GOVERNMENT FLOW-DOWN REQUIREMENTS

Where required by law or as a condition of Purchaser's contract with its customer, the provisions set forth in this document are incorporated into and made a part of this contract or Order and shall be flowed down by the Seller to suppliers and subcontractors at every tier.

A. AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009. This procurement may be funded in whole or in part using funds made available by the American Recovery and Reinvestment Act of 2009 (ARRA). If so funded, Seller agrees to comply with all applicable provisions, terms, conditions, and requirements of the ARRA, including all current implementing rules and regulations issued by the U.S. Government and the following requirements:

- Section 1605 – FAR Case 2009-008, ARRA – Buy American Requirements for Construction Material; FAR 25.6 ARRA Buy American Act – Construction Materials
- Section 1512 – FAR Case 2009-009, ARRA – Reporting Requirements; FAR 52.204-11 ARRA Reporting Requirements
- Sections 902, 1514, and 1515 – FAR Case 2009-011, ARRA – GAO/IG Access; and
- Section 1553 – FAR Case 2009-012, AARRA – Whistleblower Protections. FAR 52.203-15 Whistleblower Protections under the ARRA

B. SUSPENSION/DEBARMENT: The Seller shall provide immediate notice to Purchaser in the event of being suspended, debarred or declared ineligible by any federal agency or state government/agency, or upon receipt of a notice of proposed debarment during the performance of this Order.

C. DUTY-FREE IMPORT: If a domestic Seller intends to procure any materials from offshore (non U.S.) concerns, and to obtain duty free import under Purchaser's prime contract, Seller must obtain permission from Purchaser and advise Purchaser, in writing, of Seller's offshore order number and value.

D. ANTI-KICKBACK: By acceptance of this purchase order, Seller certifies that it has not paid any kickbacks and is in compliance with the Anti-Kickback Act of 1986, 41 U.S.C. 51-58, and further, Seller agrees to indemnify Purchaser for any costs, liabilities or administrative offsets incurred by Purchaser as a result of violations or alleged violations of any applicable, "Anti-Kickback Procedures", by Seller, its employees, its subcontractors or their employees.

E. TECHNICAL DATA: Seller shall indemnify Purchaser for any withholdings, claims, damages and expenses resulting from any assertion by the Government of its rights pursuant to Section 19 herein "CONTRACTS INVOLVING EXPERIMENTAL, DEVELOPMENTAL, OR RESEARCH WORK," as revised from time to time, and arising in whole or in part out of any failure by Seller to deliver technical data or any deficiency in said technical data as delivered, including, but not limited to, the presence of restrictive markings thereon not specifically authorized by this purchase order.

F. PRICE REDUCTION FOR DEFECTIVE COST OR PRICING: (applicable to this Order or any modification thereof for which cost or pricing data has been required.) If any price, including profit or fee, negotiated in connection with this Order or any modification thereof or any cost reimbursable under this Order, including modifications thereof, was increased by any significant sums because: (a) Seller furnished cost or pricing data, which was not accurate, complete and current as certified in Seller's certificate of current cost or pricing data; (b) A subcontractor of Seller pursuant to the clauses of this purchase order entitled "Subcontractor Cost or Pricing Data--Modifications", or any Subcontract clause therein required, furnished cost or pricing data, which was not accurate, complete and current as certified in Seller's Certificate of Current Cost or Pricing Data; (c) A subcontractor or prospective subcontractor of Seller furnished cost or pricing data which was required to be accurate, complete and current and to be submitted to support a Subcontract cost estimate furnished by the subcontractor but which was not accurate, complete and current as of the date certified in the subcontractor's Certificate of Current Cost or Pricing Data; or (d)

If Seller or its subcontractor, or prospective Seller or its subcontractor furnished any data, not within (a), (b), or (c) above, which was not accurate, complete, and current as submitted, then the price or cost shall be reduced accordingly and the purchase order shall be modified in writing as may be necessary to reflect such reduction.

Seller agrees to indemnify Purchaser for any costs, liabilities, and expenses resulting from failure of Seller or any subcontractor or supplier of any tier hereunder, incurred by Purchaser as a result of Seller's or its subcontractor's defective cost or pricing data.

G. COST ACCOUNTING STANDARDS ("CAS"): (Applicable when CAS is incorporated in this Order.) Seller agrees to indemnify Purchaser for any costs, liabilities, and other expenses that result from Seller's failure to comply with an applicable cost accounting standard, or failure to comply with Public Laws 91-379 and 100-679.

