

**CONTRACT NO. \_\_\_\_\_**  
**GENERAL PROVISIONS**

***THIS AGREEMENT*** ("Contract") made as of March 24, 2022 between New Jersey Transit Corporation, a public instrumentality of the State of New Jersey, hereinafter referred to as NJ TRANSIT, having its principal office at One Penn Plaza East, Newark, New Jersey 07105-2246 and Alstom Signaling Inc. hereinafter referred to as the Contractor, includes four parts namely: a) General Provisions; b) Specifications; c) Exhibits; and d) all addenda issued prior to execution of the Contract.

***THIS CONTRACT*** shall become binding upon the parties hereto when executed on behalf of NJ TRANSIT by the Contracting Officer or their designee. The Contractor shall commence work within five (5) calendar days of receipt of a written Notice to Proceed to that effect which shall be issued on behalf of NJ TRANSIT by its Contracting Officer or their designee after execution of the Contract by NJ TRANSIT. The term of this Contract shall be for the purchase of the centralized traffic control equipment identified in the NJTRO Specification S-120720, dated December 7, 2020, the NJTRO Specification S-120820, dated December 8, 2020, the NJTRO Specification S-121120, dated December 11, 2020, the NJTRO Specification S-020820, dated February 24, 2020, and the NJTRO Specification S-022020, dated March 27, 2020, as incorporated in Attachment 2.

**1. Goods/Materials/Services to be Provided**

The Contractor, for and in consideration of the payments hereinafter specified and agreed to be made by NJ TRANSIT, agrees to do and perform all work and labor required to furnish and deliver all goods, materials or services in conformity with the Specifications included hereinafter.

**2. Quantities and Unit Prices**

The Contractor agrees that the prices hereinafter set forth are firm for the period of this Contract. The Contractor also agrees that the quantities noted are approximate and subject to increases or decreases at the sole option of NJ TRANSIT. NJ TRANSIT is obligated to pay for only those goods, materials or services and quantities thereof ordered, delivered/provided and accepted in accordance with this Contract.

**3. Proper Payments**

The Contractor agrees to make timely payment of all proper charges for labor and materials required to provide NJ TRANSIT the aforementioned goods, materials or services.

**4. Non-restrictive Clause**

Wherever brand names may appear in this Contract, they are included for the purpose of establishing identification and a general description of the item. Wherever such names may appear, the term "or approved equal" is considered to follow. The decision on the approved equal will be rendered by NJ TRANSIT at its sole discretion.

**5. Payment**

NJ TRANSIT agrees, subject to the availability of funds, to payment terms of Net 30 Days to the Contractor upon submission of proper invoices for the quantities of goods, materials or services ordered, delivered and accepted by NJ TRANSIT, in accordance with the prices set forth in the Bid Price Form attached hereto in Attachment 1 of this Contract.

NJ TRANSIT shall order goods, materials or services by use of a NJ TRANSIT Purchase Order referencing this Contract, and such Purchase Order shall be the only authorization the Contractor shall use to deliver goods, materials or services and invoice NJ TRANSIT.

These terms shall apply to Purchase Order 210020738, issued February 5, 2021, Purchase Order 210020730, issued February 5, 2021, and Purchase Order 210032977, issued June 16, 2021.

## **6. Release of Claims**

It is agreed that the Contractor's acceptance of final payment from NJ TRANSIT shall release in full all claims against NJ TRANSIT or any of its employees under this Contract.

## **7. Assignment**

The Contractor may assign or novate its rights and obligations under the Contract, in whole or in part, to any of its affiliates under the Contractor's sole common ownership and control, subject to NJ TRANSIT's consent, which may not be unreasonably withheld.

## **8. Subcontracting**

Currently Subcontracting is not contemplated but in the event the parties mutually agree that Subcontracting is required, the following applies:

The Contractor shall not subcontract any portion of this Contract without the prior written consent of NJ TRANSIT, which consent may be withheld at NJ TRANSIT's sole discretion. Utilization of independent delivery services and other similar activities are acceptable.

A Subcontractor or Supplier shall look only to the Contractor for the payment of any claims of any nature whatsoever arising out of the said subcontract, and said Subcontractor agrees, as a condition of NJ TRANSIT's consent to the making of said subcontract, that it shall make no claim whatsoever against NJ TRANSIT, its officers, agents, servants or employees for any work performed or thing done by reason of said subcontract, or for any other cause whatsoever that may arise by reason of the relationship created between the Contractor and Subcontractor by the subcontract.

## **9. Taxes and Applicable Laws**

The Contractor and any subcontractor agree that any taxes to be paid as a result of this Contract will be paid by the Contractor and any subcontractor and that NJ TRANSIT's obligation is limited to payment for the goods, materials or services in accordance with the unit prices stated herein. As a public agency, NJ TRANSIT is exempt from State use & sales taxes and Federal Excise Taxes. They must not be included in the Contractor's price quotations or invoices. The State of New Jersey's Federal Excise Tax Exemption Number is 22-75-0050K and the State of New Jersey's State Excise Tax Exemption Number is 21-60000928.

The Contractor shall comply with applicable laws, regulations, ordinances, and codes of the United States, the State of New Jersey and local governments within the State. If NJ TRANSIT determines that the Contractor has violated or failed to comply with applicable federal, state or local laws with respect to its performance under this Contract, NJ TRANSIT may withhold payments for such performance and take such other actions that it deems appropriate under the circumstances until compliance or remedial action has been accomplished by the Contractor to the satisfaction of NJ TRANSIT. This Contract shall be governed by and construed in accordance with the laws of the State of New Jersey.

## **10. Succession**

This Contract is to be binding upon NJ TRANSIT, its successor or successors, and upon the Contractor, its successor or successors.

## **11. Changes**

Any change in this Contract proposed by the Contractor shall be submitted to NJ TRANSIT for its prior approval, and, if approved, NJ TRANSIT will make the change by a written Contract modification. Oral change orders are not permitted. The Contractor shall be liable for all costs resulting from and/or for satisfactorily correcting any change not approved by written Contract modification to the Contract signed by the Contracting Officer.

NJ TRANSIT may, at any time, by a written order, and without notice to the sureties, make changes, within the general scope of this Contract. If any such change causes an increase or decrease in the cost of, or the time required for, the performance of any part of the work, whether changed or not changed by any such order, an equitable adjustment shall be made in the Contract price or delivery schedule, or both, and the Contract shall be modified in writing accordingly.

Within five (5) calendar days after receipt of the proposed written change order, the Contractor shall provide the Contracting Officer a detailed price and schedule proposal for the work to be performed. This proposal shall be accepted or modified by negotiations between the Contractor and the Contracting Officer. At that time, a Contract modification shall be executed in writing by both parties. Disagreements that cannot be resolved through negotiations shall be resolved in accordance with Section 18, "Disputes." Regardless of any disputes, the Contractor shall proceed with the work ordered.

If a price adjustment is indicated either upward or downward, it shall be negotiated between NJ TRANSIT and the Contractor for changes that are mandated as a result of legislation or regulation that are promulgated and become effective between the date of bid opening and the date of performance. Such price adjustment may be audited by NJ TRANSIT.

## **12. Delays**

If performance under the Contract should be unavoidably delayed, the Contracting Officer shall extend the time for completion of the Contract for the determined number of days of such delay. A delay is unavoidable only if the delay was not reasonably expected to occur in connection with or during the Contractor's or NJ TRANSIT's performance, was not caused directly or substantially by acts, omissions, negligence, or mistakes of the Contractor or NJ TRANSIT, the Contractor's or NJ TRANSIT's suppliers, or their agents, was substantial and in fact caused the Contractor to miss delivery dates, and could not adequately have been guarded against by contractual or legal means.

The Contractor shall notify the Contracting Officer as soon as the Contractor has, or should have, knowledge that an event has occurred which will delay performance. Within five (5) calendar days, the Contractor shall confirm such notice in writing furnishing as much detail as is available. Failure of the Contractor to so notify the Contracting Officer shall result in a waiver of any rights that the Contractor may have for an extension of time under this Contract.

The Contractor agrees to supply, as soon as such data are available, any reasonable proof that is required by the Contracting Officer to make a decision on any request for extension. The Contracting Officer shall examine the request and any documents supplied by the Contractor and shall determine if the

Contractor is entitled to an extension and the duration of such extension. The Contracting Officer shall notify the Contractor of his decision in writing.

It is expressly understood and agreed that the Contractor shall not be entitled to damages or compensation, and shall not be reimbursed for losses on account of delays, resulting from any cause under this provision.

### **13. Labor Disputes**

Whenever the Contractor has knowledge that any actual or potential labor dispute is delaying or threatens to delay the timely performance of this Contract, the Contractor shall immediately give notice thereof, including all relevant information to NJ TRANSIT.

### **14. Indemnification**

The Contractor agrees to defend, indemnify, protect and save harmless the United States Department of Transportation, the FTA, the State of New Jersey, New Jersey Transit Corporation, its subsidiaries, and their agents, servants, directors, officers, and employees (collectively, "Indemnified Parties") from and against any and all suits, claims, demands or damages of any nature arising out of or related to the performance of this Contract by the Contractor or its directors, officers, agents, servants, or employees including but not limited to expenditures for and costs of investigations, hiring of expert witnesses, court costs, counsel fees, settlements, judgments or otherwise and to the extent caused by Contractor or its directors, officers, agents, servants, or employees; provided, however, that the obligations of the Contractor hereunder shall not apply to the extent negligence or an intentional act of an agent or employee of NJ TRANSIT is the cause. NJ TRANSIT shall, as soon as practicable, after a claim has been made against it, give written notice thereof to the Contractor along with full and complete particulars of the claim. If the suit is brought against NJ TRANSIT, NJ TRANSIT shall immediately forward to the Contractor every demand, complaint, notice, summons, pleading, or other process received by NJ TRANSIT or its representatives.

