOT may approve in advance during the Term.
- 12.7 In signing and submitting the ISP and invoice, Contractor represents and warrants that it has clear title to all materials and supplies for the Work included on the invoices for payment, and neither Contractor or its subcontractor(s) has subjected any such materials or supplies to any chattel mortgage or purchased them under a conditional sales or other agreement by which an interest is retained by the seller.

#### Article 13. REVIEW OF WORK & COOPERATION

- 13.1 CTDOT shall have the right to review at any time, the Work performed under this Contract. Contractor shall be and remain fully responsible for the Work performed under this Contract, and any review by CTDOT shall not relieve Contractor of this responsibility.
- 13.2 Contractor shall:
- (a) cooperate with staff, representatives, and contractors of CTDOT and individuals or entities identified by CTDOT on a reasonable basis including, without limitation, consultants to CTDOT, host railroads over which **CTrail** operates, and CTDOT's rail fleet maintenance provider, and **CTrail** service operators;
  - (b) attend such meetings, discussions, hearings as may be reasonably requested from time to time by CTDOT to effectuate this cooperation; and
  - (c) comply with all directives reasonably given by CTDOT with respect to specific coordination required with the aforementioned individuals or entities.



Article 14. INSURANCE FOR CONTRACTOR AND SUBCONTRACTOR(S)

14.1 Contractor shall carry, and shall require its subcontractor(s) to carry, at no direct cost to CTDOT, for the duration of the Contract (unless otherwise specified below), the following insurance coverages and minimum limits as described in (a) through (c) below, with CTDOT its officers, agents and employees being named an additional insured party.

- (a) Commercial General Liability Insurance providing for a total limit of \$1,000,000 combined single limit per occurrence for all damages arising out of bodily injury, personal injury to or death of all persons, and for all damages arising out of injury to or destruction of property, and, subject to that limit per accident, an aggregate limit of Two Million Dollars (\$2,000,000) for all damages arising out of bodily injuries to or death of all persons in all accidents or occurrences and out of injury to or destruction of property during the policy period. Coverage shall include Premises and Operations, Independent Contractors, Products and Completed Operations, Contractual Liability and Broad Form Property Damage coverage.
- (b) Automobile Liability Insurance with respect to the operation of all motor vehicles providing for a total limit of \$1,000,000 combined single limit per accident for bodily injury to or death of all persons in any one accident or occurrence, and for all damages arising out of injury to or destruction of property. Coverage extends to owned, hired, borrowed and non-owned automobiles used in connection with the Work. In cases where an insurance policy shows an aggregate limit as part of the automobile liability coverage, the aggregate limit must be at least Two Million Dollars (\$2,000,000);
- (c) Workers' Compensation and Employers Liability Insurance providing statutory coverage in compliance with the workers compensation laws of the State. Coverage shall include Employer's Liability with minimum limits of \$100,000 each accident, \$500,000 Disease Policy limit, \$100,000 each employee.
- (d) As applicable, with respect to any design or engineering services performed as part of the Work, Professional Liability Insurance for errors and omissions in the minimum amount of One Million Dollars (\$1,000,000), with the appropriate and proper endorsement to its Professional Liability Policy to cover the Indemnification clause (set forth in section 34.5 as the same relates to negligent acts, errors or omissions in the Work performed by the Contractor or its subcontractor(s) providing design services, as applicable. Contractor, or its subcontractor(s) may, at its election, obtain a policy containing a maximum Two Hundred Fifty Thousand Dollars (\$250,000) deductible clause, but if it should obtain a policy containing such a deductible clause, Contractor, or its subcontractor(s) shall be liable to the extent of the deductible amount. Contractor, or its subcontractor(s)

shall maintain this Professional Liability insurance coverage for a period of three (3) years from the date of Conditional Acceptance of the final rail car subject to the continued commercial availability of such insurance.

- 14.2 From the date of delivery of the first rail car and continuing through the date of Conditional Acceptance of the final rail car, and completion of all road testing, Contractor shall carry, and shall require any of its contractor(s) participating in Conditional Acceptance testing, if any, to carry:
- (a) Railroad Liability Insurance providing for a total limit of \$1,000,000 combined single limit per occurrence for all damages arising out of bodily injury, personal injury to or death of all persons, and for all damages arising out of injury to or destruction of property, and, subject to that limit per accident, an aggregate limit of Two Million Dollars (\$2,000,000) for all damages arising out of bodily injuries to or death of all persons in all accidents or occurrences and out of injury to or destruction of property during the policy period. Coverage shall include Premises and Operations, Independent Contractors, Products and Completed Operations, Contractual Liability and Broad Form Property Damage coverage. The Contractual Liability coverage shall not include exclusions or restrictions related to railroad operations within fifty (50) feet of a railroad. CTDOT, its officers, agents and employees, Amtrak, and Metro-North Railroad shall be named as additional insured parties.
  - (b) Railroad Protective Liability Insurance with coverage limits of not less than Two Million Dollars (\$2,000,000) per occurrence for all damages arising out of any one accident or occurrence in connection with bodily injury to, or death of, all persons or injury to or destruction of property, and, subject to that limit per accident, an aggregate limit of Six Million Dollars (\$6,000,000) for all injuries to persons or property during the policy period, and with all entities falling within any of the following named as insured parties: (i) the owner of the railroad right-of-way, (ii) the owner of any railcar licensed or permitted to travel within that affected portion of railroad right-of-way, (iii) the operator of any railcar licensed or permitted to travel within that affected portion of the railroad right-of-way, (iv) CTDOT, and (v) any other party with an insurable interest.
- 14.3 Contractor shall assume any and all deductibles in the described insurance policies. Contractor's and subcontractor's insurers shall have no right of recovery or subrogation against CTDOT and the described insurance shall be primary coverage. Any failure to comply with the claim reporting provisions of the policy shall not affect coverage provided to CTDOT. Claims made policies are not allowed.
- 14.4 In the event Contractor, or its subcontractor(s), as applicable, secures excess/umbrella liability insurance to meet the minimum coverage requirements

for Commercial General Liability or Automobile Liability Insurance coverage, CTDOT must be named as an additional insured on that excess/umbrella liability insurance policy.

- 14.5 The required insurance coverage of the types and minimum limits as required by the Contract must be provided by an insurance company or companies, with each company, or if it is a subsidiary then its parent company, authorized pursuant to the Connecticut General Statutes to write insurance coverage in the State of Connecticut and/or in the state in which it, or in which the parent company, is domiciled. In either case, the company must be authorized to underwrite the specific line coverage.
- 14.6 Contractor shall provide to CTDOT evidence of all required insurance coverages by submitting a certificate of insurance on the form(s) acceptable to CTDOT fully executed by an insurance company or companies satisfactory to CTDOT.
- 14.7 Contractor shall produce, and require any subcontractors, as applicable, to produce, within five (5) business days, a copy or copies of all applicable insurance policies when requested by CTDOT. In providing said policies, Contractor, or its subcontractor(s), as applicable, may redact provisions of the policy that are proprietary. This provision shall survive the termination of the Contract. Contractor agrees to notify CTDOT with at least thirty (30) days prior notice of any cancellation or change in the insurance coverage required under this Contract.

#### Article 15. BONDING REQUIREMENTS

- 15.1 Contractor shall furnish the following bonds in such form and substance as approved by CTDOT (collectively, the "Bonds") and maintain them throughout the Term and update as needed, as set forth in this Article. The Bonds shall satisfy the following minimum requirements:
  - (a) It shall be issued and executed by a surety reasonably acceptable to CTDOT and authorized to transact business in the State of Connecticut with a listing on the U.S. Department of Treasury's Listing of Approved Sureties (Department Circular 570);
  - (b) It must be signed by an official of Contractor, with the signature placed above his/her official title and the corporate seal affixed over the signature;
  - (c) It must be signed by an official of the surety company with the corporate seal affixed over his/her signature;
  - (d) The principal and the surety signatures must be witnessed by two witnesses whose signatures must appear on the Performance Bond; and
  - (e) Any power of attorney for the official signing the bond for the surety

company must be submitted with the Bonds. The Bonds and all replacements and substitutions shall be held by CTDOT.

15.2 Performance Bond. A Performance Bond will be required in the amount of the Base Order Pricing and shall adjusted accordingly throughout the Term as Contractor completes Work and, in the event, CTDOT exercises any Option Work. Such bond must be received prior to issuance of NTP. It is the responsibility of Contractor to ensure that its bond is updated as required.

15.3 Payment Bond. A payment bond will be required in the amount of Two Million Five Hundred Thousand Dollars (\$2,500,000.00). Such bond must be received prior to issuance of NTP. It is the responsibility of Contractor to ensure that its bond is updated as required.

15.4 Warranty Bond. Prior to CTDOT's issuance of Conditional Acceptance of each rail car, Contractor shall furnish a warranty bond in the amount totaling twenty-five percent (25%) of the cost of the rail car and maintain the warranty bond throughout the warranty period of each rail car to protect against faulty materials or workmanship.

The bond shall secure Contractor's obligation during the warranty period to provide required technical support and services and replace or repair defective materials and faulty workmanship for a minimum period of two (2) years after issuance of Conditional Acceptance of each rail car.

15.5 The Bonds shall not be considered a measure or limit of CTDOT's damages upon or following a Breach by Contractor. The Bonds may be drawn upon by CTDOT without prejudice to any remedy or remedies which CTDOT may have. Except in circumstances where there is a dispute between the Parties, the Bonds shall terminate and be released by CTDOT not sooner than six (6) months after the expiration of the Contract or earlier termination of the Contract.

#### Article 16. ASSIGNMENT OR TRANSFER OF CONTRACT

16.1 Contractor shall not sell, transfer, assign, or otherwise dispose of the Contract or any portion of it, or of the Work provided for in the Contract, or of its right, title, or interest in the Contract, to any person, party, entity, firm, partnership, company or corporation without the prior written consent of CTDOT. Any such prohibited action shall be void and of no force or effect. Violation of the above stipulation shall be deemed a Breach, CTDOT shall have the right to terminate this Contract without liability.

16.2 Contractor shall not subcontract any portion of the Work required for the completion of this Contract without the prior written approval of CTDOT. The form of any subcontract shall be as developed by Contractor and must be approved by

CTDOT.

- 16.3 CTDOT may assign this Contract, in full or in part, at any time without the consent of Contractor and will provide Official Notice to Contractor regarding such assignment.

Article 17. PROTECTION OF CONFIDENTIAL INFORMATION

17.1 Contractor and Contractor Parties, at their own cost and expense, have a duty to and shall protect from a Confidential Information Breach any and all Confidential Information of CTDOT or customers of the Service which they come to possess or control, wherever and however stored or maintained, in a commercially reasonable manner in accordance with current industry standards.

17.2 Contractor and Contractor Parties each shall develop, implement and maintain a comprehensive data - security program for the protection of Confidential Information of CTDOT and customers of the Service. The safeguards contained in such program shall be consistent with and comply with the safeguards for protection of Confidential Information, and information of a similar character, as set forth in all applicable Federal and State law and the written policy of the State concerning the confidentiality of Confidential Information. Such data-security program shall include, but not be limited to, the following:

- (a) A security policy for employees related to the storage, access and transportation of data containing Confidential Information;
- (b) Reasonable restrictions on access to records containing Confidential Information, including access to any locked storage where such records are kept;
- (c) A process for reviewing policies and security measures at least annually;
- (d) Creating secure access controls to Confidential Information, including but not limited to, passwords; and
- (e) Encrypting of Confidential Information that is stored on laptops, portable devices or being transmitted electronically.