H. CONTRACT COST PRINCIPLES. If required by the terms of Purchaser's agreement with its customer, Seller agrees to comply with the applicable rules and regulations cited in FAR Part 31 (48 CFR Part 31).

I. BUY AMERICA(N). Seller agrees to comply with all applicable domestic procurement and Buy American rules and regulations as they relate to Supplier's deliverables and agrees to cooperate with Purchaser with respect to verifying its compliance to any such applicable rules and regulations.

J. Non-Discrimination. Seller agrees to comply with the applicable rules and regulations cited in 10 CFR 1040.

K. Procurement Integrity. Seller agrees to comply with the requirements of section 27 of the "Office of Federal Procurement Policy Act" (41 U.S.C. 423), as amended by section 814 of Public Law 101-189, and with the implementing regulations contained in FAR 3.104, and agrees to indemnify Purchaser for any costs and liabilities incurred by Purchaser as a result of violations of the act or regulations by Seller, its employees, its agents, its consultants, or subcontractors, or their employees.

L. Small Business Concern Size Status. Seller shall notify Purchaser in writing if Seller is qualified as a small business concern, small disadvantaged business concern, or women-owned small business concern as defined in 48 CFR 52.219-8 or 49 CFR Part 26. Likewise, Seller agrees to notify Purchaser immediately any time Seller's small or disadvantaged business status changes in any way.

M. FTA FLOW-DOWN REQUIREMENTS: The following clauses and those in subsequent appendices, if any, in effect on date of the Order are hereby incorporated by reference, to the extent they apply to Purchaser's prime contracts or any other contracts funded in whole or in part with government funding ("Purchaser's Prime Contract"). However, in the event of a conflict between the clauses listed below and the Purchaser's Prime Contract, Purchaser's Prime Contract shall prevail.

1. Fly America Requirements. Seller agrees to comply with 49 U.S.C. 40118 (the "Fly America" Act) in accordance with the General Services Administration's regulations at 41 CFR Part 301-10. The Seller agrees to include the requirements of this section in all subcontracts that may involve international air transportation.

2. Buy America Requirements. Seller agrees to comply with 49 U.S.C. 5323(j) and 49 C.F.R. Part 661. Separate requirements for rolling stock are set out at 49 U.S.C. 5323(j)(2)(C) and 49 C.F.R. 661.11. If requested by Purchaser, Seller agrees to complete and provide the relevant and applicable certification to Supplier. Such certifications are found at 49 CFR Part 661.6 (Certification requirements for procurement of steel or manufactured products) and 49 CFR Part 661.12 (Certification requirement for procurement of buses, other rolling stock and associated equipment).

3. Cargo Preference - Use of United States-Flag Vessels. Seller agrees to comply with the requirements in 46 CFR Part 381 and : a. to use privately owned United States-Flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to the underlying contract to the extent such vessels are available at fair and reasonable rates for United States-Flag commercial vessels; b. to furnish within 20 working days following the date of loading for shipments originating within the United States or within 30 working days following the date of leading for shipments originating outside the United States, a legible copy of a rated, "on-board" commercial ocean bill-of-lading in English for each shipment of cargo described in the preceding paragraph to Purchaser and to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590 and to the FTA recipient (through the Purchaser in the case of a Seller's bill-of-lading.) c. to include these requirements in all subcontracts issued pursuant to this contract when the subcontract may involve the transport of equipment, material, or commodities by ocean vessel.

4. Seismic Safety. Seller agrees that any and all work performed hereunder by the Seller and Seller's subcontractors will comply with the standards for Seismic Safety required in Department of Transportation Seismic Safety Regulations 49 CFR Part 41 and will certify to compliance to the extent required by the regulation.

5. Energy Conservation. Seller agrees to comply with mandatory standards and policies relating to energy efficiency contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.

6. Clean Water. Seller agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq. and further agrees to include these requirements in each subcontract exceeding $100,000 financed in whole or in part with FTA funding.

7. Lobbying. Seller agrees to comply with the Byrd Anti-Lobbying Amendment, 31 U.S.C. 1352, as amended by the Lobbying Disclosure Act of 1995, P.L. 104-65 [to be codified at 2 U.S.C. § 1601, et seq.] - Contractors who apply or bid for an award of $100,000 or more shall file the certification required by 49 CFR part 20, "New Restrictions on Lobbying." The certification is located at 49 CFR Part 20, Appendix A.

8. Federal Changes. Seller shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement between the applicable Recipient and the FTA. Seller's failure to so comply is a material breach of this contract.

