



**REQUEST FOR PROPOSAL (“RFP”) – EXHIBIT A-2
SINGLE-LEVEL FLEET REPLACEMENT – TECHNICAL
SUPPORT, SPARES AND SUPPLIES AGREEMENT (TSSSA)
NATIONAL RAILROAD PASSENGER CORPORATION (AMTRAK)
1 Massachusetts Ave NW, Washington DC 20001**

**NATIONAL RAILROAD PASSENGER CORPORATION (AMTRAK)
SINGLE-LEVEL FLEET REPLACEMENT**

GENERAL PROVISIONS

CONTRACT NO: _____



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1. DEFINITIONS

Capitalized terms used in these General Provisions without definition shall have the meaning ascribed to them in this Article 1. Certain additional capitalized terms are defined elsewhere in this Contract. Unless the context otherwise requires, the singular shall include the plural, and the masculine gender shall include the feminine and neuter genders and vice versa.

“**Additional Insured Parties**” has that meaning ascribed to it in Article 47, Section 47.1.

“**Adverse Rights**” has that meaning ascribed to it in Article 12, Contractor’s Representations.

“**Amtrak**” refers to the National Railroad Passenger Corporation, which has its headquarters at 1 Massachusetts Avenue, NW, Washington, DC 20001, and any permitted assignee of Amtrak’s rights under the Contract.

“**Amtrak OIG**” has that meaning ascribed to it in Article 32, Section 32.1.

“**Amtrak Project Director**” has that meaning ascribed to it in Article 3, Section 3.1.

“**Annual Service Payment**” shall mean the amount paid or payable to Contractor under the TSSSA in a 1 (one) year period.

“**Applicable Laws**” means all applicable federal, state and local laws, codes, ordinances, rules, regulations, judgments, decrees, directives, guidelines, policy requirements, orders or other governmental restrictions of any Government Authority, each as may be amended and in each case including successor provisions. For the avoidance of doubt, “Applicable Laws” includes any applicable Rules of Particular Applicability issued by the FRA and the Foreign Corrupt Practices Act.

“**Breach Notice**” has that meaning ascribed to it in Article 22, Section 22.5.

“**Business Day**” means a weekday in the United States that is not an Amtrak holiday.

“**Certificate of Final Fleet Acceptance**” refers to the certificate to be furnished by Amtrak to Contractor pursuant to the Equipment Contract.

“**Change**” means any change or variation authorized by Amtrak pursuant to a Contract Modification issued by the Contracting Official or his representative.

“**Change in Control**” means, with respect to Contractor, a transaction or series of transactions where the Persons who (i) directly or indirectly hold fifty percent (50%) or more of the equity ownership of Contractor prior to such transactions or series of transactions cease to directly or indirectly hold fifty percent (50%) or more of the equity ownership of Contractor as a result of such transaction or series of transactions or (ii) directly or indirectly have the power to control



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the management and policies of Contractor prior to such transaction or series of transactions, Contractor as a result of such transaction or series of transactions.

“Change Order” means a unilateral written order by the Contracting Official directing the Contractor to make a change that Article 7, Changes, authorizes the Contracting Official to order without the Contractor’s consent.

“Claim” has that meaning ascribed to it in Article 7, Changes, and as further defined in Article Section 27.1.

“Conflict of Interest” means that because of activities or relationships with other persons or entities, (1) a person or entity is unable to render impartial assistance or advice to Amtrak, (2) the person’s or entity’s objectivity in performing the Work under this Contract is or might be otherwise impaired, or (3) the person or entity has, or attempts to create, an unfair competitive advantage.

“Consumable Material” shall mean consumable or expendable items of material, as identified by part number and description by the Contractor and agreed to by Amtrak.

“Contract” means the entire agreement between Amtrak and Contractor and supersedes all previous negotiations, representations, understandings and agreements, either written or oral, including the bidding documents, with respect to the subject matter hereof. The terms “Contract Documents” or the “Contract” refers collectively to the following:

- a). The TSSSA Contract signed by Amtrak and Contractor;
- b). The Contract attachments, and exhibits as identified in the TSSSA, including without limitation the General Provisions and all attachments, and exhibits thereto
- c). Contract Modifications; and
- d). Any plans, Drawings, specifications, or other documents which may be produced pursuant to this Contract or derived there from.



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The terms “Contract,” “Agreement” and “Contract Documents” are used interchangeably herein.

“Contract Amount” means the total purchase price for the Work including all amounts in respect of Contract Modifications, escalations and option orders or quantities.

“Contract Modification” a document executed after the Contract is awarded, to clarify, revise, add to, or delete from the Work. A Contract Modification is: (a) a written amendment to the Contract signed by both parties; or (b) a Change Order.

“Contract Time” means the period of time allotted in the Contract for completion of the Work or a portion thereof, as applicable.

“Contracting Official” or **“CO”** means the individual authorized in writing by Amtrak to enter into, administer and make changes to the Contract and to make related determinations and findings on behalf of Amtrak, pursuant to Article 3, Section 3.1. This includes a duly appointed successor or an authorized representative of the Contracting Official acting within the limits of his or her authority.

“Contracting Official’s Representative” or **“COR”** means the individual delegated the authority to act on behalf of the Contracting Official.

“Contracting Official’s Technical Representative” or **“COTR”** means the individual authorized in writing by Amtrak to carry out the initiating, planning, executing, monitoring/controlling and closing out the Work. The COTR manages the project team and is



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accountable for accomplishing the stated project objectives relative to cost, schedule, scope and quality.

“Contractor” means the individual, entity, or authorized representative of same, identified as such in the Contract.

“Contractor Party” means Contractor or any of its Subcontractors, suppliers, or any of their respective employees, agents or authorized representatives.

“Contractor Project Manager” has that meaning ascribed to it in Article 3, Section 3.3.

“Cure Period” has that meaning ascribed to it in Article 22, Section 22.5.

“Day” or **“day”** as used in the Contract means a United States calendar day unless otherwise noted.

“Design Procurement Documents” has that meaning ascribed to it in Article 22, Section 22.3.

“Dispute” has that meaning ascribed to it in Article 27, Section 27.1.

“Documentation” except as applicable to commercially available software, includes all user manuals, systems manuals, training materials, guides, logic diagrams, programmer’s notes, flow-charts, algorithms, development tools and development platforms and other materials necessary for Amtrak’s understanding and use of the Software for the Allowable Uses in the form prepared by the Contractor, subcontractor, Supplier or Manufacturer in the regular course of its business,



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or, to the extent that the Specification requires a different form, then in the form required by the Specification.

“Dollar” or **“\$”** means a dollar of the United States (US).

“Drawings” means, as applicable, two (2) dimensional or three (3) dimensional models, modules or drawings.

“Equipment” means all Cars and Spare Vehicles ordered under the Contract, including all options for additional Cars or Spare Vehicles exercised.

“Equipment Contract” means the entire agreement between Amtrak and the Contractor for the manufacture and supply of Long-Distance Fleet Replacement Equipment.

“Equipment Design Documents” has that meaning ascribed to it in Article 22, Section 22.3.

“Escrow Materials” has that meaning ascribed to it in Article 22, Section 22.5.

“Excess Costs” are the difference between the Contract price for the terminated Supplies and/or Work and the total costs incurred by Amtrak to procure replacement Supplies and/or Work.

“Extended Cure Period” has that meaning ascribed to it in Article 22, Section 22.5.

“Event” has that meaning ascribed to it in Article 5, Section 5.3.

“Federal Railroad Administration” or **“FRA”** means an agency within the U.S. Department of Transportation.

“Financing Parties” means Lender or any Person that advances funds or provides financing (other than as capital contributions) to Amtrak for all or a part of the costs and expenses associated with the Equipment, including without limitation (a) Lenders, banks, financial institutions and capital market participants and (b) any trustee or agent acting on behalf of any Person referred to in the preceding clause (a).

“Fit for Purpose” means:

- a). In respect of each unit of Equipment, that:
 - i). all relevant approvals in respect of that Equipment have been obtained and remain in force;
 - ii). such Equipment:
 - (a) meets the requirements of the Contract, and



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- (b) is in a condition which enables Amtrak to operate such Equipment in Revenue Service in accordance with the Contract; and such Equipment is and shall remain fit for the purposes specified in paragraph (a)(ii)(A) above throughout its service life;
- b). In relation to each Amtrak-Owned Spare that such Amtrak-Owned Spare when incorporated into a unit of Equipment, does not prevent such Equipment from being Fit for Purpose as defined in paragraph (a)(ii)(A) above; and
- c). In relation to each Special Tool that such Special Tool is fit for use by a maintainer of rolling stock to carry out the maintenance and/or Services.

“Force Majeure Event” has that meaning ascribed to it in Article 30.

“Foreign Corrupt Practices Act” means the United States Foreign Corrupt Practices Act of 1977.

“General Provisions” means these terms and conditions.

“Government Authority” means (a) any international, foreign, federal, state, county or municipal government, or political subdivision thereof, (b) any governmental or quasi-governmental agency, authority, board, bureau, commission, department, instrumentality or public body or (c) any court or administrative tribunal of competent jurisdiction.

“Guarantor” means ____, the company that will execute, deliver and be liable on the Parent Guaranty, or the respective successor, in accordance with Article 56.

“Indemnified Parties” means Amtrak and its affiliates, officers, directors, employees, agents, servants, shareholders, successors, assigns subsidiaries, subcontractors, representatives, attorneys, consultants and Financing Parties.

“Indemnified Party Claims” has that meaning ascribed to it in Article 23.1.

“Intellectual Property” shall mean any recognized protectable intellectual property, such as patents, utility models, copyrights, corporate names, trade names, trademarks, trade dress, service marks, applications for any of the foregoing, discoveries, inventions, software, firmware, trade secrets, mask works, industrial design rights, rights of priority, know how, design flows, methodologies and any and all other intangible protectable proprietary information that is legally recognized. Intellectual Property includes without limitation any and all drawings, designs, specifications, documentation, notes and other works, prepared, developed or acquired in performance of the design services component of the Work (collectively, the "Equipment Design Documents") or in the performance of the Design/Build Services (collectively, the "Design



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Procurement Documents") or otherwise delivered to Amtrak in connection with the Work (the "Other Documents").

"IP Rights" means any and all of the following rights and interests worldwide: (a) any and all patent applications and patents and unpatented inventions or technology; (b) any and all proprietary knowledge, know-how, data and trade secrets; (c) any and all copyrights, whether registered or unregistered, and applications to register the same; (d) any and all rights in software, data, databases or related documentation; (e) any and all engineering data and information; and (f) any and all other proprietary rights or Intellectual Property rights.

"Key Personnel" has that meaning ascribed to it in Article 11, Section 11.1.

"Lender" means any entity that lends Amtrak funding for the Contract.

"Material" shall mean spare parts, supplies, equipment, components, material for Minor Debris Damage and Consumable Material for use on the Equipment that was supplied by Contractor, excluding special tools, test equipment or fixtures.

"Measurement Period" shall have the meaning in the TSSSA.

"Minor Debris Damage" shall mean damage to the Equipment as a result of striking debris along the railway. This damage is mild in that repairs can be made relatively quickly with simple tools. Items such as ladders, grab irons, angle cocks, track receivers, light assemblies, windows, hoses, cables, and other exterior components are susceptible to Minor Debris Damage.

"Modification" means any variation, modification or addition to the Equipment.

"Notice to Proceed" or **"NTP"** means a notice provided to Contractor that it may begin performance of the Contract or a Contract Modification.

"Option Order" refers to an option that may be exercised by Amtrak in its sole discretion for purchasing additional Equipment under the terms of the Contract.

"Other Documents" has that meaning ascribed to it in Article 22, Section 22.3.

"Parent Guaranty" means a guaranty of payment and performance (and not of collection) issued by Guarantor guarantying the Work under this Contract, including Contractor's present



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and future performance, obligations and liabilities under this Contract, in form and substance acceptable to Amtrak in its sole discretion.

“Performance Guarantees” shall have the meaning set forth in the TSSSA Statement of Work.

“Person” means a person (including Contractor and Amtrak) and shall be construed as including references to an individual, firm, company, corporation, unincorporated association or body of persons or any government authority (including any of its agencies).

“Project Executive” has that meaning ascribed to it in Article 11, Section 11.1.

“Project Manager” has that meaning ascribed to it in Article 11, Section 11.1.

“Proposed Supplier Change” has that meaning ascribed to it in Article 25, Section 25.2.

“Release Condition” has that meaning ascribed to it in Article 22, Section 22.5.

“Release Notice” has that meaning ascribed to it in Article 22, Section 22.5.

“Revenue Service” means the time when a unit of Equipment is available to the general public and there is a reasonable expectation of carrying passengers that either directly pay fares, are subsidized by public policy, or provide payment through some contractual arrangement. Equipment operated in fare free service are considered in Revenue Service.

“RFP” means that certain National Railroad Passenger Corporation (Amtrak) Request for Proposal for the Amtrak Long Distance Fleet Replacement Technical Support, Spares, and Supply Agreement (“TSSSA”), RFP Number DOC5245556832, dated as of 07/11/2025.

“Services” shall have mean the Work and other services described in the SOW.

“Software” means any and all computer application programs which are incorporated as part of any system, subsystem, assembly, subassembly or components thereof, or any interface system control between or among the systems, subsystems, assemblies, subassemblies, or components thereof, in the Equipment, or which are used in connection with a system (which use involves microprocessors, controllers, drivers, or other electronic data processing elements) or which are used in connection with any related diagnostic or testing equipment, together with all related Documentation, including without limitation, the object code, source code and pseudo-code versions of such assemblies, subassemblies, programs, firmware containing such programs, know-how protocols, listings, instruction sets, indices and other intellectual property necessary for the Amtrak’s use of the Software for the Allowable Uses in the form prepared by the Contractor, Subcontractor, Supplier or Manufacturer in the regular course of its business, or to



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the extent that the Specification requires a different form, then in the form required by the Specification.

"Source Code" means the programming statements and instructions a programmer writes, but which statements and instructions ("code") are not directly executable by the computer that will execute the instructions provided by the programmers until converted into executable or machine language.

"Spares" means spare parts, Supplies, Equipment, and components that are fit, form and functionally equal to or better to the original design and consumables or expendables made of new materials and free of defects.

"Special Tools" means all specialized tools, gauges, meters, diagnostic equipment (including laptop computer software), etc. that will be necessary to operate, maintain, overhaul, inspect, test, troubleshoot and repair all configurations of the Equipment throughout its design life. Special tools do not include those tools that are commercially available "off the shelf".

"Specification" means any specification referenced in this document, including any schedule, exhibit or attachment to it, or any Contract or Subcontract, including without limitation the latest version of Amtrak Mechanical Department Rolling Stock Equipment Specification for Single Level Fleet Replacement, Specification No. 1139, dated as of 07/11/2025, as amended.

"Statement of Work" or "SOW" means the Amtrak Long Distance Fleet Replacement Technical Support, Spares and Supplies Agreement (TSSSA) Statement of Work, dated as of 07/11/2025, as amended.

"Subcontractor" means any party that takes portions of the Contract from Contractor or another subcontractor to provide a service and/or Supplies, parts or Material necessary for the performance of the Contract, and as further defined in Article 26, Section 26.3.

"Subcontractor Intellectual Property" has that meaning ascribed to it in Article 22, Section 22.3.

"Subcontractor IP Rights" shall mean all rights and interests held or otherwise controlled by a Subcontractor worldwide in and to any IP Rights.

"Supplies" means the Spares, including, but not limited to, the Amtrak-Owned Spares, Special Tools, supplies, Equipment, including the Equipment, Materials, articles, or other items furnished by or to be furnished by Contractor under the Contract.

"Technical Proposal" means the technical proposal submitted by Contractor to Amtrak in response to the RFP, as amended.

"Termination Event" has the meaning ascribed to it in Article 9, Section 9.1.



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“**Termination Expenses**” has that meaning ascribed to it in Article 10.

“**Technical Specification**” refers to the Amtrak Mechanical Department Rolling Stock Equipment Specification for Single-Level Fleet Replacement, Specification No. 1139, Revision No. 0, dated as of 07/11/2025, as amended.

“**Technical Support and Spares Supply Agreement**” or “**TSSSA**” means the agreement entered into between Amtrak and Contractor under the terms of the Scope of Work.

“**Temporary Permit to Enter**” means a permit issued by Amtrak to permit Contractor to enter Amtrak’s property and perform Work or Services under the Contract.

“**Equipment Contract**” means the entire agreement between Amtrak and the Contractor for the manufacture and supply of Single-Level Fleet Replacement Equipment.

“**Trustee**” has that meaning ascribed to it in Article 22, Section 22.5.

“**viruses**” has the meaning ascribed to it in Article 4, Section 4.1.

“**Work**” as used herein, means performing the Services by or on behalf of the Contractor and supplying Material by or on behalf of the Contractor required by and exclusively described in the Contract Documents including modification, amendments or extensions thereto by Contract Modifications or other written documentation.

2. INTERPRETATION OF DOCUMENTS

- 2.1. The Contract constitutes the entire agreement of the parties. Except as provided under the Changes section hereof, neither oral statements nor other writings may be used to supplement, modify, or otherwise affect the provisions of the Contract. Contractor acknowledges that it has not been induced to enter into the Contract by any representations or promises not specifically stated in the Contract. Unless otherwise specified herein, all previous or contemporaneous proposals, letters, promises, representations, documents, agreements, or understandings, whether written or oral, relating to the subject matter of the Contract are hereby declared to be null and void and are superseded by the terms and conditions of the Contract. The terms and conditions of the Contract supersede any and all terms and conditions submitted by Contractor prior to, concurrently with, or pursuant to the Contract. Any additional or different terms proposed by Contractor are expressly rejected unless specifically accepted in writing by the Contracting Official. No other terms and conditions, or changes or modifications to the Contract shall be binding upon Amtrak unless agreed to in writing in accordance with the Changes section herein. As used herein, all references to a given agreement, instrument or other document shall be a reference to that agreement, instrument or other document as modified, amended, supplemented and restated through the date as of which such reference is made. Any term defined or provision incorporated herein by reference to another document, instrument or



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agreement shall continue to have the meaning or effect ascribed thereto whether or not such other document, instrument or agreement is in effect.

- 2.2. Any inconsistencies in Contract provisions or Contract shall be resolved by giving precedence in the following order:
- a). Contract Modifications;
 - b). Supplies and Services Contract;
 - c). Supplementary General Provisions;
 - d). TSSSA General Provisions;
 - e). Technical Support Spares Supply Agreement (TSSSA) Statement of Work; and
 - f). Contractor’s Technical Proposal submitted to Amtrak.
- 2.3. If any uncertainty remains after reference to the hierarchy set forth in Section 2.2, the Contractor shall then confer with and be governed by the interpretation(s) of the Contracting Official or his authorized representative.
- 2.4. The captions in these General Provisions are for the convenience of the parties in identification of the several provisions and shall not constitute a part of the Contract nor be considered interpretative hereof.
- 2.5. It shall be the Contractor’s responsibility to study the Contract and to report, at once in writing to the COTR, any errors, inconsistencies or omissions therein. Should the Contractor believe that the correction of the alleged errors, inconsistencies or omissions shall be the cause of additional expenditures or impact the schedule for performance of the Work, or portion thereof, the Contractor shall so advise Amtrak as part of the written notification. Any Work performed by the Contractor prior to receiving a written response from Amtrak with respect to any alleged error, inconsistency or omission shall be at the Contractor’s own risk and expense.
- 3. CONTRACTING OFFICIAL’S REPRESENTATIVE (COR) AND CONTRACTING OFFICIAL’S TECHNICAL REPRESENTATIVE (COTR)**
- 3.1. The Contracting Official may designate Amtrak personnel or agents to act as the Contracting Official’s Representative (COR) or technical representative (COTR). Such designation shall be set forth in the Contract or by separate letter signed by the Contracting Official, and shall contain specific instructions as to the extent to which the representative may take action for the Contracting Official.
- 3.2. Unless otherwise provided in writing by the Contracting Official, the COTR’s authority shall be to review and interpret Drawings and Contract technical submissions, review schedules, review



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invoices and progress payments, and all other interface functions of a technical or commercial nature between the Contractor and Amtrak. All orders and directives issued by the COTR shall be in writing.

- 3.3. Contractor shall designate one of its employees as its project manager, who shall be assigned by Contractor to supervise Contractor’s Work hereunder and shall serve as Amtrak’s point of contact for the resolution of problems (“Contractor Project Manager”). Amtrak shall designate one of its employees as its project director to coordinate issues concerning Contractor’s performance of the Work (“Amtrak Project Director”). The Amtrak Project Director shall serve as Contractor’s point of contact for the resolution of problems related to the management of the relationship under the Contract. Contractor may not, without the consent of the Amtrak Project Director, replace its Project Manager unless the replacement is a result of the individual: (a) voluntarily resigning from employment with Contractor; (b) being dismissed by Contractor for misconduct or unsatisfactory performance; or (c) being unable to perform duties due to death or disability.