17.3 Contractor and Contractor Parties shall notify CTDOT and the Attorney General as soon as practicable, but no later than twenty-four (24) hours after they become aware of or suspect that any Confidential Information which Contractor have come to possess, or control has been subject to a Confidential Information Breach. If a Confidential Information Breach has occurred, Contractor shall, within three (3) business days after the notification, present a credit monitoring and protection plan to CTDOT, for review and approval. Such credit monitoring or protection plan shall be made available by Contractor at its own cost and expense to all individuals

affected by the Confidential Information Breach. Such credit monitoring or protection plan shall include but is not limited to reimbursement for the cost of placing and lifting one (1) security freeze per credit file pursuant to CGS § 36a-701a. Such credit monitoring or protection plans shall be approved by CTDOT in accordance with this Section and shall cover a length of time commensurate with the circumstances of the Confidential Information Breach. Contractors' costs and expenses for the credit monitoring and protection plan shall not be recoverable from CTDOT, any State of Connecticut entity or any affected individuals.

17.4 Contractor shall incorporate the requirements of this Article 17 in all subcontracts requiring each Contractor Party to safeguard Confidential Information in the same manner as provided for in sections 17.2 and 17.3.

17.5 Contractor's or Contractor Parties' failure to encrypt the data, provide notice of a Confidential Information Breach, or to provide the credit monitoring or protection plan shall be a Breach of this Contract. Contractor shall be responsible for any Contractor Parties Breach as if Contractor itself had breached the Contract. Consequently, and without otherwise limiting the rights of CTDOT or the State at law or in equity, Contractor shall indemnify, defend and hold harmless CTDOT and the State for any and all damages, costs and expenses associated directly or indirectly with Contractor's or Contractor Parties' failure to comply with this Article 17. The damages, costs and expenses shall include, but not be limited to, those resulting from any corresponding contracting for credit or identity protection services, or both, and from any subsequent non-State use of any data.

17.6 This section shall survive the termination or expiration of the Contract.

Article 18. WARRANTY OF NON-INFRINGEMENT; OWNERSHIP OF DOCUMENTS

18.1 Contractor warrants that the processes, design, equipment, materials, or devices used in the performance of the Work shall all be delivered free of any rightful claim of any third party for infringement of any patent, copyright, or other intellectual property or proprietary right. If a suit or proceeding based on a claimed infringement of a patent or copyright is brought against CTDOT, Contractor shall, at its own cost and expense, defend or settle any such suit or proceeding if authorized to do so in writing by CTDOT, and indemnify and hold harmless the State and CTDOT, its successors and/or assigns, its subsidiaries, agents and employees from all liability, reasonable damages, costs, and expenses associated therewith, including, without limitation, defense costs and attorney fees.

18.2 All Records, documents, materials, procedures, and processes prepared and/or developed by Contractor and/or its subcontractors as required under this Contract, including without limitation the training documentation and curricula set forth in Chapter 22 of the Technical Specification, shall become the intellectual property of CTDOT and shall be provided to CTDOT in accordance with the Scope of Work.

Original copies of all such Records, documents, materials, procedures, and processes, including any electronic media of such shall be delivered to CTDOT by the respective deadlines set forth in the Scope of Work. With CTDOT's written concurrence, Contractor shall be permitted to retain copies of such items. For the purposes of this Section 18.2, "Records, documents, materials, procedures, and processes prepared and/or developed by Contractor" shall not be construed to mean pre-existing proprietary software or pre-existing works of authorship.

18.3 No materials or technical data prepared by Contractor or its subcontractors under this Contract shall be released to or used by any other person (other than CTDOT or the State) except as necessary for the performance of the Work. Contractor shall distribute all press releases or information to be published in print or electronic media only after receipt of written authorization from the Rail Administrator.

18.4 This Article 18 shall survive the termination or expiration of the Contract.

#### Article 19. REGISTRATION AND REVISIONS IN ORGANIZATION

19.1 Simultaneously with the execution of this Contract, Contractor shall provide evidence to CTDOT that it is registered with the Secretary of the State of Connecticut. Throughout the Contract, Contractor shall maintain its legal existence in good standing with the Secretary of the State of Connecticut and, if requested by CTDOT, provide evidence thereof.

19.2 Contractor shall notify CTDOT in writing when there is a change in its certificate of registration with the Connecticut Secretary of State's Office, or a change in the Key Personnel. Any such change shall not relieve Contractor of any responsibility for the accuracy and completeness of all services and products of the Work under this Contract, including any amendments or extensions to this Contract.

#### Article 20. DISPUTE RESOLUTION

20.1 With respect to disputes between the Parties arising out of or relating to the performance of their respective obligations under the Contract, and subject to Section 20.3 below, the Parties shall attempt in good faith to promptly resolve any dispute or controversy by negotiation.

20.2 Any Party may give the other Party written notice of any dispute not resolved in the normal course of business, specifically referring to this section. Notice to Contractor shall be addressed to the Project Manager. Notice to CTDOT shall be addressed to the Rail Administrator. The receiving Party shall promptly submit to the other a written response. The written notice and response may be transmitted by electronic means. The notice and the response shall each include a statement of the Party's position and a summary of arguments supporting that position. If

deemed appropriate, the Parties shall meet at a mutually acceptable time and place, and, thereafter, as often as they reasonably deem necessary, to attempt to resolve the dispute. The Parties agree that in efforts to resolve disputes, all reasonable requests for relevant information made by one Party to the other will be honored. It is the goal of the Parties to attempt to negotiate resolutions within thirty (30) days of the date that the written notification of a dispute is received by the receiving Party. If the issue is not resolved after meeting or if the Parties fail to meet for whatever reason, the matter shall automatically elevate to CTDOT's Bureau Chief for the Bureau of Public Transportation and to the designated corporate representative of Contractor to attempt to resolve the dispute.

20.3 If such Bureau Chief and designated corporate representative of Contractor are unable to reach agreement as to the resolution of the disputed issue(s), the issue(s) shall be subject to non-binding mediation. A written request for mediation can be made by either Party. The mediation shall take place at 2800 Berlin Turnpike, Newington, Connecticut, or at such location in Connecticut as the parties shall agree. The mediation shall be conducted before a single mediator to be agreed upon by CTDOT and Contractor. If CTDOT and Contractor cannot agree on the mediator, each shall select a mediator and such mediators shall together unanimously select a neutral mediator who will conduct the mediation. Each of CTDOT and Contractor shall bear the fees and expenses of its mediator and the fees and expenses of the final mediator shall be borne one-half by CTDOT and one-half by Contractor. The decision of the mediator shall be non-binding on CTDOT or Contractor.

20.4 If the Parties are unable to resolve their dispute through negotiation, the Parties reserve all other remedies under the Contract and at law. For issues related to safety, compliance with Federal and State law or other matters for which CTDOT determines immediate redress is required but that Contractor disputes, Contractor shall not delay its performance of any work required to redress such issues during the pendency of any dispute resolution process that Contractor may initiate under this Article. If a Federal, State or local authority having jurisdiction over the Work performed by Contractor pursuant to this Contract makes a determination that there is a violation of applicable safety or other regulations, that determination shall be final and binding on Contractor, and shall not, as between CTDOT and Contractor, be the subject of dispute resolution under this Contract.

20.5 Contractor shall continue to fully perform the Work and all of its obligations under the Contract, notwithstanding any dispute or dispute resolution process.

## Article 21. BREACH

21.1 The following shall be deemed to be a "Breach" of this Contract:

(a) Contractor fails to observe or perform any covenant, agreement,



obligation, condition or provision of this Contract, including, but not limited to, the Scope of Work, if such failure shall continue outside of any applicable cure period;

- (b) Contractor admits in writing its inability to pay its debts as they mature, or makes an assignment for the benefit of creditors, or applies for or consents to the appointment of a trustee or receiver for itself or for a substantial part of its property;
- (c) A trustee or receiver is appointed for Contractor for a substantial part of its property and it is not discharged within sixty (60) days after such appointment; or
- (d) Bankruptcy, reorganization, receivership, arrangement, insolvency or liquidation proceedings, or other proceedings for relief under any Federal or State bankruptcy law, or similar law for the relief of debtors are instituted by or against Contractor, and, if instituted against Contractor, are allowed against it or are consented to by it or are not dismissed within sixty (60) days after such institution.

21.2 If a Breach has occurred, CTDOT shall provide Official Notice to Contractor pursuant to Article 29. Such Official Notice may set forth, at CTDOT's discretion, an opportunity to cure such Breach within the time period set forth in the notice (the "Cure Period"). CTDOT may extend the Cure Period if CTDOT is satisfied that Contractor is making a good faith effort to cure, but the nature of the Breach is such that it cannot be cured within the Cure Period.

21.3 In the event of a Breach, CTDOT may require Contractor to prepare and submit to CTDOT a corrective action plan in connection with the Breach. The corrective action plan shall provide a detailed explanation of the reasons for the cited deficiency, Contractor's assessment or diagnosis of the cause, and a specific proposal to cure or resolve the deficiency. Contractor shall submit the corrective action plan within ten (10) business days following the request for the plan by CTDOT. The corrective action plan is subject to approval by CTDOT. Notwithstanding the submission and acceptance of a corrective action plan, Contractor remains responsible for achieving all performance standards, levels and requirements set forth in the Scope of Work. The acceptance of a corrective action plan shall not excuse prior substandard performance, relieve Contractor of its duty to comply with performance standards, levels and requirements or its obligation to pay damages, or prohibit CTDOT from pursuing additional remedies or other means to correct substandard performance.

21.4 CTDOT may include within the Official Notice of the Breach an effective termination date of this Contract. If the identified Breach is not cured by the stated termination date, unless otherwise modified by CTDOT in writing prior to such date, no further action shall be required of CTDOT to affect the termination as of the stated date. If

the notice does not set forth an effective termination date, CTDOT shall be required to provide Contractor no less than twenty-four (24) hours Official Notice prior to terminating the Contract.

- 21.5 If CTDOT reasonably and in good faith determines Contractor has not performed in accordance with the Contract, CTDOT may withhold payment in whole or in part in an amount reasonably related to the non-performance pending resolution of the performance issue, provided that CTDOT notifies Contractor in writing prior to the date that the payment would have been due.
- 21.6 A failure by either Party to enforce or require compliance with any provisions of this Contract at any time during the Term shall in no way affect the validity of this Contract, or any portion hereof, and shall not be deemed a waiver of the right of the Party thereafter to enforce any and each such provision.
- 21.7 This Article 21 shall survive the termination or expiration of the Contract.

## Article 22. TERMINATION

- 22.1 In addition to the termination rights set forth in Section 22.4 of this Contract, CTDOT may terminate the Contract whenever CTDOT makes a written determination that such termination is in the best interests of CTDOT or the State. CTDOT shall notify Contractor in writing of the termination in accordance with Section 22.2 of this Contract.
- 22.2 In the event CTDOT decides to terminate the Contract, CTDOT shall send the notice of termination to Contractor (a "Termination Notice") pursuant to the Official Notice requirements of Article 29. The Termination Notice shall specify the effective date of termination, no less than six (6) months from the date of the Termination Notice, and the extent to which Contractor must complete its performance under the Contract prior to such date. Upon receipt of a Termination Notice, Contractor shall cease operations as CTDOT directs in the Termination Notice, undertake commercially reasonable efforts to mitigate any losses or damages, take all actions that are necessary or appropriate, or that CTDOT may reasonably direct, for the protection, and preservation of the goods and materials and any other property. Except for any Work which CTDOT directs Contractor to perform in the Termination Notice prior to the effective date of termination, and except as otherwise provided in the Termination Notice, Contractor shall terminate or conclude all existing subcontracts and purchase orders and shall not enter into any further subcontracts, purchase orders or commitments. Contractor shall also deliver to CTDOT all Records in accordance with the Scope of Work. The Records are deemed to be the property of CTDOT and Contractor shall deliver them to CTDOT, at no cost or expense to CTDOT, no later than thirty (30) days after the termination of the Contract or fifteen (15) days after Contractor receives a written

request from CTDOT for the Records. Contractor shall deliver all Records in electronic, magnetic or other intangible form in a non-proprietary format, such as, but not limited to, ASCII or .TXT. Such transfer of Records shall not transfer ownership of intellectual property contained in such Records, except as provided in Section 21.2 of this Contract.