9. Bonding. Seller agrees to comply with all applicable bonding requirements of the FTA and the Purchaser. These may include bid bonds, performance and payment bonds (for either construction and non-construction procurements/projects), advance payment bonds, patent infringement bonds, and warranty of the work and maintenance bonds.

10. Clean Air. Seller agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 et seq. Seller agrees to report each violation to the Purchaser, and Seller agrees to include these requirements in each subcontract exceeding $100,000 financed in whole or in part with FTA funds.

11. Recovered Materials. Seller agrees to comply with all the requirements of Section 6002 of the Resource Conservation and Recovery Act (RCRA), as amended (42 U.S.C. 6962), including but not limited to the regulatory

provisions of 40 CFR Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 CFR Part 247.

12. Davis-Bacon and Copeland Anti-Kickback Acts. Minimum wages – If applicable to Seller's scope of work hereunder, Seller agrees to comply with any and all applicable provisions of 29 CFR Part 5 and the rules and regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3). The wage determination (including any additional classifications and the conformed wage rates and the Davis-Bacon poster (WH-1321) shall be posted at all times by the Supplier and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers. The Purchaser or grantee shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from Supplier under this contract or any other Federal contract, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics employed by Supplier or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any such laborer or mechanic all or part of the wages required by the contract, the Purchaser or grantee may, after written notice to Supplier, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

Payrolls and basic records relating thereto shall be maintained by Supplier during the course of the work and preserved for a period of three (3) years thereafter for all such laborers and mechanics. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid.

Supplier shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the Purchaser for transmission to the FTA. The payrolls submitted shall contain all information necessary to evince compliance and in accordance with the applicable rules and regulations. Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by Supplier or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify to that such information is accurate and complete and in compliance to all of the applicable rules and regulations. The falsification of any of the above certifications may subject the Supplier or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

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

Subcontracts - Supplier or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as deemed appropriate by the FTA, and as required in any lower tier subcontracts. Supplier will be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

13. Contract Work Hours and Safety Standards Act

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

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

(3) Subcontracts - Seller shall insert in any subcontracts the clauses set forth in paragraphs (1) through (3) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts.

14. No Obligation by the Federal Government. The Parties acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this contract and shall not be subject to any obligations or liabilities to the Purchaser, Seller, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract. Seller agrees to include the above clause in each subcontract financed in whole or in part with FTA funds.

15. Program Fraud and False or Fraudulent Statements or Related Acts

(1) Seller acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § § 3801 et seq. and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its actions pertaining to this Project. Upon execution of the underlying contract, the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, Seller further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on Seller to the extent the Federal Government deems appropriate.

(2) Seller also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. § 5307, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on Seller, to the extent the Federal Government deems appropriate.

(3) Seller agrees to include the above two clauses in each subcontract financed in whole or in part with FTA funds FTA.

16. Suspension and Debarment. Supplier agrees to comply with the requirements of 49 CFR Part 29 and certifies that Supplier and none of Supplier's principals or affiliates (as defined in 49 CFR 29), and its suppliers and subcontractors, are excluded or disqualified as defined at 49 CFR 29. In addition, Supplier agrees to include a provision requiring such compliance in its lower-tier covered transaction.

17. Contracts Involving Federal Privacy Act Requirements. The following requirements apply to Supplier and its employees that administer any system of records on behalf of the Federal Government under any contract. Seller agrees to comply with, and assures the compliance of its employees with, the information restrictions and other applicable requirements of the Privacy Act of 1974, 5 U.S.C. § 552a. Among other things, Seller agrees to obtain the express consent of the Federal Government before Seller or its employees operate a system of records on behalf of the Federal Government. Seller agrees that failure to comply with the terms of the Privacy Act may result in termination of the underlying contract. Seller also agrees to include these requirements in each subcontract to administer any system of records on behalf of the Federal Government financed in whole or in part with FTA funds.

18. Civil Rights. The following requirements apply to the underlying contract:

(1) Nondiscrimination - In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332, Seller agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, Seller agrees to comply with applicable Federal implementing regulations and other implementing requirements of the FTA.

(2) Equal Employment Opportunity - The following equal employment opportunity requirements apply to the underlying contract:

(a) Race, Color, Creed, National Origin, Sex - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. Seller agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, Seller agrees to comply with any implementing requirements of the FTA.

(b) Age - In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § § 623 and Federal transit law at 49 U.S.C. § 5332, Seller agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, Seller agrees to comply with any implementing requirements of the FTA.

(c) Disabilities - In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, Seller agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, Seller agrees to comply with any implementing requirements of the FTA.