4. WARRANTY, DELIVERY OF MATERIAL AND INSPECTION

- 4.1. Contractor covenants and warrants to Amtrak that the Material furnished under the Contract shall be the best of its kind or quality, and suitable for the Equipment. The warranties hereunder shall run to Amtrak, its successors and assigns. The warranties provided for under this Contract do not affect the warranties provided under the Equipment Contract.

Additional Warranties and Agreements Relating to Computer Hardware, software, etc. The warranties below in do does not limit warranties otherwise set forth herein as they may apply to any software or computer systems. Contractor represents, warrants and agrees:

- a). Virus Warranty: No viruses, Trojan horses, back-doors, malware, or similar items (“viruses”) are coded or introduced into any Amtrak software or computer system used by Amtrak or any Equipment, Special Tools, or other Supplies or items furnished under the Contract. Contractor agrees that in the event that a virus is found to have been introduced, Contractor shall take all reasonable action at its own expense to eliminate the virus and reduce the effects of the virus on Amtrak’s operations. Contractor further agrees to cooperate with Amtrak to mitigate and restore any loss of data or operational efficiency.
- b). Disabling Code Warranty: No time-bombs, drop-dead or disabling devices, back doors or similar items are coded or introduced into any Amtrak software or computer system used by Amtrak or any Equipment, Special Tools, or other Supplies or items furnished under the Contract, and that Contractor shall not install or invoke any code which could have the effect of disabling or otherwise shutting down any portion of Amtrak’s software or computer systems or any Equipment, Special Tools, or other Supplies or items furnished under the Contract.
- c). Function/Compatibility/Escrow Warranty: All Software, programming and computer



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hardware, systems and modules and related Technical Documents that Contractor or any Subcontractor furnishes to Amtrak are (i) Fit for Purpose, (ii) capable of performing the functions for which they are intended fully and correctly, (iii) if Software, written in a programming language that is commercially available in the United States and for which compilers, interpreters and other Software tools are commercially available in the United States, (iv) capable of being copied and used by Amtrak for Allowable Uses, and (v) where not delivered outright to Amtrak, being placed into escrow, including current versions, updates and fixes of them, as provided for by Article 21.

- 4.2. Contractor shall ensure that Material is available in accordance with the Scope of Work.
- 4.3. Contractor shall plan and implement a quality assurance program which shall be maintained throughout the execution of the Contract to assure delivery of Material to Amtrak conforms to the contractual requirements of the Contract.
- 4.4. Amtrak shall have the right to inspect the Material within a reasonable time after arrival at the designated delivery location. Amtrak’s making or failure to make an inspection of the Material does not relieve Contractor of its obligation to furnish the Material strictly in accordance with the terms of the Contract, and shall not operate as a waiver of any rights of Amtrak under the Contract. Such inspection or failure to make such inspection of the Materials shall not constitute Amtrak’s approval or acceptance of the Materials.

5. PAYMENT AND TERM

5.1. Payment

- 5.1.1. Amtrak shall pay Contractor in accordance with the Scope of Work. Amtrak shall pay undisputed charges when such payments are due for the Work. Amtrak may withhold payment of particular charges that Amtrak disputes in good faith, and in that case, Amtrak shall advise Contractor, in writing within sixty (60) days of when Amtrak knew of such dispute, of the nature of the dispute and, at Contractor's request, the parties shall immediately commence resolution of the issue in accordance with Article 25 Claims and Disputes.
- 5.1.2. Contractor shall invoice Amtrak by submitting an original invoice that is properly payable, along with supporting documentation, to the individual at the address set forth in the Contract. To be considered properly payable, each invoice must show the Amtrak purchase order number, Contractor invoice number, Contractor payment information, provided that invoices for Chargeable Events shall also include the part number. The content and format of invoices may be modified from time to time through mutual written agreement of the parties. Contractor certifies that, by submitting an invoice to Amtrak, any Supplies or Services being billed (1) comply with all specifications and terms and conditions set forth in the Contract Documents, and (2) have been delivered to Amtrak in the quantities shown on the invoice or have been completed per the terms of the Contract



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Documents. Except for any other express provisions to the contrary contained in the Contract Documents, Amtrak shall pay all undisputed invoices within ninety (90) days of receipt of an original invoice that is properly payable.

- 5.1.3. If after a merger with or acquisition of another entity, formation of a new company or a corporate restructuring (an “Event”), Contractor’s cost of performance decreases by five percent (5%) or more, Contractor shall share at least fifty percent (50%) of such cost savings with Amtrak. Contractor shall review its cost of performance on an annual basis after any Event and shall, within one hundred eighty (180) days of any annual review or at any later time requested by Amtrak, meet with Amtrak to negotiate in good faith a reduction to the fees charged to Amtrak. The reduction shall be at least fifty percent (50%) of the cost savings accruing to Contractor. Prior to such negotiations, Contractor shall provide any data, records or other documentation reasonably requested by Amtrak to substantiate Contractor’s cost of performance. Prior to such negotiations, Contractor shall propose to Amtrak a methodology to account for and verify any proposed cost savings deemed attributable to an Event. If the parties are unable to agree on the proposed methodology, this will constitute a Dispute which will be resolved pursuant to the Claims and Disputes provision herein.

5.2. Term

- 5.2.1. The Term of the Contract shall begin at the issuance of a Certificate of Conditional Acceptance for the first Unit of Equipment (the “Commencement Date”) and unless Amtrak’s exercises an option for an additional term shall end twenty (20) years thereafter. Amtrak, in its sole discretion, may terminate the Contract ninety-six (96) months after the Commencement Date. In order to exercise this option to terminate, Amtrak shall provide Contractor a minimum of one-hundred and eighty (180) days’ written notice prior to the end of the ninety-sixtieth (96th) month of the Term. Additionally, Amtrak, in its sole discretion, may terminate the Contract one-hundred and fifty-six (156) months after the Commencement Date. In order to exercise this second option to terminate, Amtrak shall provide Contractor a minimum of one-hundred and eighty (180) days’ written notice prior to the end of the one-hundred and fifty-sixth (156th) month of the Term. No termination costs will be paid to Contractor for either termination.
- 5.2.1.1. If Amtrak exercises its right to terminate the Contract in accordance with 5.2.1 above, within thirty (30) days of Amtrak’s issuance of the notice described therein, Amtrak and Contractor shall meet to agree to a level of Spares that will be maintained by Contractor through the end of the 96th or 156th month term. Notwithstanding Section 5.3 below, Amtrak shall purchase the agreed upon Spares at the prices set forth in the Master Spares List. For the avoidance of doubt, all other Contractor obligations in Section 5.3 shall apply. Additionally, Amtrak shall pay Contractor a reasonable reimbursement fee for the following



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transition services, to the extent requested by Amtrak: management of Spares transfer, transfer of technical support systems, transfer or technology, and relevant data on vehicles and parts. In no event shall such reimbursement fee reflect any consequential damages, lost or anticipatory profits, unabsorbed overhead, or any other indirect costs. Contractor agrees to negotiate in good faith with Amtrak regarding the reimbursement fee for transition services, and any reimbursement fee and related negotiation shall be subject to the Audit and Inspection of Records section of this Contract.

- 5.3. Upon termination of the Contract for any reason, Contractor shall comply with the requirements of the SOW regarding Transition at Termination of Contract.

6. PERFORMANCE GUARANTEES

- 6.1. If the delivery deadlines have not been met by Contractor, Contractor shall, in place of actual damages for failing to meet Performance Guarantees, pay to Amtrak a fixed and agreed amount as calculated in accordance with the Scope of Work. Except as otherwise set forth in the Contract Documents, the payment due under this Section 6.1 and the Scope of Work shall be the sole and exclusive remedy for failing to meet the Performance Guarantees.

7. CHANGES

- 7.1. The Contracting Official may, at any time, without notice to the sureties, if any, by written order, direct any change within the general scope of this Contract. No other Amtrak employee, agent or representative is authorized to do so, unless expressly authorized in writing by the Contracting Official.
- 7.2. RESERVED.
- 7.3. If any such change causes an increase or decrease in the cost of the Materials, or the time required for delivery of the Materials or Work, or impacts Contractor's ability to meet the Performance Guarantees, if appropriate, the Contracting Official shall make an equitable adjustment in the Contract Amount, to time, cost, and/or the Performance Guarantees and shall modify the Contract.
- 7.4. Contractor must immediately proceed with the Contract as changed, unless otherwise directed by the Contracting Official, and further must within thirty (30) days from the date of receipt of the written order (i) assert in writing its right to an adjustment under this Article and (ii) notify Amtrak of any impact such change shall have. A failure by Contractor to timely assert its right to an adjustment or to timely notify Amtrak of such impact shall be deemed a waiver of Contractor's right to an adjustment with respect to the change or such other Work, and of its or its subsidiary's right to an adjustment under such separate contract.



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- 7.5. If Contractor makes a proposed change request, Contractor, in connection with such request, shall furnish a price breakdown, itemized as required by the Contracting Official, impact to schedule, resources, any new risks or impact to existing known risks with applicable mitigation plans. Unless otherwise directed, the breakdown shall be in sufficient detail to permit an analysis of all material, labor, equipment, subcontract, and overhead costs, as well as profit. Any amount claimed for subcontracts shall be supported by a similar price breakdown. In addition, if the proposal includes a time extension, a justification therefore shall also be furnished. All such changes must be recorded in the Program Change Control Log along with applicable analysis documents and final disposition of changes and necessary approvals.

If Contractor’s proposal for a change in the Contract Amount includes the cost of property made obsolete or redundant by the change, the Contracting Official shall have the right to prescribe the manner of the disposition of the property.

- 7.6. Failure to agree to any adjustment shall be a dispute as defined under Article 25, Claims and Disputes. However, nothing in such Article shall excuse the Contractor from proceeding with the Contract as changed.
- 7.7. When submitting any Claim exceeding one hundred thousand Dollars (\$100,000), Contractor shall provide the following certification:

“I certify that the Claim is made in good faith; that the supporting data are accurate and complete to the best of my knowledge and belief; that the amount requested accurately reflects the contract adjustment for which the contractor believes Amtrak is liable; and that I am duly authorized to certify the Claim on behalf of the Contractor.”

- a). The certification requirement does not apply to issues in controversy that have not been submitted as all or part of a Claim.
- b). The aggregate amount of both increased and decreased costs shall be used in determining when the Dollar thresholds requiring certification are met.
- c). The certification may be executed by any person authorized to bind the contractor with respect to the Claim.

8. TERMINATION FOR DEFAULT

- 8.1. Amtrak may, by written notice to Contractor, terminate for default this Contract in whole or in part if Contractor fails to perform or comply with any of its material obligations under the Contract, including without limitation (each, a “Termination Event”):
- a). failure to make progress or timely performance under the Contract;
 - b). failure, without cause, to make undisputed prompt payment to Subcontractors or to make undisputed prompt payment for equipment, materials and/or labor;



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- c). noncompliance with the Applicable Laws;
- d). failure to comply with Amtrak’s rules and proper instructions;
- e). a bankruptcy event occurs with respect to the Contractor or the Contractor’s Guarantor;
- f). failure to meet Contractor’s performance obligations by reaching the limits of guarantees specified in Section 9, Performance Guarantees and Performance Incentives of the SOW for two (2) consecutive Measurement Periods;
- g). Contractor is prevented from executing the Work or Amtrak is prevented from using the Work as a consequence of any infringement of letters patent, registered design, copyright, trademark, trade name and the Contractor is unable, within ninety (90) days (or such longer period as the Parties may mutually agree) after notice thereof, to procure the removal at its own expense of the cause of the infringement;
- h). any representation or warranty made by the Contractor or the Contractor Guarantor shall prove to be false or misleading in any material respect as of the time made;
- i). any violation of anticorruption provisions of the Contract, or any violation of applicable anticorruption laws, including but not limited to the Foreign Corrupt Practices Act; in each case, in connection with this Contract;
- j). the Contractor Guarantor, if any, breaches any provision of the Contractor Parent Guaranty if any, breaches any provision of or disavows the Contractor Parent Guaranty or Contractor fails to provide or maintain in full force and effect the Parent Guaranty as required by Article 59;
- k). Contactor’s assigns, transfers or pledges the Contract or any right or interest therein except as expressly permitted in Article 27;
- l). Contactor fails to provide or maintain the insurance required under hereunder; or
- m). The occurrence of any other event or circumstance expressly provided for hereunder as constituting a default by the Contractor.
- n). Contractor fails to deliver or execute on a Modification Plan or recovery plan; or
- o). The occurrence of any other event or circumstance expressly provided for hereunder as constituting a default by the Contractor.



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For the avoidance of doubt, the parties agree that items (a) – (m) above are material and that items (a) – (m) do not represent an exhaustive list of material defaults.

Except as set out below, Amtrak will give the Contractor written notice of the default and the opportunity to cure the default within ten (10) days (or such greater timeframe that Amtrak may specify) of Contractor's receipt of the written notice of default from Amtrak. Amtrak shall not be required to allow such cure period if Contractor's default is a violation of Applicable Laws or impacts safety. Additionally, Amtrak shall not be required to provide written notice of default if the Termination Event is of the type described in Section 9.1(f). In the event that Contractor's material default is not excused or cured to the satisfaction of Amtrak, Amtrak may terminate the Contract in whole or in part and reprocure the Work, in which event Contractor shall be liable for (1) repayment to Amtrak of any payments made by Amtrak and (2) any Excess Costs to Amtrak relating to the reprocurement. In the event that the Contract is terminated only in part, the remaining part shall remain in full force and effect. If the Termination Event is of the type described in Section 9.1(f), without further notice or demand of any kind (all of which are hereby waived), Amtrak shall not be obligated to procure the Work hereunder and Amtrak may otherwise exercise any of the other remedies provided for herein with respect to all or a portion of this Contract as Amtrak in its sole discretion shall elect, to the extent permitted by applicable law then in effect.

- 8.2. If Amtrak terminates this Contract in accordance with this provision, Contractor shall not be entitled to receive any further payment for the terminated Work. Further, Amtrak may take possession of all of the materials, equipment and tools on the site(s) and may continue the Work by whatever method Amtrak may deem expedient, including the acquisition, under the terms and in the manner the Contracting Official considers appropriate, of Supplies or Services similar to those terminated. Provided that the termination was for default, Contractor shall be liable to Amtrak for any Excess Costs for those Supplies or Services.
- 8.3. Upon termination of this Contract for default, in whole or in part, Contractor shall, if directed by the Contracting Official, take action including but not limited to:
- a). Stop the terminated Work on the date and to the extent specified in the notice of termination (unless such notice is waived as provided herein), without creating a hazardous condition;
 - b). Place no further subcontracts for materials, equipment, services, facilities or other items, except as may be necessary for completion of such portion of the Work that is not terminated;
 - c). Unless directed otherwise by Amtrak, terminate all subcontracts to the extent that they relate to the performance of terminated Work;
 - d). Furnish Amtrak with a release of all claims against Amtrak, including all claims by Subcontractors, and including a release of all Claims related to Work completed in



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accordance with the Contract;

- e). Take such other reasonable action as Contractor may deem necessary, or as Amtrak may direct, for the protection of property which is in the possession of Contractor and in which Amtrak has or may acquire an interest;
- f). Cooperate fully with Amtrak to enable Amtrak to effectively and efficiently continue and complete the Work;
- g). Assign or otherwise transfer to Amtrak, or an entity designated by Amtrak, in the manner, at the time, and to the extent directed by Amtrak, all of the right, title and interest of Contractor under the subcontracts;
- h). To the extent reasonably required by Amtrak, settle all outstanding liabilities and all claims arising out of the termination without cause of subcontracts, with the approval of Amtrak;
- i). Transfer title to Amtrak, or an entity designated by Amtrak, and deliver in the manner, at the time, and to the extent, if any, directed by Amtrak (1) the fabricated or un-fabricated parts, Work in progress, dies, jigs, fixtures, plans, Drawings, information, contract rights, completed Work, Supplies, and other Material and other property produced as a part of, or acquired in connection with the performance of, the terminated Work, including without limitation all books, files and records relating to the Project, and (2) the completed or partially completed plans, Drawings, fabrication Drawings, information, and any other property which, if this Contract had been completed, would have been required to be furnished to Amtrak;
- j). To the extent requested by Amtrak, use its best efforts to sell, in the manner, at the times, to the extent, and at the price or prices directed or authorized by the Contracting Official, any property of the types referred to in 8.3(i) above, provided, however, that Contractor (1) shall not extend credit to any purchaser, and (2) may acquire any such property under the conditions prescribed and at a price or prices approved by the Contracting Official; and provided, further, that the proceeds of any such transfer or disposition shall be applied in reduction of any payments to be made by Amtrak to Contractor under this Contract or shall otherwise be credited to the price or cost of the Work covered by the Contract or paid in such other manner as the Contracting Official may direct;
- k). Complete, in accordance with the Contract, performance of such part of the Work as shall not have been terminated by the notice of termination; and
- l). Execute any further documents reasonably required by the Contracting Official to confirm or effectuate the terms of this Article without compromising Contractor's right or remedies.



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- 8.4. In the event Amtrak terminates this Contract for default pursuant hereto, Contractor shall bear all costs and expenses incurred in connection with this Article. In accordance with Section 52.2, this Article shall survive the termination or expiration of the Contract.
- 8.5. If, after termination, it is determined that Contractor was not in default, or that the default was excusable, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of Amtrak.
- 8.6. The rights and remedies of Amtrak in this Article are in addition to any other rights and remedies provided by law or in equity or otherwise provided under this Contract, and no termination of this Contract shall constitute a waiver, release or estoppel by Amtrak of any right, action or cause of action it may have against Contractor.

9. TERMINATION FOR CONVENIENCE

- 9.1. Termination for Convenience is the exercise of Amtrak's right to completely or partially terminate performance of work under the Contract when it is in Amtrak's interest to do so, without cause or justification. Amtrak's exercise of this right does not release Contractor from any obligations that it has to Amtrak under any other provision of the Contract Documents, nor does it waive any existing claims that Amtrak may have pending at the time of the Termination for Convenience.
- 9.2. Upon thirty (30) days written notice to Contractor, Amtrak may, at its option and in its sole discretion, terminate the Contract in whole or in part at any time for Amtrak's convenience for whatsoever reason, or no reason, and without regard to fault or breach.
- 9.3. Upon termination of this Contract for convenience, in whole or in part, Contractor shall, if directed by the Contracting Official, take action including but not limited to:
 - a). Stop the terminated Work on the date and to the extent specified in the notice of termination, without creating a hazardous condition;
 - b). Place no further subcontracts for materials, Vehicle, services, facilities or other items, except as may be necessary for completion of such portion of the Work that is not terminated;
 - c). Unless directed otherwise by Amtrak, terminate all subcontracts to the extent that they relate to the performance of terminated Work;
 - d). Furnish Amtrak with a release of all claims against Amtrak, including all claims by Subcontractors, and including a release of all Claims related to Work completed in accordance with the Contract, to the extent Amtrak has made payment in respect thereof in accordance with the Contract.
 - e). Take such other reasonable action as Contractor may deem necessary, or as Amtrak may



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direct, for the protection of property which is in the possession of Contractor and in which Amtrak has or may acquire an interest;

- f). Cooperate fully with Amtrak to enable Amtrak to effectively and efficiently continue and complete the Work;
- g). Assign to Amtrak, or an entity designated by Amtrak, in the manner, at the time, and to the extent directed by Amtrak, all of the right, title and interest of Contractor under the subcontracts;
- h). To the extent reasonably required by Amtrak, settle all outstanding liabilities and all claims arising out of the termination without cause of subcontracts, with the approval of Amtrak;
- i). Transfer title to Amtrak or an entity designated by Amtrak, and deliver in the manner, at the time, and to the extent, if any, directed by Amtrak (1) the fabricated or un-fabricated parts, Work in progress, dies, jigs, fixtures, plans, Drawings, information, contract rights, completed Work, Supplies, and other material and other property produced as a part of, or acquired in connection with the performance of, the terminated Work, including without limitation all books, files and records relating to the Project, and (2) the completed or partially completed plans, Drawings, fabrication Drawings, information, and any other property which, if this Contract had been completed, would have been required to be furnished to Amtrak;
- j). To the extent requested by Amtrak, use its best efforts to sell, in the manner, at the times, to the extent, and at the price or prices directed or authorized by the Contracting Official, any property of the types referred to in Section 18 (i) above, provided, however, that Contractor (1) shall not extend credit to any purchaser, and (2) may acquire any such property under the conditions prescribed and at a price or prices approved by the Contracting Official; and provided, further, that the proceeds of any such transfer or disposition shall be applied in reduction of any payments to be made by Amtrak to Contractor under this Contract or shall otherwise be credited to the price or cost of the Work covered by the Contract or paid in such other manner as the Contracting Official may direct;
- k). Complete, in accordance with the Contract, performance of such part of the Work as shall not have been terminated by the notice of termination; and
- l). Execute any further documents reasonably required by the Contracting Official to confirm or effectuate the terms of this Article without compromising Contractor’s right or remedies.