In the defense of any such claims, demands, suits, actions and proceedings, the Contractor shall not raise or introduce, without the express written permission in advance of the Attorney General of the State of New Jersey, any defense involving in any way the immunity of NJ TRANSIT or the State of New Jersey, the jurisdiction of the tribunal over NJ TRANSIT or the State of New Jersey, or the provisions of any statute respecting suits against NJ TRANSIT or the State of New Jersey.

### **15. Limitation of Liability**

In no event, regardless of cause or legal theory, shall Contractor be liable for any incidental, special, indirect, consequential, or punitive damages, loss of profits, revenue, production, beneficial use, goodwill, reputation or interest, whether real or alleged, even if advised of the possibility of such. In no event shall Contractor's liability for matters exceed the total contract price, except to the extent arising from: (a) third party bodily injury and property damage claims, and/or (b) intellectual property infringement claims, and/or (c) the fraud, gross negligence or willful misconduct of the Contractor.

### **16. Environmental Indemnity Clause**

The Contractor shall conduct all activities in compliance with all applicable federal, state and local laws, rules and regulations designed to prevent or control the discharge of substances into the land, water and air and to protect individual health and safety. The Contractor will indemnify, hold harmless and defend

NJ TRANSIT, the State of New Jersey, their directors, officers, employees, agents and assigns from and against any and all suits, actions, proceedings, costs, fines, penalties and claims arising from or alleged to have arisen from its violation of any such environmental, health or safety laws, rules or regulations whenever such suits, actions, claims or proceedings shall be commenced, or whenever such costs are accrued, except for any violations, if any, at the NJ TRANSIT facility existing prior to the Contractor's activities. The Contractor shall take reasonable and necessary precautions to prevent the discharge of hazardous substances, including asbestos and petroleum products, onto NJ TRANSIT property or into the environment, including the air. Failure to comply will be considered grounds for default, and NJ TRANSIT may cancel the contract in accordance with Section 18, "Termination for Default". The indemnification obligations hereunder shall survive the completion or termination of this Contract.

## **17. Termination for Convenience**

(a) NJ TRANSIT may terminate performance of work under this contract in whole or, from time to time, in part if the Contracting Officer determines that a termination is in NJ TRANSIT's interest. The Contracting Officer shall terminate by delivering to the Contractor a Notice of Termination specifying the extent of termination and the effective date.

(b) After receipt of a Notice of Termination, and except as directed by the Contracting Officer, the Contractor shall immediately proceed with the following obligations, regardless of any delay in determining or adjusting any amounts due under this clause:

- (1) Stop work as specified in the notice.
- (2) Place no further subcontracts or orders (referred to as subcontracts in this clause) for materials, services, or facilities, except as necessary to complete the continued portion of the contract.
- (3) Terminate all subcontracts to the extent they relate to the work terminated.
- (4) Assign to NJ TRANSIT, as directed by the Contracting Officer, all right, title, and interest of the Contractor under the subcontracts terminated, in which case NJ TRANSIT shall have the right to settle or to pay any termination settlement proposal arising out of those terminations.
- (5) With approval or ratification to the extent required by the Contracting Officer, settle all outstanding liabilities and termination settlement proposals arising from the termination of subcontracts; the approval or ratification will be final for purposes of this clause.
- (6) As directed by the Contracting Officer, transfer title and deliver to NJ TRANSIT (i) the fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced or acquired for the work terminated, and (ii) the completed or partially completed plans, drawings, information, and other property that, if the contract had been completed, would be required to be furnished to NJ TRANSIT.
- (7) Complete performance of the work not terminated.
- (8) Take any action that may be necessary, or that the Contracting Officer may direct, for the protection and preservation of the property related to this contract that is in the possession of the Contractor and in which NJ TRANSIT has or may acquire an interest.
- (9) Use its best efforts to sell, as directed or authorized by the Contracting Officer, any property of the types referred to in subparagraph (b)(6) of this clause; provided, however, that the Contractor (i) is not required to extend credit to any purchaser and (ii) may acquire the property under the conditions prescribed by, and at prices approved by, the Contracting Officer. The proceeds of any transfer or disposition will be applied to reduce any payments to be made by NJ TRANSIT under this contract, credited to the price or cost of the work, or paid in any other manner directed by the Contracting Officer.

(c) The Contractor shall submit complete termination inventory schedules no later than 120 calendar days from the effective date of termination, unless extended in writing by the Contracting Officer

upon written request of the Contractor within this 120-day period.

(d) After expiration of the plant clearance period as defined in subpart 49.001 of the Federal Acquisition Regulation, the Contractor may submit to the Contracting Officer a list, certified as to quantity and quality, of termination inventory not previously disposed of, excluding items authorized for disposition by the Contracting Officer. The Contractor may request NJ TRANSIT to remove those items or enter into an agreement for their storage. Within fifteen (15) calendar days, NJ TRANSIT will accept title to those items and remove them or enter into a storage agreement. The Contracting Officer may verify the list upon removal of the items, or if stored, within forty-five (45) calendar days from submission of the list, and shall correct the list, as necessary, before final settlement.

(e) After termination, the Contractor shall submit a final termination settlement proposal to the Contracting Officer in the form and with the certification prescribed by the Contracting Officer. The Contractor shall submit the proposal promptly, but no later than 1 year from the effective date of termination, unless extended in writing by the Contracting Officer upon written request of the Contractor within this 1-year period. However, if the Contracting Officer determines that the facts justify it, a termination settlement proposal may be received and acted on after 1 year or any extension. If the Contractor fails to submit the proposal within the time allowed, the Contracting Officer may determine, on the basis of information available, the amount, if any, due the Contractor because of the termination and shall pay the amount determined.

(f) Subject to paragraph (e) of this clause, the Contractor and the Contracting Officer may agree upon the whole or any part of the amount to be paid or remaining to be paid because of the termination. The amount may include a reasonable allowance for profit on work done. However, the agreed amount, whether under this paragraph (f) or paragraph (g) of this clause, exclusive of costs shown in subparagraph (g)(3) of this clause, may not exceed the total contract price as reduced by (1) the amount of payments previously made and (2) the contract price of work not terminated. The contract shall be modified, and the Contractor paid the agreed amount. Paragraph (g) of this clause shall not limit, restrict, or affect the amount that may be agreed upon to be paid under this paragraph.

(g) If the Contractor and the Contracting Officer fail to agree on the whole amount to be paid because of the termination of work, the Contracting Officer shall pay the Contractor the amounts determined by the Contracting Officer as follows, but without duplication of any amounts agreed on under paragraph (f) of this clause:

- (1) The contract price for completed supplies or services accepted by NJ TRANSIT (or sold or acquired under subparagraph (b)(9) of this clause) not previously paid for, adjusted for any saving of freight and other charges.
- (2) The total of --
  - (i) The costs incurred in the performance of the work terminated, including initial costs and preparatory expense allocable thereto, but excluding any costs attributable to supplies or services paid or to be paid under subparagraph (g)(1) of this clause;
  - (ii) The cost of settling and paying termination settlement proposals under terminated subcontracts that are properly chargeable to the terminated portion of the contract if not included in subdivision (g)(2)(i) of this clause; and
  - (iii) A sum, as profit on subdivision (g)(2)(i) of this clause, determined by the Contracting Officer under 49.202 of the Federal Acquisition Regulation, in effect on the date of this contract, to be fair and reasonable; however, if it appears that the Contractor would have sustained a loss on the entire contract had it been completed, the Contracting Officer shall allow no profit under this subdivision (iii) and shall reduce the settlement to reflect the indicated rate of loss.

(3) The reasonable costs of settlement of the work terminated, including --

- (i) Accounting, legal, clerical, and other expenses reasonably necessary for the preparation of termination settlement proposals and supporting data;
- (ii) The termination and settlement of subcontracts (excluding the amounts of such settlements); and
- (iii) Storage, transportation, and other costs incurred, reasonably necessary for the preservation, protection, or disposition of the termination inventory.

(h) Except for normal spoilage, and except to the extent that NJ TRANSIT expressly assumed the risk of loss, the Contracting Officer will exclude from the amounts payable to the Contractor under paragraph (g) of this clause, the fair value as determined by the Contracting Officer, of property that is destroyed, lost stolen, or damaged so as to become undeliverable to NJ TRANSIT or to a buyer.

(i) The cost principles and procedures of part 31 of the Federal Acquisition Regulation, in effect on the date of this contract, shall govern all costs claimed, agreed to, or determined under this clause.

(j) The Contractor shall have the right of appeal, under the Disputes clause, from any determination made by the Contracting Officer under paragraph (e), (g), or (l) of this clause, except that if the Contractor failed to submit the termination settlement proposal or request for equitable adjustment within the time provided in paragraph (e) or (l), respectively, and failed to request a time extension, there is no right of appeal.

(k) In arriving at the amount due the Contractor under this clause, there shall be deducted --

- (1) All unliquidated advance or other payments to the Contractor under the terminated portion of this contract;
- (2) Any claim which NJ TRANSIT has against the Contractor under this contract; and
- (3) The agreed price for, or the proceeds of sale of, materials, supplies, or other things acquired by the Contractor or sold under the provisions of this clause and not recovered by or credited to NJ TRANSIT.

(l) If the termination is partial, the Contractor may file a proposal with the Contracting Officer for an equitable adjustment of the price(s) of the continued portion of the contract. The Contracting Officer shall make any equitable adjustment agreed upon. Any proposal by the Contractor for an equitable adjustment under this clause shall be requested within ninety (90) calendar days from the effective date of termination unless extended in writing by the Contracting Officer.

(m) (1) NJ TRANSIT may, under the terms and conditions it prescribes, make partial payments and payments against costs incurred by the Contractor for the terminated portion of the contract, if the Contracting Officer believes the total of these payments will not exceed the amount to which the Contractor will be entitled.

(2) If the total payments exceed the amount finally determined to be due, the Contractor shall repay the excess to NJ TRANSIT upon demand, together with interest computed at the rate established by the Secretary of the Treasury under 50 U.S.C. App. 1215(b)(2). Interest shall be computed for the period from the date the excess payment is received by the Contractor to the date the excess is repaid. Interest shall not be charged on any excess payment due to a reduction in the Contractor's termination settlement proposal because of retention or other disposition of termination inventory until ten (10) calendar days after the date of the retention or disposition, or a later date determined by the Contracting Officer because of the circumstances.