(3) Seller also agrees to include these requirements in each subcontract financed in whole or in part with FTA funds, modified only if necessary to identify the affected parties.

19. Contracts Involving Experimental, Developmental, Or Research Work

(1) Rights in Data - The following requirements apply to each contract involving experimental, developmental or research work:

(a) The term "subject data" used in this clause means recorded information, whether or not copyrighted, that is delivered or specified to be delivered under the contract. The term includes graphic or pictorial delineation in media such as drawings or photographs; text in specifications or related performance or design-type documents; machine forms such as punched cards, magnetic tape, or computer memory printouts; and information retained in computer memory. Examples include, but are not limited to: computer software, engineering drawings and associated lists, specifications, standards, process sheets, manuals, technical reports, catalog item identifications, and related information. The term "subject data" does not include financial reports, cost analyses, and similar information incidental to contract administration.

(b) The following restrictions apply to all subject data first produced in the performance of the contract to which this Appendix has been added:

(i) Except for its own internal use, the Purchaser or Seller may not publish or reproduce subject data in whole or in part, or in any manner or form, nor may the Purchaser or Seller authorize others to do so, without the written consent of the Federal Government, until such time as the Federal Government may have either released or approved the release of such data to the public; this restriction on publication, however, does not apply to any contract with an academic institution.

(ii) In accordance with 49 C.F.R. § 18.34 and 49 C.F.R. § 19.36, the Federal Government reserves a royalty-free, non-exclusive and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use, for "Federal Government purposes," any subject data or copyright described in the following subsections:

- Any subject data developed under that contract, whether or not a copyright has been obtained; and
- Any rights of copyright purchased by the Purchaser or Contractor using Federal assistance in whole or in part provided by FTA.

As used in the previous sentence, "for Federal Government purposes," means use only for the direct purposes of the Federal Government. Without the copyright owner's consent, the Federal Government may not extend its Federal license to any other party.

(iii) When FTA awards Federal assistance for experimental, developmental, or research work, it is FTA's general intention to increase transportation knowledge available to the public, rather than to restrict the benefits resulting from the work to participants in that work. Therefore, unless FTA determines otherwise, the Purchaser and Supplier performing experimental, developmental, or research work required by the underlying contract to which this Appendix is added agrees to permit FTA to make available to the public, either FTA's license in the copyright to any subject data developed in the course of that contract, or a copy of the subject data first produced under the contract for which a copyright has not been obtained. If the experimental, developmental, or research work, which is the subject of the underlying contract, is not completed for any reason whatsoever, all data developed under that contract shall become subject data as defined in subsection (a) of this clause and shall be delivered as the Federal Government may direct. This subsection (c), however, does not apply to adaptations of automatic data processing equipment or programs for the Purchaser or Supplier's use whose costs are financed in whole or in part with Federal assistance provided by FTA for transportation capital projects.

(iv) Unless prohibited by state law, upon request by the Federal Government, the Purchaser and Supplier agree to indemnify, save, and hold harmless the Federal Government, its officers, agents, and employees acting within the scope of their official duties against any liability, including costs and expenses, resulting from any willful or intentional violation by the Purchaser or Supplier of proprietary rights, copyrights, or right of privacy, arising out of the publication, translation, reproduction, delivery, use, or disposition of any data furnished under that contract. Neither the Purchaser nor the Supplier shall be required to indemnify the Federal Government for any such liability arising out of the wrongful act of any employee, official, or agents of the Federal Government.

(v) Nothing contained in this clause on rights in data shall imply a license to the Federal Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Federal Government under any patent.

(vi) Data developed by the Purchaser or Supplier and financed entirely without using Federal assistance provided by the Federal Government that has been incorporated into work required by the underlying contract to which this Appendix has been added is exempt from the requirements of subsections (b), (c), and (d) of this clause, provided that the Purchaser or Supplier identifies that data in writing at the time of delivery of the contract work.

(vii) Unless FTA determines otherwise, Supplier agrees to include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with FTA funds.

(c) Unless the Federal Government later makes a contrary determination in writing, irrespective of Supplier's status (i.e., a large business, small business, state government or state instrumentality, local government, nonprofit organization, institution of higher education, individual, etc.), the Purchaser and Supplier agree to take the necessary actions to provide, through FTA, those rights in that invention due the Federal Government as described in U.S. Department of Commerce

regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 C.F.R. Part 401.

(d) Supplier also agrees to include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with FTA funds.