- 22.3 CTDOT shall, within forty-five (45) days of the effective date of termination, reimburse Contractor for its Work rendered and accepted by CTDOT or for any goods and materials delivered by Contractor prior to the date of the Termination Notice. In addition, CTDOT shall, within forty-five (45) days of the effective date of termination reimburse all reasonable actual costs incurred after termination in completing those portions of the Work or other close-out activities as required by the Termination Notice (“Post Termination Costs”). However, Contractor is not entitled to receive and CTDOT is not obligated to tender to Contractor any payments for anticipated or lost profits. Post Termination Costs shall be paid as Change Order Work under the Contract and shall constitute full and final payment for all services performed by Contractor under this Contract. Upon request by CTDOT, Contractor shall assign to CTDOT, or any replacement contractor which CTDOT designates, all subcontracts, purchase orders, warranties, and other commitments, and remove from State premises, whether leased or owned, all of Contractor's property, equipment, waste material and rubbish related to its Work. This section 22.2 shall survive the termination of this Contract.
- 22.4 Except as otherwise provided in this Contract, upon termination of the Contract, all rights and obligations shall be null and void, so that no Party shall have any further rights or obligations to any other Party, except with respect to the provisions in this Contract which survive termination. All representations and warranties of the parties under the Contract shall survive such termination to the extent not otherwise limited in the Contract and without each one of them having to be specifically mentioned in the Contract.
- 22.5 In the event CTDOT terminates this Contract in whole or in part, CTDOT may procure, upon such terms and in such manner as CTDOT may deem appropriate, supplies or services similar to those so terminated, and Contractor shall be liable to CTDOT for any excess costs for such similar supplies or services; provided that Contractor shall continue the performance of this Contract to the extent not terminated under the provision of this Article 22.
- 22.6 If this Contract is terminated as provided in this Article 22, CTDOT, in addition to any other rights provided in this section, may require Contractor to transfer title and deliver to CTDOT, in the manner and to the extent directed by CTDOT, any completed supplies, and such partially completed supplies and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and Contract rights (herein after called “manufacturing materials”) as Contractor may have specifically

produced or specifically acquired for the performance of such part of this Contract as has been terminated; and Contractor shall, upon direction of CTDOT, protect and preserve property in the possession of Contractor in which CTDOT has an interest.

- (a) Payment for completed supplies delivered to and accepted by CTDOT shall be at the Contract price.
- (b) Payment for manufacturing materials delivered to and accepted by CTDOT and for protection and preservation of property shall be in an amount agreed upon by Contractor and CTDOT; failure to agree to such amount shall be a dispute concerning a question of fact within the meaning of the section of this Contract entitled "Dispute Resolution", Article 20.
- (c) CTDOT may withhold from amounts, otherwise due Contractor for such completed supplies or manufacturing materials, such sum as CTDOT determines to be necessary to protect CTDOT against loss because of outstanding liens or claims of former lien holders.

22.7 Termination of the Contract pursuant to this Article 22 shall not be deemed to be a Breach of the Contract by CTDOT or the State.

#### Article 23. SUSPENSION OF THE WORK

- 23.1 CTDOT, in its sole discretion, reserves the right to stop or suspend all or any portion of the Work for such period as it may deem necessary or in the best interest of the State, including without limitation, due to the failure on the part of Contractor to carry out orders given or to perform any obligations under the Contract or to factors that are not the responsibility of Contractor. Contractor shall comply immediately with the written order of CTDOT to suspend the Work in whole or in part.
- 23.2 In the event that CTDOT orders a suspension of the Work in part, Contractor shall, to the extent reasonably practicable under the circumstances, safeguard the existing non- suspended Work.
- 23.3 If the suspension of Work is substantially due to Contractor's failure to perform Work to CTDOT's satisfaction or fulfill its responsibilities under this Contract to CTDOT's satisfaction, or other action or omission on the part of Contractor, all costs related to the suspension shall be borne by Contractor. Contractor shall not be entitled to additional compensation as a result of the suspension for any Change Order as a result of the suspension.
- 23.4 If the suspension of Work is due to factors that are not the responsibility of Contractor or its subcontractors, suspension of all or any portion of the Work may entitle Contractor to compensation and/or schedule extensions pursuant to

Section 23.7 of this Contract.

- 23.5 It is expressly understood and agreed that CTDOT's ordering of a suspension of Work under this Article 23 shall not prejudice CTDOT's rights to seek any remedies under the Contract or at law or in equity and obtain full reimbursement from Contractor of all damages caused by Contractor.
- 23.6 In the event of a suspension of the Work Contractor shall not be relieved of responsibilities under this Contract, except the obligations to perform the Work which CTDOT has specifically directed Contractor to suspend under this Article 23.
- 23.7 Contractor shall resume suspended Work pursuant to written direction from CTDOT and the requirements and the timeframe or schedule set forth in such written direction. Within seven (7) calendar days of receipt of the written direction to resume Work, Contractor may submit to CTDOT in writing a request for adjustment for additional time, and/or additional compensation, to complete the Work. The request shall set forth the reasons and support for any adjustment. CTDOT will notify Contractor within thirty (30) calendar days whether Contractor's request for additional time or compensation is or is not approved or if additional information is needed for CTDOT to complete its review of the request.
- 23.8 Contractor hereby agrees that he shall have no claim for damages of any kind on account of any delay in commencement of the work or any delay or suspension of any portion thereof, except as hereinafter provided.
- (a) If the Engineer in his judgment shall determine that the performance of all or any major portion of the work is suspended, delayed, or interrupted for any unreasonable period of time, any act of CTDOT in the administration of the Contract or by CTDOT's failure to act as required by the Contract within the time specified in the Contract (or if no time is specified, within a reasonable time), and without the fault or negligence of Contractor, an adjustment shall be made by CTDOT for any increase in the actual cost of performance of the Contract (excluding profit and overhead) necessarily caused by the period of such suspension, delay, or interruption.
  - (b) Adjustment shall be made also in the delivery or performance dates or any other contractual provision affected by such delay or interruption.
  - (c) No adjustment shall be made if the performance by Contractor would have been prevented by other causes even if the work had not been suspended, delayed or interrupted by CTDOT or its representative.
  - (d) No adjustment shall be made, under this Section, for which an adjustment is provided or excluded under any other Section of this Contract.

- 23.9 No claim shall be allowed under this Subsection for CTDOT's failure to act as required by the Contract within the time specified in the Contract (or if no time is specified, within a reasonable time) for any cost incurred more than twenty (20) days before Contractor shall have notified CTDOT in writing of his claim due to CTDOT's failure to act.
- 23.10 No claim under this Subsection shall be allowed unless the claim, in an amount stated, including breakdown of how the amount was computed, is asserted in writing as soon as practical after the termination of such delay or interruption, but not later than the date of the final payment under the Contract.
- (a) Any dispute concerning whether the delay or suspension is unreasonable or any other question of fact arising under this paragraph shall be determined by CTDOT or its designee and such determination and decision, in case any question should arise, shall be a condition precedent to the right of Contractor to receive any money hereunder."
- (b) Contractor further agrees that the sole allowance for any such delay or suspension, other than as provided above, is an extension of time as provided in Article 7.

#### Article 24. WARRANTY

- 24.1 Contractor warrants that all rail cars, specialized tools, diagnostic equipment, spare parts, material and equipment, and documentation shall be new, the best of its kind or quality, free from failures, defects in design, material and workmanship fit for its intended use as set forth in the Technical Specification, and of safe, substantial, and durable construction.
- 24.2 Contractor's obligation under this Article 24 shall be to promptly remedy any defect by repair or replacement, in accordance with the Scope of Work, and at Contractor's own cost and expense (including Contractor engineering time and cost of removal and installation), of any item which, under the contemplated specified use and with proper maintenance, proves defective or insufficient within its warranty period (whether the defect be patent or latent), or during such period proves to have failed to comply with the Technical Specification. Contractor must make arrangement with CTDOT's contracted rail equipment maintenance provider ("Maintenance Provider") to provide all labor to remedy such defects, at Contractor's cost with direct payment made to the Maintenance Provider.
- 24.3 Warranties in this Article are in addition to any statutory remedies or warranties imposed on Contractor.
- 24.4 All corrective and warranty work and services that are to be accomplished on the State's property must be performed by CTDOT's contracted rail equipment

maintenance provider (“Maintenance Provider”) designated by CTDOT. All negotiations for the performance of such work and services must be conducted solely with the Maintenance Provider. CTDOT shall not at any time, be charged for required corrective and warranty work and services provided by the Maintenance Provider or Contractor.

- 24.5 If, after placing the rail car into revenue service operation, and for the duration of the warranty period, the equipment fails to meet the terms of the warranty, CTDOT will notify Contractor of the existence of such a defect.
- 24.6 Contractor shall correct or replace the defective equipment at its expense including associated costs such as, but not limited to, freight out and in, service engineering charges, etc. and shall be subject to all provisions of this section to the same extent as materials initially delivered and shall be in accordance with section 24.2.
- 24.7 If Contractor receives warranties from Subcontractors, such warranties shall be passed to CTDOT.
- 24.8 The warranty shall not apply to any part or component of the rail car that has been subjected by CTDOT to negligent damage due to the negligence of CTDOT, accident, or that has been repaired or altered by CTDOT so as to adversely affect its performance or reliability, except insofar as such repairs were in accordance with Contractor’s maintenance manuals and the workmanship was in accordance with recognized standards of the industry. The warranty shall also be voided if CTDOT fails to conduct normal inspections and scheduled preventive maintenance procedures as recommended in Contractor’s maintenance manuals.
- 24.9 The warranty shall apply to scheduled maintenance items except consumables. The warranty shall extend to any part that fails or is damaged as a result of a failure of a warranted part.
- 24.10 When warranty repairs are required, CTDOT, and Contractor shall agree within two (2) working days or less after notification on the most appropriate course for the repairs and the exact scope of the repairs to be performed under the warranty.
  - (a) If no agreement is reached within two (2) working days or less, or if Contractor fails or refuses to replace or correct the deficiency, CTDOT may have the materials corrected or replaced with similar items.
  - (b) CTDOT will bill Contractor the full amount, plus a service and general administration fee, of the costs occasioned thereby, or obtain an equitable adjustment in the Contract price to compensate for the defects.
- 24.11 If CTDOT requires Contractor to perform major warranty covered repairs, Contractor must begin work necessary to effect repairs within five (5) working days

after receiving notification of a defect. CTDOT shall make the rail car available for complete repairs in accordance with Contractor's timely repair schedule.

- (a) It is agreed that Contractor will undertake major warranty repairs in accordance with section 24.2 (i.e. those which cannot be performed by the Maintenance Provider at the CCR shop) within five (5) working days after receiving notification of a defect. For non-major repairs, Contractor will perform the repair work as soon as possible, but not to exceed ten (10) days.

