STANDARD TERMS AND CONDITIONS OF PURCHASE

1. ACCEPTANCE OF TERMS AND CONDITIONS. Seller agrees to be bound by and to comply with all terms set forth herein and in the purchase order, to which these terms are attached and are expressly incorporated by reference (collectively, the “Order”), including any amendments, supplements, requirements, specifications and other documents referred to in this Order and in the Supplier Collaboration Portal (https://supplier.gettransportation.com/trans_xpc/endevour/index.jsp). Acknowledgement of this Order, including without limitation, by beginning performance of the work called for by this Order, shall be deemed acceptance of this Order. The terms set forth in this Order take precedence over any alternative terms in any other document connected with this transaction unless such alternative terms are: (A) part of a written supply agreement (“Supply Agreement”), which has been negotiated between the parties and which the parties have expressly agreed may override these terms in the event of a conflict and/or (B) issued by Purchaser as set forth on the face of the Order to which these terms are attached and in the absence of a Supply Agreement. In the event these terms are part of a written Supply Agreement between the parties, the term “Order” used herein shall mean any purchase order issued under the Supply Agreement. In the event of a conflict between the terms set forth herein and in the purchase order to which these terms are attached, the terms in the purchase order shall control. This Order does not constitute an acceptance by Purchaser of any offer to sell, any quotation, or any proposal. Reference in this Order to any such offer to sell, quotation or proposal shall in no way constitute a modification of any of the terms of this Order. ANY ATTEMPTED ACKNOWLEDGMENT OF THIS ORDER CONTAINING TERMS INCONSISTENT WITH OR IN ADDITION TO THE TERMS OF THIS ORDER IS NOT BINDING UNLESS SPECIFICALLY ACCEPTED BY PURCHASER IN WRITING.

2. PRICES, PAYMENTS AND TAXES. All prices are firm and shall not be subject to change. No extra charges of any kind will be allowed unless specifically agreed in writing by Purchaser. Seller warrants the pricing for any goods or services shall not exceed the pricing for the same or comparable goods or services offered by Seller to third parties. Seller shall promptly inform Purchaser of any lower pricing levels for same or comparable goods or services and the parties shall promptly make the appropriate price adjustment. Purchaser’s standard payment terms in effect shall be as follows unless prohibited by law or alternatively stated in the purchase order: For the purposes of this section “day” means business day and is defined as any day in a work week excluding Saturday, Sunday and legal holidays.

2.1 STANDARD:

(A) Payment Terms. Unless Seller is enrolled in the Accelerated Payment Program described in Section 2.2 below and payment is initiated within the applicable discount period, Purchaser will initiate payment of the full invoiced amount (not discounted) to Seller on or before the 135th day (120th day if Seller is enrolled in the Accelerated Payment Program) from the “Payment Start Date” described in Section 2.3 below (each deemed the “Net Due Date” depending of enrollment). Settlement and invoicing must be paperless and in a format acceptable to Purchaser. Options acceptable to Purchaser include Web Invoicing, Evaluated Receipt Settlement and Electronic Data Interchange. Seller must provide banking information to establish electronic funds transfers for U.S. suppliers and wire transfers for non-U.S. suppliers.

(B) Batched Payments. Purchaser will group all approved invoices that are not paid within their applicable discount periods and all approved invoices that have not been discounted and that have Net Due Dates ranging from the 16th day of one month to the 15th day of the next month, and will pay all such approved invoices in the first week of the second month (the “Batch Payment Date”), with the result that some approved invoices will be paid earlier than their Net Due Dates and some approved invoices will be paid later than their Net Due Dates without affecting the average Net Due Date of such approved invoices. In the event an approved invoice is received by Purchaser after the applicable Batch Payment Date that corresponds to the approved invoice’s Net Due Date, the approved invoice will be paid on the next day that Purchaser and the banks used by Purchaser are open for business.

2.2 ACCELERATED PAYMENT PROGRAM: If Seller is enrolled in the Accelerated Payment Program, Purchaser will be entitled, either directly or through an affiliate, to take an early payment discount of 0.0363% of the gross invoice price (the “Daily Discount Rate”) for each day before the 120 Net Due Date that payment is initiated. Each discount will be rounded to the nearest one hundredth of a percent. For example, a discount of 3.7% corresponds to payment initiated 102 days before the 120 Net Due Date and a discount of 0.36% corresponds to payment initiated 18 days before the 120 Net Due Date. If the Net Due Date falls on a weekend or a holiday, the Net Due Date will be moved to the next business day (the “Reset Net Due Date”). If Purchaser initiates payment before such Reset Net Due Date and takes an early payment discount as set forth above, Purchaser will be entitled to take the early payment discount based upon each day payment is initiated before the Reset Net Due Date. If Purchaser and Seller agree that Purchaser may take a fixed-percentage early payment discount (the “Fixed Discount”) whereby Purchaser will take the Fixed Discount for initiating payment on or before a date certain prior to the Net Due Date or the Reset Net Due Date, as applicable (the “Fixed Discount Date”), and the Fixed Discount Date falls on a weekend or a holiday, Purchaser will be entitled to initiate payment to Seller on the next business day following the Fixed Discount Date and take the Fixed Discount as if it initiated payment on the Fixed Discount Date. The Daily Discount Rate is based in part on a 3 Month Libor Rate (defined below) in effect on the last business day of the month preceding the date on which payment is initiated with respect to the first purchase order to which these terms attach (the “Base Libor Rate”). If the 3 Month Libor Rate in effect on the last business day of any month (the “Current Libor Rate”) exceeds the Base Libor Rate, the Daily Discount Rate to be used to calculate the early payment discounts for future invoices may be adjusted upward or downward on the last business day of such month by 0.00003% for each basis point fluctuation between the Current Libor Rate and the Base Libor Rate on such date; provided, however, that if the Current Libor Rate ever falls below the Base Libor Rate, the Daily Discount Rate will never fall below 0.0363%. If the Daily Discount Rate is adjusted on the last business day of the month as set forth above, then such adjusted Daily Discount Rate will be applicable to all invoices posted for payment during the following month. For purposes of this Section, the 3 Month Libor Rate will be the 3 month Libor rate
published in the “Money Rates” section of The Wall Street Journal as the “London interbank offered rate, or Libor three month” (or, in the event that such rate is not so published, as published in another nationally recognized publication) on the last business day of each month. Funding for accelerated payment of invoices under Purchaser's accelerated payment program will be provided by General Electric Commercial Finance (GECF). If Purchaser chooses to settle an invoice pursuant to the accelerated payment program, the following shall occur: (A) title to the goods that are being delivered shall pass directly to GECF on the date of arrival of the item at the specified delivery place; (B) once title to the goods has passed to GECF, GECF will immediately and directly transfer title to Purchaser; and (C) any and all of the Seller’s obligations under this Order, including Seller’s representations and warranties, shall extend to and benefit Purchaser as if title passed directly to Purchaser.

2.3 PAYMENT START DATE:

(A) The “Payment Start Date” is the latest of the required date identified on this Order, the received date of the goods and/or services in Purchaser's receiving system or the date of Purchaser's receipt of valid invoice from Seller. The received date of the goods and/or services in Purchaser’s receiving system will occur: (A) in the case where the goods are shipped directly to Purchaser and/or services are performed directly for Purchaser, within forty-eight (48) hours of Purchaser’s physical receipt of the goods or services; (B) in the case of goods shipped directly to: (1) Purchaser’s customer or a location designated by Purchaser’s customer (“Material Shipped Direct” or “MSD”); or (2) a non-Purchaser/non-customer location to be incorporated into MSD, within forty-eight (48) hours of Seller presenting Purchaser with a valid bill of lading confirming that the goods have been shipped from Seller’s facility; (C) in the case where goods are shipped directly to a third party in accordance with this Order, within forty-eight (48) hours of Purchaser’s receipt of written certification from the third party of its receipt of the goods; or (D) in the case of services performed directly for a third party in accordance with this Order, within forty-eight (48) hours of Purchaser’s receipt of written certification from Seller of completion of the services. Seller agrees to submit correct and complete invoices for goods or services within 180 days of the received date of the goods or services. Any claim involving perceived nonpayment, underpayment or any other payment related issues shall be deemed waived unless asserted in writing within sixty (60) days after (1) receipt by Seller of Purchaser’s payment or (2) the Net Due Date, whichever first occurs.