(2) Patent Rights - The following requirements apply to each contract involving experimental, developmental, or research work:

(a) General - If any invention, improvement, or discovery is conceived or first actually reduced to practice in the course of or under the contract to which this Appendix has been added, and that invention, improvement, or discovery is patentable under the laws of the United States of America or any foreign country, the Purchaser and Seller agree to take actions necessary to provide immediate notice and a detailed report to the party at a higher tier until FTA is ultimately notified.

(b) Unless the Federal Government later makes a contrary determination in writing, irrespective of the Seller's status (a large business, small business, state government or state instrumentality, local government, nonprofit organization, institution of higher education, individual), the Purchaser and Seller agree to take the necessary actions to provide, through FTA, those rights in that invention due the Federal Government as described in U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 C.F.R. Part 401.

(c) Seller also agrees to include the requirements of this clause in each subcontract for experimental, developmental, or research work financed in whole or in part with FTA funds.

20. Transit Employee Protective Provisions

(1) Seller agrees to the comply with applicable transit employee protective requirements as follows:

(a) General Transit Employee Protective Requirements - To the extent that FTA determines that transit operations are involved, Seller agrees to comply with terms and conditions determined by the U.S. Secretary of Labor to be fair and equitable to protect the interests of employees employed under this contract and to meet the employee protective requirements of 49 U.S.C. A 5333(b), and U.S. DOL guidelines at 29 C.F.R. Part 215, and any amendments thereto. The Contractor agrees to carry out that work in compliance with the conditions stated in that U.S. DOL letter.

(b) Transit Employee Protective Requirements for Projects Authorized by 49 U.S.C. § 5310(a)(2) for Elderly Individuals and Individuals with Disabilities - If applicable to Supplier's work hereunder, Supplier agrees to comply with the terms and conditions determined by the U.S. Secretary of Labor to meet the requirements of 49 U.S.C. § 5333(b), U.S. DOL guidelines at 29 C.F.R. Part 215, and any amendments thereto.

(c) Transit Employee Protective Requirements for Projects Authorized by 49 U.S.C. § 5311 in Non-urbanized Areas - If applicable to Supplier's work hereunder, Supplier agrees to comply with the terms and conditions of the Special Warranty for the Non-urbanized Area Program agreed to by the U.S. Secretaries of Transportation and Labor, dated May 31, 1979, and the procedures implemented by U.S. DOL or any revision thereto.

(2) Supplier also agrees to include the any applicable requirements in each subcontract involving transit operations financed in whole or in part with FTA funds.

21. Disadvantaged Business Enterprise (DBE) 49 CFR Part 26. Seller agrees to cooperate with Purchaser and comply with the requirements of 49 CFR Part 26 and all related requirements applicable to Purchaser. Supplier shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. Supplier shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of this contract. Failure by Supplier to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy deemed appropriate. Each subcontract the contractor signs with a subcontractor must include the assurance in this paragraph (see 49 CFR 26.13(b)). Supplier agrees to pay its subcontractors performing work related to this contract for satisfactory performance of that work no later than 30 days after Supplier's receipt of payment for that work.

22. Incorporation of Federal Transit Administration (FTA) Terms. This Appendix and the provisions herein include, in part, certain terms and conditions required by the DOT, whether or not expressly set forth herein. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1F and any subsequent circulars or circular versions are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA-mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this contract. Supplier shall not perform any act, fail to perform any act, or refuse to comply with any requests that would cause any other party to be in violation of FTA's terms and conditions.

23. Drug and Alcohol Testing. Supplier agrees to establish and implement a drug and alcohol testing program that complies with 49 CFR Parts 655, produce any documentation necessary to establish compliance, and permit any authorized representative of the US DOT or its operating administrations, the state oversight agency, the grantee, and/or the Purchaser to inspect the facilities and records associated with the implementation of the drug and alcohol testing program as required under 49 CFR Parts 655 and review the testing process. Supplier agrees further to certify annually its compliance with Parts 655 and to submit the Management Information System (MIS) reports as required by law. To

certify compliance, Supplier shall use the "Substance Abuse Certifications" in the "Annual List of Certifications and Assurances for FTA Grants and Cooperative Agreements," which is published annually in the Federal Register.

N. **AMTRAK FLOW-DOWN REQUIREMENTS**. In addition to any other rules and regulations set out herein, the following requirements apply to contracts funded in whole or in part by Amtrak. Supplier agrees to comply with all such requirements and cooperate with Purchaser in assessing and establishing its compliance hereunder. In the event of a conflict between the clauses listed below and the Purchaser's contract with Amtrak or with any party working on an Amtrak-funded contract, Purchaser's prime contract shall prevail.