- 9.4. Within thirty (30) days after Termination for Convenience, Contractor may submit to Amtrak in a form prescribed by Amtrak, a claim for termination costs. Termination costs may include: (1) Costs incurred in the performance of work performed prior to the termination, (2) a fair and reasonable profit on the incurred costs related to work performed prior to the termination, and (3) reasonable settlement expenses. The Contractor and Amtrak may look to FAR 52.249-2 for



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guidance regarding termination costs, but are not bound by the requirements therein. In no event shall Amtrak’s liability for termination costs exceed the unpaid balance of the Compensation, nor shall Amtrak be liable for consequential damages, including but not limited to lost or anticipatory profits, unabsorbed overhead or indirect costs. Contractor agrees to negotiate in good faith with Amtrak regarding any claim after termination. If appropriate, the Contracting Official shall issue a modification to the Contract reflecting any agreed upon adjustments to the Compensation resulting from the negotiation. Contractor’s termination and related negotiation shall be subject to the Audit and Inspection Section herein. Contractor’s subcontracts, sub-subcontracts, and purchase orders shall contain appropriate provisions for termination for convenience under this Section.

- 9.5. In the event of the failure of Contractor and Amtrak to agree upon the amount to be paid to Contractor by reason of the termination of Contract pursuant to this Section, the CO shall determine, on the basis of information available to him/her, the amount, if any, due Contractor by reason of the termination and shall pay to Contractor the amount which the CO determines to be fair and reasonable subject to Contractor’s right to assert a claim in compliance with the requirements of the Contract Documents.

10. CONTRACTOR KEY AND OTHER PERSONNEL

- 10.1. Contractor shall designate, prior to the commencement of the Work, “Key Personnel” who shall include: an individual to whom all Amtrak communications concerning this Contract may be addressed (the “Project Executive” or other title); and “Project Manager” (or other title), who shall report to the Project Executive, and shall be in charge of Contractor’s Work.
- 10.2. Amtrak shall have the right to approve the assignment and replacement by Contractor of all Key Personnel. Before assigning an individual to any of the positions designated herein, whether as an initial assignment or a subsequent assignment, Contractor shall notify Amtrak of the proposed assignment, shall introduce the individual to appropriate Amtrak representatives, and shall provide Amtrak with a resume of any other information about the individual reasonably requested by Amtrak. If, after being notified thereof, Amtrak in good faith objects to the proposed assignment within fifteen (15) days, then Contractor agrees to discuss such objections with Amtrak and attempt to resolve such concerns on a mutually agreeable basis. If the parties have not been able to resolve Amtrak’s concerns within five (5) days, Contractor shall not assign the individual to that position and shall propose to Amtrak the assignment of another individual of suitable ability, experience and qualifications.
- 10.3. Amtrak shall have the right to require Contractor to replace any employee, including those not designated as Key Personnel, who Amtrak judges to be incompetent, careless, unsuitable or otherwise objectionable, or whose continued use is deemed contrary to the best interests of Amtrak. Before a written request is issued, it shall be discussed by the Contracting Official or his representative and the Project Executive. Upon receipt of a written request from Amtrak, Contractor shall be required to proceed with the replacement unless it can demonstrate that Amtrak’s request is unreasonable. The replacement request shall include the desired



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replacement date and the reason for the request. Contractor shall affect the replacement in a manner that does not degrade quality of the Work.

- 10.4. In the event Contractor elects to remove any individual proposed as Contractor’s Key Personnel from the Project without the Contracting Official’s approval, Contractor shall pay to Amtrak the specified assessment for each individual removed during the time period indicated below.

First Year of Contract:	\$1,000,000
Second Year of Contract:	\$500,000
Third Year of Contractor:	\$100,000
Remaining Period of Contract:	\$50,000

- 10.5. The Contracting Official retains the right to approve any request by Contractor to remove Contractor’s Key Personnel from the Project. Said approval shall not be unreasonably withheld. The assessments apply only if Contractor removes Contractor’s Key Personnel without the Contracting Official’s approval. The assessments do not apply if any of Contractor’s Key Personnel leave the Project for reasons limited to retirement, resignation from Contractor’s firm (but not including a situation where Contractor’s Key Personnel takes another position with Contractor’s firm, with any of its affiliated or subsidiary firms, its parent company or any firms affiliated with or subsidiaries of the parent company or any other entity which either owns or controls Contractor’s firm, within one year of resignation), death, disability, personal hardship, or termination of the Key Personnel’s employment by Contractor due to the Key Personnel’s inability to meet performance requirements or for misconduct as defined in Contractor’s Employee Handbook or Corporate policies and procedures.
- 10.6. Contractor shall comply with the applicable provisions of Amtrak Policy 7.39.2 (Contractor Background Check), a copy of which is incorporated herein by reference.
- 10.7. Amtrak and Contractor agree that, during the term of this Contract and for one year thereafter, neither party shall, either directly or indirectly, on the party’s own behalf or on behalf of others, solicit or recruit any person to terminate such person’s employment with the other party. This shall not restrict one party from hiring any employee of the other who responds to regular employment solicitation efforts, such as newspaper advertisements, employment agencies, open house or job fair events, or widely distributed announcements of job openings, or who makes a direct inquiry as to employment with Amtrak or Contractor.

11. CONTRACTOR’S REPRESENTATIONS

Contractor represents that at the time of transfer to Amtrak, or an entity designated by Amtrak, of title to the Supplies, Contractor shall be vested with requisite authority to pass, and covenants that it shall pass such title, free of all liens and encumbrances, security interests, contractual



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rights (for example, such as those under debt instruments or leases), title retention and all other rights of third parties of every kind and description including, without limitation, any creditors of Contractor, whether or not filed, recorded or otherwise perfected or effective under applicable law (collectively, “Adverse Rights”). Contractor shall execute additional documents reasonably requested by Amtrak, or an entity designated Amtrak.

12. SEVERABILITY

If any term or provision hereof is or becomes invalid or unenforceable, Contractor and Amtrak shall in good faith negotiate to replace the invalid or unenforceable term or provision with a term or provision which is valid and enforceable, and which comes as close as possible to expressing the intention of the invalid or unenforceable term or provision. The remaining valid portion of the Contract shall remain binding upon the parties.

13. CONFIDENTIALITY

- 13.1. Confidential Information. The term “Confidential Information” shall mean any and all information or proprietary materials (in every form and media) not generally known and which has been or is hereafter disclosed or made available by either Party (the “Disclosing Party”) to the other Party (the “Receiving Party”) in connection with the efforts contemplated hereunder, including: (i) all trade secrets; (ii) existing or contemplated products, services, designs, technology, processes, technical data, engineering, techniques, methodologies, and concepts and any information related thereto; (iii) information relating to business plans, sales or marketing methods or merchandising techniques, plans or information, and actual or potential customer information, lists or requirements; (iv) financial information or materials; (v) cost data; (vi) user lists and information; (vii) actual or potential vendor lists and information; (viii) procurement requirements; (ix) purchasing information; (x) manufacturing or development information; (xi) pricing policies; (xii) information about employees, independent contractors, interns, officers, directors, shareholders, investors, lenders, accountants, attorneys, and any other agents of either Party; (xiii) information about actual, under development, or what might reasonably be anticipated to be or become business and contractual relationships; (xiv) actual or potential lender, investor or partner lists and information; and (xv) other proprietary business information of either Party. “Confidential Information” as it relates to people or entities includes all contact information, including name, title, position, address, phone numbers, and email addresses. Further, “Confidential Information” includes any and all technical and non-technical information or material in which either Party has rights, opportunities, or obligations, whether or not owned or developed by such Party (or people or entities such Party may have disclosed to or received from pursuant to non-disclosure agreements).
- 13.2. Contractor agrees that all information furnished or disclosed by Contractor to Amtrak in connection with the performance of the Contract: (i) is furnished or disclosed as part of consideration of the Contract; (ii) shall not, unless otherwise agreed in writing by the CO, be treated as confidential or proprietary information of Contractor; and (iii) subject to third party copyright restrictions, may be used, modified, copied, or disclosed by Amtrak for any purpose.



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Generally, routine deliverables provided by the Contractor to Amtrak will not be considered confidential. Contractor expressly waives any and all Claims against Amtrak and releases Amtrak from any and all Claims relating to the use, modification, copying or disclosure of such information by Amtrak, its assigns, or intended beneficiaries. No employee, agent, or representative of Amtrak, other than the CO, is authorized to accept any information which Contractor considers to be proprietary or confidential. Only the CO has authority to enter into an agreement, which shall be in writing, to provide for the confidential treatment of, or limit disclosure of, information furnished or disclosed by Contractor, its employees, agents or representatives.

- 13.3. Contractor shall: (i) hold Amtrak's Confidential Information in trust and confidence and not disclose or release any Confidential Information to any other person or entity; and (ii) not use the Confidential Information of Amtrak for any purpose whatsoever except as set forth in the Contract Documents or herein. Contractor shall disclose Amtrak's Confidential Information only to those of its employees, independent contractors, permitted subcontractors (including their employees and independent contractors) having a need to know such Confidential Information, provided that such persons and entities are bound by obligations of confidentiality and non-use no less restrictive than those contained herein. Upon completion or termination of the Contract, or as otherwise requested by Amtrak, Contractor shall immediately return all such items and information to Amtrak or make other disposition thereof as directed by Amtrak. Contractor shall not make any news releases, articles, brochures, advertisements, speeches or other information releases relating to the Contract without the prior written approval of the CO.
- 13.4. Contractor acknowledges that disclosure or use of Amtrak's Confidential Information without express written consent of the CO violates the Uniform Trade Secrets Act and federal Defend Trade Secrets Act. Contractor agrees not to improperly disclose third-party trade secrets or confidential information to Amtrak.
- 13.5. Contractor shall fully indemnify Amtrak against any and all actions, claims, liability, costs, charges, damages, and expenses suffered or incurred in connection with or arising out of any breach by Contractor of any of the provisions of this Section. Contractor acknowledges that a breach of its obligations hereunder cannot be compensated adequately by an award of damages or other pecuniary remedy, and that Amtrak shall also be entitled in the event of any such breach to the remedies of injunction, specific performance, or other equitable relief in respect of any such breach.
- 13.6. Contractor agrees that, in the event any Confidential Information of Amtrak is sought by subpoena, required by law or order of a court of competent jurisdiction or regulatory authority, or other process to the extent allowed by applicable law, Contractor shall notify Amtrak in writing as soon as practicable or within three (3) days of receipt of notice of such required disclosure in order to enable Amtrak to seek an appropriate protective order. Further, to the extent allowed by applicable law, Contractor shall reasonably cooperate and assist Amtrak in obtaining a protective order or other appropriate protection of its Confidential Information. If,



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nonetheless, the Confidential Information is ordered to be disclosed, Contractor shall furnish only that portion of the Confidential Information that is required legally to be disclosed, and any portion of such Confidential Information required to be disclosed shall be used only for the purposes for which a court issues an order, or for other such purposes required by law.

- 13.7. Contractor agrees that, in the event any of Contractor's Confidential Information in Amtrak's possession is disclosed to a third party pursuant to a lawful subpoena, is required to be disclosed by law (e.g. FOIA) or order of a court of competent jurisdiction or regulatory authority, or other process to the extent allowed by applicable law, Contractor shall hold Amtrak harmless for such release.
- 13.8. This Confidentiality Section shall survive the termination or expiration of the Contract.

14. RETURN OF DATA

Contractor, at any time upon the request of Amtrak, shall immediately return and surrender to Amtrak all copies of any materials, records, notices, memoranda, recordings, Drawings, specifications and any other documents furnished by Amtrak to Contractor and Subcontractor.

15. ACCESS TO WORK

Amtrak, through its designated representative(s), and the Financing Parties shall at all times have access to the Work at the project site(s), or wherever the Work may be in preparation or progress, and Contractor shall provide proper facilities for such access.

16. AMTRAK'S RIGHT TO STOP THE WORK

If Contractor fails to correct Work which is not in accordance with the requirements of the Contract or persistently fails to carry out Work in accordance with the Contract, the Contracting Official, by written order signed personally or by his authorized representative, may order Contractor to stop the Work or any portion thereof, until the cause for such order has been eliminated; however, the right of the Contracting Official to stop the Work shall not give rise to a duty on the part of Amtrak to exercise this right for the benefit of Contractor or any other person or entity. Contractor shall not be entitled to any extension of the Contract Time or increase in the Contract Amount in connection with any stopping of the Work or portion thereof pursuant to this Article.

17. AMTRAK'S RIGHT TO CARRY OUT THE WORK

If Contractor fails to carry out the Work in accordance with the Contract and fails, within a ten (10) day period after receipt of written notice from the Contracting Official to cure this default with diligence and promptness, the Contracting Official may give Contractor a second written notice to correct such deficiencies within a seven (7) day period. If Contractor within such seven (7) day period after receipt of such second notice fails to commence and continue to correct any deficiencies, the Contracting Official may, without prejudice to other remedies



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Amtrak may have, correct, or cause to be corrected, such deficiencies. In so doing, Amtrak or its designee shall utilize any of Contractor's materials, plant and equipment necessary to correct the deficient Work. In such case, an appropriate Change Order shall be issued deducting from payments then or thereafter due Contractor the cost of correcting such deficiencies, including compensation for the Contracting Official's or Amtrak's additional services and expenses made necessary by such default, neglect or failure. If payments then or thereafter due Contractor are not sufficient to cover such amounts, Contractor shall pay the difference to Amtrak. In accordance with Article 55, Amtrak's rights under this Article are in addition to any other rights it may have with respect to defective Work, including those rights of termination as specified elsewhere in the General Provisions.

18. NON-PERFORMANCE BY AMTRAK

Amtrak's failure to perform any of its responsibilities set forth in the Contract shall not be deemed to be grounds for termination, suspension or slowdown of the Work by Contractor; provided, however, that Contractor's nonperformance of its obligations to perform the Work shall be excused if and to the extent: (a) Contractor is unable to perform and its inability to perform is caused solely by Amtrak's failure to perform its responsibilities, and (b) Contractor provides Amtrak with reasonable notice of nonperformance and uses all reasonable efforts to perform notwithstanding Amtrak's failure to perform.

19. SUSPENSION OF THE WORK

- 19.1. After the Work has been started, Contractor shall not suspend the Work without permission of the Contracting Official or his designated representative. When under suspension, the Work shall be put in proper and satisfactory condition, and properly protected as directed by the Contracting Official or his designated representative. In all cases of suspension, the Work shall not again be resumed until permitted by order of the Contracting Official or his designated representative.
- 19.2. In addition to any other rights afforded to Amtrak under this Contract to suspend the Work, Amtrak shall have the right at any stage of the Work, to suspend operations thereon, or upon any part thereof, either for a time named or indefinitely, by giving Contractor written notice. If such rights of suspension are exercised by Amtrak, the Contracting Official shall grant to Contractor an extension of the Contract Time for the relevant part of the Work equal to the length of the actual delay to the critical path necessarily caused by such suspension and may grant additional time necessary to overcome such delay, but there shall be no adjustment of the Contract Amount in connection with such suspension except as explicitly provided in this Article. In the event that operations on a part of the Work are suspended by Amtrak pursuant to this Article for more than thirty (30) days, in the case of suspension of the Work, the Contract Amount for such part of the Work may be adjusted for any increase in the cost of performance of the Work (excluding profit) necessarily caused by such suspension (it being understood that the economic adjustment formulae in the Contract shall compensate Contractor for increased costs attributable to inflation). However, no adjustment of the Contract Time or Contract



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Amount shall be made for any suspension: (a) to the extent that performance would have been suspended, delayed or interrupted by any other cause, including the fault or negligence of Contractor or (b) for which equitable adjustment is provided for or excluded under any other provision of the Contract. Amtrak’s rights under this Article shall be in addition to any other right under the Contract to suspend the Work.

- 19.3. No Claim under this Section shall be allowed unless the Claim, is submitted to Amtrak in writing, setting forth any requested extension to the period of performance or increase in Compensation, and the basis therefore, as soon as practicable after the termination of such suspension, but no later than twenty-one (21) days after the termination of such suspension pursuant to the Claims Section.

20. TAXES

Pursuant to 49 U.S.C. 24301(k), Amtrak is exempt from payment of state or local sales and use taxes on personal property. Based on this statutory exemption, Contractor may be exempt from payment of state or local sales and use taxes on material and property purchased for performance of this Contract. It is Contractor’s responsibility to determine applicability of any exemption from taxation arising from his performance under this Contract and Contractor shall not be entitled to payment for any taxes for which any exemption was applicable.

21. INTELLECTUAL PROPERTY RIGHTS

21.1. IP Rights.

21.1.1. Contractor shall pay any and all royalties and license fees required to be paid to third parties in connection with (a) Contractor's (or its Subcontractors’) efforts relating to the Work, and (b) Amtrak's use and exploitation of any portion thereof, including without limitation Amtrak’s use of any deliverables, Work Product, or Supplies. In addition, Contractor shall defend and indemnify Amtrak from, and hold Amtrak harmless from and against, any and all costs, expenses, losses and liabilities (including without limitation costs, expenses and attorneys' fees) arising out of or in connection with any and all demands, suits, claims and other similar proceedings brought by third parties alleging infringement, misappropriation or violation of any IP Rights arising in connection with any Work, Work Product, deliverables or Supplies, or Amtrak’s use and exploitation of any portion thereof, including without limitation Amtrak’s use of any Work, Work Product, deliverables or Supplies; provided that Amtrak provides Contractor with reasonable notice of the same.

21.1.2. With respect to the Work, Contractor shall not use, or permit the use of, or furnish for use by Amtrak any appliance, article, device, method of construction, design or manufacturing, Work Product, Supplies, or any Intellectual Property or IP Rights, unless Contractor has obtained all necessary consents, permissions, or authorizations for such use or uses. Any and all such consents, permissions or authorizations shall include,



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without limitation, all rights necessary for Contractor to grant the licenses set forth below.

21.2. License and Use Rights.

- 21.2.1. "Allowable Uses" shall be limited to (a) the use, maintenance or repair (including wreck repairs) of the Equipment, (b) work performed by or on behalf of Amtrak to complete the Work due to a Contractor default or failure (or, in the case of Subcontractor Intellectual Property, after termination for cause of the relevant Subcontractor), (c) marketing, branding, advertising and training initiatives, and/or (d) other Amtrak equipment acquisitions or other Amtrak business reasons (or, in the case of Subcontractor Intellectual Property, the applicable Subcontractor ceases to be in the business of selling the equipment to which the applicable Subcontractor Intellectual Property relates). The Contractor shall cause its Subcontractors to grant "Allowable Uses") to Amtrak as set forth in this section and these General Provisions.
- 21.2.2. Contractor Intellectual Property: Contractor hereby grants to Amtrak an irrevocable, perpetual, fully paid-up right and license (with the right to grant sublicenses, except as set forth below in Section 33.3.D) to use the Contractor's Intellectual Property: (a) for any and all Allowable Uses, (b) to make and use any and all Work, Supplies, Work Product, deliverables, products, methods and services, and (c) to use, copy, have copied, modify, have modified, incorporate in other products or services, prepare derivative works from, have derivative works prepared from, and distribute any and all copyrightable works. The right and license set forth in this section shall survive the expiration or termination of this Contract and may be transferred by Amtrak to any third-party.
- 21.2.3. Subcontractor Intellectual Property: Contractor shall cause each and every Subcontractor to grant to Amtrak an irrevocable, perpetual, fully paid-up right and license (with the right to grant sublicenses) to use the Subcontractor's Intellectual Property (the "Subcontractor Intellectual Property"): (a) for any and all Allowable Uses, (b) to make and use any and all Work, Supplies, Work Product, deliverables, products, methods or services, and to (c) use, copy, have copied, modify, have modified, incorporate in other products or services, prepare derivative works from, have derivative works prepared from, and distribute any and all copyrightable works. The rights and licenses set forth in this section shall survive the expiration or termination of this Contract, and the expiration or termination of any agreements between Contractor and the Subcontractor, and may be transferred by Amtrak to any third party.
- 21.2.4. Without limiting any right or remedy of Amtrak, if Amtrak or any of its affiliates is enjoined from or likely to be enjoined from using all or any portion of the Work, Work Product, any deliverables or Supplies, or Amtrak's use and exploitation (as defined below) of any portion thereof, as to which Contractor is required to indemnify Amtrak against infringement, misappropriation or other violation, Contractor shall, at Amtrak's request and at Contractor's expense, either (a) procure promptly for Amtrak the right to



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continue using the foregoing, or (b) promptly replace all or any portion of the foregoing with a non-infringing product or part of equivalent functionality and performance which is satisfactory to Amtrak and the use of which does not violate the terms and conditions of such injunction, or (c) promptly modify all or any portion of the foregoing in a manner satisfactory to Amtrak so as to render use of the foregoing non-infringing and not in conflict with the injunction, and having equivalent functionality and performance.