2.4 TAXES: Seller’s price includes all payroll and/or occupational taxes, any value added tax that is not recoverable by Purchaser and any other taxes, fees and/or duties applicable to the goods and/or services purchased under this Order; provided, however, that any value added tax that is recoverable by Purchaser, state and local sales, use, excise and/or privilege taxes, if applicable, will not be included in Seller's price but will be separately identified on Seller’s invoice. If Seller is obligated by law to charge any value added and/or similar tax to Purchaser, Seller shall ensure that if such value added and/or similar tax is applicable, that it is invoiced to Purchaser in accordance with applicable rules so as to allow Purchaser to reclaim such value added and/or similar tax from the appropriate government authority. Neither party is responsible for taxes on the other party’s income or the income of the other party’s personnel or subcontractors. If Purchaser is required by government regulation to withhold taxes for which Seller is responsible, Purchaser will deduct such withholding tax from payment to Seller and provide to Seller a valid tax receipt in Seller’s name. If Seller is exempt from such withholding taxes or eligible for a reduced rate of withholding tax as a result of a tax treaty or other regime, Seller shall provide to Purchaser a valid tax residency certificate or other documentation, as required by the applicable government regulations, at a minimum of thirty (30) days prior to payment being due. The following state sales and use tax identification numbers are applicable for goods delivered into the States of Ohio and North Carolina, Massachusetts, and Pennsylvania: (A) Ohio - DPP# 98-000-604; (B) North Carolina - DPP# 457; (C) Massachusetts - DPP# 00008; (D) Pennsylvania - DPP# 51-995692.

2.5 SET-OFF: Purchaser shall be entitled to set-off any amount owing from Seller to Purchaser or to any of Purchaser’s affiliated companies against any amount payable under this Order.

3. DISPUTE RESOLUTION.

3.1 If Seller is a permanent resident of the U.S., or a corporation or partnership existing under the laws of the U.S., Purchaser and Seller shall attempt amicably to resolve any controversy, dispute or difference arising out of this Order, by commercial negotiations. If a dispute is not resolved by negotiations, either party shall, upon written notice (“Notice”), refer the dispute to either:

(A) a meeting of appropriate senior management representatives from each of the parties who will confer in good faith to attempt to resolve the matter or

(B) to mediation, to be held within thirty (30) business days after the giving of Notice, or such later date as may be mutually agreed. If the dispute is not resolved within the thirty (30) days of the Initial Notice, or within the mutually agreed-upon later time period, either party may commence arbitration or court proceedings as follows:

(1) If the Purchaser, or any of its affiliates with connections to this Order, has offices in North America, legal action will exclusively be brought and resolved in the United States District Court for the Southern District of New York (where federal jurisdiction exists) or the Commercial Division of the Courts of the State of New York sitting in the County of New York (where federal jurisdiction does not exist), and the appellate courts having jurisdiction of appeals in such courts. Each party agrees that jurisdiction and venue in these New York courts is appropriate, and irrevocably submits with respect to any action or proceeding brought pursuant to this Section 3 for itself and in respect of its property, generally and unconditionally, to the personal jurisdiction of the courts of New York, and irrevocably waives any objection that it may now or hereafter have that any such court is an improper or inconvenient forum for any proceeding brought pursuant to this Section 3.

(2) If Seller is a permanent resident of a country other than the U.S., or is a corporation or partnership existing under the laws of any country other than the U.S., the dispute shall be submitted to and finally resolved by arbitration
4. ASSIGNMENT, SUBCONTRACTING AND CHANGE IN OWNERSHIP.
4.1 ASSIGNMENT AND SUBCONTRACTING. Seller may not assign (including by change of ownership or control, by operation of law or otherwise) this Order or any interest therein including payment, without Purchaser’s prior written consent. Seller shall not subcontract or delegate performance of all or any substantial part of the work called for under this Order without Purchaser’s prior written consent. Should Purchaser grant consent to Seller’s assignment or subcontract, Seller shall cause such assignee or subcontractor to be bound by the terms and conditions of this Order. Further, Seller shall advise Purchaser of any subcontractor or supplier to Seller: (A) that will have at its facility any parts or components with Purchaser’s or any of its affiliates’ name, logo or trademark (or that will be responsible to affix the same); and/or (B) 50% percent or more of whose output from a specific location is purchased directly or indirectly by Purchaser. In addition, Seller will obtain for Purchaser, unless advised to the contrary in writing, written acknowledgement by such assignee, subcontractor and/or supplier to Seller of its commitment to act in a manner consistent with Purchaser’s integrity policies, and to submit to, from time to time, on-site inspections or audits by Purchaser or Purchaser’s third party designee as requested by Purchaser. If Seller subcontracts any part of the work under this Order outside of the final destination country where the goods purchased hereunder will be shipped, Seller shall be responsible for complying with all customs requirements related to such sub-contracts, unless otherwise set forth in this Order. Purchaser may freely assign this order or any interest therein to any of its affiliates or subsidiaries without the consent of or notice to Seller.

4.2 CHANGE IN OWNERSHIP. If a third party submits a solicited or unsolicited offer to Seller that would result in a Change of Ownership or Control of Seller, as defined below, Seller shall give notice of such offer, including the identity of the offeror, to Purchaser as early as commercially practical following Seller’s receipt of the offer. Before Seller accepts the offer, it shall give Purchaser an opportunity, within a reasonable time, to advise Seller of its impact on performance of this Order. If the Change in Ownership and Control occurs, Purchaser has the right at its discretion to terminate this Order. In the event of such termination, Seller agrees to render full cooperation to Purchaser in order to minimize disruption to the Purchaser’s program. Pending termination or in lieu of termination, Purchaser may require Seller to provide adequate assurance of performance, including, but not limited to the institution of special controls regarding the protection of Purchaser’s Property, including all intellectual property and proprietary information. (For purposes of this section, the term “Change in Ownership or Control” shall mean any of the following: (A) the sale of equity shares controlling 20% or more of the voting rights in Seller or Seller’s parent, (B) the sale, lease, transfer or other disposition of substantially all of the assets of Seller or Seller’s parent, (C) a merger, reorganization, consolidation, share exchange, recapitalization, business combination, liquidation or dissolution or similar transaction, (D) a tender offer or exchange offer for any of the outstanding shares of capital stock of Seller or Seller’s parent, (E) a sale by Seller of the assets relating to the goods Seller produces or will produce for Purchaser, or (F) any public disclosure of a proposal or plan or intention to do any of the foregoing.)

5. TRANSPORTATION AND PACKAGING.
5.1 Unless otherwise stipulated on the face of the purchase order,
(A) goods covered by this Order shall be shipped and delivered F.C.A. Seller's door (Incoterms, 2010 Edition) except goods that are to be shipped directly to Purchaser’s customer or a location designated by Purchaser’s customer that are: (1) not to be exported; or (2) exported from the United States of America (“U.S.”), shall be delivered EXW Seller’s facility. The term EXW used herein is modified from the INCOTERMS 2010 definition to mean “EXW with Seller responsible for loading the goods at Seller’s risk and expense”.
(B) In any event, title to goods shall pass to Purchaser upon (1) arrival of such goods at the specified delivery location, and (2) Purchaser’s inspection and receipt into its receiving system. Purchaser insures all goods for which it accepts risk of loss while such goods are in transit. Therefore, Seller shall not declare any insurance value on such goods shipped via Purchaser’s designated carrier.
5.2 Seller shall release rail or truck shipments at the lowest released valuation permitted in the governing tariff or classification. Purchaser will pay no charges for unauthorized transportation. Any unauthorized shipment, which results in excess transportation charges, must be fully prepaid by the Seller. If Seller does not comply with the stated delivery schedule, Purchaser
may require delivery by the fastest means available. The charges resulting from this mode of transportation must be fully prepaid and the Seller must absorb the full cost of the shipment.

5.3 Upon Purchaser's request, all shipment containers for goods shall be labeled in accordance with Purchaser's Bar Code Shipping Label Instructions. Seller shall submit example labels for approval within sixty (60) days of said request. Seller shall designate an individual responsible for compliance with said instructions and shall act as the Seller's contact for issues concerning bar code labels.