1. **Equal Employment Opportunity.** Supplier shall comply with E.O. 11246, as amended by E.O. 11375, and as supplemented by regulations at 41 CFR Part 60. The equal opportunity clause provided under 41 CFR 60-1.4(b) is hereby incorporated by reference. Supplier shall prohibit discrimination based upon race, color, religion, national origin, sex (including gender identity), disability, or age.

2. **Rights in Intangible Property.**

2.1 Definition. Intangible property, as defined herein means property having no physical existence, such as trademarks, copyrights, patents and property applications.

2.2 Title to Intangible Property. Intangible property acquired or created in the performance of this Contract vests in Amtrak upon acquisition or creation, as applicable. The requirements of this Section 2.0 shall apply only to intellectual property acquired or created under a planning, experimental, developmental, or research grant or contract.

2.3 Copyright. Amtrak may copyright any work that is subject to copyright and was created or for which ownership was acquired under this Contract. For any work acquired or created under a planning, experimental, developmental, or research grant or contract, Supplier agrees that the Federal Railroad Administration has reserved a royalty-free, nonexclusive and irrevocable right to reproduce, publish, or otherwise use the work for Federal purposes and to authorize others to do so for Federal Government purposes.

2.4 Patents. The following provisions will apply to patents under this Contract:

2.4.1 If the Contract involves the performance of experimental, developmental, or research work, the rights of the Federal Government and Amtrak shall be in accordance with 37 CFR Part 501, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the Federal Railroad Administration (FRA).

2.4.2 If any invention, improvement, or discovery of Supplier or any of its subcontractors is conceived or first actually reduced to practice in the course of or under a planning, experimental, developmental or research grant or contract, Supplier agrees to grant Amtrak and the Federal Railroad Administration, a royalty-free, nonexclusive and irrevocable license to use and to authorize others to use the patented device or process for Federal Government purposes.

2.5 Research Data. For any research data (as defined in 2 CFR Part 200.315(e)) acquired under this Contract, the Federal Railroad Administration has a right to:

2.5.1 Obtain, reproduce, publish, or otherwise use the research data produced under this Agreement for Federal Government purposes; and

2.5.2 Authorize others to receive, reproduce, publish or otherwise use such research data for Federal Government purposes.

3. **Byrd Anti-Lobbying Amendment**. Suppliers that apply or bid for an award exceeding $100,000 shall file the required certification at 49 CFR Part 20. Each tier contractor certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier contractor shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to Amtrak.

4. **Debarment and Suspension.** For contracts that exceed $250,000, Supplier shall certify to Amtrak that Supplier is not listed on the government-wide exclusions in the System for Award Management (SAM), in accordance with OMB guidelines at 2 CFR Part 180 that implement Executive Orders 12549 and 12689, “Debarment and Suspension”. SAM exclusions contain the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than E.O. 12549. Supplier shall comply and cause its subcontractors to comply with U.S. DOT regulations 2 CFR Part 180 and 2 CFR Part 1200, “Nonprocurement Suspension and Debarment,” Supplier shall execute the Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion” set forth in Attachment A. Supplier agrees to obtain the same such certification on debarment and suspension from its subcontractors and lower tier subcontractors.

5. **Domestic Buying Preference/Buy American Act.**

5.1 In accordance with Amtrak’s Domestic Buying Preference requirements at 49 U.S.C. 24305(f), Amtrak shall only buy, and accordingly, Supplier shall only supply (a) unmanufactured articles, materials, and supplies mined or produced in the United States; or (b) manufactured articles, material and supplies manufactured in the United States substantially from articles, materials, and supplies mined, or manufactured in the United States. For purposes of this provision, substantially means that more than 55% of all components by cost must be domestic. This Section 5.1 shall apply only when the cost of those articles, material or supplies bought or supplied to Amtrak by Suppliers is at least $1,000,000.