## **18. Termination for Default**

NJ TRANSIT may, by written notice of default to the Contractor, terminate the whole or any part of this Contract for any breach of the Contract including but not limited to: if the Contractor fails to make delivery of the goods or materials or to perform the services within the time specified herein or any extension thereof; or if the Contractor fails to perform any of the other provisions of the Contract, so as to endanger performance of this Contract in accordance with its terms, and in either of these two circumstances does not cure such failure within a period of ten (10) calendar days (or such longer period as the Contracting Officer may authorize in writing) after receipt of notice from the Contracting Officer specifying such failure.

If the Contract is terminated in whole or in part for default, NJ TRANSIT may procure, upon such terms and in such manner as the Contracting Officer may deem appropriate, items similar to those so terminated. The Contractor shall be liable to NJ TRANSIT for any excess costs for such similar goods, materials or services and shall continue the performance of this Contract to the extent not terminated under the provisions of this clause.

Except for the default of Subcontractors, the Contractor shall not be liable for any excess costs if the failure to perform the Contract arises out of causes beyond the control and without the fault or negligence of the Contractor. If the failure to perform is caused by the default of a Subcontractor, and if such default arises out of causes beyond the control of both the Contractor and Subcontractor, and without the fault or negligence of either of them, the Contractor shall not be liable for any excess costs for failure to perform, unless the goods, materials or services to be furnished by the Subcontractor were obtainable from other sources in sufficient time to permit the Contractor to meet the required delivery schedule.

If, after notice of termination of this Contract under the provisions of this clause, it is determined for any reason that the Contractor was not in default under the provisions of this clause, or the default was excusable under provisions of this clause, the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to Section 17, "Termination for Convenience".

## **19. Disputes**

For disputes arising in the performance of this Contract, the parties' representatives with direct knowledge of a given dispute shall first attempt to resolve the dispute in good faith. If the parties' representatives fail to reach resolution of the dispute within a reasonable time under the circumstances, then either party may request, by written notice, that the dispute be escalated to the parties' senior representatives. Within ten (10) days of receipt of such written notice, each party shall identify such senior representative(s), and they shall thereafter promptly meet either in person or telephonically to discuss and attempt to resolve the dispute in good faith.

Thereafter, disputes arising in the performance of this Contract which are not resolved by agreement of the parties shall be decided in writing by the authorized representative of the Contracting Officer. This decision shall be final and conclusive unless within ten (10) calendar days from the date of receipt of its copy, the Contractor mails or otherwise furnishes a written appeal to the Contracting Officer. In connection with any such appeal, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the Contracting Officer shall be binding upon the Contractor and the Contractor shall abide by the decision. The New Jersey Contractual Liability Act, N.J.S.A. 59:13-1 et seq., shall govern any action which may be brought by the Contractor as a result of NJ TRANSIT's decision.



## **20. No Third-Party Beneficiaries**

It is specifically agreed between the parties executing this Contract that it is not intended by any of the provisions of any part of the Contract to create the public or any member thereof a third party beneficiary hereunder, or to authorize anyone not a party to the Contract to maintain a suit for personal injuries or property damage pursuant to the terms or provisions of the Contract.

It is the further intent of NJ TRANSIT and the Contractor in executing this Contract that no individual, firm, corporation or any combination thereof, which supplies materials, labor, services or equipment to the Contractor for the performance of the Work becomes thereby a third party beneficiary of this Contract. NJ TRANSIT and the Contractor understand that such individual, firm, corporation or combination thereof, has no right to bring an action in the courts of this State against the State or NJ TRANSIT, by virtue of this lack of standing and also by virtue of the provisions of the New Jersey Contractual Liability Act, N.J.S.A. 59:13-1, et seq.

## **21. Personal Liability of Public Officials**

In carrying out the provisions of the Contract, or in exercising power or authority granted to them by or within the scope of the Contract, there shall be no liability upon any NJ TRANSIT employee, either personally or as officials of the State, as in all such matters they act solely as agents and representatives of the State.

## **22. NJ TRANSIT Representatives**

The individuals authorized by NJ TRANSIT to order goods, materials or services in the Specification and to act for NJ TRANSIT are the Contracting Officer, and his designee.

The Chief of Procurement and Support Services, or his designee, shall be the Contracting Officer.

## **23. Contractor Representatives**

The individual(s) authorized by the Contractor to act on its behalf are:

Name	<u>Jack Norris</u>
Title	<u>Senior Sales Manager, Business and Development</u>
Address	<u>Riverwood Tech Campus, Building 4</u>
	<u>West Henrietta, NY 14586</u>
Phone	<u>585-613-5879</u>

## **24. Communications**

Communications shall be in writing and shall be sent personally, or by facsimile, email or regular, registered, or certified mail addressed to the representatives of NJ TRANSIT and of the Contractor designated to receive such communications. Telephone calls may be used to expedite communications but shall not be official communications unless confirmed in writing.

Communications shall be considered received at the time actually received by the addressee or designated agent.

## **25. Equal Employment Opportunity**

The parties to this Contract do hereby agree that the provisions of N.J.S.A. 10:2-1 through 10:2-4 and N.J.S.A. 10:5-31 et seq. (P.L. 1975, c.127) set forth in the State of New Jersey Equal Employment Opportunity Provisions for Goods and Services Contracts, annexed hereto in Attachment 1, are hereby made a part of this Contract.

In accordance with N.J.S.A. 10:2-1 through 10:2-4 as amended and supplemented and the rules and regulations promulgated pursuant thereto, the Contractor agrees that:

a. In the hiring of persons for the performance of work under this contract or any subcontract hereunder, or for the procurement, manufacture, assembling or furnishing of any such materials, equipment, supplies or services to be acquired under this contract, no contractor, nor any person acting on behalf of such contractor or subcontractor, shall, by reason of race, creed, color, national origin, ancestry, marital status, gender identity or expression, affectional or sexual orientation or sex, discriminate against any person who is qualified and available to perform the work to which the employment relates;

b. No contractor, subcontractor, nor any person on his behalf shall, in any manner, discriminate against or intimidate any employee engaged in the performance of work under this contract or any subcontract hereunder, or engaged in the procurement, manufacture, assembling or furnishing of any such materials, equipment, supplies or services to be acquired under such contract, on account of race, creed, color, national origin, ancestry, marital status, gender identity or expression, affectional or sexual orientation or sex;

c. There may be deducted from the amount payable to the contractor by the contracting public agency, under this contract, a penalty of \$50.00 for each person for each calendar day during which such person is discriminated against or intimidated in violation of the provisions of the contract; and

d. This contract may be canceled or terminated by the contracting public agency and all money due or to become due hereunder may be forfeited, for any violation of this section of the contract occurring after notice to the contractor from the contracting public agency of any prior violation of this section of the contract.

## **26. Equal Opportunity For Individuals with Disabilities**

The Contractor and NJ TRANSIT agree that the provisions of Title II of the Americans With Disabilities Act of 1990 (the "Act") (42 U.S.C. § 12101 et seq.), which prohibits discrimination on the basis of disability by public entities in all services, programs, and activities provided or made available by public entities, and the rules and regulations promulgated thereto, are made a part of this Contract. In providing any aid, benefit, or service on behalf of NJ TRANSIT pursuant to this Contract, the Contractor agrees that the performance shall be in strict compliance with the Act. In the event that the Contractor, its agents, servants, employees, or subcontractors violate or are alleged to have violated the Act during the performance of this Contract, the Contractor shall defend NJ TRANSIT and the State of New Jersey in any action or administrative proceeding commenced pursuant to this Act. The Contractor shall indemnify, protect, and save harmless NJ TRANSIT and the State, their agents, servants, and employees from and against any and all suits, claims, losses, demands, or damages of whatever kind or nature arising out of or claimed to arise out of the alleged violation. The Contractor shall, at its own expense, appear, defend, and pay any and all charges for legal services and any and all costs and other expenses arising from such action or administrative proceeding or incurred in connection therewith. In any and all complaints brought pursuant to the owner's grievance procedure, the Consultant agrees to abide by any decision of the owner.

which is rendered pursuant to such said grievance procedure. If any action or administrative proceeding results in an award of damages against NJ TRANSIT or the State or if NJ TRANSIT or the State incur any expense to cure a violation of the Act which has been brought pursuant to its grievance procedure, the Contractor shall satisfy and discharge the same at its own expense.

NJ TRANSIT shall, as soon as practicable after a claim has been made against it, give written notice thereof to the Contractor along with full and complete particulars of the claim. If any action or administrative proceeding is brought against NJ TRANSIT or any of its agents, servants, and employees, NJ TRANSIT shall expeditiously forward or have forwarded to the Contractor every demand, complaint, notice, summons, pleading or other process received by it or its representatives.

It is expressly agreed and understood that any approval by NJ TRANSIT of the services provided by the Contractor pursuant to this Contract will not relieve the Contractor of the obligation to comply with the Act and to defend, indemnify, protect, and save harmless NJ TRANSIT pursuant to this paragraph.

The Contractor expressly understands and agrees that the provisions of this indemnification clause shall in no way limit the Contractor's obligations assumed in this Contract, nor shall they be construed to relieve the Contractor from any liability, nor preclude NJ TRANSIT from taking any other actions available to it under any other provisions of this Contract or otherwise at law.

## **27. Utilization of Disadvantaged Business Enterprises**

Currently DBE is not contemplated but in the event the parties mutually agree that DBE is required, the following applies:

The term "disadvantaged business enterprise" means a for-profit small business concern that is owned and controlled by one or more socially and economically disadvantaged persons, as defined by 49 C.F.R. Part 26. Such disadvantage may arise from cultural, racial, chronic economic circumstances or background or other similar cause. Such persons would include, but not be limited to, Black Americans (not of Hispanic origin); Hispanic Americans; Native Americans; Asian-Pacific Americans; Subcontinent Asian Americans; and Women, regardless of race or ethnicity.