5.4 Packing, preservation and marking will be in accordance with the specification, drawing or as specified on the Order, or if not specified, the best commercially accepted practice will be used, and at a minimum consistent with applicable law. In addition, Seller shall include the following information on each shipment under this Order: Purchaser's Order number, case number, routing center number (if provided by Purchaser’s routing center), country of manufacture, destination shipping address, commodity description, gross/net weight in kilograms and pounds, dimensions in centimeters and inches, center of gravity for items greater than one (1) ton and precautionary marks (e.g., fragile, glass, air ride only, do not stack, etc.), loading hook/lifting points and chain/securing locations where applicable to avoid damage and improper handling. Seller shall place all markings in a conspicuous location as legibly, indelibly and permanently as the nature of the article or container will permit. All goods shall be packed in an appropriate manner, consistent with Purchaser's packaging specifications outlined and set forth in document number 84A220081 which may be accessed in the Supplier Collaboration Portal (https://supplier.gettransportation.com/trans_xpc/endeavour/index.jsp). Goods that cannot be packed due to size or weight shall be loaded into suitable containers, pallets or crossbars thick enough to allow safe lifting and unloading. Vehicles that reach their destination and present unloading difficulties due to Seller’s failure to comply the requirements of this section may be sent back to their point of departure at Seller’s expense.

5.5 Failure of Seller to comply with any such Purchaser specification shall cause all resulting transportation charges to be for the account of Seller and give rise to any other remedies available at law or equity.

6. DELIVERY AND DELAY.

6.1 Time is of the essence for this Order. Unless otherwise agreed to in writing, any material commitments or production arrangements that Seller makes which are in excess of the amount or in advance of the time necessary to meet schedules that are within lead time shall be at Seller's risk and cost. Seller bears sole responsibility for managing Seller's raw material, work in process, and inventory, and Purchaser shall have no liability with respect thereto (whether upon termination of this Order or subcontract) other than in connection with termination as provided in Section 19, below. Goods shipped to Purchaser in advance of scheduled lead times may be returned to Seller at Seller’s expense.

6.2 If Seller fails to deliver the goods or complete the services as scheduled, Purchaser may assess such amounts as may be set on the face of an Order as liquidated damages for the agreed delay period. The parties agree that such amounts, if assessed, are an exclusive remedy for the agreed delay period; are a reasonable pre-estimate of the damages Purchaser will suffer as a result of delay based on circumstances existing at the time the Order was established; and are to be assessed as liquidated damages and not as a penalty. In the absence of agreed to liquidated damages, Purchaser shall be entitled to recover damages that it incurs as a result of Seller’s failure to perform as scheduled. Unless expressly stated to the contrary, Purchaser’s remedies are cumulative and Purchaser shall be entitled to pursue any and all remedies available at law or equity. Further to the foregoing, Seller shall not make material commitments or production arrangements in excess of the amount or in advance of the time necessary to meet Purchaser’s delivery schedule. Should Seller enter into such commitments or engage in such production, any resulting exposure shall be for Seller's account.

7. PURCHASER’S PROPERTY.

7.1 All Purchaser property, including but not limited to tools, tool drawings, equipment, materials, drawings, specifications (including Purchaser's ‘S’ specifications), as well as materials that include or disclose processes, know-how, procedures, process parameters, trade secrets, and any other documents, information or data of every description and storage media containing software or firmware, that is furnished to Seller by Purchaser, or by Purchaser’s affiliates, subsidiaries or contractors, or paid for in whole or in part by Purchaser, and any replacement thereof, or any materials affixed or attached thereto (hereinafter, collectively referred to as “Purchaser's Property”), shall be and remain the exclusive personal property of Purchaser, and, unless otherwise agreed to in writing by Purchaser shall be used by Seller solely to render services or provide goods to Purchaser. Such property, and whenever practical each individual item thereof, shall be plainly marked or otherwise adequately identified by Seller as being the property of Purchaser or Purchaser's designee, and shall be safely stored separate and apart from Seller's property. Seller further agrees to comply with any handling and storage requirements provided by Purchaser for such property. Seller shall not substitute any property for Purchaser's Property and shall not use such property except in fulfilling Purchaser's purchase order. Such property while in Seller's custody or control shall be held at Seller's risk and shall be insured by Seller at Seller's expense for replacement cost with loss payable to Purchaser. Such property shall be subject to removal at Purchaser's written request, in which event Seller shall prepare such property for shipment and shall deliver it as directed by Purchaser in the same condition as originally received by Seller, reasonable wear and tear excepted, all at Seller's expense. The foregoing shall not be deemed to affect the rights, if any, of the Government in any such property or to grant any rights to Purchaser in conflict with the FTA provisions set forth in Appendix I.

7.2 Unless otherwise instructed by Purchaser in writing, upon completion of performance of all of purchase order requirements including but not limited to the record retention requirements set forth in Article 21.10, the Seller shall return all Purchaser’s Property to Purchaser at Seller’s expense. The Purchaser may require the Seller to provide a certification of the destruction of all intangible Purchaser’s Property.
7.3 Purchaser shall have the right to audit all pertinent books and records of Seller, and to make reasonable inspections of Seller's facilities to verify compliance with this Article 7 and with Article 8.

7.4 In the event Seller, without Purchaser's prior written consent and authorization, designs or manufacturers for sale to any person or entity other than Purchaser any goods that are substantially similar to or can replace or repair Purchaser goods or parts, or obtains governmental approval for such good or repair, the Seller, in any adjudication involving or relating to Purchaser's Property, shall be required to establish by clear and convincing evidence that neither Seller nor any of its employees, contractors or agents used in whole or in part, directly or indirectly, any of Purchaser's Property in such design or manufacture or in obtaining governmental approval with respect to such goods or repair.

8. INTELLECTUAL PROPERTY.

8.1 INTELLECTUAL PROPERTY TREATMENT.

(A) Nothing in this Order shall entitle Purchaser to ownership rights in data, information, discoveries or inventions made by Seller prior to, or outside the scope of this Order. Regarding the rights to any innovations, inventions, drawings, tools, software or specifications conceived and/or reduced to practice in the course of or performance of this Order or any related purchase order, Seller assigns and agrees to assign to Purchaser all intellectual property rights thereto, including any trade secrets, copyrights and patents issuing thereon (the “Purchaser Rights”).

(B) Seller will provide reasonable assistance to Purchaser, at Purchaser's expense, for securing all such Purchaser Rights, and will cooperate with Purchaser, its officers and agents, in obtaining, at the expense of Purchaser with respect to the prosecution thereof, patents on such inventions or discoveries in the name of and for the benefit of Purchaser in any country that Purchaser may consider desirable. Seller will procure from its employees, without charge to Purchaser, the execution of all patent applications, assignments and other instruments necessary to the procurement of such patents and to the vesting of title thereto in Purchaser. Any compensation due Seller's employees shall be paid solely by Seller.

(C) Purchaser shall become the sole owner of all notes, reports, memoranda, and any other information (regardless of the media of expression) made or prepared in connection with any purchase order placed by Purchaser. Seller will not use any material developed by Seller under any purchase order placed by Purchaser without first obtaining the written consent of Purchaser. All such materials, irrespective of the media of expression, shall be deemed works-for-hire and shall belong exclusively to Purchaser. If by operation of law any of the material is not work-for-hire, then Seller agrees to assign, and hereby assigns, to Purchaser the ownership of such material including all copyrights thereto. Purchaser may obtain and hold in its own name copyrights, registrations, and other protection that may be available in such material, and Seller shall provide any assistance required to perfect such protection.

(D) Purchaser hereby grants Seller a limited, revocable, non-exclusive, non-transferable, non-sublicensable (except as may be provided explicitly in this paragraph) limited personal license to use Purchaser Rights and/or Purchaser's Property solely for performing this Order for Purchaser. Purchaser's Property and Purchaser Rights shall not be used for any other purpose, or disclosed to others or reproduced for any purpose, including, but not limited to, the design, manufacture or repair of parts or to obtain FTA or other government approval to do so; provided, however, Seller may provide Purchaser's Property, and sublicense Purchaser Rights, to Seller's subcontractors for the sole purpose of enabling Seller's subcontractors to assist Seller in performing this Order for Purchaser and on condition that Seller's subcontractors agree in writing for Purchaser's benefit to the terms of this agreement relating to Purchaser Rights and to Purchaser's Property including Articles 7, 8, 10 and 21.4 hereof. This license is terminable with or without cause by Purchaser at any time.

(E) All Purchaser's Property and Purchaser Rights are or shall be deemed to be confidential and proprietary property to Purchaser, whether or not it is marked with any restrictive legend. In the event Seller is notified by Purchaser that goods ordered under this Order have registered intellectual property rights, Seller agrees to mark such Goods with any patent numbers or other markings designated by Purchaser, including updates to such numbers or markings.