5.2 When complying with Section 5.1, Supplier shall comply with the domestic preference requirements of the Build America, Buy America Act (BABA) § 70914, Pub. L. No. 117-58, div. G, tit. IX, subtit. A, 135 Stat. 429, 1298 (2021), as implemented by OMB, USDOT, and FRA.
5.3 In accordance with 2 CFR §200.322, as appropriate and to the extent consistent with he law, Suppliers shall, to the greatest extent practicable, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). The requirements of this section must be included in all subcontracts and purchase orders for work or products under this Contract. (a) For purposes of this Section 5.3: (1) "Produced in the United States" means for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States. (2) "Manufactured products" means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.
6. **Cargo Preference--Use of United States-Flag Vessels**. Supplier agrees to comply with the US Cargo Preference requirements set out in section M(3) of this Appendix.
7. **Drug-Free Work Place.** Supplier agrees to comply with U.S. DOT regulations, "Government-wide Requirements for Drug-Free Workplace (Grants)", 49 CFR Part 32, and FRA regulations, "Control of Alcohol and Drug Use", 49 CFR Part 219.
8. **Participation by Small Business Concerns Owned and Controlled by Socially and Economically Disadvantaged Individuals.** Supplier is encouraged to utilize small business concerns owned and controlled by socially and economically disadvantaged individuals (as that term is defined in 49 CFR part 26) in carrying out activities funded under this Contract.
9. **Record Retention And Access.**
9.1 Supplier shall retain all financial records, supporting documents, statistical records and all other Supplier records pertinent to this Contract for a period of three (3) years after contract closeout as set forth in 2 CFR 200.333-200.337.
9.2 Authorized representatives of the FRA, Inspectors General, and the Comptroller General of the United States shall have access to and the right to examine, audit and copy any of Supplier's directly pertinent books, documents, papers, or other records involving transactions related to this Contract as long as the records are retained.
9.3 In cases where litigation, a claim, or an audit is initiated prior to the expiration of the three (3) year period, records must be retained until completion of the action and resolution of the issues or the end of the three (3) year period, whichever is later.
9.4 In accordance with the May 2013 Executive Order on Making an Open and Machine Readable the New Default for Government Information, Supplier shall, whenever practicable, collect, transmit, and store Contract-related information in open and machine readable formats rather than in closed formats or on paper.
10. **Environmental Protection.** *This section applies if the contract exceeds $150,000*. Supplier will conduct work under this contract, and will require that work that is conducted as a result of this contract be in compliance with the following provisions, as modified from time to time, all of which are incorporated herein by reference: the Clean Air Act, 42 U.S.C. 7401 et seq., and the Federal Water Pollution Control Act, 33 U.S.C. 1251 et seq., and all regulations issued thereunder. Also, where applicable, Supplier shall comply with the **Wild and Scenic Rivers Act** of 1968 (16 U.S.C. 1271 et seq).
11. **Application to Lower-Tier Subcontractors, Suppliers that provide more than $50,000 in supplies to Amtrak under this Contract.** Supplier shall insert in each subcontract the provisions set forth herein and also a provision requiring the subcontractors to include these provisions in any lower tier subcontracts. Supplier shall be responsible for compliance by any subcontractor or lower tier subcontractor with the provisions set forth herein. Supplier shall also include in each subcontract that exceeds $250,000, and cause its subcontractors to include in each lower tier subcontract that exceeds $250,000 provisions that allow for administrative, contractual or legal remedies in instances which a supplier or subcontractor violates or breaches contract terms.
12. **Contract Termination Provisions.** All subcontracts in excess of $10,000, shall address termination for cause and termination for convenience, including the manner by which termination shall be effected and the basis for settlement.
13. **Allowable Costs.** Supplier's expenditures will be reimbursed only if they conform with Federal guidelines or regulations and Federal cost principles as set forth in Federal Acquisition Regulation, 48 CFR Chapter I, Subpart 31.2, which are incorporated herein by reference. If any costs are disallowed, as determined by an audit by Purchaser, Amtrak, or the Federal Government, Supplier agrees to reimburse Amtrak for such disallowed costs within sixty (60) days of advice to Supplier of the determination of disallowance.
14. **Capital Acquisition.** The FY 2016 Appropriations Act requires Amtrak to include a statement in any contract for a capital acquisition that exceeds $10,000,000 in life cycle costs that funding for the acquisition is subject to the availability of funds appropriated by Congress in an Appropriations Act, even though Amtrak is not subject to the Anti-Deficiency Act, does not receive appropriations directly from Congress, and possesses other sources of revenue that may fund the capital acquisition.

15. **Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment.** Supplier shall provide no equipment, services, or systems under the Contract that causes Amtrak to be in violation of 2 CFR §200.216 (Prohibition on certain telecommunications and video surveillance services or equipment). As of the effective date of 2 CFR §200.216, companies that may be implicated by this provision are: Huawei Technologies Company, ZTE Corporation, Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities). Supplier shall include this provision in all subcontracts it issues.

16. **Application of Federal Laws and Regulations.** Supplier understands that Federal laws, regulations, policies, and related administrative practices may be modified from time to time. Supplier agrees that the most recent of such Federal requirements will govern this Contract at any particular time, except if there is sufficient evidence in this Contract of a contrary intent.