NJ TRANSIT's DBE Program is accorded the same priority as compliance with all other legal obligations required by the USDOT. Contractors shall comply with the DBE Program requirements in the award and administration of NJ TRANSIT contracts. Failure by the Contractor to carry out these requirements shall constitute a breach of the contract, which may result in the termination of the contract or other such remedy, as NJ TRANSIT deems appropriate.

Should the actual contract amount increase or decrease, through approved change order(s), the Office of Business Development (OBD) must be informed. OBD will determine if this will result in an adjustment to DBE participation to reflect the assigned DBE goal, as applicable.

The Contractor shall fully comply with the requirements and provisions set forth in the New Jersey Transit Corporation DBE Requirements for Federal Procurement Activities.

## **28. Covenant Against Contingent Fees**

The Contractor warrants, in accordance with the Non Collusion Affidavit attached hereto in Attachment 1, 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 the

Contractor for the purpose of securing business. For breach or violation of this warranty NJ TRANSIT shall have the right to annul this Contract without liability or at its discretion, to deduct from the Contract price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage or contingent fee.

## **29. Audit, Inspection and Record Retention**

Pursuant to N.J.S.A. 52:15C-14(d) the Contractor and all subcontractors and suppliers shall maintain and retain all records, data, documents, reports, and materials relating to the Contract and contract work and shall permit authorized representatives of NJ TRANSIT, the Comptroller General of the United States, the U.S. Department of Transportation, the FTA, the State of New Jersey and the Office of the State Comptroller and their duly authorized representatives, upon request to inspect, audit and photocopy all project work, materials, payroll, and all data and records of the Contractor relating to products, transactions or services provided under its performance and its subcontracts and assignees, if any, under this Contract from the effective date hereof through and until the expiration of five (5) years after completion of and final payment for the Contract Work.

NJ TRANSIT, the State of New Jersey, the USDOT, the FTA and the Comptroller General of the United States and their duly authorized representatives also shall have the right to examine all aspects of the products, transactions and services and specifically the right to conduct interviews, on-site visits, surveillance, field activities and head counts and to perform financial audits and operational reviews as deemed necessary to prevent, remediate or mitigate fraud, waste and abuse. Any inspection, audit or review or lack thereof shall not relieve the Contractor of responsibility for satisfactory performance of the Scope of Services. Contractor shall maintain a true and correct set of records for all financial and operational data in sufficient detail to permit reasonable verification or correction of charges and performance in accordance with this Contract.

The Contractor further agrees to include in all its subcontracts hereunder a provision to the effect that the subcontractor agrees that it will keep all Contract records and that NJ TRANSIT, the Comptroller General of the United States, the U.S. Department of Transportation, the FTA the State of New Jersey and the Office of the State Comptroller, or any of their duly authorized representatives, shall, until the expiration of five (5) years after payment under the subcontract, have access to and the right to examine any books, documents, and other records related to the subcontractor's performance under the subcontract.

The periods of access and examination described above, for records which relate to (1) appeals under the "Disputes" clause of the Contract, (2) litigation or the settlement of claims arising out of the performance of this Contract, or (3) costs and expenses of this Contract as to which exception has been taken by NJ TRANSIT the Comptroller General of the United States, the U.S. Department of Transportation or the State of New Jersey or any of their duly authorized representatives, shall continue until such appeals, litigation, claims, or exceptions have been disposed of.

## **30. Interest of Members of Congress**

No member of, or delegate to, the Congress of the United States shall be admitted to any share or part of this Contract or to any benefit arising therefrom.

## **31. Prohibited Interest**

No member, officer, or employee of NJ TRANSIT or its subsidiaries shall have any interest, direct or indirect, in this Contract or the proceeds thereof. No former member, officer or employee of NJ TRANSIT or its subsidiaries who, during his or her tenure, had a direct, substantial involvement with

matters that are closely related to this Contract, shall have any interest, direct or indirect, in this Contract or the proceeds thereof.

### **32. Insurance**

Prior to the execution of this contract by NJ TRANSIT and before commencing any performance hereunder, the Contractor shall provide the following coverage under its corporate insurance policy:

(a) Commercial General Liability Insurance, in accordance with standard ISO Commercial General Liability policy form, with a limit of USD \$1,000,000 (required by contract) per occurrence and in the aggregate for bodily injury, including death and property damage;

(b) Business Automobile Liability Insurance for all owned, non-owned or hired vehicles used by Contractor in performance of the Work or Services, with a combined single limit per accident of USD \$1,000,000 for bodily injury, including death, and property damage.

(c) Excess or Commercial Umbrella Liability over the policies described in (a) and (b) with a limit of USD \$4,000,000 per occurrence. (Vendor may provide any combination of primary GL and Excess or Follow Form Umbrella products)

NJ TRANSIT and the other "Indemnified Parties" defined in Section 14, are to be covered as additional insureds on the policies required in this Section 31.

Furthermore, all insurance policies shall contain a waiver of subrogation endorsement in the benefit of the additional insureds and shall be primary and non-contributory. Any insurance or self-insurance maintained by the additional insureds shall not contribute to any loss.

Any excess or umbrella policies shall provide coverage on a follow form basis for the scheduled underlying general liability, commercial auto liability, and/or employer's liability policies.

All insurance policies shall be written with companies authorized to do business in the State of New Jersey, and with a financial strength rating of A-X or better by A.M. Best.

Contractor shall furnish NJ TRANSIT with original Certificates of Insurance. The failure to obtain the required documents prior to commencement of any work shall not waive the Contractor's obligation to provide them.

### **33. Business Registration Notice**

In accordance with N.J.S.A. 52:32-44, all New Jersey and out of State business organizations must obtain a Business Registration Certificate (BRC) from the Department of Treasury, Division of Revenue, prior to a contract being awarded or authorized by NJ TRANSIT.

The Contractor shall maintain a list of the names of any subcontractors and their current addresses, updated as necessary during the course of the contract performance. The Contractor shall submit a complete and accurate list to NJ TRANSIT before final payment is made for goods or services rendered under the Contract. The Contractor shall not enter into any contract with a Subcontractor unless the Subcontractor first provides proof of valid business registration.

If the Contractor fails to provide a copy of a business registration as required pursuant to N.J.S.A. 52:32-44 or that provides false information of business registration under the requirements of that section,

pursuant to N.J.S.A 54:49-4.1 it shall be liable for a penalty of \$25 for each day of violation, not to exceed \$50,000 for each business registration copy not properly provided to NJ TRANSIT.

The Contactor and any subcontractor providing goods or performing services under the contract, and each of their affiliates, shall, during the term of the contract, collect and remit to the Director of the Division of Taxation in the Department of the Treasury the use tax due pursuant to the “Sales and Use Tax Act”, P.L. 1966, c, 30 (N.J.S.A. 54:32B-1 et seq.) on all their sales of tangible personal property delivered into the State.

### **34. Out-of-State Corporations**

If the Contractor is a corporation organized under laws of a state other than New Jersey, the Contractor shall have a certificate of authority to do business in New Jersey in accordance with N.J.S.A. 14A:13-3. In addition, pursuant to N.J.S.A. 14A: 4-1 et seq., the Contractor shall maintain a registered agent having a business office in New Jersey and shall file with the Secretary of State the name of said agent and address of said office and provide a copy thereof to NJ TRANSIT.

Inquiries should be directed to:

State of New Jersey  
Department of Treasury  
Division of Revenue and Enterprise Services  
PO Box 628  
Trenton, NJ 08625  
[www.state.nj.us/njbgs](http://www.state.nj.us/njbgs)  
[\(609\) 292-9292](tel:(609)292-9292)

### **35. Restriction of Gifts**

The Contractor, its officers, representatives, agents, Subcontractors and employees agree not to give any present nor make any gift of money or any other gift or gratuity in any form whatsoever to any director, officer, or employee of NJ TRANSIT, his or her relatives or agents.

### **36. Source Disclosure Requirements (For Services Procurement Only)**

Under N.J.S.A. 52:34-13.2, all contracts primarily for services awarded by NJ TRANSIT shall be performed within the United States, except when the Contracting Officer certifies in writing a finding that a required service cannot be provided by a Contractor or Subcontractor within the United States and the certification is approved by the Executive Director of NJ TRANSIT.

All Contractors seeking a contract primarily for services with NJ TRANSIT must disclose the location, by country, where services under the contract, including subcontracted services, will be performed.

If any of the services cannot be performed within the United States, the Contractor shall state with specificity the reasons why the services cannot be so performed. NJ TRANSIT's Contracting Officer shall determine whether sufficient justification has been provided by the Contractor to form the basis of his certification that the services cannot be performed in the United States and whether to seek the approval of the Executive Director.

If, during the term of the Contract, the Contractor or Subcontractor, who had on contract award declared that services would be performed in the United States, proceeds to shift the performance of the services outside the United States, the Contractor shall be deemed to be in breach of its Contract, which Contract shall be subject to termination for default pursuant to Section 18, unless previously approved by the Contracting Officer and the Executive Director. During the contract term, the Contractor shall submit a subsequent Source Disclosure Certification within five (5) calendar days of NJ TRANSIT's request.

### **37. Disclosure of Investment Activities in Iran**

Pursuant to N.J.S.A. 52:32-58, any person or entity that submits a proposal or otherwise proposes to enter into or renew a contract must complete the certification to attest, under penalty of perjury, that neither the person or entity, nor any of its parents, subsidiaries, or affiliates, is identified on the Department of Treasury's Chapter 25 list as a person or entity engaging in investment activities in Iran. The Chapter 25 list is found on the Division's website at <http://www.state.nj.us/treasury/purchase/pdf/Chapter25List.pdf>. Contractors must review this list prior to completing the Disclosure of Investment Activities in Iran Certification attached hereto in Attachment 1. If NJ TRANSIT finds a person or entity to be in violation of law, NJ TRANSIT shall take action as may be appropriate and provided by law, rule or contract, including but not limited to, imposing sanctions, seeking compliance, recovering damages, declaring the party in default and seeking debarment or suspension of the party.