(F) Seller shall provide any software and firmware under this Order free of license terms, such as reciprocal open source license terms, that would obligate Purchaser to divulge source code to the public, or if not publicly divulged then (i) offered free of charge or (ii) cause a distributor or publisher of the software to deprive themselves of the benefit of any patent protection associated with the software.

(G) If the work being done hereunder is pursuant to a contract with a governmental entity that contains provisions regarding retention of intellectual property rights of the Seller, Seller shall retain ownership of inventions and Seller hereby grants and agrees to grant to Purchaser an irrevocable, fully paid, perpetual license for all such intellectual property rights, and with the right to extend such license to Purchaser's customers, licensees, co-producers, affiliates and subsidiaries.

(H) The Seller agrees that it will cause its employees to execute contracts of employment or other agreements assuring the Seller's ability to comply fully with the provisions of this Section 8.1.

8.2 INTELLECTUAL PROPERTY INDEMNITY. Seller shall indemnify and save Purchaser, and Purchaser's subsidiaries and affiliates, and their respective vendors and customers, harmless from and against any expense or liability, including costs, fees and all damages, arising out of any claim, suit or proceeding that the manufacture or furnishing of goods and/or services under this purchase order, or the use of such goods and/or services or sales of such goods and/or services constitutes infringement of any patent or copyright, or misappropriation of trade secret. If a reasonable claim of infringement or misappropriation is made, Seller shall procure for Purchaser, and Purchaser's customers, the rights to continue using the goods and/or services, modify them in a manner acceptable to Purchaser to remove the claim, or with the written approval of Purchaser, remove the goods and/or services and refund the purchase price. The forgoing provisions apply to all goods and/or services provided by the Seller to the Purchaser.
9. CHANGES.

9.1 Purchaser reserves the right at any time to make changes within the general scope of this Order. Such changes may include: (A) drawings, designs or specifications; (B) technical clarifications; (C) artwork; (D) quantity; (E) method of shipment or packing; (F) quality; (G) place or time of delivery; or (H) amount of Purchaser's furnished property. In addition, Purchaser may at any time, by notice to Seller, change the place or time of delivery or suspend performance of the work for such time as it deems appropriate. Upon receiving notice of suspension, Seller shall promptly suspend work to the extent specified, properly caring for and protecting all work in progress and materials, supplies and equipment Seller has on hand for performance. Upon Purchaser's request, Seller shall promptly deliver to Purchaser copies of outstanding purchase orders and subcontracts for materials, equipment and/or services for the work and take such action relative to such purchase orders and subcontracts as Purchaser may direct. Purchaser may at any time withdraw the suspension as to all or part of the suspended work by written notice specifying the effective date and scope of withdrawal. Seller shall assume diligent performance on the specified effective date of withdrawal.

9.2 If any change causes a significant impact on the cost of, or the time required for, performance of any work under this Order, an equitable adjustment shall be made in the price or delivery schedule, or both as applicable, in writing; provided, however, the maximum liability of the Purchaser for obsolescence, scrap, rework of materials and parts which Seller has released for manufacture in advance of Seller's normal manufacturing cycle required to meet the schedule. Any Seller claim for adjustment under this section shall be deemed waived unless asserted in writing within twenty (20) days after receipt by Seller of the notice to make the change and may only include reasonable, direct costs that will necessarily be incurred as a direct result of the change.

9.3 No departure shall be made by Seller from Purchaser's specifications, nor any change made in materials, sources of supply, or design, manufacturing or assembly processes. Any change(s) to the specifications requested by Seller must be in writing and is(are) subject to the receipt of written approval from Purchaser's Engineering department, to be issued at Purchaser's sole discretion. Seller must request and receive approval from Purchaser of any proposed changes in writing. Failure to do so could result in penalties and or termination of purchase order for default. In the event that Seller desires to transfer any work under this Order to another site or make any material modification in its manufacturing process or the procurement of materials related to the goods, it shall first consult with and obtain the prior written consent of Purchaser, which consent shall not be unreasonably withheld. Such consent by Purchaser shall be subject to qualification of the new site under Purchaser's supplier qualification standards. Purchaser reserves sole right to accept or reject such changes.

9.4 Nothing in this section, including any disagreement with Purchaser as to the equitable adjustment to be made, shall excuse Seller from proceeding with the Order as changed.

10. WARRANTIES.

10.1 Seller warrants that all goods and services provided pursuant to this Order, whether provided by Seller or a direct or indirect supplier of Seller, will be free of any claims of any nature, including without limitation title claims, and will cause any lien or encumbrance asserted to be discharged, at its sole cost and expense, within thirty (30) days of its assertion (provided such liens do not arise out of Purchaser’s failure to pay amounts not in dispute under this Order or an act or omission of Purchaser). Seller warrants and represents that all such goods and services will be new and of merchantable quality, not used, rebuilt or made of refurbished material unless approved in writing by Purchaser, free from all defects in design, workmanship and material and will be fit for the particular purpose for which they are intended. Such goods and services will be provided in strict accordance with all specifications, samples, drawings, designs, descriptions or other requirements approved or adopted by Purchaser. Any review or approval of drawings by Purchaser will be for Seller's convenience and will not relieve Seller of its responsibility to meet all requirements of this Order. Any attempt by Seller to limit, disclaim or restrict any such warranties or remedies by acknowledgment or otherwise shall be null, void and ineffective. The warranties shall apply to Purchaser, its successors, assigns and the users of goods and services covered by this Order.

10.2 The warranties set forth in section 10.1 only shall apply for a period of forty-eight (48) months, plus delays (such as those due to non-conforming goods and services), from the date (A) of Seller's delivery of all goods to destination/performance of the services; and (B) such goods or services have successfully passed all performance and operational tests as applicable and required under the Order. The 48-month limitation contained in this Section 10.2 does not supersede or otherwise alter or limit any performance and/or reliability requirements set forth in the specifications or other documents governing this Order.

10.3 If any of the goods and/or services are found to be defective or otherwise not in conformity with the warranties in this section during the warranty period, then, Purchaser, in addition to any other rights, remedies and choices it may have by law, contract or at equity, and in addition to seeking recovery of any and all damages and costs emanating therefrom, at its option and sole discretion and at Seller’s expense may: (A) require Seller to inspect, remove, reinstall, ship and repair or replace/re-perform nonconforming goods and/or services with goods and/or services that conform to all requirements of this Order; (B) take such actions as may be required to cure all defects and/or bring the goods and/or services into conformity with all requirements of this Order, in which event all related costs and expenses (including, but not limited to, material, labor, and handling costs and any required re-performance of value added machining or other service) and other reasonable charges shall be for Seller’s account; and/or (C) reject and return all or any portion of such goods and/or services. Any repaired or replaced good, or part thereof, or re-performed services shall carry warranties on the same terms as set forth above, with the warranty period being the greater of the original unexpired warranty or twenty-four (24) months after repair or replacement.
10.4 Purchaser’s failure to inspect, accept, reject or detect defects by inspection shall neither relieve Seller from responsibility for such goods or services that are not in accordance with the Order requirements nor impose liabilities on Purchaser.

11. INDEMNITY AND INSURANCE.

11.1 INDEMNITY. Seller shall defend, indemnify, release and hold harmless Purchaser, its directors, officers, employees, agents representatives, successors and assigns, whether acting in the course of their employment or otherwise, against any and all suits, actions, or proceedings, at law or in equity, and from any and all claims, demands, losses, judgments, fines, penalties, damages, costs, expenses, or liabilities (including without limitation claims for personal injury or property or environmental damage, claims or damages payable to customers of Purchaser, and breaches of Sections 16, and/or 18 below) arising from any act or omission of Seller, its agents, employees, or subcontractors, except to the extent attributable to the sole and direct gross negligence of Purchaser. Seller further agrees to indemnify Purchaser for any attorneys’ fees or other costs that Purchaser incurs in the event that Purchaser has to file a lawsuit to enforce any indemnity or additional insured provision of this Order.