O. FAR COMMERCIAL ITEM FLOW-DOWN. Supplier agrees to comply with the following FAR clauses (found at Title 48 of the Code of Federal Regulations) in effect on the date of the Order, and these requirements are hereby incorporated by reference, to the extent they apply to Purchaser's contract with the Government or to the extent they are required by the use of Government funding. Where applicable, the terms "government", "Contracting Officer", and similar terms shall mean Purchaser, and the term "Contractor" and similar terms shall mean Seller or Supplier.

1. 52.203–13, Contractor Code of Business Ethics and Conduct (APR 2010) (Pub. L. 110–252, Title VI, Chapter 1 (41 U.S.C. 251 note)).
2. 52.219–8, Utilization of Small Business Concerns (DEC 2010) (15 U.S.C. 637(d)(2) and (3)), in all subcontracts that offer further subcontracting opportunities. If the subcontract (except subcontracts to small business concerns) exceeds $650,000 ($1.5 million for construction of any public facility), the subcontractor must include 52.219–8 in lower tier subcontracts that offer subcontracting opportunities.
3. 52.222–26, Equal Opportunity (Mar 2007) (E.O. 11246).
4. 52.222–35, Equal Opportunity for Veterans (Sept 2010) (38 U.S.C. 4212).
5. 52.222–36, Affirmative Action for Workers with Disabilities (OCT 2010) (29 U.S.C. 793).
6. 52.222–40, Notification of Employee Rights Under the National Labor Relations Act (DEC 2010) (E.O. 13496). Flow down required in accordance with paragraph (f) of FAR clause 52.222-40.
7. 52.222–41, Service Contract Act of 1965 (NOV 2007) (41 U.S.C. 351, *et seq.*).
8. 52.222–50, Combating Trafficking in Persons (FEB 2009) (22 U.S.C. 7104(g)).
9. 52.222–51, Exemption from Application of the Service Contract Act to Contracts for Maintenance, Calibration, or Repair of Certain Equipment-Requirements (NOV 2007) (41 U.S.C. 351, *et seq.*).
10. 52.222–53, Exemption from Application of the Service Contract Act to Contracts for Certain Services-Requirements (FEB 2009) (41 U.S.C. 351, *et seq.*).
11. 52.222–54, Employment Eligibility Verification (JAN 2009).
12. 52.226–6, Promoting Excess Food Donation to Nonprofit Organizations. (MAR 2009) (Pub. L. 110–247). Flow down required in accordance with paragraph (e) of FAR clause 52.226–6.
13. 52.247–64, Preference for Privately Owned U.S.-Flag Commercial Vessels (FEB 2006) (46 U.S.C. Appx. 1241(b) and 10 U.S.C. 2631). Flow down required in accordance with paragraph (d) of FAR clause 52.247–64.

ATTACHMENT A

CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION

1. The offeror/prospective contractor certifies, by submission of this offer or proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

2. Where the offeror/prospective contractor is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this offer or proposal.

_____
Name of Supplier

_____
Signature of Authorized Representative

_____
Printed Name of Authorized Representative

_____
Title of Authorized Representative

_____
Date

DOMESTIC PREFERENCE/BUY AMERICA ACT CERTIFICATION

Supplier/Offeror must compete one of the certifications below indicating whether it can meet the requirements of 49 U.S.C. §24305(f) and the domestic preference requirements of the Build America, Buy America Act (BABA) §70914, Pub. L. No. 117-58, div. G, tit. IX, subtit. A, 135 Stat. 429, 1298 (2021, as implemented by OMB, USDOT, and FRA.

Certificate of Compliance with Domestic Preference/ Buy America Requirements
Supplier/Offeror hereby certifies that it will comply with the requirements of 49 U.S.C. §24305(f), and the domestic preference requirements of the BABA, as implemented by OMB, USDOT, and FRA.

Date _____

Signature of Authorized Representative _____

Company _____

Printed Name _____

Title of Authorized Representative _____

Certificate of Non-Compliance with Domestic Preference/Buy America Requirements
Supplier/Offeror hereby certifies that it cannot comply with the requirements of 49 U.S.C. §24305(f), and the domestic preference requirements of the BABA, as implemented by OMB, USDOT, and FRA, but it may qualify for an exception to the requirement pursuant to 49 U.S.C. §24305(f), and the domestic preference requirements of the BABA, as implemented by OMB, USDOT, and FRA.

Date _____

Signature of Authorized Representative _____

Company _____

Printed Name _____

Title of Authorized Representative _____