### **38. NJ TRANSIT's Code of Ethics for Vendors**

#### **A. General**

1. NJ TRANSIT considers the maintenance of public trust and confidence critical to its proper functioning. Vendors of NJ TRANSIT must avoid all situations where proprietary or financial interest, or the opportunity for financial gain, could lead to the favored treatment of any organization or individual. Vendors must also avoid circumstances and conduct which may not constitute actual wrongdoing, or conflict of interest, but might nevertheless constitute the appearance of questionable behavior to the general public, thus compromising the integrity of NJ TRANSIT.

2. This policy is based upon the principles established in the New Jersey Conflicts of Interest Law (N.J.S.A. 52:13 D-12 et seq.) and the regulations promulgated by the New Jersey State Ethics Commission thereunder, as well as the Plain Language Guide to Ethical Business Conduct for Companies Transacting Business with the State of New Jersey, promulgated by the New Jersey Department of the Treasury.

3. This Code of Ethics for Vendors shall be deemed to be a substantial and integral part of every NJ TRANSIT Invitation for Bid (IFB), Request for Proposal (RFP) and contract.

4. This policy is intended to augment, not to replace, existing law, regulations, administrative orders and the current Uniform Ethics Code.

#### **B. NJ TRANSIT Code of Ethics for Vendors**

##### **1. Gifts, Gratuities and Favors:**

a) A vendor shall not, either directly or indirectly, pay, offer to pay, or agree to pay any amount of money, fee, commission, compensation, gift, gratuity or other thing of value of any kind to any NJ TRANSIT Board Member or employee or to any member of their immediate family, or to any partnership, firm or corporation with which any such Board

Member or employee is employed or associated, or in which (s)he has an interest within the meaning of N.J.S.A. 52:13D-13g.

b) A vendor shall not give or offer any NJ TRANSIT Board Member, employee or their immediate family any amount of money, gift, loan or other thing of value regardless of whether it might be reasonably inferred that such amount of money, gift, loan, service or other thing of value was given or offered for the purpose of influencing the Board Member or employee in the discharge of his or her official duties. In addition, Board Members, employees and their immediate family are not permitted to accept breakfasts, lunches, dinners, alcoholic beverages, tickets to entertainment and/or sporting events, wagers or other items or consideration. A vendor may not "wine and dine" NJ TRANSIT Board Members, employees or their immediate family.

c) NJ TRANSIT Board Members and employees may not accept any food or beverages from any vendor with the exception of coffee, tea, soda, Danish, chips, pretzels, donuts or similar snacks, which may be provided to all attendees at a conference, seminar or business meeting. If food other than the above is provided (e.g., sandwich, pizza or a meal), the Board member or employee must pay the cost for the meal.

d) Any questions as to what is or is not acceptable or what constitutes proper conduct for an NJ TRANSIT Board Member or employee, and any solicitation of gifts, consideration or items of value by or on behalf of a NJ TRANSIT Board Member or employee, should be referred to:

Chief Ethics Officer  
NJ TRANSIT  
One Penn Plaza East, 8th Floor  
Newark, NJ 07105-2246  
(973) 491-8820

**2. Solicitation by NJ TRANSIT Board Member or employee:**

A vendor shall immediately report in writing the solicitation of any fee, commission, compensation, gift, gratuity or other thing of value by a NJ TRANSIT Board Member or employee, to NJ TRANSIT's Chief Ethics Officer, the New Jersey Attorney General and the State Ethics Commission.

**3. Business, commercial or entrepreneurial relationship:**

Whether or not pursuant to employment, contract or other agreement, expressed or implied, a vendor shall not, directly or indirectly, undertake any private business, commercial or entrepreneurial relationship with, or sell any interest in such vendor to any NJ TRANSIT Board Member or employee having any duties or responsibilities in connection with the purchase, acquisition or sale of any property or services by or to NJ TRANSIT or with any person, firm or entity with which (s)he is employed or associated or in which (s)he has an interest within the meaning of N.J.S.A. 52:13D-13g. Any relationships subject to this provision shall be reported in writing forthwith to NJ TRANSIT's Chief Ethics Officer.

**4. General Standards:**

a) A vendor shall not influence, or attempt to influence or cause to be influenced, any NJ TRANSIT Board Member or employee in his/her official capacity in any manner which might tend to impair the objectivity or independence of judgment of any Board Member or employee.



b) A vendor shall not request, influence, or attempt to request, influence or cause to be requested or influenced, any NJ TRANSIT Board Member or employee to use, or attempt to use, his/her official position in any manner to secure unwarranted privilege or advantage for the vendor or any other person.

**5. Protected/Confidential Information:**

- a) A vendor may not profit, directly or indirectly, from the use of any secret or confidential NJ TRANSIT information, knowledge or data that has been illicitly disclosed.
- b) Vendors and their employees may not use any secret or confidential NJ TRANSIT information, knowledge or data for any purposes other than complying with their contractual obligations to NJ TRANSIT.

**6. Intellectual Property:**

A vendor may not use NJ TRANSIT branding, logo or any promotional or marketing materials without prior written approval from the NJ TRANSIT Communications Department.

**7. Employment Offers:**

- a) Current State Employees/Future Employment: If a vendor offers a job to a NJ TRANSIT employee, with whom they have direct and substantial contact, such offer or solicitation must be immediately disclosed to management and the Chief Ethics Officer. Please also note that NJ TRANSIT employees must secure prior approval for secondary employment. Depending on the vendor relationship with the employee, the vendor employment offer may be disapproved, and the NJ TRANSIT employee could be screened from taking any official action with respect to the particular vendor contracts, applications, or matters in the future.
- b) Former State Employees: After leaving NJ TRANSIT, employees are under a lifetime ban against the use or provision of information not generally available to the public acquired during their employment. Additionally, former employees are prohibited from representing or assisting a vendor concerning a particular contract or other matter if they were substantially and/or directly involved in that particular contract or other matter while employed by NJ TRANSIT.

**8. Failure to Comply:**

A vendor's failure to comply with this policy may result in termination of the contract or debarment pursuant to N.J.A.C. 16:72-5.2. Additionally, violations of certain provisions of the Conflict of Interest Law are subject to a fine not to exceed \$1,000, or imprisonment not to exceed six months, or both.

**C. CROSS-REFERENCES**

New Jersey Uniform Ethics Code, available online at <https://www.state.nj.us/ethics/docs/ethics/uniformcode.pdf>

New Jersey Conflicts of Interest Law and regulations adopted thereunder (N.J.A.C. 19:61-1.1 et seq.), available online at <https://www.state.nj.us/ethics/statutes/conflicts/> and <https://www.state.nj.us/ethics/statutes/rules/>

Plain Language Guide to Ethical Business Conduct for Companies Transacting Business with the State of New Jersey, available online at <https://nj.gov/ethics/docs/ethics/plainlanguage.pdf>

### **39. Setting Off Tax Arrears Against Sums Owed**

Whenever a taxpayer under contract with the State of Jersey is indebted for any State Tax in accordance with N.J.S.A 54:49-19 the State of New Jersey shall seek to set off the indebtedness as follows:

Whenever any taxpayer under contract to provide goods or services to the State of New Jersey or its agencies or instrumentalities, and including the legislative and judicial branches of State government, is entitled to payment for the goods or services or on that construction project and at the same time the taxpayer is indebted for any State tax, the Director of the Division of Taxation shall seek to set off so much of that payment as may be necessary to satisfy the indebtedness. The Director, in consultation with the Director of the Division of Budget and Accounting in the Department of the Treasury, shall establish procedures and methods to effect a set-off. The Director shall give notice of the set-off to the taxpayer, the provider of goods or services or the contractor or subcontractor of construction, and provide an opportunity for a hearing within thirty (30) calendar days of such notice under the procedures for protests established under N.J.S.A. 54:49-18, but no request for conference, protest, or subsequent appeal to the Tax Court from any protest under this section shall stay the collection of the indebtedness. No payment shall be made to the taxpayer, the provider of goods or services or the contractor or subcontractor of construction projects pending resolution of the indebtedness. Interest that may be payable by the State pursuant to N.J.S.A. 52:32-32 et seq., to the taxpayer, the provider of goods and services or the contractor or subcontractor of construction projects shall be stayed.

### **40. Contractor's Certification of Eligibility**

The Contractor certifies that it is not listed on the State of New Jersey, Department of Labor and Workforce Development, Division of Wage and Hour Compliance, Prevailing Wage Debarment List or on the State of New Jersey, Department of Treasury, Consolidated Debarment Report.

The Contractor also certifies that it has no exclusions on the consolidated U.S. Government, System for Award Management (SAM) database.

### **41. Air Pollution**

The Contractor and its suppliers must comply with all governing air pollution criteria required by the Federal Transit Administration.

### **42. Buy America**

#### **(1) Surface Transportation Assistance Act Requirements**

Pursuant to Section 165 of the Surface Transportation Assistance Act of 1982 (P.L. 97-424, 49 U.S.C. § 5323(j) and the regulations found at 49 C.F.R. Part 661, the Contractor agrees that all steel, iron and manufactured products purchased or used as a result of this Contract must be domestic manufacture or origin unless a waiver of these provisions is granted by the FTA.

There are four (4) exemptions to this otherwise universal mandate:

- a. That their application would be inconsistent with the public interest;
- b. That such materials and products are not produced in the United States in sufficient and reasonable

available quantities and of a satisfactory quality;

- c. In the case of the procurement of rolling stock (including train control, communication and traction power equipment, and rolling stock prototypes) under the Federal Transit Act of 1964 (49 U.S.C. § 5301), that (A) the cost of components and subcomponents which are produced in the United States is more than 70 percent of the cost of all components of the rolling stock, and (B) final assembly of the vehicle or equipment described in this paragraph has taken place in the United States; and
- d. That inclusion of domestic material will increase the cost of the overall project by more than twenty-five percent (25%).