21.3. Escrow.

21.3.1. Escrow Materials and Escrow Agreement. To secure Amtrak’s rights hereunder, Contractor shall place copies of its then current system design, Source Code and Object Code, listings and related Documentation including, without limitation, annotated notes (the “Escrow Materials”) for the Contractor’s Software and Subcontractor’s noncommercially available Software with an independent escrow agent reasonably selected by Amtrak, subject to the terms and conditions of the independent escrow agent’s standard agreement (the “Escrow Agreement”) and in accordance with the provisions of this Article 31.

21.3.2. Release Conditions. As used in the Contract, “Release Condition” shall mean the occurrence of any of the following events with respect to Contractor during the term of Amtrak’s rights hereunder:

- a). if Contractor materially breaches an express obligation with respect to the Contract, then Amtrak shall so notify Contractor in writing in accordance with the notice provisions set forth in the Contract (“Breach Notice”), specifying in reasonable detail the basis for Amtrak’s claim of breach. Amtrak shall serve a copy of the Breach Notice simultaneously upon the escrow agent under the Escrow Agreement. At the same time that Amtrak delivers the Breach Notice, it may also deliver notice to the escrow agent under the Escrow Agreement), with a copy to Contractor, requesting a release of the Escrow Materials (a “Release Notice”). The Release Notice will commence the thirty (30) Business Day period under the Escrow Agreement, if such thirty (30) Business Day period is required, for Contractor to issue contrary instructions. Contractor shall (i) cure such breach during the thirty (30) day period immediately following its receipt of the Breach Notice (“Cure Period”); or (ii) if such breach is of a nature such that it is not capable of being cured within such period, (A) provide Amtrak a plan for cure that will cure the breach within sixty (60) days from the date of the Breach Notice (the “Extended Cure Period”) and (B) commence acting on such plan during the initial Cure Period. If Contractor fails to meet its obligations under (i) and (ii) above or does not send written notice to Amtrak of a good faith dispute of the breach specified in the Breach Notice, then Contractor hereby agrees that it will not issue contrary instructions to the escrow agent under the Escrow Agreement, and the escrow agent under the Escrow Agreement will be authorized to release the Escrow Materials



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upon the tolling of the thirty (30) Business Day Period during which Contractor was allowed to issue contrary instructions; provided however if the breach is of such a nature that it could not have been cured during the initial Cure Period and Contractor complied with its obligations under (ii) above, then Contractor may issue Contrary Instructions only to the extent it prohibits the escrow Agent under the Escrow Agreement from releasing the Escrow materials until the end of the Extended Cure Period.

- b). the entry of an order for relief in a proceeding in bankruptcy (other than Chapter 11 of Title 11 of the U.S. Code, as the same may be amended) in which Contractor is the named debtor; (ii) Contractor's making of an assignment for the benefit of Contractor's creditors; (iii) the appointment of a receiver for Contractor; (iv) the filing of (1) any bankruptcy proceeding against Contractor, other than Chapter 11 of Title 11 of the U.S. Code, (2) any proceeding for an assignment for the benefit of Contractor's creditors or (3) any proceeding for appointment of a receiver or custodian of the assets and property of Contractor, which proceeding shall be consented to or acquiesced to be by Contractor or has not been discharged or terminated within ninety (90) days; or (v) the rejection by Contractor or any trustee of Contractor of the License Agreement pursuant to 11 U.S.C. Clause 365. The terms of clause (a) of this Clause 4.1 shall apply if following the filing of a proceeding under Chapter 11 of Title 11 of the U.S. Code, Contractor or its trustee materially breaches an express obligation under the Contract.
- c). Contractor dissolves, liquidates or ceases to provide services or work similar to those provided for under the Contract for a substantial number of its customers for a period of at least thirty (30) days.
- d). the parties have entered into a good faith dispute and Contractor ceases providing services or work similar to those provided for under the Contract prior to the final conclusion of the dispute resolution process set forth in Article 36 “Claims and Disputes”; provided that no such release condition will be deemed to have occurred if (i) Contractor has obtained a court order allowing it to cease performance of the Contract or (ii) Amtrak has failed to pay undisputed invoices or make milestone payments for the Work for ninety (90) days following written receipt of notice of breach from Contractor.

21.3.3. Use of Escrow Materials. Contractor hereby grants Amtrak an irrevocable, perpetual, fully paid-up right license (with the right to grant sublicenses) to use or have used on its behalf the Escrow Materials upon their release to Amtrak only to perform and authorize the performance of the Allowable Uses, which includes without limitation the right to make and use any and all products, methods and services, and to use, copy, have copied, modify, have modified, incorporate in other products, prepare derivative works from,



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have derivative works prepared from, and distribute any and all copyrightable works, in each case in connection with and limited to Allowable Uses.

- 21.3.4. Establishment of Escrow. Within one (1) year of conditional acceptance of the first Consist of Cars, Contractor shall cause the Escrow Materials to be placed into escrow. The first ten (10) years of the escrow period, shall be maintained at the sole expense of Contractor under this Contract. After ten (10) years, Contractor shall continue to maintain the escrow, including the payment thereof, under the TSSSA. After the TSSSA terminates, Amtrak shall be responsible for payment of the escrow agent’s fees. The deposit made with the escrow agent shall be kept current so as to accurately reflect the then current version of the Escrow Materials and promptly updated by Contractor following each material upgrade, modification or enhancement thereto. Contractor shall designate a mutually acceptable neutral third party that, at the expense and request of Amtrak made from time to time, may audit the materials deposited with the escrow agent for purposes of determining whether Contractor has fulfilled its deposit obligations. Contractor will promptly, at its expense, correct any deficiency disclosed by the audit.
- 21.3.5. Extension of Obligations. The obligations of Contractor under this Article 31 shall extend to any trustee in bankruptcy, receiver, administrator or liquidator appointed for Contractor, to Contractor as debtor-in-possession (“Trustee”), and to any other successor in interest to Contractor. Without limiting the generality of the foregoing, upon written request of Amtrak, Contractor shall not interfere with the rights of Amtrak as provided in the Contract or the Escrow Agreement to obtain the Escrow Materials from the Trustee or any other person or entity having possession thereof, and shall, if requested under the conditions specified in the Escrow Agreement for release of the Escrow Materials, cause a copy of such Escrow Materials to be made available to Amtrak.
- 21.4. Trademarks. Contractor shall not use Amtrak’s name, trade name, logo, trademarks, or service marks in any context in connection with any advertising, publicity, product, equipment, promotion, or publication without the prior written consent of Amtrak. Contractor agrees to comply with Amtrak instructions regarding trade dress, packaging, trade names, trademarks, service marks or other indicia of origin which shall appear on any items to be delivered under the Contract. Contractor further agrees that, after delivery of said items to Amtrak, Amtrak may modify the trade dress or packaging thereof, and/or replace, modify, or supplement any indicia of origin appearing thereon, to identify Amtrak as the source of said items.
- 21.5. Pre-existing Materials of Contractor and Subcontractors. Contractor hereby grants to Amtrak a non-exclusive, irrevocable, perpetual, worldwide, fully paid-up license to use, execute, reproduce, modify, display, transfer, distribute copies of and prepare derivative works based on materials and intellectual property embodied therein, including any and all modifications thereto, owned and developed independently by Contractor prior to the preparation of its proposal used to provide Equipment under the Contract. Contractor shall retain its ownership



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interest in such pre-existing materials. Contractor shall cause its Subcontractors to grant the licenses described herein.

- 21.6. Indemnity for Third Party Infringement Claims. The Contractor hereby represents and warrants that: (i) materials that it uses in its performance of the Work under the Contract; (ii) the Work, Work Product, including deliverables, Supplies, and Subcontractor Intellectual Property; and (iii) Amtrak’s use of any Work, Work Product, including deliverables, Supplies, and Subcontractor Intellectual Property shall not infringe or misappropriate any U.S. or foreign patent, copyright, trade secret or other intellectual property right of a third party. If any claim is made against Amtrak claiming that its use of the Work, Work Product, including deliverables, Supplies, and Subcontractor Intellectual Property or other materials provided by Contractor hereunder infringes any third party intellectual property right, including but not limited to infringement of patent, copyright, royalty, trademark, service mark, proprietary right, misappropriation or wrongful use of trade secret, or confidential information (“Third-Party Infringement Claim”), Contractor shall, at its own expense, defend, indemnify, and hold harmless Amtrak and its Affiliates (including its directors, officers, employees, agents, subsidiaries, and assigns) (“the “Amtrak Indemnified Party”) from and against any and all claims, damages, fees, losses, liabilities, penalties, and costs (including costs of defense and attorneys’ fees) (“Losses”). In the event that a Third-Party Infringement Claim is asserted or sought against an Amtrak Indemnified Party, the Amtrak Indemnified Party shall notify the Contractor in writing in respect of such Third-Party Infringement Claim (a “Notice of Infringement Claim”) as promptly as practicable; provided, however, that a failure or delay by the Amtrak Indemnified Party to provide a Notice of Infringement Claim as promptly as practicable shall not affect the rights or obligations of such Amtrak Indemnified Party unless the Contractor shall have been actually prejudiced as a result of such failure or delay. The Amtrak Indemnified Party shall enclose with the Notice of Infringement Claim a copy of all papers served with respect to such Third-Party Infringement Claim, if any, and any other documents evidencing such Third-Party Infringement Claim. Contractor shall have the obligation to assume the defense or prosecution of such Third-Party Infringement Claim and any litigation resulting therefrom with counsel of its choice (which counsel shall be reasonably satisfactory to the Amtrak Indemnified Party) and at its sole cost and expense (a “Third-Party Infringement Defense”), but only if the Contractor provides written notice of such assumption to the Amtrak Indemnified Party within sixty (60) days following delivery of the Notice of Infringement Claim and acknowledges in writing in such notice that any Losses that may be assessed against the Amtrak Indemnified Party in connection with such Third-Party Infringement Claim constitute Losses for which the Amtrak Indemnified Party shall be indemnified pursuant to this Section. Notwithstanding the foregoing, the Contractor shall not have the right to assume the defense of such Third-Party Infringement Claim, if: (i) the Amtrak Indemnified Party shall have been advised by counsel that there are one or more legal or equitable defenses available to it which are different from or in addition to those available to the Contractor, and, in the reasonable opinion of the Amtrak Indemnified Party, counsel for the Contractor could not adequately represent the interests of the Amtrak Indemnified Party because such interests could be in conflict with those of the Contractor; or (ii) the Contractor shall not have assumed the



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defense of such Third-Party Infringement Claim in a timely fashion. If the Contractor assumes the Third-Party Defense in accordance with this Section: (i) Contractor shall diligently defend such Third-Party Infringement Claim; (ii) the Amtrak Indemnified Party shall have the right, but not the obligation, to participate in any such Third-Party Defense and to retain separate co-counsel at the sole cost and expense of Contractor; (iii) the Amtrak Indemnified Party will not file any papers or consent to the entry of any judgment or enter into any settlement with respect to the Third-Party Infringement Claim without the prior written consent of the Contractor; and (iv) the Contractor will not consent to the entry of any judgment or enter into any settlement with respect to the Third-Party Infringement Claim: (a) to the extent such judgment or settlement provides for equitable or injunctive relief without the prior written consent of the Amtrak Indemnified Party; (b) if such settlement does not include as a term thereof the giving by the third party asserting such claim to the Amtrak Indemnified Party a release from all liability with respect to such claim underlying such judgment or settlement; or (c) if such settlement or judgment contains any admission or statement suggesting any wrongdoing or liability on behalf of the Amtrak Indemnified Party. The Parties will use their commercially reasonable efforts to minimize Losses from Third-Party Infringement Claims and will act in good faith in responding to, defending against, settling or otherwise dealing with such claims. The Parties will also cooperate in any such defense and give each other reasonable access to all information relevant thereto. Notwithstanding the foregoing, Contractor shall have no indemnification obligation toward Amtrak under this provision if the respective Third-Party Infringement Claim is due to any modifications made by Amtrak or a third party acting on behalf of and with the authority of Amtrak or misuses by Amtrak.

21.7. Corrective Actions. If Amtrak’s use of the Intellectual Property is enjoined, or if the Contractor’s performance of its obligations under this Contract are materially impaired by reason of such Third-Party Infringement Claim, Contractor shall use commercially reasonable efforts, at its expense, to continue its performance hereunder, including without limitation, at its own elections: (i) to substitute an allegedly infringing item or process with a non-infringing item or process of at least the same functionality; (ii) to modify the allegedly infringing item or process so that it no longer infringes but remains at least functionally equivalent; or (iii) to obtain for Amtrak and its Affiliates the right to continue using such allegedly infringing item or process.

21.8. RESERVED

21.9. This terms and conditions set forth in this Section 22 shall survive the expiration or termination of the Contract, and the rights and licenses set forth hereunder may be transferred by Amtrak to any third party.

22. INDEMNIFICATION

22.1. Contractor agrees to defend, indemnify and hold harmless the Indemnified Parties, from and against any claims, losses, liabilities (including without limitation environmental liabilities), penalties, fines, demands, causes of action, suits, costs and expenses incidental thereto,



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(including costs of defense and attorneys’ fees) (collectively “Indemnified Party Claims”), arising in whole or in part from the fault, negligence or wrongful act of Contractor, which any of the Indemnified Parties may hereafter incur, be responsible for or pay as a result of: (a) breach of warranty, (b) injury or death of any person, or damage to or loss (including loss of use) of any property, including property of the parties hereto, arising out of or in any degree directly or indirectly caused by or resulting from Supplies, Material, deliverables, products or Equipment supplied by, or from activities of, or Work performed by Contractor, Contractor’s officers, employees, agents, servants, Subcontractors, or any other person acting for or with the permission of Contractor under the Contract, (c) occasioned by or in any manner connected with Contractor’s failure to perform the Work in compliance with any applicable laws, ordinances, rules, regulations or orders, or (d) as a result of Contractor’s failure to perform its obligations in compliance with the Contract.

- 22.2. In addition to the foregoing, Contractor agrees to defend, indemnify and hold harmless the Indemnified Parties, irrespective of any negligence or fault on the part of the Indemnified Parties, from and against any Claims which any of the Indemnified Parties may hereafter incur, be responsible for or pay as a result of injuries (including death) to any of Contractor’s employees, agents or Subcontractors.
- 22.3. The indemnification obligations under this section shall not be limited by the existence of any insurance policy procured or maintained by Contractor or any Subcontractor or by any limitation on the amount or type of damages, compensation or benefits payable by or for Contractor or any Subcontractor and shall survive the termination or expiration of the Contract.

23. LIMITATION OF LIABILITY

- 23.1. With the exception of losses (including defense costs) covered by the proceeds of insurance carried by or insuring Contractor or any Subcontractor, Contractor’s liability to Amtrak for damages resulting from or arising out of any causes of action (including but not limited to tort) relating to Contractor’s performance of the Contract shall not exceed an aggregate amount equal to 100% of the Contract Amount. The foregoing limitation of liability will not apply to or limit any right of recovery respecting the following:
- a). losses (including defense costs) arising out of the Work and covered by the proceeds of insurance carried by or insuring Contractor;
 - b). losses (including defense costs) of amounts which would have been reimbursed but for Contractor’s failure to carry insurance required to be carried under the Contract;
 - c). losses (including defense costs) of arising out of fraud, criminal conduct, intentional misconduct, recklessness, bad faith or gross negligence;
 - d). Contractor’s indemnities under the Contract ;



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- e). Contractor’s obligation to pay liquidated damages in accordance with the Contract;
- f). fines assessed against Amtrak by a government authority to the extent that such fines are due to a Contractor Party’s violation of Applicable Law; and
- g). losses arising out of releases of hazardous materials by Contractor or Amtrak.

Notwithstanding any other provision in the Contract, except in respect of the express Performance Guarantees and liquidated damages in the Contract or as otherwise set forth herein, neither party shall be liable to the other party for consequential damages.

24. SOURCING OF SPARES

- 24.1. In performing the Work, Contractor shall only provide Material of the same or similar standards, functionality, features and quality as the original equipment manufactured component or part provided under the Contract, except where Contractor seeks and is granted Amtrak approval, which shall not be unreasonably withheld.
- 24.2. If Contractor wishes to change the supplier of any component or Material (a “Proposed Supplier Change”), Contractor shall notify Amtrak in writing of the Proposed Supplier Change including the new supplier’s name and the Contractor’s suppliers’ part numbers, and any other information reasonably requested by Amtrak.

25. SUBCONTRACTORS

- 25.1. All references to Subcontractors herein include Subcontractors at any tier. Nothing contained in the Contract or any contract with a Subcontractor at any tier shall create any contractual relationship between Amtrak and any Subcontractor, or any third-party beneficiary rights in any Subcontractor; provided, however, that Amtrak shall be named as a third-party beneficiary of all contracts with a Subcontractor. Contractor agrees to obtain Amtrak’s prior written approval before subcontracting the Contract or any substantial portion hereof; provided, however, this limitation shall not apply to the purchase of standard commercial supplies or raw material.
- 25.2. All work performed for Contractor by a Subcontractor shall be pursuant to an appropriate agreement between Contractor and the Subcontractor which shall contain provisions that:
 - a). Preserve and protect the rights of Amtrak under the Contract with respect to the Work to be performed under the subcontract so that the subcontracting thereof shall not prejudice such rights;
 - b). Require that such Work be performed in accordance with the requirements of the Contract;
 - c). Require submission to Contractor of applications for payment under each subcontract to which Contractor is a party, in reasonable time to enable Contractor to apply for payment;



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- d). Require that all claims for additional costs, extensions of time, damages for delays or otherwise with respect to subcontracted portions of the Work shall be submitted to Contractor (via any Subcontractor where appropriate) in sufficient time so that Contractor may comply in the manner provided in the Contract for like Claims by Contractor upon Amtrak;
- e). Contractor’s insurance as specified in Articles 46 and 47 of this Contract shall provide insurance coverage for each Subcontractor working on its behalf.
- f). Preclude Contractor and Subcontractor from naming, impleading or otherwise including Amtrak as a party in any arbitration or lawsuit between Contractor and any Subcontractor, and preclude the Subcontractor from naming, impleading or otherwise including Amtrak in any arbitration or lawsuit arising as a result of any Work performed by or for Contractor under the Contract;
- g). Provide that Contractor’s rights under the subcontract shall be assignable to Amtrak at Amtrak’s option;
- h). Require the Subcontractor to continue diligently to prosecute the Work, notwithstanding any disputes, including without limitation, disputes between Contractor and Amtrak, or Contractor and any Subcontractor;
- i). Provide that the subcontract is terminable on the same terms as the Contract, but that no termination shall be effective without Amtrak’s consent, and the Work covered by the subcontract may be suspended on the same terms as the Work may be suspended pursuant to the Contract;
- j). Include Amtrak as a named indemnitee under any indemnification obligations imposed on the Subcontractor; and
- k). Obligate each Subcontractor specifically to consent to the provisions of this Article 24

25.3. Whenever the Contract: (i) requires Contractor to include any provisions in an agreement with a Subcontractor, or (ii) requires Contractor to bind a Subcontractor to any obligation or otherwise create any obligation, responsibility, or liability on the part of any Subcontractor, or (iii) confers any rights or benefits on Amtrak with respect to a Subcontractor, the reference to “Subcontractors” shall be deemed to include Subcontractors of any tier, and Contractor shall require Subcontractors to include in all agreements with their suppliers: (a) provisions parallel to those required to be included in the agreement with the Subcontractor, (b) provisions necessary and sufficient to impose parallel obligations, responsibilities and liabilities on the Subcontractors, and (c) provisions necessary to confer such rights and benefits on Amtrak with respect to their suppliers.