24.12 In no case shall corrective and/or warranty work, under guarantee or otherwise, of defects in design, material, or workmanship, take the form of an increase in maintenance requirement beyond that specified in the Contract, or that submitted by Contractor at the time of bidding for the Contract, or that described in the original edition of the maintenance instructions.

24.13 If CTDOT performs the warranty covered repairs, it shall correct or repair the defects and any related defects using Contractor supplied spare parts if available from its own stock, or those supplied by Contractor specifically for this repair.

- (a) If spare parts are not available from Contractor on a timely basis, then original parts of the same or better quality shall be used by CTDOT so as to maintain original equipment performance fit, durability, reliability, and function. Substitution of used parts for new spare parts is prohibited.
- (b) Monthly, or at a period to be mutually agreed upon, reports of all repairs covered by this warranty shall be submitted by CTDOT to Contractor for reimbursement or replacement of spare parts.

24.14 Contractor shall update the list of recommended spare parts as needed throughout the duration of the warranty period ("Warranty Spare Parts") which shall be maintained on site by Contractor.

- (a) Contractor may request that parts covered by the warranty be returned to the manufacturing plant. The total cost for this action shall be paid by Contractor.
- (b) CTDOT shall be reimbursed by Contractor for defective parts and for parts that must be replaced to correct the defect. It is agreed that any spare parts borrowed by Contractor shall be replaced with like components as originally delivered.
- (c) If any component, unit, or subsystem is repaired, rebuilt, or replaced by Contractor or by CTDOT, with the concurrence of Contractor, the subsystem shall have the unexpired warranty period of the original



subsystem.

- (d) Functional operation, as referred to above, shall commence on the date that the equipment is first put into revenue service operation. If the date of revenue service operation exceeds three (3) months from the date of actual delivery by the Supplier, the Supplier shall have the right to inspect his its equipment prior to revenue service operation.
- (e) At the end of the warranty period, a price for each warranty spare part shall be negotiated between CTDOT and Contractor in order for CTDOT to retain individual warranty spares in its inventory. Price shall be negotiated based on straight line depreciation of the individual part over its service life.

#### Article 25. FLEET DEFECT

- 25.1 Without limitation of other remedies, CTDOT may declare a fleet defect in the event that cumulative failures by either system orientation or of any kind identical components serving substantially similar functions exceed three (3) total failures or exceed five (5) percent of the total number of such components in the vehicles, in any consecutive twelve (12) month period prior to the expiration of the warranty period for the last rail car. Systems, subsystems or components which are out of warranty shall not be included in the above calculations.
- 25.2 In such event and notwithstanding the date of expiration or commencement of any warranty period as to any particular item(s), Contractor shall retrofit all item(s) in service and shall implement any necessary design or material modifications as to item(s) not yet accepted. If any such retrofit work is required, the warranty period as to the affected system, subsystem or component shall be extended by one (1) year from the completion of such retrofit work or the expiration of the previously effective warranty period applicable to such affected system, subsystem or component, whichever is later.
- 25.3 In the event that the calculations of failures, based on the above percentages, results in a fractional figure it shall be rounded off to the next highest whole number.

#### Article 26. TECHNOLOGY LICENSE

- 26.1 Contractor hereby grants to CTDOT on Contractor's behalf, and on behalf of its Subcontractors, suppliers and manufacturers (as to whom Contractor represents and warrants that it has the power and authority to grant such sublicense), an irrevocable, perpetual, royalty-free, nonexclusive license and sublicense ("Technology License") to use, itself or through its agents, for the approved purposes described in Section 26.2, below without recourse to the original

Contractor, Subcontractor, supplier or manufacturer: all patented, copyrighted and unpatented technology, know-how, trade secrets and other proprietary rights, and documentation thereof (except manufacturing detailed drawings and software, which is separately defined at and licensed pursuant to Article 27), which is included in the rail car, including but not limited to all systems, subsystems, assemblies, subassemblies, components, and interface systems and controls which are necessary for the maintenance and repair, modification and upgrading, overhaul and/or remanufacture of the rail car, and for the manufacture of parts which are unavailable for purchase, as defined below, all of which shall be designated the "Licensed Technology".

26.2 CTDOT's rights under this Technology License shall be limited to its use for the following:

- (a) evaluation and qualification for the purposes of future procurements of systems, subsystems and components of subsystems on the rail car to be delivered under this Contract;
- (b) preparation of specifications for future production orders of passenger rail vehicles employing some or all of the Licensed Technology;
- (c) maintenance and repair of the rail cars;
- (d) modification and upgrading of the rail cars;
- (e) overhaul and/or remanufacture of the rail cars;
- (f) manufacture of parts for the rail cars which become unavailable for purchase. The term "unavailable for purchase" means that a part is no longer being manufactured; or an inventory of the part in sufficient quantities to meet CTDOT's needs is not available for purchase; or no supplier will sell a part to CTDOT or cannot supply the part according to a delivery schedule that meets CTDOT's needs; or that no supplier will offer the part at a commercially reasonable price.

26.3 CTDOT shall not have the right under this Technology License either to use the Licensed Technology to manufacture itself, or to have manufactured for it by a third party as a sublicensee of CTDOT, either the rail cars, systems, subsystems or components thereof, except as specified in the foregoing subsection 26.226.2(f) . The purposes described in the foregoing subparagraphs subsection 26.2(a) through subsection 26.2(f) as limited by the immediately preceding sentence are referred to in this Article as the "Approved Purposes."

26.4 This Article 26 shall survive the termination or expiration of the Contract.

Article 27. SOFTWARE LICENSE

- 27.1 Contractor hereby grants to CTDOT on Contractor's behalf, and on behalf of its Subcontractors, suppliers and manufacturers (as to whom Contractor represents and warrants that it has or will have the power and authority to grant such sublicense), an irrevocable, perpetual, royalty-free, nonexclusive license and sublicense ("Software License") to use, itself or through its agents, for the approved purposes without recourse to the original Contractor, Subcontractor, Supplier, or Manufacturer: all of the Software (defined in Section 27.2) which is included in the rail car, and in all systems, subsystems, assemblies, subassemblies and components thereof, all interface systems and controls with respect to all of the above, all diagnostic and testing systems, and all other microprocessor-based systems and software necessary to permit CTDOT to implement the Approved Purposes, including all such systems and software which are necessary for the maintenance and repair, modification and upgrading, overhaul and/or remanufacture of the rail cars and for the manufacture of parts which become obsolete or otherwise unavailable for purchase, all of which shall be designated the "Licensed Software".
- 27.2 The term "Software" shall mean any and all computer application programs which are incorporated as part of any system, subsystem, assembly, subassembly or components thereof, or any interface system control between or among the systems, subsystems, assemblies, subassemblies, or component thereof, in the rail cars, or which are used in connection with a system (which use involves microprocessors, controllers, drivers, or other electronic data processing elements) or which are used in connection with any related diagnostic or testing equipment (if any), together with all related documentation, including without limitation the object code, source code (which, in the alternative may be required to be provided to an Escrow agent for the benefit of CTDOT) and pseudo-code versions of such assemblies, subassemblies, programs, firmware containing such programs, know-how protocols, listings, instruction sets, indices and other intellectual property necessary for CTDOT's use of the Software for the Approved Purposes in the form prepared by Contractor, subcontractor, supplier or manufacturer in the regular course of its business, or to the extent that the Specification requires a different form, then in the form required by the Specification.
- 27.3 This Article 27 shall survive the termination or expiration of the Contract.

Article 28. STATUTORILY-REQUIRED PROVISIONS REGARDING INFORMATION TECHNOLOGY

- 28.1 In accordance with § 4d-31 of the CGS, this Contract is deemed to have incorporated within it, and Contractor shall deliver the goods and services required by this Contract in compliance with, all specifications established by the State Comptroller to ensure that all policies, procedures, processes and control systems, including hardware, software and protocols, which are established or provided by Contractor or Contractor Parties, are compatible with and support the State's core

financial systems, including but not limited to, accounting, payroll, time and attendance, and retirement systems.

- 28.2 In accordance with § 4d-32 of the CGS, Contractor shall not award a subcontract for work under this Contract without having first obtained the written approval of the Chief Information Officer of the Department of Administrative Services (“DAS”) or their designee of the selection of the subcontractor and of the provisions of the subcontract. Contractor shall deliver a copy of each executed subcontract or amendment to the subcontract to the Chief Information Officer, who shall maintain the subcontract or amendment as a public record, as defined in § 1-200 of the CGS
- 28.3 In accordance with § 4d-34 of the CGS, (a) neither Contractor nor Contractor’s Parties shall have any title in or to (1) any public records which Contractor or Contractor’s Parties possess, modify or create pursuant to a contract, subcontract or amendment to a contract or subcontract, or (2) any modifications by such contractor, subcontractor, employee or agent to such public records; (b) neither Contractor nor Contractor’s Parties shall impair the integrity of any public records which they possess or create; and (c) public records which Contractor or Contractor’s Parties possess, modify or create pursuant to this Contract or other contract, subcontract or amendment to a contract or subcontract shall at all times and for all purposes remain the property of the State. For purposes of this section, “public records” shall have the meaning set forth in § 4-33 of the CGS, as it may be modified from time to time.
- 28.4 In accordance with § 4d-35 of the CGS, any public record which a State agency provides to Contractor or Contractor’s Parties shall remain a public record for the purposes of subsection (a) of § 1-210 of the CGS and as to such public records, the State, Contractor and Contractor’s Parties shall have a joint and several obligation to comply with the obligations of the state agency under the Freedom of Information Act, as defined in § 1-200 of the CGS, provided that the determination of whether or not to disclose a particular record or type of record shall be made by such State agency.
- 28.5 In accordance with § 4d-36 of the CGS, neither Contractor nor Contractor’s Parties shall disclose to the public any public records (a) which they possess, modify or create pursuant to this Contract or any contract, subcontract or amendment to a contract or subcontract and (b) which a state agency (1) is prohibited from disclosing pursuant to state or federal law in all cases, (2) may disclose pursuant to state or federal law only to certain entities or individuals or under certain conditions or (3) may withhold from disclosure pursuant to state or federal law. This provision shall not be construed to prohibit Contractor from disclosing such public records to any Contractor’s Parties to carry out the purposes of its subcontract. For purposes of this section, “public records” shall have the meaning set forth in § 1-200 of the CGS, as it may be modified from time to time.