11.2 INSURANCE. Seller shall maintain the following insurance: (A) Comprehensive General Liability in the minimum amount of $3,000,000 combined single limit per occurrence with coverage for bodily injury/property damage, including coverage for contractual liability insuring the liabilities assumed in this Order, products liability, contractors protective liability, where applicable, collapse or structural injury and/or damage to underground utilities, where applicable; (B) Business Automobile Liability Insurance covering Commercial Automobile Liability covering bodily injury/property damage and all owned, hired and non-owned automotive equipment used in the performance of the Order in the amount of $2,000,000 combined single limit each occurrence; (C) Employers’ Liability in the amount of $1,000,000 each occurrence; (D) Property Insurance covering the full value of all goods and services owned, rented or leased by Seller in connection with this Order and covering damage to property in Seller’s care, custody and control; and (E) appropriate Workers’ Compensation Insurance protecting Seller from all claims under any applicable Workers’ Compensation and Occupational Disease Act. Coverage similar to Workers’ Compensation and Employers’ Liability shall be obtained for each local employee outside the United States where work in connection with this Order is performed. Purchaser shall be named as additional insured under Seller’s Comprehensive General Liability policy for any and all purposes arising out of or connected to this Order. Upon request, Seller shall furnish Purchaser an endorsement showing that Purchaser has been named an additional insured and a certificate of insurance completed by its insurance carrier(s) certifying that insurance coverages are in effect and will not be canceled or materially changed except ten (10) days after Purchaser’s written approval. Seller hereby waives subrogation. All insurance specified in this section shall contain a waiver of subrogation in favor of Purchaser, its affiliates and their respective employees for all losses and damages covered by the insurance required in this section, including coverage for damage to Purchaser’s property in Seller’s care, custody or control.

12. SELLER’S EMPLOYEES.

12.1 Seller's personnel performing services under this Order shall remain employees of Seller subject to its right of direction, control and discipline and shall neither become employees of Purchaser nor be entitled to any rights, benefits or privileges of Purchaser employees. As appropriate, Purchaser shall give direction as to the ultimate objective of the project to the Seller. The Seller shall ensure that its personnel adhere to the terms and policies in this Order and that they have the requisite knowledge, training and ability to perform work under this Order competently and in accordance with applicable laws and regulations.

12.2 Seller’s employees are not authorized to enter into any agreements or to make any commitments financial or otherwise on behalf of Purchaser.

13. WORK ON PURCHASER’S OR ITS CUSTOMER’S PREMISES OR SYSTEMS.

13.1 If Seller’s work under this Order involves operations by Seller on the premises of Purchaser or Purchaser’s customer or access to Purchaser’s systems or its computers, then:

(A) Seller shall comply with all of Purchaser’s safety and security procedures and shall take all necessary precautions to prevent the occurrence of any injury to person or property during the progress of such work.

(B) Seller represents and warrants that all of its employees who will perform work under this Order on Purchaser’s or its customer’s premises have been tested and are free from illegal drugs. The term “illegal drugs” does not include the use of a controlled substance pursuant to a valid prescription. The prescription medication must not prevent the employee from performing competent and safe work.

OR (to be used in circumstances where Seller does not have the right to conduct routine drug testing):

(B) Seller represents and warrants that it will use reasonable endeavors to ensure that all of its employees who will perform work under this Order on Purchaser’s or its customer’s premises are free from illegal drugs. In the event that Seller has reason to suspect that any employee performing work under this Order on Purchaser’s or its customer’s premises, Seller agrees to take immediate steps to remove such employee from Purchaser’s or its customer’s premises and procure that the employee does not continue to perform work under this Order. The term “illegal drugs” does not include the use of a controlled substance pursuant to a valid prescription. The prescription medication must not prevent the employee from performing competent and safe work.

(C) To the extent permissible by law, Seller represents and warrants that it will conduct a criminal convictions records investigation of any employee before they are assigned to work on any order that requires that employee to enter Purchaser’s or its customer’s premises.
13.2 Seller shall include this provision in any subcontract placed pursuant to this Order where the subcontractor will perform work on Purchaser's or its customer's premises.

13.3 Purchaser reserves the right to deny access to or expel from its or its customer's premises any person for any reason including but not limited to those who fail to adhere to these referenced procedures or appear on government-issued lists (i.e. the Department of State list of terrorists, suspects, etc., Arms Export Control Debarment List; Department of State, Proliferation List; Department of Commerce, Denied Parties List; and Department of Treasury, Specially Designated National List).

14. AUDIT AND INSPECTION. Seller shall permit Purchaser or its representatives to have reasonable access to the site(s) where work under this Order is performed to assess Seller's compliance with its representations and warranties in order to assess Seller's work quality, conformance with Purchaser's specifications and compliance with this Order. Upon reasonable notice by Purchaser, all: (A) goods, materials and services related in any way to the goods and services purchased hereunder (including without limitation raw materials, components, intermediate assemblies, work in process, tools and end products) shall be subject to inspection and test by Purchaser and its customer or representative at all times and places, including sites where the goods and services are created or performed, whether they are at premises of Seller, Seller's suppliers or elsewhere; and (B) Seller's books and records relating to this Order shall be subject to audit and inspection by Purchaser.

14.1 If any inspection, test, audit or similar oversight activity is made on Seller's or its suppliers' premises, Seller shall, without additional charge: (A) provide all reasonable access and assistance for the safety and convenience of the inspectors and (B) take all necessary precautions and implement appropriate safety procedures for the safety of Purchaser's personnel while they are present on such premises.

14.2 Seller shall provide and maintain an inspection, testing and process control system acceptable to Purchaser and its customer covering the goods and services to ensure compliance with this Order and shall keep complete records available to Purchaser and its customer for three (3) years after completion of this Order. Acceptance of such system by Purchaser shall not alter the obligations and liability of Seller under this Order.

15. PARTS COMPLIANCE AND MATERIALS TEST CERTIFICATION:

15.1 By acceptance of this purchase order, Seller certifies that goods supplied shall conform to all requirements of this Order, including referenced specifications in effect as of the date of purchase order placement or as modified pursuant to Section 9, and that Objective Evidence of conformance and specifications required by this Order is on file and available for examination by Purchaser. For the purposes of this section, “Objective Evidence” shall mean any statement of fact pertaining to the quality of a good or service based on observations, measurements or tests that can be fully verified. Evidence must be expressed in terms of specific quality requirements or characteristics. These characteristics are identified in drawings, specifications, and other documents which describe the item, process, or procedure.

15.2 The Seller shall comply with the Purchaser’s deviation process using the Supplier Collaboration Portal. The Seller shall submit an on-line deviation request and receive Purchaser’s written approval prior to shipping any part that does not meet the Purchaser specifications or requirements.

15.3 Seller shall conform to Purchaser’s Discrepant Material Report (DMR) process. In addition to any other remedies Purchaser may have, the Purchaser shall have the right charge the Seller $200, per occurrence, for any part found defective via DMR where the Seller is at fault to cover the processing costs of the DMR for the Purchaser. If the Seller has three (3) DMRs written against the same part within six (6) months then the Purchaser shall charge an additional fee of $1,000 or 25% of the cost (whichever is less) of the defective quantity of the part as a recovery against manufacturing impacts to the Purchaser.

15.4 Seller shall comply with all requirements of the Purchaser's component/supplier validation process before production parts can be shipped to Purchaser. Seller shall notify Purchaser and adhere to component/supplier validation process if any changes in part parameters, processes used to produce parts, or facilities changes occur throughout Seller's supply chain. Seller shall provide on-going part verification data in accordance with Purchaser's component/supplier validation process including real-time data for any characteristics identified as Critical To Quality characteristics (CTQs). Data for CTQs shall be provided via Purchaser's electronic systems. Seller shall perform timely failure analysis and implement corrective actions for components found to be defective from Purchaser. Any review or approval by Purchaser regarding the validation process will be for Seller's convenience and will not relieve Seller of its responsibility to meet all requirements of this Order.

16. CONFIDENTIALITY.

16.1 Seller shall keep confidential any: (A) other tangible or intangible property furnished by Purchaser in connection with this Order, including any drawings, specifications, data, goods and/or information; (B) technical, process, proprietary or economic information derived from drawings or 3D or other models owned or provided by Purchaser; and (C) other tangible or intangible property furnished by Purchaser in connection with this Order, including any drawings, specifications, data, goods and/or information (the “Confidential Information”) and shall not divulge, directly or indirectly, the Confidential Information for the benefit of any other party without Purchaser's prior written consent. Confidential Information shall also include any notes, summaries, reports, analyses or other material derived by Seller in whole or in part from the Confidential Information in whatever form maintained (collectively, “Notes”). Except as required for the efficient performance of this Order, Seller shall not use or permit copies to be made of the Confidential Information without Purchaser's prior written consent. If any such reproduction is made with prior written consent, notice referring to the foregoing requirements shall be provided thereon.