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- 25.4. Contractor shall promptly pay all Subcontractors, and shall require each Subcontractor to promptly pay its own Subcontractors. To verify payments to Subcontractors, Contractor shall provide any documentation reasonably requested by Amtrak.
- 25.5. The Contractor shall include all anticorruption provisions of the Contract in each subcontract and third-party agreement entered into under the Contract, including but not limited to representations and warranties of compliance with applicable anticorruption laws, including but not limited to the Foreign Corrupt Practices Act. Amtrak may require Contractor to terminate any Subcontractor in the event that the Subcontractor’s continued performance of the Work would cause Amtrak to (i) violate any Applicable Law; or (ii) lose Amtrak’s access to public funding for the Work, including from the Financing Parties.
- 26. CLAIMS AND DISPUTES**
- 26.1. Submission of Claim and Decision of Contracting Official: If, prior to the date of Final Payment, the Contracting Official and the Contractor fail to agree on any request for adjustment, the Contractor may elect to submit a Claim to the Contracting Official for action. A decision by the Contracting Official, as provided in the “Resolution of Claims and Disputes” Section, shall be required as a condition precedent to litigation of a Claim between Contractor and Amtrak as to all such matters arising prior to the date Final Payment is due, regardless of (a) whether such matters relate to execution and progress of the Services or (b) the extent to which the Services have been completed.
- 26.2. Time Limits on Claims: Claims by the Contractor must be made by written notice to Amtrak, identified as a “Claim” under this Section” within thirty (30) days after occurrence of the event giving rise to such Claim or within thirty (30) days after the Contractor first recognizes, or reasonably should have recognized, the condition giving rise to the Claim, whichever is later. Provided, however, that Contractor shall use its best efforts to furnish the CO, as expeditiously as possible, with notice of any Claim once such Claim is recognized, and shall cooperate with the CO in any effort to mitigate the alleged or potential damages, delay or other adverse consequences arising out of the condition which is the cause of such a Claim. A notice of Claim must clearly identify the alleged cause and the nature of the Claim and shall describe the basis for any request for an extension of the contract period of performance or increase in the contract sum and shall include data and information then available to the Contractor that will facilitate prompt verification and evaluation of the Claim.
- 26.3. Continuing Contract Performance: Pending final resolution of the Claim, including litigation, unless otherwise directed by Amtrak in writing, Contractor shall proceed diligently with performance of the Contract and Amtrak shall continue to make undisputed payments in accordance with the Contract Documents.
- 26.4. Waiver of Claims - Final Payment: The making of Final Payment shall constitute a waiver of Claims by the Contractor except for Claims made in writing prior to Final Payment pursuant to



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the requirements of the Contract Documents and identified by the Contractor in writing to the CO as unresolved at the time of Final Payment.

26.5. Any Claim of Contractor not made in compliance with the requirements of the “Time Limits on Claims” subsection above shall be deemed waived. No Claim by Contractor for a Contract change hereunder shall be allowed if asserted after Final Payment under the Contract.

26.6. Resolution of Claims and Disputes:

26.6.1. Subject to Contractor’s compliance with the “Changes in the Services” and “Claims” Sections, the Contracting Official will review Claims and take one or more of the following actions within thirty (30) days of receipt of a Claim: (a) request additional supporting data from Contractor; (b) notify the Contractor in writing when the Contracting Official expects to take action; (c) reject the Claim in whole or in part, stating reasons for rejection; (d) recommend approval of the Claim; or (e) or take other actions as deemed necessary by the Contracting Official.

26.6.2. If a Claim has been resolved, the CO will prepare or obtain appropriate documentation for execution by Amtrak and the Contractor.

26.6.3. Additionally, the decision of the CO shall be final and conclusive unless Contractor pursues its rights or remedies under law, in accordance with the “Governing Law, Jurisdiction, and Venue” Section. Pending a final decision of a dispute by the court, Contractor shall diligently proceed with the performance of its work under the Contract in accordance with the decision of the CO, pursuant to the “Resolution of Claims and Disputes” Section, except to the extent that the CO’s decision is that Contractor is not to proceed with the performance of all or part of the Contract.

27. ASSIGNMENT OF CLAIMS

Claims for moneys due or to become due Contractor from Amtrak under this Contract may be assigned to a bank, trust company, or other financing institution, including any Federal lending agency upon the prior written consent of the Contracting Official, and may thereafter be further assigned and reassigned to any such institution upon the prior written consent of the Contracting Official. Any such assignment or reassignment shall cover all amounts payable under this Contract and not already paid, and shall not be made to more than one party except that any such assignment or reassignment may be made to one party as agent or trustee for two or more parties participating in such financing.

28. SUCCESSORS AND ASSIGNS

28.1. Contractor shall not assign, transfer or pledge (whether by operation of law or otherwise) the Contract nor delegate its responsibility under the Contract without the prior written consent of the Contracting Official which may be withheld in Amtrak’s sole discretion, nor shall



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Contractor assign any moneys due or to become due to him there-under, except as provided in Article 28. Amtrak may assign its rights and delegate its responsibilities, in whole or in part, under the Contract (including rights under required insurance policies and bonds) (i) to any entity succeeding to all or substantially all of Amtrak’s interests in the assets [associated with the Northeast Corridor] or which otherwise is to be the operator of the Equipment, (ii) to any Amtrak lessor of the Equipment, or (iii) to the Financing Parties. For purposes of this Section 29.1, a “Change in Control” shall be deemed to be an assignment.

- 28.2. In connection with any assignment of the Contract for collateral purposes to Financing Parties pursuant to Section 29.1, Contractor shall provide to such Financing Parties at its sole cost and expense a consent to assignment agreement in a form as may be reasonably required by such Financing Parties (it being agreed that such Financing Parties may reasonably require provision by competent counsel to Contractor of legal opinions addressing authorization, enforceability and other customary matters related to such consent or direct agreement), covering matters that are customary in project or equipment financings of the applicable type, which, among other things, shall authorize the Financing Parties, as secured parties, to exercise all rights of Amtrak under the Contract, and to subsequently assign such rights in connection therewith without the consent of Contractor and may also cover matters such as Financing Parties’ security rights with respect to the Contract, direct notices to Financing Parties, step-in/step-out rights, access by Financing Parties’ representative, deferral of Contractor’s rights to terminate the Contract in certain circumstances and other matters applicable to such project or equipment financing. In this regard, Contractor shall cooperate with Amtrak in its efforts to obtain such financing, including by supplying information and documentation reasonably requested by the Financing Parties and taking such other actions as the Financing Parties may reasonably request.

29. FORCE MAJEURE

- 29.1. For purposes of this Contract, a Force Majeure Event is any one of the following: act of God or the public enemy, act of a governmental authority acting in its sovereign capacity, fire, flood, epidemic, quarantine restriction, unusually severe weather, war, terrorism, riot, earthquake, strike or embargo. In the event that either party’s failure to perform in accordance with any schedule or when otherwise required under the Contract arises solely out of a Force Majeure Event that is both out of the control of such party and without the fault or negligence of such party, the time for performance under the Contract will be extended proportionately up to a maximum of 30 days (or longer, in the Contracting Official’s sole discretion), consistent with the requirements of this Article 28.
- 29.2. Within ten (10) days of (i) becoming aware or (ii) the date by which it should reasonably have become aware, of a delay resulting from a cause specified in Section 30.1, whichever is earlier, Contractor shall advise the Contracting Official in writing of a claimed Force Majeure Event. The Contracting Official will then determine whether the event constitutes a Force Majeure as defined in Section 30.1 and will so advise the Contractor in writing. Once performance of the delayed work re-commences, or at the end of the thirty (30) day period (or such longer period as



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the Contracting Official in his or her sole discretion choose to allow), the Contracting Official will advise the Contractor of the time extension granted due to the Force Majeure Event. Contractor shall make every reasonable effort to minimize the duration of the Force Majeure Event.

- 29.3. Apart from extension of time, no Claim for additional payment shall be filed by Contractor and no payment or allowance of any kind shall be made to Contractor as compensation for damages occasioned by way of the causes specified in Section 30.1.
- 29.4. Contractor recognizes it is imperative that the Work proceed uninterrupted and shall endeavor to prevent and shall diligently take all reasonable steps to re-start performance fully in accordance with the Contract, cure any work stoppage or strike of Contractor's employees caused by any labor disputes, including jurisdictional disputes arising out of the assignment of any of the Work. Contractor shall cause parallel provisions to be inserted in all subcontracts at any tier. If Contractor's failure to perform extends for more than fifteen (15) days from the start of the Force Majeure Event, Amtrak may, at its discretion, terminate the Contract without liability or cost at any time after such fifteen (15) days or some greater timeframe that may be specified by Amtrak. In the event of such early termination, if requested by Amtrak, Contractor shall transfer title as directed by Amtrak and deliver to Amtrak in the manner directed by Amtrak, any completed or partially completed deliverables or other work products Contractor has produced or acquired specifically for performance of the Work under the Contract.
- 29.5. Contractor agrees that no time extension shall be granted for time lost due to normal seasonal weather conditions. In order to qualify for consideration for a time extension due to adverse weather conditions, Contractor must show that the weather conditions during a given quarterly period (summer, fall, winter, spring) were more severe than the most severe year of the previous five years for the project geographical area and, in addition, that these weather conditions critically impacted the final project completion date by delaying the performance of Work. If abnormal weather losses within the meaning of the preceding sentence can be shown to have affected the Project Schedule, a non-compensable time extension shall be granted for that portion of the proven weather-related delays which exceeded the normal weather losses which should have been anticipated for the quarterly period in question, but no Claim for additional payment shall be filed by Contractor and no payment or allowance of any kind shall be made to Contractor as compensation for damages occasioned by way of any such abnormal weather.
- 29.6. Defaults or delays in performance of the Work by Contractor which are caused by acts or omissions of Subcontractors or unavailability of parts or Spares shall not relieve Contractor of its obligations, except to the extent that the relevant Subcontractor is itself subject to a Force Majeure Event covered hereunder and Contractor cannot reasonably circumvent the effect of the Subcontractors default or delay in performance through the use of alternate sources, work around plans or other means.
- 29.7. Force Majeure Events shall also not include (a) a failure of the Equipment or Supplies, (b) sabotage by employees or any contractors, subcontractors or suppliers of the party claiming the



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Force Majeure Event, (c) increases in commodity, manufacturing or delivery costs or (d) changes in foreign currency exchange rates.

30. PRICING OF ADJUSTMENTS

When costs are a factor in any determination of a Contract price adjustment pursuant to Article 7, Changes, or any other provision of this Contract, such costs shall be in accordance with the contract cost principles and procedures of Part 31 of the Federal Acquisition Regulation (FAR), as amended by O.M.B. Circular A-87, in effect on the date of this Contract.

31. FEDERAL FUNDING, AUDIT, AND INSPECTION

- 31.1. Contractor hereby acknowledges and accepts that: (1) federal funds may be expended to it in connection with the tasks, assignments or duties which it performs pursuant to this Contract, and (2) the federal False Claims Act, 31 U.S.C. § 3729 et seq. may apply in connection with applications for payment, claims, requests for equitable adjustment or other requests for payment which Contractor submits to Amtrak under, or in connection with, this Contract.
- 31.2. Contractor acknowledges and agrees that Amtrak and Amtrak's Office of Inspector General (OIG) may inspect, copy and/or audit Contractor's data and records (in hard copy and/or electronic format) related in any way to the Contract, including without limitation, all data and records relating to: (1) support for any proposal, change order, or request for equitable adjustment submitted to Amtrak by Contractor; (2) Contract compliance and performance, including any work or deliverables in progress; (3) compliance with applicable provisions of Amtrak's federal grant, regulations and statutes; and (4) support for all direct and indirect costs or prices charged to Amtrak. Contractor agrees to maintain all such data and records throughout the term of the Contract and until three (3) years after final payment under the Contract, and agrees to cooperate with all audit activities.
- 31.3. In connection with audit and inspection activities, Amtrak and Amtrak OIG shall be afforded, upon request, (1) access to Contractor's facilities and to Contract work or deliverables in progress, (2) the opportunity to interview Contractor's employees concerning any matter relating to the Contract, and (3) adequate and appropriate workspace.
- 31.4. Contractor agrees to reimburse Amtrak, within sixty (60) calendar days after receipt of a written request, the full amount of any undisputed audit findings or questioned costs, unless otherwise agreed by Amtrak in the course of post-audit negotiations with Contractor.
- 31.5. Contractor shall include the provisions of this clause in every subcontract or purchase order exceeding \$100,000, as well as a provision requiring all subcontractors to include these provisions in any lower tier subcontracts or purchase orders exceeding \$100,000. Contractor shall be responsible for subcontractor or lower tier subcontractor's compliance with this clause.



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- 31.6. Nothing in this Contract shall be construed to limit the rights, obligations, authority, or responsibilities of Amtrak's Office of the Inspector General pursuant to the Inspector General Act of 1978, as amended, including the right to seek information by subpoena.

32. PAYMENT PROVISIONS – GENERAL

- 32.1. With respect to any amount to be paid to Amtrak by Contractor pursuant to the Contract, Amtrak may, at its option, set off that amount as a credit against the Contract Amount payable to Contractor for the Work.
- 32.2. Amtrak shall pay undisputed charges when such payments are due for the Work. Amtrak may withhold payment of particular charges that Amtrak disputes in good faith, and in that case, Amtrak shall advise Contractor, in writing, of the nature of the dispute and, at Contractor's request, the parties shall immediately commence resolution of the issue in accordance with Article 25, Claims and Disputes.
- 32.3. Contractor represents that the prices specified in the Contract and any prices for options do not or will not exceed the current and/or generally offered selling price for the same or substantially similar Material, supplies, or services to any other purchasers, taking into account quantity and geographical factors.

33. RESERVED.

34. FAIR EMPLOYMENT PRACTICES/EQUAL EMPLOYMENT OPPORTUNITY

- 34.1 Contractor agrees to abide by Amtrak's policy and practice to ensure that all business organizations receive fair and equal consideration and treatment without regard to race, color, religion, sex, disability, veteran status or national origin of the owners or principals of the business organization. In addition, Contractor agrees that it shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, disability, veteran status or national origin and that it shall comply in all respects with the Americans with Disabilities Act, 42 U.S.C. 12101 et seq.
- 34.2 Contractor shall take affirmative action to ensure that applicants and employees are treated fairly without regard to their race, color, religion, sex, disability, veteran status or national origin. 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. Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this non-discrimination section.
- 34.3 Contractor shall send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice advising the labor



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union or workers’ representative of Contractor’s commitments under this section and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

- 34.4 The Contract may be canceled, terminated, or suspended in whole or in part based on Contractor’s failure to comply with this section.
- 34.5 Contractor shall include the provisions of Articles 34.1 through 34.4 in subcontracts involving Services to be performed or Supplies to be furnished under the Contract, unless exempted by rules, regulations, or orders of the U.S. Secretary of Labor.

35. ENVIRONMENTAL COMPLIANCE

- 35.1 Contractor shall comply with all Applicable Laws concerning the environment and/or waste disposal.
- 35.2 Contractor shall dispose of any wastes, including hazardous wastes, generated by Contractor, its Subcontractors or agents (either purposefully or accidentally) in connection with its performance of the Contract in accordance with applicable federal, state, and local laws, regulations, ordinances, and orders, at its sole expense, using its own EPA generator number. In no event shall Amtrak be identified as the generator of any such wastes. Amtrak reserves the right to require Contractor to provide to Amtrak a copy of the results of any tests conducted by or for Contractor on any such wastes and, at Amtrak’s expense, to perform additional tests or examinations of any such wastes prior to disposal.
- 35.3 Contractor shall include and enforce this Environmental Compliance Article in all subcontracts or lower tier purchasing agreements.

36. BUY AMERICA(N) REQUIREMENTS

- 36.1 In accordance with Amtrak’s Domestic Buying Preference requirements at 49 U.S.C. 24305(f), Amtrak shall only buy, and accordingly, Contractor shall only supply (a) unmanufactured articles, materials, and supplies mined or produced in the United States; or (b) manufactured articles, material, and supplies manufactured in the United States substantially from articles, materials, and supplies mined, produced or manufactured in the United States. For purposes of this provision, substantially means that more than 55% of all components by cost must be domestic. This Section 5.1 shall apply only when the cost of those articles, material, or supplies bought or supplied to Amtrak by Contractor is at least \$1,000,000.
- 36.2 When complying with Section 5.1, Contractor shall comply with the domestic preference requirements of the Build America, Buy America Act (BABA) § 70914, Pub. L. No. 117-58, div. G, tit. IX, subtit. A, 135 Stat. 429, 1298 (2021), as implemented by OMB, USDOT, and FRA.
- 36.3 In accordance with 2 C.F.R. §200.322, as appropriate and to the extent consistent with law, Contractor shall, to the greatest extent practicable, provide a preference for the purchase,



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acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). The requirements of this section must be included in all subcontracts and purchase orders for work or products under this Contract.

a). For the purposes of this Section 36.3:

1. “Produced in the United States” means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.
2. “Manufactured products” means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

37. CUSTOM DUTIES

- 37.1 Contractor agrees that, if any items or Supplies are shipped F.O.B. (Free on Board) destination or D.D.P. (Delivered Duty Paid), Contractor shall be the importer of record for all articles that enter into the United States in connection with the Contract. Contractor shall be liable for all duties, fees, and taxes attaching on importation of such articles, including anti-dumping and countervailing duties, if any.
- 37.2 Contractor agrees that, if the items or Supplies are shipped F.O.B. origin, C.I.F. (Cost, Insurance & Freight) or F.C.A. (Free Carrier), Amtrak shall specify the customs broker and shall be the importer of record for all articles that enter into the United States in connection with the Contract.
- 37.3 Amtrak shall not pay on behalf of Contractor, or reimburse Contractor for any anti-dumping or countervailing duties for which Contractor may be liable.

38. EXPORT CONTROLS

- 38.1 Contractor represents and warrants that it shall comply with (1) all United States export laws and regulations issued by any U.S. government authority, including without limitation the U.S. Export Administration Regulations, the International Traffic in Arms Regulations and any regulations administered by the Department of the Treasury’s Office of Foreign Assets Control, that govern the export or re-export of any deliverable, technology or technical data provided hereunder, including software, hardware, equipment, documentation, specifications, Drawings, and schematics (collectively, the “Products”) and any of the Services, and (2) any applicable laws and regulations of countries other than the United States that govern the importation, use, export or re-export of Products and/or Services. Contractor further represents and warrants that it shall (1) obtain appropriate export authorizations, consents or licenses that may apply to Contractor’s export or import of any Products or Services, and (2) comply with any conditions that are contained in any export or import licenses pertaining to the Products or Services.



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Contractor shall comply with any reporting requirements that may apply to the export or re-export of the Products and/or Services and provide to Amtrak and the appropriate governmental authority any periodic reports containing such information as may be required under applicable law.

- 38.2 Each party will reasonably cooperate with the other in making the appropriate filings with any governmental authority and will, to the fullest extent permitted by law, provide any information, certificates or documents as are reasonably requested.
- 38.3 In performing Services under this Contract, Contractor warrants and represents that it shall not employ or make use of any non-U.S. person who is a citizen of country that has been designated by the U.S. Government as a “terrorist supporting country” (see Country Group E at Supplement No. 1 to Export Administration Regulations Part 740).
- 38.4 With the exception of commodities, software or technologies that are controlled solely for “antiterrorism” reasons under the Export Administration Regulations (“EAR”), Contractor represents and warrants that the deliverables shall not contain any export-controlled technology or technical data under the export control laws or regulations unless approved by Amtrak’s Contracting Official in writing. At least thirty (30) days prior to the earlier of the delivery, installation or provision of a deliverable containing any controlled technology or technical data, Contractor shall inform Amtrak’s Contracting Official in writing of the EAR Export Control Classification Number(s) (“ECCN”) or the International Traffic in Arms Regulations (“ITAR”) U.S. Munitions List Classification (“MLC”) numbers applicable to such deliverable. In addition, upon delivering or otherwise providing a deliverable with an ECCN or MLC number, Contractor shall place the following legend, or substantially similar one, as applicable on technical data and/or deliverable documentation:

“WARNING—INFORMATION SUBJECT TO EXPORT CONTROL LAWS. This document or software contains information subject to the Export Administration Regulations (“EAR”) [or the International Traffic in Arms Regulations (“ITAR”)]. This information may not be exported, released, or disclosed to foreign persons, whether within or outside the United States without first complying with the export license requirements of EAR [or ITAR]. Include this notice with any reproduced portion of this document. The EAR Export Control Classification Number(s) (“ECCN”) [or the ITAR U.S. Munitions List Classification(s)] is/are:
_____.”