- 28.6 In accordance with § 4d-37 of the CGS, neither Contractor nor Contractor's Parties shall sell, market or otherwise profit from the disclosure or use of any public records which are in their possession pursuant to this Contract or any contract, subcontract or amendment to a contract or subcontract, except as authorized in this Contract. For purposes of this section, "public records" shall have the meaning set forth in § 1-200 of the CGS, as it may be modified from time to time.
- 28.7 In accordance with § 4d-38 of the CGS, if Contractor or Contractor Parties learn of any violation of the provisions of §§ 4d-36 or 4d-37 of the CGS they shall, no later than seven (7) calendar days after learning of such violation, notify the Chief Information Officer of DAS of such violation.
- 28.8 In accordance with § 4d-40 of the CGS, the Joint Committee on Legislative Management and each nonpartisan office of the General Assembly shall continue to have access to State agency records that is not less than the access that said committee and such offices have on July 1, 1997.
- 28.9 Continuity of Systems. This Article 28 is intended to comply with § 4d-44 of the CGS.
- (a) Contractor acknowledges that Work related to information system and telecommunication system facilities, equipment and services are important to the function of State government and that they must continue without significant interruption. Pursuant to § 4d-44 of the CGS, if the work under the Contract, any subcontract, or amendment to either, is transferred back to the State or to another contractor at any time for any reason, then Contractor shall cooperate fully with the State, provided there is no cost to Contractor (or at a cost that the parties mutually agree to), and do and perform all acts and things that CTDOT deems to be necessary or appropriate, to ensure continuity of State agency information system and telecommunication system facilities, equipment and services so that there is no significant disruption or interruption in performance as required or permitted in the Contract. Contractor shall not enter into any subcontract for any part of the performance under the Contract without approval of such subcontract by DAS, as required by § 4d-32 of the CGS, and without such subcontract including a provision that obligates the subcontractor to comply fully with § 4d-44 of the CGS as if the subcontractor were in fact Contractor. Contractor shall make a full and complete disclosure of and delivery to DAS or its representatives of all Records and "Public Records," as that term is defined in § 4d-33 of the CGS, as it may be amended, in whatever form they exist or are stored and maintained and wherever located, directly or indirectly concerning the Contract.
- (b) The parties shall follow the following applicable and respective procedures

in order to ensure the orderly transfer to the State of:

- (1) Such facilities and equipment: Unless a shorter period is necessary or appropriate to ensure compliance with subsection (a) above, in which case that shorter period shall apply, Contractor shall deliver to CTDOT, F.O.B. Newington, Connecticut or other State location which CTDOT identifies, all facilities and equipment related to or arising out of the Contract, subcontract or amendment, no later than 10 days from the date that the work under the Contract is transferred back to the State or to another contractor for any reason. Contractor shall deliver the facilities and equipment to CTDOT, during the CTDOT's business hours, in good working order and in appropriately protective packaging to ensure delivery without damage. Concurrent with this delivery, Contractor shall also deliver all related operation manuals and other documentation in whatever form they exist and a list of all related passwords and security codes;
- (2) All software created or modified pursuant to the Contract, subcontract or amendment, if any: unless a shorter period is necessary or appropriate to ensure compliance with subsection (a) above, in which case that shorter period shall apply, Contractor shall deliver to CTDOT, F.O.B. Newington, Connecticut or other location which CTDOT identifies, all deliverables, no later than ten (10) days from the date that the work under Contract is transferred back to the State or to another contractor for any reason. Contractor shall deliver such deliverables to CTDOT, during CTDOT's business hours, in good working order, and if equipment shall be delivered, in appropriately protective packaging to ensure delivery without damage. Concurrent with this delivery, Contractor shall also deliver all deliverable-related operation manuals and other documentation in whatever form they exist, if delivery of such manuals and documentation is required by this Contract, and a list of all deliverable passwords and security codes; and
- (3) All public records, as defined in § 4d-33 of the CGS, which Contractor or Contractor Parties possess or create pursuant to the Contract, subcontract or amendment: Unless a shorter period is necessary or appropriate to ensure compliance with subsection (a) above, in which case that shorter period shall apply, Contractor shall deliver to CTDOT, F.O.B. Newington, Connecticut or other State location which CTDOT identifies, all Public Records created or modified pursuant to the Contract, subcontract or amendment and requested in writing by CTDOT (provided that Contractor may redact confidential information of Contractor, its personnel or third parties to the extent permitted by applicable law) no later than the latter of (1) the time

specified in the section in this Contract concerning Termination for the return of Public Records and (2) ten (10) days from the date that the work under the Contract is transferred back to the State or to another contractor for any reason. Contractor shall deliver to CTDOT those Public Records in electronic, magnetic or other intangible form in a non-proprietary format, such as, but not limited to, ASCII or TXT. Contractor shall deliver to CTDOT, during CTDOT's business hours, those Public Records and a list of all applicable passwords and security codes, all in appropriately protective packaging to ensure delivery without damage.

- (c) If Contractor employs former State employees, Contractor shall facilitate the exercising of any reemployment rights that such State employees may have with the State, including, but not limited to, affording them all reasonable opportunities during the workday to interview for State jobs. Contractor shall include language similar to this section in all of its contracts with its subcontractors and applicable Contractor Parties so that they are similarly obligated.

Article 29. OFFICIAL NOTICE

29.1 Any "Official Notice" from one such Party to the other such Party, in order or such notice to be binding thereon, shall:

- (a) Be in writing (hardcopy) addressed to:

- (b) When CTDOT is to receive such notice-

Commissioner of Transportation  
Connecticut Department of  
Transportation 2800 Berlin Turnpike  
P.O. Box 317546  
Newington, Connecticut 06131-7546  
Attention: Bureau of Public Transportation;

- (c) When Contractor is to receive such notice-

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- (d) Be delivered in person with acknowledgement of receipt; or be mailed by the United States Postal Service – “Certified Mail, Return Receipt Requested” to the address recited herein as being the address of the Party(ies) to receive such Official Notice; or delivered by a recognized overnight delivery service, and
  - (e) Contain complete and accurate information in sufficient detail to properly and adequately identify and describe the subject matter thereof.
- 29.2 The term "Official Notice" as used herein, shall be construed to include, but not be limited to, any request, demand, authorization, direction, waiver, and/or consent of the Party(ies) as well as any document(s), including any electronically - produced versions, provided, permitted, or required for the making or ratification of any change, revision, addition to or deletion from the document, contract, or agreement in which this Official Notice specification is contained.
- 29.3 Further, it is understood and agreed that nothing hereinabove contained shall preclude the parties hereto from subsequently agreeing, in writing, to designate alternate persons (by name, title, and affiliation) to which such Official Notice(s) is (are) to be addressed; alternate means of conveying such Official Notice(s) to the particular Party(ies); and/or alternate locations to which the delivery of such Official Notice(s) is (are) to be made, provided such subsequent agreement(s) is (are) concluded pursuant to adherence to this Article 29.
- 29.4 Any notice of communication to Contractor shall be deemed served if delivered to Contractor or to the address named in the RFP, or if deposited in the U.S. Post Office, postage prepaid, addressed to Contractor as aforesaid; and the date of service shall be the date of such delivery, or, if mailed, five (5) days after such mailing; provided, however, that any notice of default shall be sent by certified mail.
- 29.5 In the event that the awarded Contractor moves or updates telephone numbers, it is the responsibility of Contractor to advise the Department of Transportation, Division of Purchasing & Materials Management of such changes in writing, in accordance with this Article 29.

#### Article 30. SUBCONTRACTORS

- 30.1 CTDOT must approve any and all subcontractors utilized by Contractor prior to any such Subcontractor commencing any work. Contractors acknowledge by the act of submitting a Proposal that any work provided under the contract is work conducted on behalf of CTDOT and that the Commissioner of DOT or his designee may communicate directly with any Subcontractor as CTDOT deems to be



necessary or appropriate. It is also understood that Contractor shall be responsible for all payment of fees charged by the Subcontractor(s). A performance evaluation of any Subcontractor shall be provided promptly by Contractor to CTDOT upon request. Contractor shall comply with the provisions of Chapter 3 of the Technical Specification with regard to Subcontractors and suppliers.

- 30.2 Contractor agrees to ensure that the following certification be included in each subcontract under this Contract to which it enters, and further, to require said certification to be included in any sub-subcontracts and purchase orders that any of its subcontractor enters into for Work under this Contract:
- (a) The prospective subcontractors, sub-subcontractors' participants certify that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
  - (b) Where the prospective subcontractors, sub-subcontractors' participants are unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to the subcontract or purchase order.

#### Article 31. ADMINISTRATIVE AND STATUTORY REQUIREMENTS

31.1 Whistleblower Provision for Large State Contracts (value \$5 million and above). This Contract may be subject to the provisions of Section 4-61dd of the Connecticut General Statutes. In accordance with this statute, if an officer, employee or appointing authority of a large state contractor takes or threatens to take any personnel action against any employee of a large state contractor in retaliation for such employee's disclosure of information to any employee of the contracting state or quasi-public agency or the Auditors of Public Accounts or the Attorney General under the provisions of subsection (a) of such statute, a large state contractor shall be liable for a civil penalty of not more than Five Thousand dollars for each offense, up to a maximum of twenty percent of the value of this Contract. Each violation shall be a separate and distinct offense and in the case of a continuing violation, each calendar day's continuance of the violation shall be deemed to be a separate and distinct offense. The State may request that the Attorney General bring a civil action in the Superior Court for the Judicial District of Hartford to seek imposition and recovery of such civil penalty. In accordance with subsection (f) of such statute, each large state contractor, as defined in the statute, shall post a notice of the provisions of the statute relating to large state contractors in a conspicuous place which is readily available for viewing by the employees of the Contract.

31.2 Disclosure of Records. This Contract may be subject to the provisions of section 1-

218 of the Connecticut General Statutes. In accordance with this statute, each contract in excess of two million five hundred thousand dollars (\$2,500,000) between a public agency and a person for the performance of a governmental function shall (a) provide that the public agency is entitled to receive a copy of records and files related to the performance of the governmental function, and (b) indicate that such records and files are subject to the Freedom of Information Act and may be disclosed by the public agency pursuant to the Freedom of Information Act. No request to inspect or copy such records or files shall be valid unless the request is made to the public agency in accordance with the Freedom of Information Act. Any complaint by a person who is denied the right to inspect or copy such records or files shall be brought to the Freedom of Information Commission in accordance with the provisions of sections 1-205 and 1-206 of the Connecticut General Statutes.

31.3 Forum and Choice of Law. The parties deem the Contract to have been made in the City of Hartford, State of Connecticut. CTDOT and Contractor agree that it is fair and reasonable for the validity and construction of the Contract to be, and it shall be, governed by the law and court decisions of the State of Connecticut, without giving effect to its principles of conflicts of laws. To the extent that any immunities provided by Federal law or the laws of the State of Connecticut do not bar an action against the State, and to the extent that these courts are courts of competent jurisdiction, for the purpose of venue, the complaint shall be made returnable to the Judicial District of Hartford only or shall be brought in the United States District Court for the District of Connecticut only, and shall not be transferred to any other court, provided, however, that nothing here constitutes a waiver or compromise of the sovereign immunity of the State of Connecticut. Contractor waives any objection which it may now have or will have to the laying of venue of any Claims in any forum and further irrevocably submits to such jurisdiction in any suit, action or proceeding.

31.4 Tangible Personal Property (CGS § 12-411b).

(a) Contractor on its behalf and on behalf of its Affiliates, as defined in subsection (b) below, shall comply with the provisions of § 12-411b of the Connecticut General Statutes, as follows:

(1) For the Term of the Contract, Contractor and its Affiliates shall collect and remit to the State of Connecticut, Department of Revenue Services, any Connecticut use tax due under the provisions of Chapter 219 of the Connecticut General Statutes for items of tangible personal property sold by Contractor or by any of its Affiliates in the same manner as if Contractor and such Affiliates were engaged in the business of selling tangible personal property for use in Connecticut and had sufficient nexus under the provisions of Chapter 219 to be required to collect Connecticut use tax;

- (2) A customer's payment of a use tax to Contractor or its Affiliates relieves the customer of liability for the use tax;
- (3) Contractor and its Affiliates shall remit all use taxes they collect from customers on or before the due date specified in the Contract, which may not be later than the last day of the month next succeeding the end of a calendar quarter or other tax collection period during which the tax was collected;
- (4) Contractor and its Affiliates are not liable for use tax billed by them but not paid to them by a customer; and
- (5) Any Contractor or Affiliates who fails to remit use taxes collected on behalf of its customers by the due date specified in the Contract shall be subject to the interest and penalties provided for persons required to collect sales tax under chapter 219 of the Connecticut General Statutes.