16.2 The restrictions in this section regarding the Confidential Information shall be inoperative as to particular portions of the Confidential Information disclosed by Purchaser to Seller if such information: (A) is or becomes generally available to the public.
other than as a result of disclosure by Seller; (B) was available on a non-confidential basis prior to its disclosure to Seller; (C) is or becomes available to Seller on a non-confidential basis from a source other than Purchaser when such source is not, to the best of Seller’s knowledge, subject to a confidentiality obligation with Purchaser, or (D) was independently developed by Seller, without reference to the Confidential Information, and Seller can verify the development of such information by written documentation. Upon completion or termination of this Order, Seller shall promptly return to Purchaser all Confidential Information, including any copies thereof, and shall destroy (with such destruction certified in writing by Seller) all Notes and any copies thereof. Any knowledge or information, which Seller shall have disclosed or may hereafter disclose to Purchaser and which in any way relates to the goods or services purchased under this Order (except to the extent deemed to be Purchaser’s property as set forth in Section 7), shall not be deemed to be confidential or proprietary and shall be acquired by Purchaser free from any restrictions (other than a claim for infringement) as part of the consideration for this Order, and notwithstanding any copyright or other notice thereon, Purchaser shall have the right to use, copy, modify and disclose the same as it sees fit.

17. SECURITY AND CRISIS MANAGEMENT REQUIREMENTS. Seller will (1) develop and implement security procedures (“Security Improvement Plan”) in accordance with (A) the recommendations of the United States Customs Service under the provisions of the Customs-Trade Partnership Against Terrorism (“C-TPAT”) for Seller’s type of business, (B) the requirements or recommendations of the EU Authorized Economic Operator (“AEO”) program, and (C) any other governmental program for protection of international supply chains; and (2) upon request of Purchaser, provide a written copy of the Security Improvement Plan.

18. COMPLIANCE WITH LAWS.

18.1 GENERAL. Seller represents, warrants, certifies and covenants (collectively “Covenants”) that it will comply with all laws applicable to the goods, services and/or the activities contemplated or provided under this Order, including, but not limited to, any national, international, federal, state, provincial or local law, treaty, convention, protocol, common law, regulation, directive or ordinance and all lawful orders, including judicial orders, rules and regulations issued thereunder, including without limitation those dealing with the environment, health and safety, employment, records retention, personal data protection and the transportation or storage of hazardous materials. Seller shall also comply with good industry practices, including the exercise of that degree of skill, diligence, prudence and foresight which can reasonably be expected from a competent Seller who is engaged in the same type of service or manufacture under similar circumstances in a manner consistent with all applicable requirements and with all applicable generally recognized international standards. Seller further agrees at Purchaser’s request to provide certificates relating to any applicable legal requirements or to update any and all of the certifications, representations and warranties under this Order in form and substance satisfactory to Purchaser.

18.2 ENVIRONMENT, HEALTH AND SAFETY.

(A) When Seller ships goods to Purchaser, Seller shall provide with the goods the language(s) of the locations where the goods are delivered to Purchaser or its designee: (1) safe use instructions; (2) hazard communication, safe transport and labeling information; (3) regulatory, compliance and certification documentation; and (4) for chemical substances and mixtures, safety data sheets (MSDS/SDS) in all readily available languages.

(B) Upon request Seller shall provide the chemical composition of the goods and any other relevant information regarding the goods, including without limitation, test data and safe use and hazard information, subject to reasonable protection of Seller’s confidential business information.

(C) Seller covenants any goods Seller provides to Purchaser comply with all laws governing the management, handling, shipping, import, export, notification, registration or authorization of chemical substances such as the Montreal Protocol, the Stockholm Convention on Persistent Organic Pollutants, the US Toxic Substances Control Act, the European Union’s Restrictions on Hazardous Substances and REACH legislation, and other comparable chemical regulations (collectively “chemicals legislation”); and can be used as contemplated by Purchaser in full compliance with the chemicals Legislation. Unless GE has expressly agreed otherwise in writing, Seller covenants that the goods do not contain (1) any chemicals that are restricted or otherwise banned under “chemicals legislation” and/or (2) contain lead, mercury, cadmium, hexavalent chromium, polychlorinated biphenyls (PCB), polybrominated diphenyl ethers (PBDE), arsenic, asbestos, benzene, polychlorinated biphenyls (PCBs), or carbon tetrachloride. Seller shall notify Purchaser in writing of the presence of any engineered nanoscale material in the goods or use in Seller’s operations.

18.3 ANTI-DUMPING. Seller represents, warrants, certifies and covenants that all sales made hereunder are made in circumstances that will not give rise to the imposition of new anti-dumping or countervailing duties under United States law (19 U.S.C. Sec. 1671 et seq.), European Union (Council Regulation (EC) No. 384/96 of December 22, 1995, Commission Decision No. 2277/96/ECSC of November 28, 1996), similar laws in such jurisdictions or the law of any other country to which the goods may be exported. To the full extent permitted by law, Seller will indemnify, defend and hold Purchaser harmless from and against any costs or expenses (including any countervailing duties which may be imposed and, to the extent permitted by law, any preliminary dumping duties that may be imposed) arising out of or in connection with any breach of this warranty. In the event that countervailing or anti-dumping duties are imposed that cannot be readily recovered from Seller, Purchaser may terminate this Order with no further liability of any nature whatsoever to Seller hereunder. In the event that any jurisdiction imposes punitive or other additional tariffs on goods subject to this Order in connection with a trade dispute or as a remedy in an “escape clause” action or for any other reason, Purchaser may, at its option, treat such increase in duties as a condition of force majeure.

18.4 IMPORTER OF RECORD AND DRAWBACK. If goods are to be delivered DDP (INCOTERMS 2000) to the destination country, Seller agrees that Purchaser will not be a party to the importation of the goods, that the transaction(s) represented by this Order will be consummated after importation and that Seller will neither cause nor permit Purchaser’s name to be shown as

“importer of record” on any customs declaration. Seller also confirms that it has Non-Resident importation rights, if necessary, into the destination country with knowledge of the necessary import laws. If Seller is the importer of record into the United States for any goods, including any component parts thereof, associated with this Order, Seller shall provide Purchaser required documentation for Duty Drawback purposes which includes, but is not limited to, Customs Form 7552 entitled “Certificate of Delivery” properly executed as well as Customs Form 7501 “Entry Summary” and a copy of Seller’s Invoice. Seller shall accurately indicate the Country of Origin of the goods sold hereunder on the customs/commercial invoice and other applicable documentation. When requested by Purchaser, Seller shall execute such documents as may be necessary to allow Purchaser to claim duty preference under any and all applicable programs.

18.5 INTERNATIONAL TRADE CONTROLS. All transactions hereunder shall at all times be subject to and conditioned upon compliance with all applicable export control laws and regulations and any amendments thereto. The parties hereby agree that they shall not, except as said applicable laws and regulations may expressly permit, make any disposition by way of transshipment, re-export, diversion or otherwise, of any goods, technical data, or software, or the direct product thereof, furnished by either party in connection with this Order. The obligations of the parties to comply with all applicable export control laws and regulations shall survive any termination or discharge of any other contract obligations.

18.6 PROHIBITED GOODS AND SERVICES: The United States of America prohibits the importation of goods or the purchase of services from certain countries. No goods or services from prohibited countries may be used directly or indirectly in the design, manufacture, test, or other methods of providing any of the items (whether goods, services, or otherwise) covered by this Order. The list of prohibited countries can change from time to time and it is Seller’s responsibility to ensure compliance with such list at all times. Current information can be obtained by accessing the internet at URL http://www.treas.gov/ofac/

19. TERMINATION.

19.1 TERMINATION FOR CONVENIENCE. Purchaser may terminate all or any part of this Order at any time by written notice to Seller. Upon termination (other than due to Seller’s insolvency or default including failure to comply with this Order), Purchaser and Seller shall negotiate reasonable termination costs consistent with costs allowable under Section 9 “Changes” and identified by Seller within thirty (30) days of Purchaser’s termination notice to Seller, unless the parties have agreed to a termination schedule in writing.