- 38.5 If the Services under the Contract include the maintenance or servicing of a Product, Contractor shall be responsible for promptly informing Amtrak’s Contracting Official of any changes in the



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ECCN or MCL status of such Product until expiration or termination of the maintenance or serving period for that Product.

- 38.6 If Contractor is provided, or provided access to, any technology or technical data by or through Amtrak that is restricted under the export control laws or regulations, Contractor shall fully comply with any and all restrictions imposed by Amtrak at no additional cost.
- 38.7 Contractor is fully responsible for compliance with the provisions herein on behalf of itself and its employees, agents and contractors and those of its Subcontractors, at any tier level, and their respective employees, agents and contractors.

39. TRANSACTIONS INVOLVING EMPLOYEES OF AMTRAK

- 39.1 Without giving prior written notice to the Contracting Official, Contractor shall not: (a) employ any employee of Amtrak when Contractor knows or has reason to believe that such person after employment by Contractor, shall also continue to remain in the employ of Amtrak; or (b) utilize as a consultant or otherwise, for compensation, the services of any employee of Amtrak in connection with the performance of the Work under this Contract; or (c) procure any portion of the Work under this Contract, or any materials or Services required in connection with the performance of this Contract, from any firm (excluding corporations whose stock is listed on a recognized stock exchange) which Contractor knows or has reason to believe is owned or controlled by employees of Amtrak or in which employees of Amtrak have a substantial interest.
- 39.2 Contractor shall furnish the Contracting Official with such further information as the Contracting Official may request concerning any proposed transactions of Contractor set forth above.

40. AMERICANS WITH DISABILITY ACT

The Contractor shall comply with all the applicable requirements of the Americans with Disabilities Act of 1990 and regulations promulgated thereafter, including 49 CFR Parts 27, 37 & 38.

41. CONVENANTS AGAINST CONTINGENT FEES

Contractor warrants that no person or selling agency has been employed or retained to solicit or secure this Contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by Contractor for the purpose of securing business. For breach or violation of this warranty, Amtrak shall have the right to terminate this Contract without liability or in its discretion to deduct from the Contract Amount, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.

42. ETHICAL BUSINESS PRACTICES

- 42.1 Contractor agrees that it shall not give, promise, or offer to any Amtrak employee, agent or



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representative any cash, gift, entertainment, commission, or kickback, or anything of value.

- 42.2 Contractor agrees that it shall neither solicit nor accept any cash, gift, entertainment, commission, kickback or anything of value from a Subcontractor or any other person or entity.
- 42.3 Contractor agrees that it shall not (1) knowingly employ the services of any Amtrak employee or member of an employee’s immediate family as a consultant, Subcontractor, or otherwise, in connection with the performance of Services under the Contract, or (2) purchase any material or Services required to perform the Contract from any entity owned or controlled (including a substantial financial interest) by any Amtrak employee or member of an employee’s immediate family.
- 42.4 Contractor represents and warrants that (i) it has not committed any violations of any applicable anticorruption laws in connection with the Contract; (ii) it is not aware of any violations of any applicable anti-corruption laws in connection with the Contract; (iii) it will not commit any violations of any applicable anti-corruption laws in connection with the Contract; and (iv) it has in place a compliance program reasonably designed to detect and prevent violations of any anti-corruption laws in connection with the Contract; and (v) the Contractor, its parent, and its affiliates are not subject to any deferred prosecution agreements with any U.S. or foreign government authority. For the avoidance of doubt, applicable anticorruption laws include, but are not limited to, the Foreign Corrupt Practices Act.
- 42.5 Contractor shall certify that it has performed due diligence reasonably calculated to identify anticorruption risk on any subcontractor or any consultants, representatives, or agents retained in connection with this Contract.
- 42.6 Contractor shall use commercially reasonable efforts to include the provisions of this Article in each subcontract or third-party agreement entered into under this Contract.

43. CONFLICT OF INTEREST

- 43.1 Contractor hereby affirmatively represents that it shall not have a Conflict of Interest in performing the Services for Amtrak pursuant to this Contract. Contractor agrees not to (a) engage in activities, or (b) initiate or maintain relationships with persons or entities where such activities or relationships create a conflict of interest. Contractor shall use its best efforts to identify and prevent potential Subcontractor conflicts of interest. Contractor shall inform Amtrak of any activity or relationship that Contractor has reason to believe may create a conflict of interest. Without limiting the generality of the foregoing, Contractor shall not, and shall not knowingly permit any Subcontractor to, enter into any contract, subcontract, or other arrangement in excess of fifty thousand Dollars (\$50,000) (other than for personal employment) related to this Contract or the Work if any of its officers or directors or any members of the immediate family or one of the foregoing has any material interest in the contract, subcontractor arrangement, unless the other party (or parties) to such contract or subcontractor arrangement is the lowest qualified bidder on a publicly advertised, sealed-bid basis and written records of the entire transaction are



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kept by the Contractor and made available to Amtrak and FRA upon request.

- 43.2 Contractor represents that it is not a party to any existing agreement which would prevent Contractor from entering into and performing this Contract.

44. GRATUITIES

- 44.1 Amtrak may, by written notice to the Contractor, terminate the right of the Contractor to proceed under this Contract if it is found, after notice and hearing, by Amtrak, that gratuities (in the form of anything of value, including but not limited to cash, entertainment, gifts) were offered or given by the Contractor, or any agent or representative of the Contractor, to any officer or employee of Amtrak with a view toward securing a contract or securing favorable treatment with respect to the awarding or amending, or the making of any determinations with respect to the performing of such contract, provided, that the existence of the facts upon which Amtrak makes such findings shall be in issue and may be reviewed in any competent court.
- 44.2 In the event of a breach under Article 44.1, in addition to its right to terminate, Amtrak shall be entitled (i) to pursue the same remedies against the Contractor as it could pursue in the event of a breach of contract by the Contractor, and (ii) as a penalty in addition to any other damages to which it may be entitled by law, to exemplary damages in an amount (as determined by Amtrak) which shall not be less than three or more than ten times the cost incurred by the Contractor in providing any such gratuities to any such office or employee.
- 44.3 In accordance with Section 52.1 hereof, the rights and remedies of Amtrak provided in this Article shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Contract.

45. OFFICIALS NOT TO BENEFIT

- 45.1 No member of or delegate to Congress, or resident commissioner, shall be admitted to any share or part of this Contract, or to any benefit that may arise there-from; but this provision shall not be construed to extend to this Contract if made with a corporation for its general benefit.
- 45.2 The Contractor warrants that no director, officer, employee or agent of Amtrak is a director, officer, employee or agent of the Contractor, and that to the knowledge and belief of the Contractor, no director, officer, employee, or agent of Amtrak owns any stock or has a substantial interest in the Contractor.

46. NON-WAIVER

- 46.1 No waiver by Amtrak of any breach on the part of Contractor of any of Contractor's obligations herein contained shall constitute a waiver of any subsequent breach of the same or any other of such obligations, and no payment made hereunder shall be deemed to constitute an acceptance or approval of any defective or unsatisfactory material or workmanship, or a waiver of Amtrak's right to reject the same later. As provided in Section 52.1 hereof, the remedies of Amtrak under



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this Article are cumulative, and in addition to those provided by law.

47. INSURANCE

- 47.1 Subject to the provisions of Article 47, and to the extent not required by the Equipment Contract during the term of the TSSSA, Contractor shall procure and maintain, at its own cost and expense, during the entire period of performance under the Contract, the types of insurance specified below. All insurance shall be placed with insurance carriers reasonably acceptable to Amtrak and authorized to do business in the jurisdiction(s) where Work is to be performed. All insurance shall affirmatively include coverage for acts of terrorism. Amtrak shall have the right to review and approve all insurance certificates applicable to the Work. However, Amtrak's acceptance, acquiescence or failure to object to Contractor's submitted insurance certificates shall in no way relieve Contractor from responsibility for obtaining insurance policies complying with the terms of this Contract. Contractor shall furnish Amtrak with a certificate or certificates of insurance giving evidence of the required insurance prior to the issuance of a NTP or commencement of any portion of the Work pursuant to this Contract and upon renewal of any required insurance thereafter. In no event shall Work be performed until the required certificates of insurance have been furnished. If the insurance provided is not in compliance with the requirements listed below, Amtrak shall have the right to stop Work until proper evidence of all required insurance is provided. Contractor shall have no right to an adjustment of the Contract Time or the Contract Amount based on Amtrak's exercise of such right, and any delay in the completion of any portion of the Work caused by Amtrak's exercise of such right to stop Work shall be an unexcused delay. All Subcontractors shall be required to maintain the required insurance for the Contractor or Contractor's insurance shall provide coverage for each Subcontractor working on its behalf for covered claims caused in whole or part by the Subcontractor. Contractor shall provide thirty (30) days prior written notice to Amtrak in the event coverage is changed or the policy is canceled or not renewed. Unless otherwise specifically provided to the contrary, all insurance coverages specified herein shall name Amtrak and the Financing Parties as additional insureds (collectively, “Additional Insured Parties”) using ISO CG 20 10 04 13 and CG 20 37 04 13 or their equivalent, and shall provide that Additional Insured Parties are additional insureds with respect to covered “liability caused in whole or in part arising out of” the Work, shall be primary and noncontributory to any other insurance available to Additional Insured Parties and their respective employees and agents, and shall include waivers of subrogation rights against Additional Insured Parties and their respective employees and agents. Except as otherwise expressly provided herein, Contractor's insurance obligations under this Article shall not be construed to limit Amtrak's rights whether in warranty, contract or any other applicable legal theory which may arise under provisions of the Contract or at law or in equity.
- 47.2 Workers' Compensation Insurance. A policy complying with the requirements of the statutes of the jurisdictions in which the Work shall be performed, covering all employees of Contractor. Employers' Liability coverage with limits of liability of not less than \$1,000,000 for each accident or illness shall be included. Additional Insured Parties shall not be named as an



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additional insured under this policy but the policy shall include a waiver of subrogation against the Additional Insured Parties and their respective employees and agents.

- 47.3 Commercial General Liability Insurance. A policy issued on an occurrence basis to and covering liability arising out of the Work to be performed by Contractor under the terms of the Contract. Products/Completed Operations Liability, Independent Contractors Liability, Contractual Liability (with railroad exclusions deleted), and Personal Injury/ Advertising Liability coverages are to be included. The policy shall contain a cross liability endorsement allowing claims and suits between insureds, shall not have any exclusion for liability relating to railroad operations, and shall not require mediation or arbitration of any disputes. Coverage under this policy shall have combined single limits for bodily injury (including disease or death) and property damage (including loss of use) of not less than \$100,000,000 per occurrence and \$200,000,000 in the aggregate.
- 47.4 Automobile Liability Insurance. A policy issued to and covering the liability of Contractor arising out of the use of all owned, non-owned, hired, rented or leased vehicles which bear, or are required to bear, license plates according to the laws of the jurisdiction in which they are to be operated, and which are not covered under Contractor's Commercial General Liability Insurance. Coverage under this policy shall have combined single limits of liability of not less than \$2,000,000 per occurrence and in the annual aggregate.
- 47.5 Railroad Protective Liability Insurance. Amtrak shall provide railroad protective liability coverage for Contractor and Subcontractor work within fifty (50) feet of track or right of way under Amtrak's blanket program. The cost of such coverage will be borne by Amtrak.
- 47.6 Professional Liability Insurance. A policy issued to and covering the liability of Contractor for engineering and design errors and omissions in the performance of this Contract. Contractor shall maintain such coverage during the term of this Contract and for at least three (3) years following completion and acceptance of the Project. This insurance shall have limits of liability of not less than \$10,000,000 per occurrence and in the annual aggregate. The deductible amount shall not exceed \$500,000. The Additional Insured Parties shall not be named as an additional insured under this policy.
- If professional liability insurance coverage is written on a claims-made basis: (1) the policy retroactive date shall coincide with or precede Contractor's start of contract services (including subsequent policies purchased as renewals or replacements); (2) the policy will allow for the reporting of circumstances or incidents that might give rise to future claims; (3) Contractor will use its best efforts to maintain similar insurance under the same terms and conditions for at least six years following completion of the Services under the Contract; and (4) if insurance is terminated for any reason, Contractor agrees to purchase an extended reporting provision of at least six years to report claims arising from the Contract.
- 47.7 Property Insurance. A policy issued to and covering Contractor equipment used in Contract performance under this Contract. The insurance shall provide coverage on an all-risk basis and



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shall have limits adequate to cover the full replacement value of the Supplies and Contractor’s Equipment. This insurance shall name the Additional Insured Parties as loss payees, as their interest may appear, and contain a waiver of subrogation against Additional Insured Parties.

- 47.8 Valuable Papers and Records Insurance: A policy covering loss or damage to valuable papers including blueprints, reports, surveys, designs or specifications in connection with this Contract, on an all-risk basis, in an amount no less than 100% of the replacement cost of such property. This insurance shall name the Additional Insured Parties as loss payees as their interest may appear and contain a waiver of subrogation against the Additional Insured Parties.
- 47.9 Technology Errors and Omissions Insurance. When Contractor’s Services includes the delivery of information technology services and/or technology products to Amtrak, technology errors and omissions coverage for liability from errors, omissions or negligent acts in rendering or failing to render computer or information technology services and technology products, violation of software copyright, and the failure of products to perform the intended function or serve the intended purpose. The policy shall not contain a provision that would prevent, preclude or exclude liability triggered by or connected to a network failure, system failure or the disclosure of private information and shall have limits of not less than the amount set forth in the Contract per occurrence and in the aggregate, covering the information technology services performed in connection with Services and continuing in force by renewal or extended reporting provision for not less than the greater of three (3) years after final completion of the Services or the greater time under which a claim may be properly asserted under the applicable statute of limitations or repose. The policy shall have limits of insurance of not less than fifty million dollars per occurrence and in the annual aggregate.
- 47.10 Cyber Liability Insurance. When the Contractor’s Services includes access to Amtrak’s electronically stored proprietary information and personally identifiable information of Amtrak employees, customers or other third parties, cyber liability insurance for loss, disclosure and theft of data in any form, system failure, and network security failure, including but not limited to, social engineering, phishing, ransomware, denial of service attacks, and transmission of malicious code. Coverage shall include regulatory fines and penalties, the cost of notifying individuals of a security or data breach, the cost of credit monitoring services and any other causally-related crisis management expense for up to one (1) year, shall contain no provision that would prevent, preclude or exclude a claim triggered by or connected with an act of cyber terrorism, shall extend to actual or alleged acts, errors or omissions committed by the Contractor or its agents, subcontractors, independent contractors or employees, shall contain severability for the insured organization for any intentional act exclusions, shall include consequential or vicarious liabilities and direct losses for the wrongful acts or failures of the Contractor, and shall have the “Insured v. Insured” exclusion amended to allow an Indemnified Party to bring a claim against the Named Insured. The policy shall have limits of not less than the amount set forth in the Contract per occurrence and in the aggregate, covering the information technology services performed in connection with Services and continuing in force by renewal or extended reporting provision for not less than the greater of three (3) years after final completion of the work or the



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greater time under which a claim may be properly asserted under the applicable statute of limitations or repose. The policy shall have limits of insurance of not less than fifty million dollars per occurrence and in the annual aggregate.

48. RESERVED.

49. PROTECTION OF PERSONS AND PROPERTY

- 49.1 Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work.
- 49.2 Contractor shall take all reasonable precautions for the safety of, and shall provide all reasonable protection to prevent damage, injury or loss to:
- a). All employees involved in the Work and all other persons who may be affected thereby;
 - b). All the Work and all materials and equipment to be incorporated therein, whether in storage on or off the site or under the care or custody of Subcontractors; and
 - c). Other property at the Work site(s) or adjacent thereto, including but not limited to trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.
- 49.3 Contractor shall comply with all applicable laws, ordinances, rules, regulations, and lawful orders of any public authority having jurisdiction for the safety of persons or property or to protect them from damage, injury or loss. Contractor shall erect and maintain, as required by existing conditions and progress of the Work, all reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety rules and notifying owners and users of adjacent utilities.
- 49.4 Use or storage of explosive or other hazardous material shall not be permitted without the written approval of the Contracting Official. If use or storage of such materials is approved, Contractor shall exercise the utmost care in such use or storage and shall carry on such activities under the supervision of properly qualified personnel.
- 49.5 All damage or loss to any property referred to in this Article caused in whole or in part by Contractor, its Subcontractors, or anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable shall be remedied by Contractor.
- 49.6 Contractor shall designate a responsible member of his organization at the site(s) whose duty shall be the prevention of accidents. This person shall be Contractor’s superintendent unless otherwise designated in writing by Contractor to the COTR.
- 49.7 Contractor shall not load or permit any part of the Work to be loaded so as to endanger personnel and/or property.



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- 49.8 When working in and around Amtrak property, all personnel employed by Contractor or its Subcontractors shall abide by the applicable safety policies and procedures for the respective property.
- 49.9 Contractor shall notify Amtrak to arrange for permission to enter upon Amtrak and railroad property. Twenty-one (21) days prior notice must be given to Amtrak for property access when Amtrak protection personnel are required. Prior to entering Amtrak’s property, Contractor and its Subcontractors may be required to execute Amtrak’s then current Permit to Enter.
- 49.10 Contractor, his employees and Subcontractors shall attend all required safety seminars as directed by Amtrak.
- 49.11 Contractor must comply with all Amtrak safety rules and operating rules.

50. GOVERNING LAW

The Contract shall be governed by and construed in accordance with the laws of the District of Columbia, excluding that portion of District of Columbia law relating to the application of laws of another jurisdiction. Subject to the Claims and Disputes section hereof, each party agrees that all legal proceedings in connection with any dispute arising under or relating to the Contract shall be brought in the United States District Court for the District of Columbia. Contractor hereby accepts the jurisdiction of the United States District Court for the District of Columbia and agrees to accept service of process as if it were personally served within the District of Columbia. In accordance with Section 52.2, this Article shall survive the termination or expiration of the Contract.

51. COMPLIANCE WITH LAW

- 51.1 All Work shall comply with all Applicable Laws that bear on the performance of the Work (including without limitation all building codes, zoning and other Laws that bear, or would bear but for any exemption from such Laws enjoyed by Amtrak, on the Work), except as otherwise expressly specified in the Contract or directed by the Contracting Official. If Contractor observes that any of the Contract terms are at variance therewith in any respect, he shall promptly notify the COTR in writing, and any necessary changes shall be made by appropriate Contract Modification, provided that no Contract Modification shall extend the Contract Time or increase the Contract Amount if it is based on a law enacted at the time of Contract execution. Contractor shall be deemed to have had notice of all laws enacted at the time of Contract execution, regardless if the effective date is after Contract execution. Contractor shall be deemed to have included in the Contract Amount the cost of making all Work comply with all laws enacted at the time of Contract execution.
- 51.2 In the event any governmental requirements are removed, relaxed or changed in any way after the execution of the Contract so as to make Contractor’s performance less expensive or less



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difficult, Amtrak shall have the option to either require Contractor to perform pursuant to the more rigorous requirements, or to receive a reduction in the cost of the items of material or equipment affected for all savings by reason of such change.

52. WRITTEN NOTICE

Any written notice required of the parties under the provisions of the Contract shall be deemed to have been duly served upon receipt if delivered in person to the individual or representative or officer of the relevant party for whom it was intended, or upon mailing if sent by registered or certified mail to the business address designated in the Contract.

53. RIGHTS AND REMEDIES

53.1 Each of Amtrak's rights and remedies hereunder shall be cumulative, in addition to, and not a limitation of, any duties, obligations, rights and/or remedies provided at law, in equity, or otherwise. Amtrak's failure to exercise any of its rights under the Contract shall not constitute a waiver of any past, present or future right or remedy. No action or failure to act by Amtrak or any of its representative(s), including the Contracting Official, shall constitute approval of, waiver of, or acquiescence to, a breach by Contractor unless specifically agreed in writing. Waiver by Amtrak of any breach by Contractor shall not constitute a waiver of any other breach of the same or any other provision of the Contract. Acceptance of any Supplies of Services, or payment therefore, shall not operate as a waiver of any breach.

53.2 All representations, warranties, guarantees, licenses, indemnifications, agreements to hold Amtrak harmless, and other obligations created by the Contract which by their terms are intended to be fulfilled in whole or in part after termination or completion of the Work or which can, under the particular circumstances at issue, reasonably be fulfilled only after termination or completion of the Work, shall survive termination or expiration of the Contract. Contractor shall cause a parallel survival clause to be inserted in all subcontracts.