(b) For purposes of this section, "Affiliate" means any person, as defined in § 12-1 of the Connecticut General Statutes, that controls, is controlled by, or is under common control with another person. A person controls another person if the person owns, directly or indirectly, more than ten percent of the voting securities of the other person. "Voting security" means a security that confers upon the holder the right to vote for the election of members of the board of directors or similar governing body of the business, or that is convertible into, or entitles the holder to receive, upon its exercise, a security that confers such a right to vote. "Voting security" includes a general partnership interest.

(c) Contractor represents and warrants that each of its Affiliates has vested in Contractor plenary authority to so bind the Affiliates in any agreement with the State. Contractor on its own behalf and on behalf of its Affiliates shall also provide, no later than thirty (30) days after receiving a request by the State's contracting authority, such information as the State may require to ensure, in the State's sole determination, compliance with the provisions of Chapter 219 of the Connecticut General Statutes, including, but not limited to, § 12-411b.

31.5 Indemnification. Contractor shall indemnify, defend and hold harmless the State, and its officers, representatives, agents, servants, employees, successors and assigns from and against any and all (1) Claims arising, directly or indirectly, in connection with the Contract, including the acts of commission or omission (collectively, the "Acts") of Contractor or Contractor Parties; and (2) liabilities, damages, losses, costs and expenses, including but not limited to, attorneys' and

other professionals' fees, arising, directly or indirectly, in connection with Claims, Acts or the Contract. Contractor shall use counsel reasonably acceptable to the State in carrying out its obligations under this section. Contractor's obligations under this section to indemnify, defend and hold harmless against Claims includes Claims concerning confidentiality of any part of or all of Contractor's bid, proposal or any Records, any intellectual property rights, other proprietary rights of any person or entity, copyrighted or uncopyrighted compositions, secret processes, patented or unpatented inventions, articles or appliances furnished or used in the performance.

- (a) The Contractor shall not be responsible for indemnifying or holding the State harmless from any liability arising due to the negligence of the State or any third party acting under the direct control or supervision of the State.
- (b) Contractor shall reimburse the State for any and all damages to the real or personal property of the State caused by the Acts of Contractor or any Contractor Parties. The State shall give Contractor reasonable notice of any such Claims.
- (c) Contractor's duties under this section shall remain fully in effect and binding in accordance with the terms and conditions of the Contract without being lessened or compromised in any way, even where Contractor is alleged or is found to have merely contributed in part to the Acts giving rise to the Claims and/or where the State is alleged or is found to have contributed to the Acts giving rise to the Claims.
- (d) Contractor shall carry and maintain at all times during the term of the Contract, and during the time that any provisions survive the term of the Contract, sufficient general liability insurance to satisfy its obligations under this Contract. Contractor shall name CTDOT and the State as additional insureds on the policy. CTDOT shall be entitled to recover under the insurance policy even if a body of competent jurisdiction determines that CTDOT or the State is contributorily negligent.
- (e) This section 31.5 shall survive the termination of the Contract and shall not be limited by reason of any insurance coverage.

31.6 Non-waiver of the State of Connecticut's Immunities. The Parties acknowledge and agree that nothing in the Contract shall be construed as a modification, compromise or waiver by the State of Connecticut of any rights or defenses of any immunities provided by Federal law or the laws of the State of Connecticut to the State or any of its officers and employees, which they may have had, now have or

will have with respect to all matters arising out of the Contract. To the extent that this section conflicts with any other section, this section shall govern.

31.7 Summary of State Ethics Laws. Pursuant to the requirements of section 1-101qq of the Connecticut General Statutes, the summary of State of Connecticut ethics laws developed by the State Ethics Commission pursuant to section 1-81b of the Connecticut General Statutes is incorporated by reference into and made a part of this Contract as if the summary had been fully set forth herein.

31.8 Audit and Inspection of Plants, Places of Business and Records.

- (a) The State of Connecticut and its agents, including, but not limited to, the Connecticut Auditors of Public Accounts, Attorney General and State's Attorney and their respective agents, may, at reasonable hours, inspect and examine all of the parts of plants and places of business of Contractor and Contractor Parties which, in any way, are related to, or involved in, the performance of this Contract.
- (b) Contractor shall maintain, and shall require each of Contractor Parties to maintain, accurate and complete Records. Contractor shall make all of its and Contractor Parties' Records available at all reasonable hours for audit and inspection by the State and its agents.
- (c) The State of Connecticut shall make all requests for any audit or inspection in writing and shall provide Contractor with at least twenty-four (24) hours' notice prior to the requested audit and inspection date. If the State of Connecticut suspects fraud or other abuse, or in the event of an emergency, is not obligated to provide any prior notice.
- (d) Contractor shall keep and preserve or cause to be kept and preserved all of its and Contractor Parties' Records until three (3) years after the latter of (i) final payment under this Contract, or (ii) the expiration or earlier termination of this Contract, as the same may be modified for any reason. The State may request an audit or inspection at any time during this period. If any Claim or audit is started before the expiration of this period, Contractor shall retain or cause to be retained all Records until all Claims or audit findings have been resolved.
- (e) Contractor shall cooperate fully with the State of Connecticut and its agents in connection with an audit or inspection. Following any audit or inspection, the State may conduct and Contractor shall cooperate with an exit conference.
- (f) Contractor shall incorporate this entire section verbatim into any contract

or other agreement that it enters into with any subcontractor under the Contract.

- 31.9 State Elections Enforcement Commission Campaign Contribution and Solicitation Ban. For all State contracts as defined in Conn. Gen. Stat. § 9-612(f)(1) having a value in a calendar year of \$50,000 or more or a combination or a series of such agreements or contracts having a value of \$100,000 or more, the authorized signatory to this Contract expressly acknowledges receipt of the State Elections Enforcement Commission's notice advising contractors of state campaign contribution and solicitation prohibitions and will inform its principals of the contents of the notice, as set forth "Notice to Executive Branch State Contractors and Prospective State Contractors of Campaign Contribution and Solicitation Limitations," a copy of which is attached hereto and hereby made a part of this Contract as Schedule E.
- 31.10 Executive Orders. This Contract is subject to the provisions of Executive Order No. Three of Governor Thomas J. Meskill, promulgated June 16, 1971, concerning labor employment practices, Executive Order No. Seventeen of Governor Thomas J. Meskill, promulgated February 15, 1973, concerning the listing of employment openings, and Executive Order No. Sixteen of Governor John G. Rowland, promulgated August 4, 1999, concerning violence in the workplace, all of which are incorporated into and are made a part of the Contract as if they had been fully set forth in it. The Contract may also be subject to Executive Order No. 14 of Governor M. Jodi Rell, promulgated April 17, 2006, concerning procurement of cleaning products and services, and Executive Order No. 49 of Governor Dannel P. Malloy, promulgated May 22, 2015, mandating disclosure of certain gifts to public employees and contributions to certain candidates for office. If Executive Order No. 14 and/or Executive Order No. 49 are applicable, they are deemed to be incorporated into and are made a part of the Contract as if they had been fully set forth therein. At Contractor's request, DOT shall provide a copy of these orders to Contractor.
- 31.11 Nondiscrimination. References in this section to "contract" shall mean this "Contract," references to "State" shall mean "State of Connecticut," and references to "contractor" shall mean "Contractor."
- (a) For purposes of this Section, the following terms are defined as follows:
- (1) "Commission" means the Commission on Human Rights and Opportunities;
  - (2) "Contract" and "contract" include any extension or modification of the Contract or contract;
  - (3) "Contractor" and "contractor" include any successors or assigns of

Contractor or contractor;

- (4) "gender identity or expression" means a person's gender-related identity, appearance or behavior, whether or not that gender-related identity, appearance or behavior is different from that traditionally associated with the person's physiology or assigned sex at birth, which gender-related identity can be shown by providing evidence including, but not limited to, medical history, care or treatment of the gender-related identity, consistent and uniform assertion of the gender-related identity or any other evidence that the gender-related identity is sincerely held, part of a person's core identity or not being asserted for an improper purpose.
- (5) "good faith" means that degree of diligence which a reasonable person would exercise in the performance of legal duties and obligations;
- (6) "good faith efforts" shall include, but not be limited to, those reasonable initial efforts necessary to comply with statutory or regulatory requirements and additional or substituted efforts when it is determined that such initial efforts will not be sufficient to comply with such requirements;
- (7) "marital status" means being single, married as recognized by the state of Connecticut, widowed, separated or divorced;
- (8) "mental disability" means one or more mental disorders, as defined in the most recent edition of the American Psychiatric Association's "Diagnostic and Statistical Manual of Mental Disorders", or a record of or regarding a person as having one or more such disorders;
- (9) "minority business enterprise" means any small contractor or supplier of materials fifty-one percent or more of the capital stock, if any, or assets of which is owned by a person or persons: (1) who are active in the daily affairs of the enterprise, (2) who have the power to direct the management and policies of the enterprise, and (3) who are members of a minority, as such term is defined in subsection (a) of Connecticut General Statutes § 32-9n; and
- (10) "public works contract" means any agreement between any individual, firm or corporation and the State or any political subdivision of the State other than a municipality for construction, rehabilitation, conversion, extension, demolition or repair of a public building, highway or other changes or improvements in real property, or which is financed in whole or in part by the State, including, but not limited to, matching expenditures, grants, loans,

insurance or guarantees.

For purposes of this section, the terms "Contract" and "contract" do not include a contract where each contractor is (1) a political subdivision of the state, including, but not limited to, a municipality, (2) a quasi-public agency, as defined in Conn. Gen. Stat. Section 1-120, (3) any other state, including but not limited to any federally recognized Indian tribal governments, as defined in Conn. Gen. Stat. Section 1-267, (4) the federal government, (5) a foreign government, or (6) an agency of a subdivision, agency, state or government described in the immediately preceding enumerated items (1), (2), (3), (4) or (5).

- (b) Contractor agrees and warrants that in the performance of the Contract such Contractor will not discriminate or permit discrimination against any person or group of persons on the grounds of race, color, religious creed, age, marital status, national origin, ancestry, sex, gender identity or expression, intellectual disability, mental disability or physical disability, including, but not limited to, blindness, unless it is shown by such Contractor that such disability prevents performance of the work involved, in any manner prohibited by the laws of the United States or of the State of Connecticut; and Contractor further agrees to take affirmative action to insure that applicants with job-related qualifications are employed and that employees are treated when employed without regard to their race, color, religious creed, age, marital status, national origin, ancestry, sex, gender identity or expression, status as a veteran, intellectual disability or physical disability, including, but not limited to, blindness, unless it is shown by Contractor that such disability prevents performance of the work involved; (2) Contractor agrees, in all solicitations or advertisements for employees placed by or on behalf of Contractor, to state that it is an "affirmative action-equal opportunity employer" in accordance with regulations adopted by the Commission; (3) Contractor agrees to provide each labor union or representative of workers with which Contractor has a collective bargaining agreement or other contract or understanding and each vendor with which Contractor has a contract or understanding, a notice to be provided by the Commission, advising the labor union or workers' representative of Contractor's commitments under this section and to post copies of the notice in conspicuous places available to employees and applicants for employment; (4) Contractor agrees to comply with each provision of this section and Connecticut General Statutes §§46a-68e and 46a-68f and with each regulation or relevant order issued by said Commission pursuant to Connecticut General Statutes §§46a-56, 46a-68e and 46a-68f; and (5) Contractor agrees to provide the Commission on Human Rights and Opportunities with such information requested by the Commission, and permit access to pertinent books, records and



accounts, concerning the employment practices and procedures of Contractor as relate to the provisions of this section and Connecticut General Statutes §46a-56. If the contract is a public works contract, Contractor agrees and warrants that he will make good faith efforts to employ minority business enterprises as subcontractors and suppliers of materials on such public works projects.