19.2 TERMINATION FOR DEFAULT. Except for delay due to causes beyond the control and without the fault or negligence of Seller and all of its suppliers (lasting not more than 60 days), Purchaser, without liability, may by written notice of default, terminate the whole or any part of this Order if Seller: (A) fails to perform within the time specified or in any written extension granted by Purchaser; (B) fails to make progress which, in Purchaser’s reasonable judgment, endangers performance of this Order in accordance with its terms; or (C) fails to comply with any of the terms of this Order. Such termination shall become effective if Seller does not cure such failure within ten (10) days of receiving notice of default. Upon termination, Purchaser may procure at Seller’s expense and upon terms it deems appropriate, goods or services similar to those so terminated. Seller shall continue performance of this Order to the extent not terminated and shall be liable to Purchaser for any excess costs for such similar goods or services. As an alternate remedy and in lieu of termination for default, Purchaser, at its sole discretion, may elect to extend the delivery schedule and/or waive other deficiencies in Seller’s performance, making Seller liable for any costs, expenses or damages arising from any failure of Seller’s performance. If Seller for any reason anticipates difficulty in complying with the required delivery date, or in meeting any of the other requirements of this Order, Seller shall promptly notify Purchaser in writing. If Seller does not comply with Purchaser’s delivery schedule, Purchaser may require delivery by fastest method and charges resulting from the premium transportation must be fully prepaid by Seller. Purchaser’s rights and remedies in this clause are in addition to any other rights and remedies provided by law, equity or under this Order.

19.3 TERMINATION FOR INSOLVENCY/PROLONGED DELAY. If Seller ceases to conduct its operations in the normal course of business or fails to meet its obligations as they mature or if any proceeding under the bankruptcy or insolvency laws is brought by or against Seller, a receiver for Seller is appointed or applied for, an assignment for the benefit of creditors is made or an excused delay (or the aggregate time of multiple excused delays) lasts more than 60 days, Purchaser may immediately terminate this Order without liability, except for goods or services completed, delivered and accepted within a reasonable period after termination (which will be paid for at the Order price).

19.4 OBLIGATIONS ON TERMINATION. Upon expiration or after receipt of a notice of termination for any reason, Seller shall immediately: (A) stop work as directed in the notice; (B) place no further subcontracts or purchase orders for materials, services or facilities hereunder, except as necessary to complete the continued portion of this Order; and (C) terminate all subcontracts to the extent they relate to work terminated. After termination, Seller shall deliver to Purchaser all completed work and work in process, including all designs, drawings, specifications, other documentation and material required or produced in connection with such work and all of Purchaser’s Confidential Information as set forth in Section 16.

20. PERSONAL DATA PROTECTION AND PRODUCT CYBERSECURITY.

20.1 PERSONAL DATA PROTECTION. (A) “Personal Data” includes any information relating to an identified or identifiable natural person; “Purchaser Personal Data” includes any Personal Data obtained by Seller from Purchaser; and “Processing” includes any operation or set of operations performed upon Personal Data, such as collection, recording, organization, storage, adaptation or alteration, retrieval,
accessing, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, blocking, erasure or destruction.

(B) Seller, including its officers, directors, employees and/or agents, shall view and Process Purchaser Personal Data only on a need-to-know basis and only to the extent necessary to perform this Order or to carry out Purchaser's further written instructions.

(C) Seller shall use reasonable technical and organizational measures to ensure the security and confidentiality of Purchaser Personal Data in order to prevent, among other things, accidental, unauthorized or unlawful destruction, modification, disclosure, access or loss. Seller shall immediately inform Purchaser of any Security Breach involving Purchaser Personal Data, where "Security Breach" means any event involving an actual, potential or threatened compromise of the security, confidentiality or integrity of the data, including but not limited to any unauthorized access or use. Seller shall also provide Purchaser with a detailed description of the Security Breach, the type of data that was the subject of the Security Breach, the identity of each affected person and any other information Purchaser may request concerning such affected persons and the details of the breach, as soon as such information can be collected or otherwise becomes available. Seller agrees to take action immediately, at its own expense, to investigate the Security Breach and to identify, prevent and mitigate the effects of any such Security Breach and to carry out any recovery necessary to remedy the impact. Purchaser must first approve the content of any filings, communications, notices, press releases or reports related to any Security Breach ("Notices") prior to any publication or communication thereof to any third party. Seller also agrees to bear any cost or loss Purchaser may incur as a result of the Security Breach, including without limitation, the cost of Notices.

(D) Upon termination of this Order, for whatever reason, Seller shall stop the Processing of Purchaser Personal Data, unless instructed otherwise by Purchaser, and these undertakings shall remain in force until such time as Seller no longer possesses Purchaser Personal Data.

(E) Seller understands and agrees that Purchaser may require Seller to provide certain Personal Data ("Seller Personal Data") such as the name, address, telephone number and e-mail address of Seller’s representatives in transactions and that Purchaser and its affiliates and its or their contractors may store such data in databases located and accessible globally by their personnel and use it for purposes reasonably related to the performance of this Order, including but not limited to supplier and payment administration. Seller agrees that it will comply with all legal requirements associated with transferring any Seller Personal Data to Purchaser. Purchaser will be the Controller of this data for legal purposes and agrees not to share Seller Personal Data beyond Purchaser, its affiliates and its or their contractors, and to use reasonable technical and organizational measures to ensure that Seller Personal Data is processed in conformity with applicable data protection laws. “Controller” shall mean the legal entity which alone or jointly with others determines the purposes and means of the processing of Personal Data. By written notice to Purchaser, Seller may obtain a copy of the Seller Personal Data and submit updates and corrections to it.

20.2 PRODUCT CYBERSECURITY. Seller agrees that all goods supplied under this Order that include executable binary code shall comply with the terms and conditions of the Product Cybersecurity Appendix located at http://www.gesupplier.com/html/GEpolicies.htm.

21. MISCELLANEOUS.

21.1 ENGLISH LANGUAGE. Except as the parties may otherwise agree, this Order, purchase orders, purchase agreements, data, notices, shipping invoices, correspondence and all other writings shall be in the English language. In the event of any inconsistency between any terms of this Order and any translation thereof into another language, the English language meaning shall control.

21.2 QUANTITY. Purchaser is not obligated to purchase any quantity of goods and/or services except for such quantity(ies) as may be specified either: (1) on the face of an Order; (2) in a "release" on the face of an Order; or (3) on a separate written release issued by Purchaser pursuant to an Order. The quantity of goods or services, if any, specified in requests for quotation or forecasts supplied by Purchaser from time to time, or otherwise, is an estimate only. Unless otherwise agreed to in writing by Purchaser, Seller shall not make material commitments or production arrangements in excess of the quantities specified in Purchaser’s Order or release and/or in advance of the time necessary to meet Purchaser’s delivery schedule. Should Seller enter into such commitments or engage in such production, any resulting exposure shall be for Seller’s account. Goods delivered to Purchaser in excess of the quantities specified in Purchaser’s Order or release and/or in advance of schedule may be returned to Seller at Seller’s risk and expense, including but not limited to any cost incurred by Purchaser related to storage and handling of such goods.

21.3 GOVERNING LAW. This Order shall be governed by the laws of the jurisdiction in which Purchaser is organized, notwithstanding such jurisdictions conflict of laws rules. For any Purchaser organized in the U.S., New York law shall govern, notwithstanding its conflict of laws rules. The application of the United Nations Convention on the International Sale of Goods is hereby excluded except as expressly referenced herein.

21.4 WAIVER, MODIFICATION AND SEVERABILITY. Any failure or delay in the exercise of rights or remedies under this Order will not operate to waive or impair such rights or remedies. Any waiver given will not be construed to require future or further waivers. No waiver, alteration or modification of any of the provisions of this Order shall be binding upon either party unless in a subsequent writing signed by the duly authorized representative of the party intended to be bound thereby. If any portion of this Order is determined to be contrary to any controlling law, rule or regulation, such portion will be revised or deleted from this Order, but the balance of this Order will remain in full force and effect. The invalidity, in whole or in part, of any of the foregoing sections or paragraphs of this Order shall not affect the remainder of such sections or paragraphs or any other section or paragraph of this Order, which shall continue in full force and effect. Further, the parties agree to give any such section or provision deemed invalid, in whole or in part, a lawful interpretation that most closely reflects the original intention of Purchaser and Seller.
21.5 **SECURITY INTEREST.** In the event items will be bailed to Seller or progress payments will be made, Seller hereby grants Purchaser a security interest in equipment, machinery, contract rights, inventory, goods, merchandise and raw materials, whether now existing or hereafter arising, and any replacements, improvements, substitutions, attachments, accessories and accessions thereto or thereon provided by Purchaser or purchased by Seller with progress payments or advances made by Purchaser and to be used by Seller in manufacturing goods ordered by Purchaser under this Order. Seller agrees to execute and deliver all documents requested by Purchaser to protect and maintain Purchaser's security interest.