With respect to rolling stock only, but including train control, communications, traction power equipment, and rolling stock prototypes, less than 30 percent may be non-domestic manufacture, but final assembly of such products must take place in the United States.

## **(2) Domestic Preferences for Procurements**

a. In accordance with 2 C.F.R. 200.322, the Contractor is notified of NJ TRANSIT's preference, to the greatest extent practicable, for the purchase, acquisition, or use of goods, products, or materials, produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products).

b. For purposes of this section:

- (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 nonferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

## **43. Fly America Requirements**

The Contractor agrees to comply with 49 U.S.C. 40118 (the "Fly America" Act) in accordance with the General Services Administration's regulations at 41 C.F.R. Part 301-10, which provide that recipients and subrecipients of Federal funds and their contractors are required to use U.S. Flag air carriers for U.S. Government-financed international air travel and transportation of their personal effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter of necessity, as defined by the Fly America Act. The Contractor shall submit, if a foreign air carrier was used, an appropriate certification or memorandum adequately explaining why service by a U.S. flag air carrier was not available or why it was necessary to use a foreign air carrier and shall, in any event, provide a certificate of compliance with the Fly America requirements. The Contractor agrees to include the requirements of this section in all subcontracts that may involve international air transportation.

## **44. Cargo Preference-Use of U.S. Flag Vessel**

The Contractor agrees to utilize privately owned United States-flag commercial vessels to ship at least fifty percent (50%) of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, materials, or commodities pursuant to 46 C.F.R.

Part 381, to the extent such vessels are available at fair and reasonable rates for United States-flag commercial vessels.

The Contractor further agrees to furnish within twenty (20) working days following the date of loading for shipments originating within the United States, or within thirty (30) working days following the date of loading for shipment originating outside the United States, a legible copy of a rated "on-board" commercial ocean bill-of-lading in English for each shipment of cargo described in the Paragraph above to NJ TRANSIT (through the prime Contractor in the case of subcontractor bills-of-lading) and to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, D.C. 20590, marked with appropriate identification of the Project.

The Contractor further agrees to insert the substance of the provisions of this clause in all subcontracts issued pursuant to this Contract.

#### **45. Clean Water and Clean Air Acts**

44.1 The Contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. § 1251 et seq.:

(a) With the notification of violating facilities provisions of Executive Order No. 11738; "Administration of the Clean Air Act and the Federal Water Pollution Control Act with Respect to Federal Contracts, Grants, or Loans", 42 U.S.C. § 7606. The Contractor agrees to report each violation to NJ TRANSIT and understands and agrees that NJ TRANSIT will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

(b) With the provisions of the Safe Drinking Water Act of 1974, as amended, 42 U.S.C. § 300h et seq.

44.2 The Contractor agrees to comply with all applicable, standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq. The Contractor agrees to report each violation to NJ TRANSIT and understands and agrees that NJ TRANSIT will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

44.3 The Contractor agrees to include both the Clean Water and Clean Air requirements in each subcontract exceeding \$150,000. The \$150,000 limit includes indefinite quantities where the amount is expected to exceed \$150,000 in any year.

#### **46. Energy Conservation**

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

#### **47. Civil Rights**

During the performance of this Contract, the Contractor, for itself, its assignees and successors in interest and its subcontractor at every tier (hereinafter referred to as the "Contractor") agrees as follows:

##### **(a) Compliance with Regulations**

The Contractor shall comply with the Regulations relative to nondiscrimination in federally-assisted programs of the United States Department of Transportation, Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time (hereinafter referred to as the Regulations), which are

herein incorporated by reference and made a part of this Contract.

(b) Nondiscrimination

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

(c) Equal Employment Opportunity

The following equal employment opportunity requirements apply to the underlying contract:

(1) Race, Color, Religion, National Origin, Sex

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

(2) Age

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

(3) Disabilities

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

(d) The Contractor also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties.

(e) Information and Reports

The Contractor shall provide all information and reports required by the Regulations or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Recipient or NJ TRANSIT or the FTA to be pertinent to ascertain compliance with such Regulations, orders and instruction. Where any information is required or a Contractor is in the exclusive possession of another who fails or refuses to furnish this information, the

Contractor shall so certify to NJ TRANSIT, or the FTA, as appropriate, and shall set forth what efforts it has made to obtain the information.

(f) Sanctions for Noncompliance

In the event of the Contractor's noncompliance with the nondiscrimination provisions of this Contract, NJ TRANSIT shall impose such contract sanctions as it or the FTA may determine to be appropriate, including but not limited to:

(1) Withholding of payments to the Contractor under the Contract until the Contractor complies; and/or

(2) Cancellation, termination or suspension of the Contract, in whole or in part.

#### **48. Contract Cost Principles and Procedures**

Part 31 of the Federal Acquisition Regulations entitled "Contract Cost Principles and Procedures" is incorporated by reference in this Contract.

#### **49. Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – Lower Tier Covered Transaction**

By signing this agreement, the lower tier participant, defined as the Contractor and its subcontractors, is providing the certification set out below.

The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, NJ TRANSIT may pursue available remedies, including suspension and/or debarment.

The lower tier participant shall provide immediate written notice to NJ TRANSIT if at any time the lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

Certain terms used in this clause have the meanings set out in 2 C.F.R. Part 1200 and 2 C.F.R. Part 180.

The lower tier participant agrees by signing this agreement that it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized in writing by NJ TRANSIT.

The lower tier participant further agrees by signing this agreement that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – Lower Tier Covered Transaction", without modification, in all lower tier covered transactions (valued at \$25,000 or more) and in all solicitations for lower tier covered transactions.

A participant in a covered transaction may rely upon a certification of a participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. Each participant shall check the U.S. Government System for Award Management (SAM) database.

Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

Except for transactions authorized under the fifth paragraph above, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to all remedies available to the Federal Government, NJ TRANSIT may pursue available remedies including suspension and/or debarment.

The lower tier participant certifies by signing this agreement that neither it nor its "principals" (as defined 2 C.F.R. 180.995) is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency. A participant may decide the method and frequency by which it determines the eligibility of its principals.

When the lower tier participant is unable to certify to the statements in this certification, such participant shall submit a written explanation.

The lower tier participant shall also have no exclusions on the U.S. Government System for Award Management (SAM) database.

## **50. Limitations on Lobbying**

The Contractor and its subcontractors shall comply with 31 U.S.C. § 1352, entitled "Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions".

a.) No appropriated funds may be expended by the recipient of a Federal contract, grant, loan or cooperative agreement to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress or an employee of a Member of Congress in connection with any of the following covered Federal actions: the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any Federal contract, grant, loan or cooperative agreement.

b.) Any Contractor and any subcontractor at any tier who requests or receives a Federally-assisted contract or subcontract in excess of \$100,000 from NJ TRANSIT shall file with NJ TRANSIT the certification attached to this Contract and entitled "Certification for Contracts, Grants, Loans and Cooperative Agreements" which certifies that the Contractor or subcontractor, as applicable, has not made, and will not make, any payment prohibited by paragraph A.) of this Article.

c.) Any Contractor and any subcontractor who has made or has agreed to make any payment using nonappropriated funds (to include profits from any covered Federal action) which would be prohibited under paragraph A.) of this Article if paid for with appropriated funds, shall file with NJ TRANSIT a disclosure form entitled "Disclosure of Lobbying Activities", which is available from NJ TRANSIT.

d.) Any certification or disclosure form filed under paragraphs B.) and C.) of this Article shall be forwarded from tier to tier until received by NJ TRANSIT. Any certification or disclosure form shall be treated as a material representation of fact upon which all receiving tiers shall rely. All liability arising from an erroneous representation shall be borne solely by the tier filing that representation and shall not be shared by any tier to which the erroneous representation is forwarded.

e.) The prohibition on the use of appropriated funds does not apply in the case of a payment of reasonable compensation to an officer or employee of a Contractor or subcontractor if the payment is for agency and legislative liaison activities not directly related to a covered Federal action.

f.) The prohibition on the use of appropriated funds does not apply in the case of any reasonable payment to an officer or employee of a Contractor or subcontractor or to a person, other than an officer or employee of a Contractor or subcontractor, if the payment is for professional or technical services rendered directly in the preparation, submission or negotiation of any bid, proposal or application for a Federal contract, grant, loan or cooperative agreement.

## **51. Contract Work Hours and Safety Standards**

### **1. Nonconstruction Contracts**

The following requirements are applicable to any Contract subject to the overtime provisions of the Contract Work Hours and Safety Standards Act and not to any of the other statutes cited in 29 C.F.R. 5.1. The Contractor or subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years from the completion of the Contract for all laborers and mechanics, including guards and watchmen, working on the Contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. The records to be maintained under this clause shall be made available by the Contractor or subcontractor for inspection, copying, or transcription by authorized representatives of the FTA, the U.S. DOT, or the Department of Labor, and the Contractor or subcontractor will permit such representatives to interview employees during working hours on the job.

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

b. Violation: Liability For Unpaid Wages: Liquidated Damages. In the event of any violation of the requirements of 29 C.F.R. 5.5(b)(1), the Contractor and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such Contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a Territory, to such district or to such Territory) for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of 29 C.F.R. 5.5(b)(1) in the sum of \$25 for each calendar day on which such individual was required or permitted to work in excess of the standard work week of forty hours without payment of the overtime wages required by 29 C.F.R. 5.5(b)(1).

c. Withholding For Unpaid Wages And Liquidated Damages. The FTA or NJ TRANSIT shall upon its own action or upon written request of any authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Contractor or Subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other Federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such Contractor or Subcontractor for unpaid wages and liquidated damages as provided in the



clause set forth at 29 C.F.R. 5.5(b)(2).

2. Nonconstruction Subcontracts.

The Contractor or Subcontractor shall insert in any subcontracts the clauses set forth in this Section 51, "Nonconstruction Contracts", 1a through 1c and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in this Section 51.