54. AMTRAK/CONTRACTOR RELATIONSHIP

54.1 The Contracting parties are not employer and employee, and nothing herein shall be construed as creating such relationship between Amtrak and Contractor. Contractor may adopt such arrangements as it may desire, subject to the provisions of the Contract, with regard to the details of the Work and Contractor's personnel or workers, provided however, that the Work shall be done by Contractor in such manner as shall be consistent with the achievement of the result contracted for within the time herein agreed upon.

54.2 It is further understood and agreed that, in no event shall Amtrak be required to make deductions from compensation or report earnings of employees of Contractor under any Social Security Act, or any other state or Federal statute, purporting to levy a tax on payrolls or the compensation of employees; and Contractor hereby agrees to indemnify and save Amtrak harmless from any and all liability, cost, or expense under such law, growing out of performance under the Contract.



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55. PRODUCT SAFETY NOTIFICATIONS

- 55.1 Contractor shall comply with the Occupational Safety and Health Administration’s Hazard Communication Regulations 29 CFR 1910.1200 and 29 CFR 1926.59 by providing or making readily available at the worksite, material safety data sheets for all chemicals, compressed gases, products containing hazardous materials, and products that may release hazardous substances (welding rods, solder, insulation materials, transite panels, gaskets, stock metal, etc.) during routine application.
- 55.2 Contractor shall notify Amtrak immediately by telephone (followed by written confirmation within twenty-four hours) (facsimile acceptable) whenever Contractor becomes aware that any component of the Supplies may contain a defect in design or construction which could in any way (a) become harmful to persons or property, or (b) create or present a risk to the health or safety of the public or to the environment, either by itself or when used by Amtrak within the scope of its intended purpose.

56. LABOR DISPUTES

Whenever an actual or potential labor dispute delays or threatens to delay the timely performance of the Contract, Contractor shall notify Amtrak immediately and furnish all relevant information. Contractor shall include the substance of this provision in all subcontracts hereunder.

57. PARENT GUARANTY

- 57.1 If Contractor is a subsidiary of another entity, then Amtrak’s obligations under the Contract shall be contingent upon Amtrak’s receipt of a satisfactory Parent Guaranty executed by the ultimate parent entity of Contractor or a related entity acceptable to Amtrak guarantying payment and performance of Contractor’s obligations and liabilities under this Contract. In the event the ultimate parent entity of Contractor is changed, the new ultimate parent entity or a related entity acceptable to Amtrak shall become the Guarantor, and the existing Parent Guaranty shall be substituted with a Parent Guaranty provided by the new ultimate parent entity of Contractor , a related entity or a replacement guaranty acceptable to Amtrak.
- 57.2 If Guarantor is incorporated or organized in a jurisdiction outside the United States of America, the Parent Guaranty delivered to Contractor shall be accompanied by an opinion addressed to Amtrak from counsel acceptable to Amtrak who are authorized to practice law in the Guarantor’s jurisdiction, to the effect that the Parent Guaranty has been duly authorized, executed and delivered, is within the corporate power and authority of the Guarantor, requires no permits, filings, payments, consents or authorizations from any governmental authority or private party for its execution and delivery which have not been obtained by Contractor and/or Guarantor, complies with Applicable Laws, is legal, valid, binding, and a judgment or arbitration award properly obtained in the United States against Guarantor on the Parent Guaranty will be recognized and enforceable in the jurisdiction of the Guarantor without a de novo hearing on the



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merits of the judgment obtained.

- 57.3 Contractor shall provide to Amtrak a copy of the Guarantor’s most recent annual audited financial statements prior to Amtrak’s issuance of a NTP and also within one hundred twenty (120) days after the end of each of the Guarantor’s fiscal years thereafter until three years after Amtrak’s issuance of a Certificate of Final Fleet Acceptance. Any non-public financial statements submitted to Amtrak shall be treated as Amtrak treats its own confidential information if marked as such. The year-end financial statements of Guarantor shall be prepared in accordance with US Generally Accepted Accounting Principles or other similar accounting principles. If Guarantor restructures or divests itself of assets causing a substantial reduction in its net worth, it shall provide Amtrak written notice thirty (30) days prior to the public announcement of any restructuring, unless Guarantor’s notification to Amtrak would violate financial securities laws or regulations then in place, in which case such notification shall not be required. In that event, or in response to publicly disclosed or privately provided financial information regarding Guarantor, Amtrak may by written notice to Contractor require a meeting with senior officials of Contractor to discuss Guarantor’s financial situation and what assurances Amtrak has of the Guarantor’s ability to honor the Parent Guaranty and other obligations including the Contractor’s ability to complete the Work and delivery of the Supplies under the terms of this Contract. If Amtrak is or remains insecure about Guarantor’s financial condition or Contractor’s ability to complete the Contract in accordance with its terms, Amtrak may by further written notice to Contractor, require Contractor to transfer title to Amtrak (but not risk of loss) to all present Equipment and Supplies in process notwithstanding their state of completion or that they remain in the possession of Contractor. Upon Amtrak’s written notice given under the prior sentence, title to all Equipment and Supplies in process of Contractor relating to this Contract for which Amtrak has been invoiced and such invoices have been paid as required by this Contract, shall automatically be deemed to have transferred to Amtrak at the time of such notice.
- 57.4 The Parent Guaranty may be enforced by either Amtrak or a Financing Party, provided that the enforcement of the Parent Guaranty by any such Financing Party shall only be permitted for Contractor defaults and damages and amounts owed by Contractor to Amtrak under this Contract, and not for defaults by Amtrak under any of its funding agreements or otherwise outside of the scope of this Contract. In the event that Amtrak transfers the Contract, the obligations of the Guarantor pursuant to the Parent Guaranty shall not exceed Contractor’s unsatisfied obligations under the Contract.
- 57.5 If at any time the Credit Rating of Guarantor falls below “BBB” by Standard & Poor’s or “BBB” by Moody’s or Guarantor is placed on credit watch for a possible downgrade below such levels, Contractor shall provide to Amtrak a replacement Letter of Credit within five (5) days of such occurrence. “Credit Rating” means the long-term corporate credit rating or the senior unsecured and uncredit-enhanced debt rating of such Person.

58. SEGREGATION OF EQUIPMENT AND SUPPLIES



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Following receipt of payment by Contractor for Equipment and Supplies as required by this Contract for which Amtrak has been invoiced and that have been manufactured and allocated to this Contract but have not been delivered to Amtrak, Contractor shall use its commercially reasonable efforts, using its existing information technology systems to segregate such Equipment and Supplies from its other inventory and designate Amtrak as the sole beneficiary of such Equipment and Supplies.

59. CREDIT CARD INFORMATION

- 59.1 If in performance of this Contract, Contractor will store, process, transmit, or have access to payment account data belonging to Amtrak or entrusted to Amtrak by its business partners, customers, vendors, contractors or employees, Contractor shall (1) comply with the Payment Card Industry’s Data Security Standard (“PCI-DSS”), as set forth at <https://www.pcisecuritystandards.org/> and as may be updated from time to time by the PCI Security Standards Council, and (2) within thirty (30) days of each anniversary of this Contract, certify in writing (to Amtrak’s Contracting Official) Contractor’s compliance with PCI-DSS in all aspects of Contractor’s performance of this Contract or, alternatively, the basis for Contractor’s exemption from PCI-DSS compliance.
- 59.2 If any software, Supplies, goods, or equipment (collectively “Goods”) provided by Contractor pursuant to this Contract will store, process, transmit, or otherwise have access to credit card account numbers received from Amtrak or Amtrak’s customers, such Goods shall comply with the Payment Card Industry’s Payment Application - Data Security Standard (“PA-DSS”), as set forth at <https://www.pcisecuritystandards.org/> and as may be updated from time to time by the PCI Security Standards Council.
- 59.3 Contractor acknowledges that it is responsible for compliance with PCI-DSS and PA-DSS, as applicable to Contractor’s performance of this Contract.

60. SEPARATE CONTRACTS

- 60.1 If appropriate, Contractor shall afford other Amtrak Contractors reasonable opportunity for the introduction and storage of their materials and equipment and the execution of their work, and shall properly connect and coordinate its Work with theirs.
- 60.2 If any part of Contractor’s Work is dependent in any way on the work of any other separate contractor, Contractor shall take all reasonable steps to become aware of any defects in the work of such other contractors that renders or would render such work unsuitable for proper execution of Contractor’s Work. Contractor shall inspect the critical items of any such contractor’s work before relying on or incorporating such work into Contractor’s Work. If Contractor reasonably believes that another contractor’s work is deficient or otherwise unsuitable for its intended purpose, Contractor shall notify Amtrak, in writing, immediately upon such discovery. Contractor shall waive his right to any claims regarding the unsuitability of such other contractor’s work if Contractor fails to timely notify Amtrak of any defects in such other



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contractor’s work that Contractor discovered or reasonably should have discovered.

- 60.3 Should Contractor or any Subcontractor cause damage to the work or property of any separate Amtrak contractor, Contractor shall, upon due notice, make all reasonable efforts to settle with such other contractor(s). If such separate contractor(s) sues Amtrak or initiates an arbitration proceeding on account of any damage alleged to have been so sustained, Amtrak shall notify Contractor, who shall defend such proceedings at its expense, and if any judgment or award against Amtrak arises there-from, Contractor shall pay or satisfy it and shall reimburse Amtrak for all attorneys’ fees and court or arbitration costs which Amtrak incurred.

61. COMMENCEMENT OF STATUTORY LIMITATION PERIOD

Claims by Contractor shall not be brought after the earliest of (a) final payment under the Contract; (b) one year after the date of final completion of the project; or (c) one year after the date of Contractor’s last substantial Work.

62. CYBERSECURITY

- 62.1 Contractor shall follow the National Institute of Technology (NIST) Cybersecurity Framework (CSF) to maintain and enforce digital data protection, safety and physical security procedures with respect to the access, use, and possession of Amtrak's Confidential Information and Amtrak data, when providing supplies or services to Amtrak that are (a) at least equal to industry standards and in compliance with all applicable laws; and (b) which provide reasonably appropriate technical and organizational safeguards to protect Amtrak against the accidental or unlawful destruction, loss, alteration or unauthorized disclosure or access of such information, data or systems. Contractor shall take all reasonable measures to secure and defend its location and equipment against hackers and others who may seek, without authorization, to modify or access Contractor’s systems, Amtrak’s systems or the information or data found therein and shall immediately report to Amtrak any breaches of security or unauthorized access to Amtrak’s Confidential Information or Amtrak data. Contractor shall use diligent efforts to remedy breaches in a timely manner and deliver to Amtrak a root cause assessment and future incident mitigation plan with regard to any breach of security.
- 62.2 If Contractor is providing services to develop and operate Amtrak company websites on Contractor’s IT infrastructure, Contractor agrees to engage a third-party vendor at least annually, at its own expense, and acceptable to Amtrak, to perform penetration testing and vulnerability scans with respect to Contractor’s systems. Contractor shall use leading industry practices to perform penetration tests to probe for network and infrastructure weaknesses that could be exploited. Contractor shall provide Amtrak with a written report of any high and medium level security issues, as defined by NIST Common Vulnerability Scoring System (CVSS), revealed during regular testing and how and when these vulnerabilities will be mitigated.
- 62.3 Contractor shall comply with the AMTRAK CYBERSECURITY AND PRIVACY TERMS AND CONDITIONS – STANDARD SHORT FORM attached hereto as Attachment 1.



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ATTACHMENT 1

**AMTRAK CYBERSECURITY AND PRIVACY TERMS AND CONDITIONS – STANDARD
SHORT FORM**

1. GENERAL PURPOSE & APPLICABILITY

- 1.1. General Purpose: Contractors deliver supplies and/or services that may access, create, use, process, transfer, share and/or store Amtrak Data or connect to the Amtrak Infrastructure. These Cybersecurity and Privacy Terms and Conditions (collectively “Attachment”) are cybersecurity standards that apply to all Contractors who provide supplies and/or services to Amtrak.
- 1.2. Compliance: Contractors must comply with all applicable laws, regulations, statutes, industry standards, and compliance framework requirements including, but not limited to: the Payment Card Industry Data Security Standards (PCI-DSS), Health Insurance Portability and Accountability Act (HIPAA), Health Information Technology for Economic and Clinical Health (HITECH) Act, Sarbanes-Oxley Act (SOX), Gramm-Leach-Bliley Act (GLBA), General Data Protection Regulation (GDPR), California Consumer Privacy Act (CCPA), California Privacy Rights Act (CPR), Colorado Privacy Act (CPA), Connecticut Data Privacy Act (CDPA), Virginia Consumer Data Protection Act (VCDPA), Utah Consumer Privacy Act (UCPA), Illinois Biometric Information Privacy Act (BIPA), ISO/IEC 27001, ISO/IEC 27002, ISO/IEC 27701, ISO/IEC 27032, ISO/IEC 27017, ISO/IEC 27018, NIST SP 800-53, Rev. 5 and other applicable NIST SP 800 series publications, the National Institute of Technology (NIST) Cybersecurity Framework (CSF), and any U.S. State privacy laws to the extent applicable, including as enacted or amended during the term of the Agreement. Contractor shall also comply with any and all laws, regulations, and other compliance requirements and industry standards regarding data protection, data privacy, data security, data integrity, business continuity, incident response, and similar matters applicable to entities designated as “critical infrastructure” including as enacted or amended during the term of the Agreement.

2. CYBERSECURITY & PRIVACY GOVERNANCE

- 2.1. Cybersecurity Governance: The Contractor must follow industry best practices and maintain a cybersecurity program (the Program) that implements, maintains, improves, and enforces reasonable and appropriate policies, procedures, and controls for the governance, assessment, risk management, workforce management, access control, physical security, continuous monitoring, incident response, and digital data protection in relation to the access, use, and possession of Amtrak Data, including Amtrak Confidential Information and Amtrak Employee Information.
- 2.2. Cybersecurity Framework Alignment: The Program must provide appropriate organizational, technical, administrative, and physical safeguards that align with the NIST CSF through controls derived from applicable compliance frameworks such as NIST SP 800-53, Rev. 5 and ISO/IEC 27001. Program controls shall and meet or exceed any other applicable industry



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standards to protect Amtrak, Amtrak Employees, Amtrak Customers, Amtrak Data, and Amtrak Infrastructure against Security Incidents. The Contractor shall test and monitor the effectiveness of its safeguards. The Contractor shall conduct a risk assessment and review and update the Program at least annually.

- 2.3. Cybersecurity Awareness Training: Contractor must require and verify that its employees, contractors, consultants, and other downstream third-party staff complete cybersecurity awareness training, privacy awareness training, and any applicable role-based training associated with the collection, processing, or handling of Amtrak Data, no less than once per year. Upon request, Contractor shall provide Amtrak with proof of certification and/or attendance for such annual training activities.

3. AUDITS AND ASSESSMENTS

- 3.1. Audit Rights and Testing: Notwithstanding anything contrary in the Agreement and with no limitation to audit rights of Amtrak OIG, specifically with regards to security-related audits, the audit terms set forth in this Attachment shall apply.
- 3.1.1. Contractor agrees that Amtrak or its third-party designee may, but is not obligated to, perform audits and security tests of Contractor’s information technology (IT) or systems environment and procedural controls to determine Contractor’s compliance with the system, network, data, data privacy, and cybersecurity requirements of this Attachment. Audits and security tests shall be limited to areas relevant to Contractor’s contractual engagement with Amtrak. Amtrak audits of the Contractor system shall be initiated during normal business hours and with at least 20 days advance notice or in the event of any Security Incident, not less than five (5) business days after the resolution of such Security Incident. Audit shall be performed under standards established by a recognized standards organization.
- 3.1.2. Contractor shall provide all information reasonably requested by Amtrak in connection with any audits and shall provide reasonable access and assistance to Amtrak upon request. Contractor shall comply, within reasonable timeframes at its own cost and expense, with all reasonable compliance remediation recommendations that result from such inspections, tests, and audits. Amtrak reserves the right to review, upon request, any original security reports that Contractor has undertaken or commissioned to assess Contractor’s own network security for the provided Services. If requested, copies of these reports will be sent via bonded courier to the Amtrak security contact. Contractor will notify Amtrak of any such security reports or similar assessments once they have been completed.
- 3.1.3. If requested by Amtrak, Contractor shall, on an annual basis: 1) permit security reviews by Amtrak on systems storing or processing Amtrak Data including without limitation the Program; and 2) permit testing of all security processes and procedures during the Term of the Agreement, including without limitation penetration tests. Tests may include



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coordinated security tests as mutually agreed upon as well as interviews of relevant personnel, review of documentation, and technical inspection of systems and networks relating to the receipt, maintenance, use, retention, and authorized destruction of Amtrak Data.

- 3.2. Audit Certifications and Compliance Reports: Contractor shall provide the required compliance reports or audit certifications as applicable, on an annual basis, and at its own cost and expense, to enable Amtrak to fulfill its annual audit and compliance requirements. The delivery of the following reports referenced in this Section shall not fulfill, replace, or negate any of the rights or obligations detailed in Section 3.1 Audit Rights and Testing, Section 3.3 Right to Inspection, or Section 3.4 Regulatory Examinations of this Attachment:

- 3.2.1. Current year SOC 2 Type 2 report.
- 3.2.2. Current year ISO/IEC 27XXX audit report(s).
- 3.2.3. PCI DSS reports on compliance as applicable.
- 3.2.4. Cloud Security Alliance (CSA) Consensus Assessments Initiative Questionnaire (CAIQ) registry reports for Software as a Service (SaaS) products and/or applications as applicable.
- 3.2.5. Contractors utilizing the AWS hosting platform to provide services to Amtrak must comply with AWS Foundational Security Best Practices standard as well as CIS AWS Foundations v1.4.0 security standard, or most recent version, and/or any upgrades released by the CIS AWS Foundations Benchmark.

Contractors utilizing the Microsoft Azure hosting platform to provide services to Amtrak must comply with Microsoft Azure Foundational Security Best Practices standard as well as CIS Microsoft Azure Foundations Benchmark v1.4.0 Controls, or most recent version, and/or any upgrades released by the CIS Microsoft Azure Foundations Benchmark Security Standard.

- 3.3. Right to Inspection: Upon request, Contractor shall provide to Amtrak the opportunity to review copies of the Contractor’s policies, procedures, controls catalog, and independent audit report summaries for the implementation of required technical, physical, and administrative safeguards or controls derived from applicable cybersecurity frameworks relating to, and without limitation, the Program (e.g. ISO/IEC 27001, ISO/IEC 27002, ISO/IEC 27701, ISO/IEC 27032, ISO/IEC 27017, ISO/IEC 27018, NIST CSF, NIST SP 800-53, Rev. 5, SOC 2 Type 2).
- 3.4. Regulatory Examinations: Contractor agrees that any regulator or other governmental entity with jurisdiction over Amtrak and its affiliates may examine Contractor’s activities relating to the performance of its obligations under the Agreement and this Attachment to the extent that such authority is granted to such entities under the law. Contractor shall promptly cooperate



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with and provide all information reasonably requested by the regulator or other governmental entity in connection with any such examination and provide reasonable assistance and access to all equipment, records, networks, and systems reasonably requested by the regulator or other governmental entity. Contractor agrees to comply with all reasonable recommendations that result from such regulatory examinations within reasonable timeframes.

- 3.4.1. Within sixty (60) days of the audit results from the regulator or governmental entity, Contractor will provide Amtrak with a mitigation plan to address any risks, threats, concerns, or areas of non-compliance identified in the audit.