- (c) Determination of Contractor's good faith efforts shall include, but shall not be limited to, the following factors: Contractor's employment and subcontracting policies, patterns and practices; affirmative advertising, recruitment and training; technical assistance activities and such other reasonable activities or efforts as the Commission may prescribe that are designed to ensure the participation of minority business enterprises in public works projects.
- (d) Contractor shall develop and maintain adequate documentation, in a manner prescribed by the Commission, of its good faith efforts.
- (e) Contractor shall include the provisions of subsection (b) of this section in every subcontract or purchase order entered into in order to fulfill any obligation of a contract with the State and such provisions shall be binding on a subcontractor, vendor or manufacturer unless exempted by regulations or orders of the Commission. Contractor shall take such action with respect to any such subcontract or purchase order as the Commission may direct as a means of enforcing such provisions including sanctions for noncompliance in accordance with Connecticut General Statutes §46a-56; provided if such Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the Commission, Contractor may request the State of Connecticut to enter into any such litigation or negotiation prior thereto to protect the interests of the State and the State may so enter.
- (f) Contractor agrees to comply with the regulations referred to in this section as they exist on the date of this Contract and as they may be adopted or amended from time to time during the term of this Contract and any amendments thereto.
- (g) Contractor agrees and warrants that in the performance of the Contract such Contractor will not discriminate or permit discrimination against any person or group of persons on the grounds of sexual orientation, in any manner prohibited by the laws of the United States or the State of Connecticut, and that employees are treated when employed without regard to their sexual orientation; (2) Contractor agrees to provide each labor union or representative of workers with which such Contractor has a collective bargaining agreement or other contract or understanding and

each vendor with which such Contractor has a contract or understanding, a notice to be provided by the Commission on Human Rights and Opportunities advising the labor union or workers' representative of Contractor's commitments under this section, and to post copies of the notice in conspicuous places available to employees and applicants for employment; (3) Contractor agrees to comply with each provision of this section and with each regulation or relevant order issued by said Commission pursuant to Connecticut General Statutes §46a-56; and (4) Contractor agrees to provide the Commission on Human Rights and Opportunities with such information requested by the Commission, and permit access to pertinent books, records and accounts, concerning the employment practices and procedures of Contractor which relate to the provisions of this section and Connecticut General Statutes § 46a-56.

- (h) Contractor shall include the provisions of the foregoing paragraph in every subcontract or purchase order entered into in order to fulfill any obligation of a contract with the State and such provisions shall be binding on a subcontractor, vendor or manufacturer unless exempted by regulations or orders of the Commission. Contractor shall take such action with respect to any such subcontract or purchase order as the Commission may direct as a means of enforcing such provisions including sanctions for noncompliance in accordance with Connecticut General Statutes § 46a-56; provided, if such Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the Commission, Contractor may request the State of Connecticut to enter into any such litigation or negotiation prior thereto to protect the interests of the State and the State may so enter."

Article 32. ADDITIONAL PROVISIONS

32.1 Proprietary Information under FOIA.

- (a) Prior to submitting to CTDOT any Records or other materials that the Contractor considers to contain trade secrets or commercial or financial information given in confidence, not required by statute, as defined respectively in subsections (A) and (B) of § 1-210(b)(5)(A) of the CGS (hereinafter referred to as "Proprietary Information"), the Contractor must specifically and clearly mark, with the designation of "CONFIDENTIAL," those particular sentences, paragraphs, pages or sections therein that the Contractor believes to be Contractor Proprietary Information.
- (b) CTDOT shall provide notice to Contractor of any FOIA request submitted to CTDOT with respect to Records or other material that Contractor has so marked, in whole or in part, with the "CONFIDENTIAL" designation.
- (c) The Contractor shall timely provide to CTDOT a convincing explanation and rationale consistent with the law sufficient to justify treating the

designated portion(s) as Proprietary Information, including the representation that it is not already in the public domain. The Contractor shall state the rationale and explanation in terms of the prospective harm to the competitive position of the Contractor that would result if the designated portion(s) were to be released and set forth the reasons it believes the designated portion(s) is/are legally exempt from release pursuant to FOIA.

- (d) CTDOT will review the "CONFIDENTIAL" designations of the Contractor's Records or other materials and the Contractor-provided explanation and rationale to make sure all is consistent with FOIA (that is, the designated portion(s) is/are actually Proprietary Information per the statute), and if so, will endeavor to keep the designated portion(s) confidential to the extent permitted by law. See, e.g. CGS §, s 1-210(b)(5)(A)-(B).
- (d) The final administrative authority deciding whether to release or exempt any or all Records or other material, or portions thereof, designated by the Contractor as "CONFIDENTIAL" rests solely with CTDOT, subject to adjudication by the Freedom of Information Commission ("FOIC") should the Contractor's claim of Proprietary Information be challenged. CTDOT, however, has no obligation to initiate, prosecute or defend any legal proceeding or to seek a protective order or other similar relief to prevent disclosure of any information that is sought pursuant to a FOIA request.
- (e) Should CTDOT withhold from a FOIA requester any Records or materials, or portions thereof, designated by the Contractor as "CONFIDENTIAL" and a complaint is brought to the FOIC, the Contractor shall have the burden of cooperating with CTDOT in defense of that action and in terms of establishing the applicability of any FOIA exemption in any proceeding where it is an issue.
- (f) In no event shall CTDOT or the State have any liability for the disclosure of any of the Contractor's Records or other material in its possession which the State or CTDOT believes are required to be disclosed pursuant to FOIA or other requirements of law.

32.2 Waiver; Modification. No modification, waiver, amendment, discharge or change of this Contract shall be valid unless the same is in writing and signed by the Party against which the enforcement of such modification, waiver, amendment, discharge or change is or may be sought. No waiver at any time of any of the provisions hereof by such Party shall be construed as a waiver of any of the other provisions hereof, and a waiver at any time of any of the provisions hereof shall not be construed as a waiver at any subsequent time of the same provisions.

32.3 Severability. If any term or provision of this Contract or its application or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Contract or the application of such term or provision to circumstances other than those as to which it is held invalid or unenforceable shall not be affected

thereby and each remaining term and provision of this Contract shall be valid and enforced to the fullest extent possible by law.

- 32.4 Counterparts. This Contract may be signed in counterpart copies, all of which, taken together, shall constitute but one and the same document.
- 32.5 References. Reference to a "Section," "Sections," "Article," or "Articles" herein refer to this Contract unless otherwise stated. Any headings preceding the texts of the Articles and Sections of this Contract, and any table of contents or index of schedules shall be solely for convenience of reference and shall not constitute a part of this Contract, nor shall they affect its meaning, construction or effect.

Words importing the singular number mean and include the plural number and vice versa. The use of any gender shall include all genders.

- 32.6 Drafting of Contract. CTDOT and Contractor have participated in the drafting of this Contract, and any ambiguity contained in this Contract shall not be construed against CTDOT or Contractor solely by virtue of the fact that either CTDOT or Contractor may be considered the drafter of this Contract or any particular part hereof.
- 32.7 Consent or Approval. Any consent or approval provided by CTDOT hereunder with respect to the Work, subcontractors or any other matters or items as to which such consent or approval is required, is not intended to, and shall not be construed to constitute (a) representation or warranty by CTDOT as to the quality, sufficiency or compliance with any applicable legal requirements of any such Work, subcontractor or any such other matter or item or (b) acceptance by CTDOT to complete the Work or otherwise perform the obligations of Contractor as to the task consented to or approved. Any consent or approval by CTDOT shall not impose liability of any kind on CTDOT or relieve Contractor of its obligations hereunder.
- 32.8 Conflicts in the Contract. In case of conflict within the terms of this Contract, including all Schedules hereto, the more stringent requirement shall govern, unless otherwise determined by CTDOT in its sole discretion.
- 32.9 Covenant Against Contingent Fees. Contractor warrants that it has not employed or retained any company or person other than a bona fide employee(s) working solely for Contractor, to solicit or secure this Contract, and that it has not paid or agreed to pay any company or person, other than bona fide employee(s) working solely for Contractor, any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award or making of this Contract. In the event of a Breach or violation of the above provision, CTDOT shall have the right to annul this Contract without liability, or, in its discretion, to deduct from the agreed price or consideration, or otherwise recover from Contractor, the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent

fee.

- 32.10 Third Party Agreements. Contractor acknowledges and agrees that neither CTDOT nor the State will be bound by the provisions of any third party agreement (including, but not limited to any third party license agreement) that acts as a modification, compromise or waiver by CTDOT or the State of any rights or defenses of any immunities provided by Federal law or the laws of the State of Connecticut to CTDOT, the State or any of their officers and employees, which they may have had, now have or will have with respect to all matters arising out of the Proposal or this Contract. Contractor further acknowledges that neither CTDOT nor the State will be a party to any such third-party agreement or be in privity of contract with the third party or parties.

**THE REMAINDER OF THIS PAGE IS BLANK  
SIGNATURE PAGE TO FOLLOW**

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The Parties hereto have executed this Contract by their duly authorized representatives on the day and year indicated, with full knowledge of and agreement with its terms and conditions.

STATE OF CONNECTICUT  
DEPARTMENT OF TRANSPORTATION  
Joseph Giuliatti, Commissioner

By \_\_\_\_\_ Date: \_\_\_\_\_  
Name: Richard Andreski  
Title: Public Transportation Bureau Chief

(CONTRACTOR)

By \_\_\_\_\_ Date: \_\_\_\_\_  
Name:  
Title:

Approved as to form pursuant to § 4b-26 of the CGS:

\_\_\_\_\_ Date: \_\_\_\_\_

Attorney General  
State of Connecticut

## **SCHEDULE A**

### **Definitions**

Schedule A will be developed from Part 2 of the RFP when Contract with selected Proposer is finalized

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## **SCHEDULE B**

### **Scope of Work**

Schedule B will be developed from Part 3 of the RFP and the Proposal submitted by the selected Proposer when Contract is finalized

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## **SCHEDULE C**

### **Technical Specification**

Schedule C will be developed from Part 4 of the RFP and the Proposal submitted by the selected Proposer when Contract is finalized

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## SCHEDULE D

### Payment Summary

Schedule D of the Contract will be developed from selected Proposer's submission of its Price Proposal Form (Part 6 of the RFP) and the following Milestone table when Contract is finalized

Milestone Number	Milestone Description	Payment (Percent of Total Contract Price)	Cumulative (Percent of Total Contract Price)
1	NTP	2%	2%
2	Receipt and approval of - Contractor's First Progress Report - Preliminary Program Schedule - Contractor's QA Program Plan - Contractor's Program Management Plan	2%	4%
3	Completion of joint specification review and CDRL list review	1%	5%
4	Receipt and approval of - General Arrangement Drawings (each car type) - Vehicle Design and Dimensioned Outline Drawings (each car type) - QA Inspection and Test Plan - List of Vehicle Systems Subcontractors	2%	7%
5	Receipt of Copies of Subcontracts for - Trucks - Coupler and Draft Gear - Friction Brake System - Passenger Door System - Interior Panels, Flooring and Floor Covering - Passenger Seats - HVAC Systems and Controls - Lighting - Communication System - LVPS - Toilet Room - Cab and Locomotive Controls - Operational Safety System - Monitoring and Diagnostics System - Manuals and Training	2%	9%
6	Receipt and approval of - Manufacturing Program - Systems Engineering Plan - Configuration Management Plan	2%	11%
7	Receipt and approval of - Design Review Schedule - Vehicle Weight Schedule - Master Test Plan and Schedule	2%	13%