**52. New Jersey Prevailing Wage Act (Construction and Maintenance-related Procurements Only)  
(NOT APPLICABLE TO THIS PROCUREMENT) -**

If applicable, the Contractor and each subcontractor shall comply with the New Jersey Prevailing Wage Act, N.J.S.A. 34:11-56.25 et seq., and this Act is hereby made a part of this Contract. All workers shall be paid not less than the prevailing wage rate as designated by the Commissioner of Labor and Industry or the Commissioner's duly authorized deputy or representative.

In the event it is found that any worker has been paid a rate of wages less than the prevailing wage required to be paid by this Contract, the Contracting Officer may terminate the Contractor's or Subcontractor's right to proceed with the work, or such part of the work as to which there has been a failure to pay required wages, and take such action the Contracting Officer deems necessary, including prosecuting the work to completion to the account of the Contractor.

NJ TRANSIT shall furnish as part of the Contract a copy of the prevailing minimum wage rates which shall be paid to the workers employed in the performance of the Contract.

Nothing contained in the Prevailing Wage Act shall prohibit the payment of more than the prevailing wage rate to any worker employed on the project.

The Contractor and each Subcontractor performing work for NJ TRANSIT who is subject to the provisions of the Prevailing Wage Act shall post the prevailing wage rates for each craft and classification involved, including the effective date of any changes thereof, in prominent and easily accessible places at the site of the work or at such place or places as are used by them to pay workers their wages.

The Contractor's signature on the proposal is its guarantee that neither it nor any Subcontractor it intends to contract with is currently listed by or on record with the Commissioner of Labor and Industry as one who failed to pay the prevailing wages according to the Prevailing Wage Act.

The Contractor and all of its Subcontractors performing work at the site must prepare their bids as to labor costs in accordance with the prevailing wage (valid for the date the bids are to be submitted) for the geographical area of the project site.

**53. Employee Protections-Construction Activities (For Construction Procurements Only) (NOT APPLICABLE TO THIS PROCUREMENT)**

If applicable, the Contractor agrees to comply, and assures the compliance by each subcontractor at any tier, with the following employee protection requirements for construction employees:

1. Davis-Bacon Act, as amended, 40 USC 3141-3148, the Davis-Bacon Act, 40 U.S.C. §§ 276a-276a(7), and U.S. DOL regulations, "Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction", 29 C.F.R. Part 5, and 29 C.F.R. Parts 1 & 3.

2. Contract Work Hours and Safety Standards Act, 40 U.S.C. 3701-3708, as amended, in particular with the requirements of section 102 of the Act, and U.S. DOL regulations, “Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction”, 29 C.F.R. Part 5; and with section 107 of the Act, and U.S. DOL regulations, “Safety and Health Regulations for Construction”, 29 C.F.R. Part 1926.;

3. Copeland “Anti-Kickback” Act, as amended, 18 U.S.C. § 874, and U.S. DOL regulations, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in part by Loans or Grants from the United States.” 29 C.F.R. Part 3.

#### **54. Federal Provisions Related to Certain Telecommunications and Video Surveillance Services or Equipment**

The Contractor shall abide by 2 C.F.R. 200.216, which prohibits recipients and subrecipients of federal funds from entering into contracts (or extending or renewing a contract) to procure or obtain equipment, services, or systems that use covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. Covered telecommunications equipment means telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities). Additional prohibitions include:

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

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

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

The Contractor agrees to extend this provision to its subcontractors.

#### **55. Incorporation of Federal Transit Administration (FTA) Terms**

This Contract is funded in whole or in part by the United States Government and is subject to all Federal laws and regulations governing Federally-financed projects.

##### **(a) Changes to Federal Requirements**

The Contractor shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement between NJ TRANSIT and the FTA, as they may be amended or promulgated from time to time during the term of this Contract. Contractor’s failure to so comply shall constitute a material breach of this Contract unless the FTA determines otherwise.

##### **(b) Incorporation of FTA Terms**

These General Provisions include, in part, certain standard terms and conditions required by USDOT, whether or not expressly set forth in this Contract. All Contractual provisions required by USDOT, as set forth in FTA circular 4220.1F, are hereby incorporated by reference. Anything to the contrary herein

notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Contract. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any NJ TRANSIT requests which would cause NJ TRANSIT to be in violation of the FTA Master Agreement between NJ TRANSIT and the FTA.

#### **56. Exclusionary or Discriminatory Specifications**

Except where otherwise required by Federal statute or regulations, the Contractor agrees that it will comply with the requirements of 49 U.S.C. § 5323(h)(3) by refraining from using exclusionary or discriminatory specifications in the performance of the work.

#### **57. No Federal Government Obligations to Third Parties**

The Contractor agrees that, absent the Federal Government's express written consent, the Federal Government shall not be subject to any obligations or liabilities to the Contractor in connection with the performance of the Project. Notwithstanding any concurrence provided by the Federal Government in or approval of the Contract, the Federal Government continues to have no obligations or liabilities to the Contractor. The Contractor further agrees to include this clause in each subcontract financed in whole or in part with Federal assistance provided by the FTA.

#### **58. False or Fraudulent Statements and Claims**

The Contractor recognizes that the requirements of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. §§ 3801 et seq. and USDOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its actions pertaining to the Project. Accordingly, by signing the Contract, the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, or it may make pertaining to the Contract. In addition to other penalties that may be applicable, the Contractor also acknowledges that if it makes a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986, as amended, on the Contractor to the extent the Federal Government deems appropriate.

The Contractor also acknowledges that if it makes a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government in connection with an urbanized area formula project financed with Federal assistance authorized by 49 U.S.C. chapter 53, the Government reserves the right to impose on the Contractor the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1), to the extent the Federal Government deems appropriate. The Contractor further agrees to include this clause in each subcontract financed in whole or in part with Federal assistance provided by the FTA.

#### **59. Prevention of Drug and Alcohol Abuse in Transit**

If the Contractor is supporting NJ TRANSIT Bus Operations equipment maintenance, including engine, revenue vehicle, and parts rebuilding and overhaul, it shall establish and implement a drug and alcohol misuse prevention program in compliance with 49 C.F.R. parts 653 and 655

The Contractor shall certify its compliance by completing the Prevention of Drug and Alcohol Abuse in Transit Operations Certification attached hereto in Attachment 1.

## **60. Transition**

In the event that a new Contract has not been awarded prior to the expiration date of this Contract, including any extensions exercised, and the Contracting Officer elects to exercise this Contract transition, the Contractor shall continue the Contract under the same terms, conditions, and pricing until a new Contract can be completely operational. At no time shall this transition period extend more than 365 calendar days beyond the expiration date of this Contract, including any extensions exercised.

## **61. Extension**

If, in the opinion of the Contracting Officer, it is in the best interest of NJ TRANSIT to extend the Contract, the Contractor shall be so notified of the Contracting Officer's intent at least thirty (30) calendar days prior to the expiration date of the existing Contract. The Contractor shall have fifteen (15) calendar days to respond to the Contractor Officer's request to extend the term and period of performance of the Contract. If the Contractor agrees to the extension, all terms and conditions including pricing of the original Contract shall apply unless more favorable terms for NJ TRANSIT have been negotiated.

## **62. Use of Recovered Materials**

The Contractor agrees to provide a preference for those products and services that conserve natural resources, protect the environment, and are energy efficient by complying with and facilitating compliance with Section 6002 of the Resource Conservation and Recovery Act, as amended, 42 U.S.C. § 6962, and U.S. Environmental Protection Agency (U.S. EPA), "Comprehensive Procurement Guideline for Products Containing Recovered Materials," 40 C.F.R. part 247.

## **63. Asset Management Plan**

The Contractor shall provide in electronic format (e.g. CSV file format), for each part delivered, all pertinent information including the manufacturer's part number, serial number, quantity of parts provided, price per part, and the warranty period. The required information shall be included on an electronic Part History Book which shall include Field Modification Instructions (FMIs), as-built configuration validation, as well as any previously identified open items regarding the development of the part.

## **64. Equal Pay Act**

Pursuant to N.J.S.A. 34:11-56.13 and 56.14 (P.L. 2019, c. 9), also known as the Diane B. Allen Equal Pay Act, a contractor entering into a contract to perform "qualifying services" or "public work" for the State, or any agency or instrumentality of the State, shall provide the Commissioner of Labor and Workforce Development a report regarding the compensation and hours worked by employees categorized by gender, race, ethnicity, and job category. N.J.S.A. 34:11-56.14.

Information regarding the Diane B. Allen Equal Pay Act and its requirements may be obtained from the New Jersey Department of Labor and Workforce Development (LWD) web site at: <https://nj.gov/labor/equalpay/equalpay.html>.

Required forms may be obtained from that web site by clicking or going here: [https://nj.gov/labor/forms\\_pdfs/equalpayact/mw563\(6-18\)annualequalpay.pdf](https://nj.gov/labor/forms_pdfs/equalpayact/mw563(6-18)annualequalpay.pdf).

## 65. Attachments and/or Exhibits

The following Attachments and/or Exhibits are incorporated into this Contract:

### Attachment 1:

- Cost proposal
- Non-Collusion Affidavit
- Certification Regarding Debarment, Suspension and Other Responsibility Matters
- Contractors Certification of Eligibility
- Mandatory Equal Employment Opportunity (EEO) Language
- Buy America Certification
- Certification for Contracts, Grants, Loans and Cooperative Agreements
- Affidavit of Compliance/ NJ TRANSIT's Code of Ethics for Vendors
- Prevention of Drug and Alcohol Abuse in Transit Operations Certification
- Ownership Disclosure Form
- Source Disclosure Certification Form (For Service Procurements Only)
- Disclosure of Investment Activities in Iran
- 
- Certification of No Tax Liability or Felony Conviction

### Attachment 2: Specifications

IN WITNESS WHEREOF, the parties have caused this Contract to be executed effective the date set forth above. The representative signing on behalf of the Contractor shall have the authority to contractually bind the Contractor.