4. INFORMATION GOVERNANCE

- 4.1. Data Management: Contractor may collect, access, use, and otherwise process Amtrak Data solely as necessary to provide Services to or on behalf of Amtrak and in compliance with all applicable privacy and data protection laws, the Agreement, and any notices or disclosures regarding Personal Information made available by or on behalf of Amtrak (“Privacy Requirements”). Unless prior written consent is provided by Amtrak, Contractor: (1) shall not access or use Amtrak Data for any purpose other than to provide the Services, and (2) shall not give any third-party access to the data, except subcontractors subject to data protection and confidentiality requirements no less strict than those imposed on Contractor under this Attachment, or where otherwise required by law or regulation.
- 4.2. Confidentiality: Contractor agrees to maintain Amtrak Confidential Information in all forms (including paper and electronic) in strictest confidence, using measures no less stringent than those that Contractor uses for its own most confidential or sensitive information. Contractor shall take all reasonable measures to secure and defend its location and equipment against external and internal threat actors and those who may seek, without authorization, to modify or access Contractor’s systems, Amtrak’s systems, Amtrak Data, or the Confidential Information found therein. Contractor shall require its employees, contractors, consultants, and other downstream third-party staff to enter into written obligations of confidentiality and protection with respect to Amtrak Data no less protective than those contained in the Agreement and this Attachment.
- 4.3. Obligations Regarding Personal Information: Other than as strictly necessary for the performance of the Services, Contractor will not collect, store, or use the Personal Information of Amtrak, Amtrak Customers, or Amtrak Employees through the performance of the Services. Contractor will identify, monitor, protect, and maintain the Personal Information of Amtrak, Amtrak Customers, and Amtrak Employees in accordance with all laws, regulations, and legal requirements applicable for the collection, access, use, processing, sharing, storage, and deletion of Personal Information, shall not “sell” such Personal Information (as such term is defined by applicable privacy laws), and shall not retain, use, or disclose such Personal Information for any purpose other than as expressly set forth in the Agreement and this Attachment. Contractor shall notify Amtrak in the event Contractor determines that it can no longer comply with applicable Privacy Requirements. Contractor shall provide Amtrak with assistance and cooperation in



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responding to requests from or on behalf of individuals to exercise legal rights regarding Personal Information and in connection with conducting any privacy impact assessments or similar assessments regarding Personal Information.

- 4.4. Data Aggregation and Anonymization: In the event that Contractor inadvertently collects any Personal Information through or as a result of Amtrak’s, Amtrak Employees’, or Amtrak Customers’ usage of the Services, including without limitation Internet Protocol Addresses, Contractor must sanitize the data through Anonymization or Aggregation unless retention of Personal Information in an identifiable format is strictly necessary for the performance of the Services, for compliance with applicable law, or for compliance with the Agreement and this Attachment.
- 4.4.1. For the purposes of this Attachment, “Anonymization” refers to removal of Personal Information and any information reasonably likely to identify an individual person or household; provided such revised data does not include and is not subject to any key, code, or other mechanism that could be used to re-identify such information, and “Aggregation” refers to information that relates to a group or category of persons, households, or entities from which identifying information has been removed, that is not linked or reasonably linkable to any individual person, household, or entity, such as via a device; provided such revised data does not include and is not subject to any key, code, or other mechanism that could be used to re-identify such information..
- 4.4.2. Without limiting the generality of the requirements for Anonymized or Aggregated data, Contractor shall:
- 4.4.2.1. Implement technical safeguards that prohibit reversal of Anonymization or Aggregation of Personal Information collected through the Services;
- 4.4.2.2. Implement business processes that specifically prohibit such a reversal or recreation;
- 4.4.2.3. Make no attempt to achieve such reversal; and
- 4.4.2.4. Implement reasonable business processes to prevent inadvertent release of Anonymized or Aggregated Personal Information.
- 4.5. Machine Learning and Artificial Intelligence: Contractor shall not process or otherwise in any way use Amtrak Data for purposes of training, creating, or otherwise modifying any machine learning, large language model, artificial intelligence, or similar systems that learn and adapt without following explicit instructions through the use of algorithms and statistical models to analyze and draw inferences from patterns in data (“Machine Learning”) without Amtrak’s prior written authorization in each instance. If Contractor becomes aware of any use of Amtrak Data in violation of the foregoing restriction, Contractor shall promptly notify Amtrak and take steps in cooperation with Amtrak to remediate and/or mitigate such unauthorized use. In addition,



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Contractor shall not use Machine Learning for the purpose of generating or developing software, computer code, or other materials used in or provided to Amtrak as part of the products or services supplied hereunder without Amtrak’s prior written authorization in each instance.

5. INFORMATION MANAGEMENT & PROTECTION

- 5.1. Asset Management: Contractor must maintain an asset inventory and classification to manage essential information about hardware, software, data flows, interfaces, and data disclosures (e.g., unique identifiers, version numbers, data recipients, physical locations). Contractor must implement asset management controls for any assets that may be used to access Amtrak Data, Amtrak Infrastructure or Amtrak Resources. Contractor shall follow the required security standards and safeguards referenced in this Attachment for the utilization of all hardware and software in the performance of services to Amtrak under the Agreement.
- 5.2. Access Control: Contractor must restrict access to Amtrak Data and all systems that access, process, or store Amtrak Data through the utilization of a provisioning process that meets or exceeds the standards provided in the NIST CSF, NIST SP 800-53, Rev. 5, and other applicable NIST SP 800-series publications. Access to Amtrak Data must be restricted to only authorized individuals with an express need-to-know for the performance of the Services. Contractor must ensure that only authorized individuals are permitted access to business applications, systems, networks, and computing devices containing or processing Amtrak Data using, without limitation, secured channels via Contractor authorized virtual private network (VPN), jump boxes, secure shell (SSH), multi factor authentication (MFA), or other secure mechanisms.
 - 5.2.1. Contractor personnel access shall be consistent with, and in no case exceed the scope of, any such authorization granted by Amtrak. All Amtrak-authorized connectivity or attempted connectivity to Amtrak’s systems or networks shall be in conformity with Amtrak’s security policies as may be amended from time to time with notice to the Contractor.
 - 5.2.2. Contractor will review and verify the continued need for Contractor personnel access and level of access to Amtrak Data, systems, networks, and property on a quarterly basis and will retain evidence of the reviews for two (2) years from the date of each review. Contractor shall provide a certification of such review to Amtrak upon request.
- 5.3. Passwords: Contractor must ensure that its password policies and procedures are compliant with NIST SP 800-63 Digital Identity Guidelines and NIST SP 800-53, Rev. 5 guidance on password creation and authentication. These password policies and procedures must follow NIST best practices in configuration and management, including length and structure. All passwords must remain confidential and must not be shared between the Contractor, its employees, contractors and downstream third-party users.



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- 5.4. Multi-factor Authentication (MFA): Contractor must ensure that multi-factor authentication is implemented for accounts with access to Amtrak Data, Amtrak Infrastructure, and other systems, networks, applications, and computing devices based on the NIST best practices and guidelines found in NIST SP 800-63 and NIST SP 800-53, Rev.5. Contractor must work with Amtrak to implement single sign-on (SSO) solution for MFA accounts as needed for Amtrak employee access to the Services.
- 5.5. Physical Location of Data: Contractor must notify Amtrak, in writing, thirty (30) days prior to relocating any physical storage location of Amtrak Data to a location or country that is different from the one(s) documented in the Contractor’s statement of work, contract, or any Data Processing Addendum entered into between Amtrak and Contractor, so that any potential privacy or security implications can be addressed.
- 5.6. Virtualization & Cloud Solutions: If Contractor utilizes a cloud solution, then Contractor must adhere to the same security principles required by the terms in this Attachment, the Cloud Security Alliance Guidance, and applicable government regulations, laws, or directives as used throughout the Contractor’s enterprise. The geographic location of the Contractor’s infrastructure resources must be identified in writing to Amtrak prior to transferring out Amtrak Data to such resources. Contractor is required to receive prior approval from Amtrak, who has sole control over the data location in any cloud services, and shall cooperate with Amtrak to ensure compliance with local laws that restrict cross-border flow of data.
- 5.7. Physical Protection: Contractor must actively manage physical security controls and ensure that all buildings throughout the Contractor’s enterprise that house critical IT functions (e.g., data centers, network facilities, and key user areas) and store, process or transmit Amtrak Data or any other service-related Amtrak information, or connect to Amtrak Infrastructure, are physically protected from unauthorized access. These physical security controls should follow security best practices and requirements (e.g., ISO/IEC 27002 and NIST SP 800-53, Rev. 5). Contractor must maintain and record facility access logs with access restricted to only those personnel with a business need-to-know. Contractor must review and update these access logs regularly but no less than quarterly.
- 5.8. Data Encryption: Contractor shall provide industry standard FIPS 140-2 encryption of Amtrak Data and Confidential Information in transit over public or leased circuits. Contractor shall also provide industry standard FIPS 140-2 encryption of Amtrak Data and Confidential Information at rest on local laptops, mobile devices, shared drives, information repositories, and backend data stores. In the event FIPS 140-2 standards regarding encryption are updated or replaced, Contractor shall use encryption that meets or exceeds such updated or replaced standards.
- 5.8.1. Contractor shall implement and maintain logical data segregation that meets or exceeds industry standards to ensure Amtrak Data is not viewable by unauthorized users.
- 5.9. Secure Destruction: Upon completion of the delivery of the products and services to be provided under the Agreement, or at any time upon Amtrak’s request, Contractor shall return to Amtrak



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or destroy all Amtrak Data as provided herein. Contractor shall return to Amtrak all hardware and removable media provided by Amtrak containing Amtrak Data. Amtrak Data in such returned hardware and removable media shall not be removed or altered in any way. The hardware must be physically sealed and returned via a bonded courier or as otherwise directed by Amtrak. If any hardware or removable media containing Amtrak Data is owned by Contractor or a third-party, then the Contractor shall securely destroy such data or return it to Amtrak via hardware or removable media as requested by Amtrak. Contractor shall provide to Amtrak a notarized certification of destruction detailing the destruction method used and the data sets involved, the date of destruction, and the entity or individual who performed the destruction. Contractor’s destruction or erasure of Amtrak Data pursuant to this Section shall be in compliance with industry standard practices (e.g., Department of Defense Media Sanitization and Data Wipe Standard, NIST SP 800-88).

6. CYBERSECURITY INCIDENT RESPONSE AND MANAGEMENT

- 6.1. Incident Management: Contractor must document all Security Incidents and maintain a documented cybersecurity event management process that covers incident response, escalation, and remediation of Security Incidents. All such documentation must be retained for a minimum of five (5) years following the conclusion of any Security Incident, unless otherwise required by applicable law.
- 6.2. Reporting Incidents: Contractor shall immediately but no later than 24 hours after discovery, provide a written notice to Amtrak of any Security Incident.
 - 6.2.1. The written notice shall include the date and time of the Security Incident’s occurrence (or the approximate date and time of the occurrence if the actual date and time of the occurrence is not precisely known) and a detailed summary of the facts and circumstances of the Security Incident, including a description of:
 - 6.2.1.1. The date of the Security Incident’s discovery and the circumstances surrounding such discovery;
 - 6.2.1.2. Why the Security Incident occurred (e.g., a description of the reason for the system failure);
 - 6.2.1.3. The amount and type(s) of Amtrak Data known or reasonably believed to have been Disclosed;
 - 6.2.1.4. The systems and/or applications likely impacted;
 - 6.2.1.5. The categories and approximate number of data subjects affected, and their country of residence and the categories and approximate number of records affected; and



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- 6.2.1.6. The measures being taken or proposed to be taken by Contractor to address and remedy the Security Incident’s occurrence to prevent the same or a similar event from occurring in the future.
- 6.2.2. Amtrak may impose additional notification requirements for Security Incidents that compromise Amtrak’s Data based on applicable state breach notification laws or requirements under applicable domestic and/or international privacy laws.
- 6.2.3. Contractor shall provide written updates for the Security Incident to Amtrak addressing any new facts and circumstances learned after the initial written notice is provided and shall promptly, but no later than seventy-two (72) hours, provide such updates after learning of those new facts and circumstances. Contractor shall reasonably cooperate with Amtrak in Amtrak’s efforts to determine the risk posed by the Security Incident, including providing additional information regarding the Security Incident upon request from Amtrak.
- 6.3. Response Plan Development and Implementation: Contractor shall develop and implement a “Response Plan,” which shall include policies and procedures to address Security Incidents. The Response Plan shall include appropriate provisions for mitigating the harmful effects of Security Incidents and addressing and remedying the occurrence(s) to prevent the recurrence of similar Security Incidents in the future. Contractor shall provide Amtrak access to inspect Contractor’s Response Plan upon request. The development and implementation of the Response Plan shall follow industry standard practices, such as those that at a minimum are consistent with the contingency planning requirements of NIST SP 800-61, Rev. 2, Computer Security Incident Handling Guide.
- 6.3.1. Immediately upon learning of a Security Incident related to the products and services provided to Amtrak, Contractor shall implement its Response Plan and, within twenty-four (24) hours of implementing its Response Plan, shall notify Amtrak in writing of that implementation as described above.
- 6.4. Notification to Affected Parties: Contractor will, at its sole cost and expense, assist and cooperate with Amtrak with respect to any investigation of a Security Incident, disclosures to affected parties, and other remedial measures as requested by Amtrak in connection with a Security Incident or required under any applicable laws related to a Security Incident.
- 6.4.1. In the event a Security Incident results in Amtrak Data being Disclosed such that notification is required to be made to any person or entity, including without limitation any customer, shareholder, or current or former employee of Amtrak under any applicable laws, including privacy, data breach notification, and consumer protection laws, or pursuant to a request or directive from a governmental authority, such notification will be provided by Amtrak, except as required by applicable law or approved by Amtrak in writing. Amtrak will have sole control over the timing, content, and method of providing such notification.



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- 6.5. Business Continuity: Contractor shall implement and maintain a business continuity program that meets or exceeds industry standards and that provides a formal framework and methodology, including without limitation, a business impact analysis and risk assessment process to identify and prioritize critical business functions (“Business Continuity Program”). Contractor shall provide Amtrak with evidence of the Business Continuity Program upon request.
- 6.5.1. Contractor shall conduct a business continuity test every twelve (12) months, including a review of the Business Continuity Program, roles and responsibilities, business documentation requirements, recovery strategies, Mean Time to Recovery (MTTR), Recovery Time Objectives (RTOs), Recovery Point Objectives (RPOs), testing strategy and frequency to ensure that appropriate recovery time frames are maintained to meet Amtrak business requirements for the Services. Contractor shall provide the results of any business continuity tests to Amtrak upon request.
- 6.5.2. Contractor shall implement and maintain a disaster recovery program that meets or exceeds industry standards and that provides a formal framework and methodology, including without limitation, a business impact analysis and risk assessment process to identify and prioritize critical business functions. Contractor shall provide Amtrak with evidence of the disaster recovery program upon request.
- 6.5.3. Contractor shall support Amtrak’s business continuity and disaster recovery programs to restore critical business functions in the event of a cybersecurity incident and/or breach.

7. THIRD-PARTY MANAGEMENT

- 7.1. Outsourcing: Prior to making Amtrak Data available to any third-party contractor, subcontractor, vendor, processor, or supplier, Contractor shall notify Amtrak in writing and provide reasonable information regarding the scope of and reason for such proposed third-party’s access to Amtrak Data. Contractor shall provide Amtrak with a reasonable time, not less than thirty (30) days, to object to the engagement of such third party and Contractor and Amtrak shall use reasonable good faith efforts to resolve any such objection by Amtrak, such as by identifying an alternative third party or adjustment to the services. Contractor must operate a formal process to address due care and due diligence considerations in the selection and management of downstream contractors, subcontractors, vendors, processors, and suppliers. Contractor must maintain all necessary agreements with such third parties that specify the security and data privacy requirements to be met before commencing work on behalf of Contractor that could have an impact on Amtrak Data, Amtrak Infrastructure, or any Amtrak business operations with the Contractor. Contractor shall ensure that these agreements align with the terms in this Attachment and must ensure that its contractors, subcontractors, vendors, processors, and suppliers are compliant with equivalent security and data privacy requirements to those contained in this Attachment and as required by applicable law.



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- 7.2. Indemnification: Contractor agrees to indemnify Amtrak for any and all actions taken by its own contractors, subcontractors, vendors, processors, and suppliers. Contractor acknowledges that it will be fully liable for all acts and omissions of these third parties.

8. CYBERSECURITY ASSESSMENT

- 8.1. Contractor Onboarding Assessment: Amtrak shall have the option, at its sole discretion upon execution of the Agreement, to perform a full cybersecurity assessment on Contractor’s Program and technical, physical, management, and security controls. Contractor agrees to comply with all reasonable cybersecurity requirements specified by Amtrak before commencing any work for Amtrak or accessing Amtrak Infrastructure or networks.

9. MISCELLANEOUS

- 9.1. Order of Precedence: In the event of a conflict between a provision or terms in this Attachment and any other Services Agreement or Contract the provision or interpretation that provides Amtrak, Amtrak Data, Amtrak Employees, Amtrak Customers, and Amtrak Infrastructure stronger protection will control.

- 9.2. Definitions: The following defined terms in have the meanings set forth below and shall only apply to this Attachment. Any terms defined elsewhere in the Agreement will be given equal weight and importance as though set forth in this Attachment. In the event of a conflict, greater weight shall be given to the version which provides greater protection to Amtrak, Amtrak Data, Amtrak Employees, Amtrak Customers, and Amtrak Infrastructure.

9.2.1. “**Amtrak Data**” means (a) all data and information Amtrak provides to Contractor, made accessible by Amtrak to Contractor, or to which Contractor has access or that Contractor (or Contractor Services) accesses, retrieves, collects, or otherwise processes during the course of performance of the Services from or on behalf of Amtrak, Amtrak Employees, Amtrak Customers, or trackers on the Amtrak website; (b) all archives, derivatives, summaries, abstracts, compilations, combinations with other information, modifications or manipulations of the foregoing data or information, Aggregated information, Anonymized or de-identified information, data sets, subsets, and the like related to, or derived from such data or information; (c) all reports generated by the Services, or otherwise generated or provided by Contractor relating to or in connection with the Product or Services; and (d) all Amtrak Confidential Information.

9.2.2. “**Amtrak Infrastructure**” means any information technology system, virtual or physical, that Amtrak or its Affiliates own, control, lease, or rent, and that resides on or outside Amtrak’s network. Amtrak Infrastructure includes infrastructure obtained from an IaaS provider and systems that are provided and located on the Amtrak network or hosted on a third-party network as part of a Service.



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- 9.2.3. **“Confidential Information”** means any information that during the Term is disclosed by or on behalf of a Party or its Affiliate (the “Disclosing Party”) to the other Party or its Affiliate (the “Receiving Party”) and at the time of disclosure: (i) is designated in writing as confidential or proprietary; (ii) is designated orally as confidential or proprietary, and embodied by the Disclosing Party in written or other tangible form, including meeting minutes, memos, diagrams, flow charts, and software; or (iii) should reasonably be understood by the Receiving Party to be confidential to the Disclosing Party under the circumstances.
- 9.2.4. **“Disclosed”** means any circumstance when the security, integrity, or confidentiality of any Amtrak Data has been compromised, including but not limited to incidents where Amtrak Data has been damaged, lost, corrupted, destroyed, or accessed, acquired, modified, used, or disclosed by any unauthorized person, by any person in an unauthorized manner, or for any unauthorized purpose.
- 9.2.5. **“MTTR”** or Mean Time to Recovery means the average time it takes to recover from a product or system failure.
- 9.2.6. **“Personal Information”** means any information that identifies, relates to, describes, is reasonably capable of being associated with, or could reasonably be linked, directly or indirectly, with a particular individual or household and includes, without limitation, any information defined as “personal information,” “personal data,” “personally identifiable information” or similar terms under applicable privacy or data protection laws. Personal Information of Amtrak Employees or Customers is considered to be Amtrak Data and Confidential Information, and includes without limitation: Social Security Numbers, personal tax ID numbers, military identification numbers, student identification numbers, passport numbers, driver’s license numbers, other government identification numbers, financial account data, payment card information, biometric information, health or medical information, insurance information, educational information, usernames, email addresses, names, home addresses, phone numbers, passwords, unique online identifiers such as cookies and mobile identifiers, access codes, and security questions.
- 9.2.7. **“Security Incident”** means any circumstance when (i) Contractor knows or reasonably suspects that Amtrak Data hosted or stored by the Contractor has been Disclosed; (ii) Contractor knows or reasonably suspects that an act or omission has compromised or may reasonably have compromised the security of the products and Services provided to Amtrak by Contractor or the physical, technical, administrative, or organizational safeguards protecting Contractor's systems used to store or host Amtrak Data or any Amtrak Infrastructure; (iii) Contractor discovers or reasonably suspects any other incident that impacts or may impact Amtrak’s business operations, Amtrak Data, or Amtrak Infrastructure; or (iv) Contractor receives any complaint, notice, or communication which relates directly or indirectly to any of the foregoing involving (A) Contractor’s handling of Amtrak Data or Contractor’s compliance with the data



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safeguards in this Attachment or applicable laws or (B) the security of the products and Services provided to Amtrak by Contractor.

- 9.2.8. **“Services”** mean all necessary or required services, tasks, functions, products and other responsibilities and activities as set forth in, or reasonably inferable from, the Agreement, or any Scope of Work, Order or any such other written document.
- 9.2.9. **“RPO”** Recovery Point Objective means the point in time to which data must be recovered after an outage.
- 9.2.10. **“RTO”** Recovery Time Objective means the overall length of time an information system’s components can be in the recovery phase before negatively impacting Amtrak’s mission or mission/business processes.