21.6 **RELEASE OF INFORMATION/PUBLICITY.** Seller shall not make any announcement, take or release any photographs (except for its internal operation purposes for the manufacture and assembly of the goods), or release any information concerning this Order or any part thereof or with respect to its business relationship with Purchaser, to any third party, member of the public, press, business entity, or any official body except as required by applicable law, rule, injunction or administrative order without Purchaser's prior written consent.

21.7 **PROPER BUSINESS PRACTICES.** Seller shall act in a manner consistent with Purchaser's Integrity Guide for Suppliers, Contractors and Consultants, a copy of which is acknowledged to have been provided to Seller and can be found at the following Internet address [http://www.gesupplier.com/html/SuppliersIntegrityGuide.htm](http://www.gesupplier.com/html/SuppliersIntegrityGuide.htm), all laws concerning improper or illegal payments and gifts or gratuities and agrees not to pay, promise to pay or authorize the payment of any money or anything of value, directly or indirectly, to any person for the purpose of illegally or improperly inducing a decision or obtaining or retaining business in connection with this Order. Further, in the execution of its obligations under this Order, Seller shall take the necessary precautions to prevent any injury to persons or to property.

21.8 **REMEDIES.** Unless expressly indicated otherwise, any right or remedy of Purchaser set forth in this Order shall not be exclusive, and, in addition thereto, Purchaser shall have all rights and remedies under applicable law, including, without limitation, injunctive and/or equitable relief. Without limiting the generality of the foregoing, the parties agree that, whether as a result of breach of contract, warranty, tort (including negligence or patent infringement) or otherwise, Seller shall be liable for any special, consequential, incidental, indirect or exemplary damages relating to the goods, including, but not limited to, contractual liability of Purchaser to its customers, and liability for property damage or personal injury.

21.9 **OFFSET AND COUNTERTRADE CREDIT VALUE REQUIREMENTS.** All offset or countertrade credit value resulting from this Order shall accrue solely to the benefit of Purchaser. Seller agrees to cooperate with Purchaser in the fulfillment of any foreign offset/countertrade obligations.

21.10 **RECORD RETENTION REQUIREMENTS.** Seller shall maintain, for eight (8) years from the date of final payment under this Order or subcontract, purchase order files for supplies, equipment, material, or services including supporting related documentation, records and back-up files including, but not limited to, invoices and memoranda (e.g., memoranda of negotiations showing the principal elements of price negotiations), product acceptance and quality records, including inspection records, material certifications, and acceptance test records.

21.11 **ENTIRE AGREEMENT.** This Order, with documents as are expressly incorporated by reference, is intended as a complete, exclusive and final expression of the parties’ agreement with respect to the subject matter herein and supersedes any prior or contemporaneous agreements, whether written or oral, between the parties. The parties represent that they are not relying upon any representations, understandings or agreements, written or oral, which are not included herein in making their respective decisions to execute this Agreement. This Order may be executed in one or more counterparts, each of which shall for all purposes be deemed an original and all of which shall constitute the same instrument. Facsimile signatures on such counterparts are deemed originals. No course of prior dealings and no usage of the trade shall be relevant to determine the meaning of this Order even though the accepting or acquiescing party has knowledge of the performance and opportunity for objection. The term "including" shall mean and be construed as "including, but not limited to", unless expressly stated to the contrary. All provisions or obligations contained in this Order, which by their nature or effect are required or intended to be observed, kept or performed after termination or expiration of an Order will survive and remain binding upon and for the benefit of the parties, their successors (including without limitation successors by merger) and permitted assigns including, without limitation, Sections 7, 8, 10, 11, 14, 16, 18 and 20.
Appendix I

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, AARMA – 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 loading 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 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.


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 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 Attachment 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 Attachment is added agrees to permit FTA to make available to the public, either FTA's license in the copyright to any subject data developed in the course of that contract, or a copy of the subject data first produced under the contract for which a copyright has not been obtained. If the experimental, developmental, or research work, which is the subject of the underlying contract, is not completed for any reason whatsoever, all data developed under that contract shall become subject data as defined in subsection (a) of this clause and shall be delivered as the Federal Government may direct. This subsection (c), however, does not apply to adaptations of automatic data processing equipment or programs for the Purchaser or 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 Attachment 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 Attachment has been added, and that invention, improvement, or discovery is patentable under the laws of the United States of America or any foreign country, the Purchaser and 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 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, Seller 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, Seller 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.** Contractor shall comply with E.O. 11246, as amended by E.O. 11375, and as supplemented by regulations at 41 CFR Part 60.

2. **Patent Rights; Rights to Inventions.** If any invention, improvement, or discovery of Supplier or any of its subcontractors is conceived or first actually reduced to practice employing financial assistance provided to the Supplier under this contract, and that invention, improvement, or discovery is patentable under the laws of the United States of America or any foreign country, Supplier agrees to notify Amtrak immediately and provide a detailed report. The rights and responsibilities of Amtrak, Supplier and the Federal Government with respect to such invention, improvement, or discovery will be determined in accordance with applicable Federal laws, regulations, policies, and any waiver thereof.

3. **Byrd Anti-Lobbying Amendment.** Supplier agrees to comply with the Lobbying requirements set out in section M(7) of this Appendix.

4. **Debarment and Suspension.** No contract shall be entered into with parties listed on the General Services Administration’s List of Parties Excluded from Federal Procurement or Non-procurement Programs in accordance with E.O.s 12549 and 12689, and 49 CFR Part 29. Supplier will comply with U.S. DOT regulations, “Government-wide Debarment and Suspension (Non-procurement).” If this contract equals or exceeds the small purchase (simplified acquisition) threshold of $100,000, Supplier agrees to execute and provide to Purchaser a certification regarding debarment, suspension, ineligibility and voluntary exclusion, on a form specified by Purchaser.

5. **Buy American.** Supplier shall comply with the Buy American Act (41 U.S.C. 10a-d), and the implementing regulations set forth at 49 CFR part 25, except for acquisitions in excess of one million dollars ($1,000,000), in which case Supplier shall comply with Amtrak’s domestic buying requirements found at 49 U.S.C. 24305(f). If requested by Purchaser, Supplier agrees to assess, complete, and provide to Purchaser the applicable certification to such requirements.

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 29 for procurements that are expected to equal or exceed the small purchase (simplified acquisition) threshold of $100,000.

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 – Submission of Proceedings, Contracts and Other Documents.** During the course of its activities under this Contract and for three (3) years thereafter, Supplier agrees to retain intact and to provide any data, documents, reports, records, contracts, and supporting materials relating to its performance under this contract as FRA may require. Reporting and record-keeping requirements are set forth in 49 CFR part 19.

10. **Audit and Inspection; Inspection by Federal Officials.** Supplier agrees to permit Amtrak, the Secretary of Transportation and Comptroller General of the United States, or their authorized representatives, to inspect all work, materials, payrolls, and other data, and to audit the books, records, and accounts of Supplier and its subcontractors pertaining to Supplier’s activities under this contract. Supplier will take appropriate steps to ensure that the all materials are available for inspection in order to ensure compliance with this section.

11. **Environmental Protection.** *This section applies if the contract exceeds $100,000.* 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. Supplier certifies that no facilities that will be used to perform work under this contract are listed on the List of Violating Facilities maintained by the Environmental Protection Agency (EPA). Supplier will notify Amtrak as soon as it or any subcontractor receives any communication from the EPA indicating that any facility which will be used to perform work pursuant to this contract is under consideration to be listed on the EPA’s List of Violating Facilities; provided, however, that Supplier’s duty of notification hereunder shall extend only to those communications of which it is aware, or should reasonable have been aware. Also, where applicable, Supplier shall comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. 1271 et seq).

12. Remedies for Breach. All subcontracts in excess of the small purchase threshold (currently $100,000), shall contain contractual provisions or conditions that allow for administrative, contractual, or legal remedies in instances in which a subcontractor violates or breaches the contract terms, and provide for such remedial actions as may be appropriate.

13. Contract Termination Provisions. All subcontracts in excess of the small purchase threshold (currently $100,000), shall contain suitable provisions for termination by Supplier, including the manner by which termination shall be effected and the basis for settlement. In addition, such subcontracts shall describe conditions under which it may be terminated for default as well as conditions where it may be terminated because of circumstances beyond the control of Supplier.

14. 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.

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.


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.


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.


8. 52.222–50, Combating Trafficking in Persons (FEB 2009) (22 U.S.C. 7104(g)).


11. 52.222–54, Employment Eligibility Verification (JAN 2009).


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.