<b>Milestone Number</b>	<b>Milestone Description</b>	<b>Payment (Percent of Total Contract Price)</b>	<b>Cumulative (Percent of Total Contract Price)</b>
8	Receipt and approval of - Reliability Program Plan - Reliability Demonstration Plan	3%	16%
9	Receipt and approval of - Manual Development Schedule - Training Program Schedule - Spare Parts Listing	3%	19%
10	Receipt and approval of Preliminary Design Review (PDR) Packages for all systems	3%	22%
11	Receipt and approval of Intermediate Design Review (IDR) Packages for all systems	3%	25%
12	Receipt and approval of - Maintenance Program - Draft Training Program - Draft Manuals	1%	26%
13	Delivery of full-size Mockup	1%	27%
14	Receipt and approval of Final Design Review (FDR) Packages for all systems	3%	30%
15	Conditional Acceptance of Component, Equipment, and Apparatus First Article Inspection Reports	3%	33%
16	Conditional Acceptance of Vehicle Level First Article Inspection Reports and Vehicle Level Qualification Test Reports	4%	37%
17	Receipt and approval of all Pilot Car and Pilot Train Test Reports	3%	40%
18	Completion of Introductory Familiarization and Inspection Training Courses	3%	43%
19	Delivery of warranty spare parts	1%	44%
20	Conditional Acceptance of Pilot Cars (Cab and 3 Trailers)	2%	45%
21	Acceptance of each production car's Production Test Reports at Contractor's Facility – prorated per car	10%	55%
22	Release for Shipment of each production car from Contractor's Final Assembly Facility – prorated per car	10%	65%
23	Conditional Acceptance of each Production car - prorated per car	10%	75%
24	Final Acceptance of each car – prorated per car	5%	80%
25	Receipt and approval of all vehicle history books	2%	82%
26	Completion and approval of as-built drawings	2%	84%
27	Completion of General Familiarization and Inspection Training Courses	1%	85%
28	Completion of Basic Training Courses	1%	85%
29	Completion of Advanced Training Courses	1%	86%
30	Completion of "As Deployed" Training Courses	1%	87%
31	Delivery and approval of final manuals	3%	90%
32	Receipt and approval of all Contract deliverables	2%	92%
33	Expiration of the two (2) year warranty on the last car	3%	95%
34	Final Close Out of retainage - including settlement of any LDs, completion of FMIs	5%	100%



## Notice to Executive Branch State Contractors and Prospective State Contractors of Campaign Contribution and Solicitation Limitations

This notice is provided under the authority of Connecticut General Statutes §9-612(g)(2), as amended by P.A. 10-1, and is for the purpose of informing state contractors and prospective state contractors of the following law (italicized words are defined on the reverse side of this page).

### CAMPAIGN CONTRIBUTION AND SOLICITATION LIMITATIONS

No *state contractor, prospective state contractor, principal of a state contractor or principal of a prospective state contractor*, with regard to a *state contract* or *state contract solicitation* with or from a state agency in the executive branch or a quasi-public agency or a holder, or principal of a holder of a valid prequalification certificate, shall make a contribution to (i) an exploratory committee or candidate committee established by a candidate for nomination or election to the office of Governor, Lieutenant Governor, Attorney General, State Comptroller, Secretary of the State or State Treasurer, (ii) a political committee authorized to make contributions or expenditures to or for the benefit of such candidates, or (iii) a party committee (which includes town committees).

In addition, no holder or principal of a holder of a valid prequalification certificate, shall make a contribution to (i) an exploratory committee or candidate committee established by a candidate for nomination or election to the office of State senator or State representative, (ii) a political committee authorized to make contributions or expenditures to or for the benefit of such candidates, or (iii) a party committee.

On and after January 1, 2011, no state contractor, prospective state contractor, principal of a state contractor or principal of a prospective state contractor, with regard to a state contract or state contract solicitation with or from a state agency in the executive branch or a quasi-public agency or a holder, or principal of a holder of a valid prequalification certificate, shall **knowingly solicit** contributions from the state contractor's or prospective state contractor's employees or from a *subcontractor* or *principals of the subcontractor* on behalf of (i) an exploratory committee or candidate committee established by a candidate for nomination or election to the office of Governor, Lieutenant Governor, Attorney General, State Comptroller, Secretary of the State or State Treasurer, (ii) a political committee authorized to make contributions or expenditures to or for the benefit of such candidates, or (iii) a party committee.

### DUTY TO INFORM

State contractors and prospective state contractors are required to inform their principals of the above prohibitions, as applicable, and the possible penalties and other consequences of any violation thereof.

### PENALTIES FOR VIOLATIONS

Contributions or solicitations of contributions made in violation of the above prohibitions may result in the following civil and criminal penalties:

**Civil penalties**—Up to \$2,000 or twice the amount of the prohibited contribution, whichever is greater, against a principal or a contractor. Any state contractor or prospective state contractor which fails to make reasonable efforts to comply with the provisions requiring notice to its principals of these prohibitions and the possible consequences of their violations may also be subject to civil penalties of up to \$2,000 or twice the amount of the prohibited contributions made by their principals.

**Criminal penalties**—Any knowing and willful violation of the prohibition is a Class D felony, which may subject the violator to imprisonment of not more than 5 years, or not more than \$5,000 in fines, or both.

### CONTRACT CONSEQUENCES

In the case of a state contractor, contributions made or solicited in violation of the above prohibitions may result in the contract being voided.

In the case of a prospective state contractor, contributions made or solicited in violation of the above prohibitions shall result in the contract described in the state contract solicitation not being awarded to the prospective state contractor, unless the State Elections Enforcement Commission determines that mitigating circumstances exist concerning such violation.

The State shall not award any other state contract to anyone found in violation of the above prohibitions for a period of one year after the election for which such contribution is made or solicited, unless the State Elections Enforcement Commission determines that mitigating circumstances exist concerning such violation.

Additional information may be found on the website of the State Elections Enforcement Commission, [www.ct.gov/seec](http://www.ct.gov/seec). Click on the link to "Lobbyist/Contractor Limitations."



## DEFINITIONS

“State contractor” means a person, business entity or nonprofit organization that enters into a state contract. Such person, business entity or nonprofit organization shall be deemed to be a state contractor until December thirty-first of the year in which such contract terminates. “State contractor” does not include a municipality or any other political subdivision of the state, including any entities or associations duly created by the municipality or political subdivision exclusively amongst themselves to further any purpose authorized by statute or charter, or an employee in the executive or legislative branch of state government or a quasi-public agency, whether in the classified or unclassified service and full or part-time, and only in such person's capacity as a state or quasi-public agency employee.

“Prospective state contractor” means a person, business entity or nonprofit organization that (i) submits a response to a state contract solicitation by the state, a state agency or a quasi-public agency, or a proposal in response to a request for proposals by the state, a state agency or a quasi-public agency, until the contract has been entered into, or (ii) holds a valid prequalification certificate issued by the Commissioner of Administrative Services under section 4a-100. “Prospective state contractor” does not include a municipality or any other political subdivision of the state, including any entities or associations duly created by the municipality or political subdivision exclusively amongst themselves to further any purpose authorized by statute or charter, or an employee in the executive or legislative branch of state government or a quasi-public agency, whether in the classified or unclassified service and full or part-time, and only in such person's capacity as a state or quasi-public agency employee.

“Principal of a state contractor or prospective state contractor” means (i) any individual who is a member of the board of directors of, or has an ownership interest of five per cent or more in, a state contractor or prospective state contractor, which is a business entity, except for an individual who is a member of the board of directors of a nonprofit organization, (ii) an individual who is employed by a state contractor or prospective state contractor, which is a business entity, as president, treasurer or executive vice president, (iii) an individual who is the chief executive officer of a state contractor or prospective state contractor, which is not a business entity, or if a state contractor or prospective state contractor has no such officer, then the officer who duly possesses comparable powers and duties, (iv) an officer or an employee of any state contractor or prospective state contractor who has *managerial or discretionary responsibilities with respect to a state contract*, (v) the spouse or a *dependent child* who is eighteen years of age or older of an individual described in this subparagraph, or (vi) a political committee established or controlled by an individual described in this subparagraph or the business entity or nonprofit organization that is the state contractor or prospective state contractor.

“State contract” means an agreement or contract with the state or any state agency or any quasi-public agency, let through a procurement process or otherwise, having a value of fifty thousand dollars or more, or a combination or series of such agreements or contracts having a value of one hundred thousand dollars or more in a calendar year, for (i) the rendition of services, (ii) the furnishing of any goods, material, supplies, equipment or any items of any kind, (iii) the construction, alteration or repair of any public building or public work, (iv) the acquisition, sale or lease of any land or building, (v) a licensing arrangement, or (vi) a grant, loan or loan guarantee. “State contract” does not include any agreement or contract with the state, any state agency or any quasi-public agency that is exclusively federally funded, an education loan, a loan to an individual for other than commercial purposes or any agreement or contract between the state or any state agency and the United States Department of the Navy or the United States Department of Defense.

“State contract solicitation” means a request by a state agency or quasi-public agency, in whatever form issued, including, but not limited to, an invitation to bid, request for proposals, request for information or request for quotes, inviting bids, quotes or other types of submittals, through a competitive procurement process or another process authorized by law waiving competitive procurement.

“Managerial or discretionary responsibilities with respect to a state contract” means having direct, extensive and substantive responsibilities with respect to the negotiation of the state contract and not peripheral, clerical or ministerial responsibilities.

“Dependent child” means a child residing in an individual's household who may legally be claimed as a dependent on the federal income tax of such individual.

“Solicit” means (A) requesting that a contribution be made, (B) participating in any fund-raising activities for a candidate committee, exploratory committee, political committee or party committee, including, but not limited to, forwarding tickets to potential contributors, receiving contributions for transmission to any such committee or bundling contributions, (C) serving as chairperson, treasurer or deputy treasurer of any such committee, or (D) establishing a political committee for the sole purpose of soliciting or receiving contributions for any committee. Solicit does not include: (i) making a contribution that is otherwise permitted by Chapter 155 of the Connecticut General Statutes; (ii) informing any person of a position taken by a candidate for public office or a public official, (iii) notifying the person of any activities of, or contact information for, any candidate for public office; or (iv) serving as a member in any party committee or as an officer of such committee that is not otherwise prohibited in this section.

“Subcontractor” means any person, business entity or nonprofit organization that contracts to perform part or all of the obligations of a state contractor's state contract. Such person, business entity or nonprofit organization shall be deemed to be a subcontractor until December thirty first of the year in which the subcontract terminates. “Subcontractor” does not include (i) a municipality or any other political subdivision of the state, including any entities or associations duly created by the municipality or political subdivision exclusively amongst themselves to further any purpose authorized by statute or charter, or (ii) an employee in the executive or legislative branch of state government or a quasi-public agency, whether in the classified or unclassified service and full or part-time, and only in such person's capacity as a state or quasi-public agency employee.

“Principal of a subcontractor” means (i) any individual who is a member of the board of directors of, or has an ownership interest of five per cent or more in, a subcontractor, which is a business entity, except for an individual who is a member of the board of directors of a nonprofit organization, (ii) an individual who is employed by a subcontractor, which is a business entity, as president, treasurer or executive vice president, (iii) an individual who is the chief executive officer of a subcontractor, which is not a business entity, or if a subcontractor has no such officer, then the officer who duly possesses comparable powers and duties, (iv) an officer or an employee of any subcontractor who has managerial or discretionary responsibilities with respect to a subcontract with a state contractor, (v) the spouse or a dependent child who is eighteen years of age or older of an individual described in this subparagraph, or (vi) a political committee established or controlled by an individual described in this subparagraph or the business entity or nonprofit organization that is the subcontractor.