**CONTRACTOR**

ATTEST:

Debra L. Moberg  
Signature

Debra L. Moberg  
Typed Name

Notary Public, State of Missouri  
Typed Title

By: [Signature]  
Signature

Jeffrey Baker  
Typed Name

Vice President  
Typed Title

**NEW JERSEY TRANSIT CORPORATION**

ATTEST:

[Signature]  
Signature

By: Marc A McClellan  
Signature

This Contract has been reviewed and approved as to form by the Office of the Attorney General of New Jersey.

Matthew J. Platkin  
Acting Attorney General of New Jersey

By: [Signature]  
Deputy Attorney General

Date: 3/29/22

## ATTACHMENT 2

### CONTRACT NO. \_\_\_\_\_ GENERAL PROVISIONS

**THIS AGREEMENT** ("Contract") made as of March 24, 2022 between New Jersey Transit Corporation, a public instrumentality of the State of New Jersey, hereinafter referred to as NJ TRANSIT, having its principal office at One Penn Plaza East, Newark, New Jersey 07105-2246 and Alstom Signaling Inc. hereinafter referred to as the Contractor, includes four parts namely: a) General Provisions; b) Specifications; c) Exhibits; and d) all addenda issued prior to execution of the Contract.

**THIS CONTRACT** shall become binding upon the parties hereto when executed on behalf of NJ TRANSIT by the Contracting Officer or their designee. The Contractor shall commence work within five (5) calendar days of receipt of a written Notice to Proceed to that effect which shall be issued on behalf of NJ TRANSIT by its Contracting Officer or their designee after execution of the Contract by NJ TRANSIT. The term of this Contract shall be for the purchase of the centralized traffic control equipment identified in the NJTRO Specification S-120720, dated December 7, 2020, the NJTRO Specification S-120820, dated December 8, 2020, the NJTRO Specification S-121120, dated December 11, 2020, the NJTRO Specification S-020820, dated February 24, 2020, and the NJTRO Specification S-022020, dated March 27, 2020, as incorporated in Attachment 2.

#### 1. Goods/Materials/Services to be Provided

The Contractor, for and in consideration of the payments hereinafter specified and agreed to be made by NJ TRANSIT, agrees to do and perform all work and labor required to furnish and deliver all goods, materials or services in conformity with the Specifications included hereinafter.

#### 2. Quantities and Unit Prices

The Contractor agrees that the prices hereinafter set forth are firm for the period of this Contract. The Contractor also agrees that the quantities noted are approximate and subject to increases or decreases at the sole option of NJ TRANSIT. NJ TRANSIT is obligated to pay for only those goods, materials or services and quantities thereof ordered, delivered/provided and accepted in accordance with this Contract.

#### 3. Proper Payments

The Contractor agrees to make timely payment of all proper charges for labor and materials required to provide NJ TRANSIT the aforementioned goods, materials or services.

#### 4. Non-restrictive Clause

Wherever brand names may appear in this Contract, they are included for the purpose of establishing identification and a general description of the item. Wherever such names may appear, the term "or approved equal" is considered to follow. The decision on the approved equal will be rendered by NJ TRANSIT at its sole discretion.

#### 5. Payment

NJ TRANSIT agrees, subject to the availability of funds, to payment terms of Net 30 Days to the Contractor upon submission of proper invoices for the quantities of goods, materials or services ordered, delivered and accepted by NJ TRANSIT, in accordance with the prices set forth in the Bid Price Form attached hereto in Attachment 1 of this Contract.

NJ TRANSIT shall order goods, materials or services by use of a NJ TRANSIT Purchase Order referencing this Contract, and such Purchase Order shall be the only authorization the Contractor shall use to deliver goods, materials or services and invoice NJ TRANSIT.

These terms shall apply to Purchase Order 210020738, issued February 5, 2021, Purchase Order 210020730, issued February 5, 2021, and Purchase Order 210032977, issued June 16, 2021.

## **6. Release of Claims**

It is agreed that the Contractor's acceptance of final payment from NJ TRANSIT shall release in full all claims against NJ TRANSIT or any of its employees under this Contract.

## **7. Assignment**

The Contractor may assign or novate its rights and obligations under the Contract, in whole or in part, to any of its affiliates under the Contractor's sole common ownership and control, subject to NJ TRANSIT's consent, which may not be unreasonably withheld.

## **8. Subcontracting**

Currently Subcontracting is not contemplated but in the event the parties mutually agree that Subcontracting is required, the following applies:

The Contractor shall not subcontract any portion of this Contract without the prior written consent of NJ TRANSIT, which consent may be withheld at NJ TRANSIT's sole discretion. Utilization of independent delivery services and other similar activities are acceptable.

A Subcontractor or Supplier shall look only to the Contractor for the payment of any claims of any nature whatsoever arising out of the said subcontract, and said Subcontractor agrees, as a condition of NJ TRANSIT's consent to the making of said subcontract, that it shall make no claim whatsoever against NJ TRANSIT, its officers, agents, servants or employees for any work performed or thing done by reason of said subcontract, or for any other cause whatsoever that may arise by reason of the relationship created between the Contractor and Subcontractor by the subcontract.

## **9. Taxes and Applicable Laws**

The Contractor and any subcontractor agree that any taxes to be paid as a result of this Contract will be paid by the Contractor and any subcontractor and that NJ TRANSIT's obligation is limited to payment for the goods, materials or services in accordance with the unit prices stated herein. As a public agency, NJ TRANSIT is exempt from State use & sales taxes and Federal Excise Taxes. They must not be included in the Contractor's price quotations or invoices. The State of New Jersey's Federal Excise Tax Exemption Number is 22-75-0050K and the State of New Jersey's State Excise Tax Exemption Number is 21-60000928.

The Contractor shall comply with applicable laws, regulations, ordinances, and codes of the United States, the State of New Jersey and local governments within the State. If NJ TRANSIT determines that the Contractor has violated or failed to comply with applicable federal, state or local laws with respect to its performance under this Contract, NJ TRANSIT may withhold payments for such performance and take such other actions that it deems appropriate under the circumstances until compliance or remedial action has been accomplished by the Contractor to the satisfaction of NJ TRANSIT. This Contract shall be governed by and construed in accordance with the laws of the State of New Jersey.



## **10. Succession**

This Contract is to be binding upon NJ TRANSIT, its successor or successors, and upon the Contractor, its successor or successors.

## **11. Changes**

Any change in this Contract proposed by the Contractor shall be submitted to NJ TRANSIT for its prior approval, and, if approved, NJ TRANSIT will make the change by a written Contract modification. Oral change orders are not permitted. The Contractor shall be liable for all costs resulting from and/or for satisfactorily correcting any change not approved by written Contract modification to the Contract signed by the Contracting Officer.

NJ TRANSIT may, at any time, by a written order, and without notice to the sureties, make changes, within the general scope of this Contract. If any such change causes an increase or decrease in the cost of, or the time required for, the performance of any part of the work, whether changed or not changed by any such order, an equitable adjustment shall be made in the Contract price or delivery schedule, or both, and the Contract shall be modified in writing accordingly.

Within five (5) calendar days after receipt of the proposed written change order, the Contractor shall provide the Contracting Officer a detailed price and schedule proposal for the work to be performed. This proposal shall be accepted or modified by negotiations between the Contractor and the Contracting Officer. At that time, a Contract modification shall be executed in writing by both parties. Disagreements that cannot be resolved through negotiations shall be resolved in accordance with Section 18, "Disputes." Regardless of any disputes, the Contractor shall proceed with the work ordered.

If a price adjustment is indicated either upward or downward, it shall be negotiated between NJ TRANSIT and the Contractor for changes that are mandated as a result of legislation or regulation that are promulgated and become effective between the date of bid opening and the date of performance. Such price adjustment may be audited by NJ TRANSIT.

## **12. Delays**

If performance under the Contract should be unavoidably delayed, the Contracting Officer shall extend the time for completion of the Contract for the determined number of days of such delay. A delay is unavoidable only if the delay was not reasonably expected to occur in connection with or during the Contractor's or NJ TRANSIT's performance, was not caused directly or substantially by acts, omissions, negligence, or mistakes of the Contractor or NJ TRANSIT, the Contractor's or NJ TRANSIT's suppliers, or their agents, was substantial and in fact caused the Contractor to miss delivery dates, and could not adequately have been guarded against by contractual or legal means.

The Contractor shall notify the Contracting Officer as soon as the Contractor has, or should have, knowledge that an event has occurred which will delay performance. Within five (5) calendar days, the Contractor shall confirm such notice in writing furnishing as much detail as is available. Failure of the Contractor to so notify the Contracting Officer shall result in a waiver of any rights that the Contractor may have for an extension of time under this Contract.

The Contractor agrees to supply, as soon as such data are available, any reasonable proof that is required by the Contracting Officer to make a decision on any request for extension. The Contracting Officer shall examine the request and any documents supplied by the Contractor and shall determine if the

Contractor is entitled to an extension and the duration of such extension. The Contracting Officer shall notify the Contractor of his decision in writing.

It is expressly understood and agreed that the Contractor shall not be entitled to damages or compensation, and shall not be reimbursed for losses on account of delays, resulting from any cause under this provision.

### **13. Labor Disputes**

Whenever the Contractor has knowledge that any actual or potential labor dispute is delaying or threatens to delay the timely performance of this Contract, the Contractor shall immediately give notice thereof, including all relevant information to NJ TRANSIT.

### **14. Indemnification**

The Contractor agrees to defend, indemnify, protect and save harmless the United States Department of Transportation, the FTA, the State of New Jersey, New Jersey Transit Corporation, its subsidiaries, and their agents, servants, directors, officers, and employees (collectively, "Indemnified Parties") from and against any and all suits, claims, demands or damages of any nature arising out of or related to the performance of this Contract by the Contractor or its directors, officers, agents, servants, or employees including but not limited to expenditures for and costs of investigations, hiring of expert witnesses, court costs, counsel fees, settlements, judgments or otherwise and to the extent caused by Contractor or its directors, officers, agents, servants, or employees; provided, however, that the obligations of the Contractor hereunder shall not apply to the extent negligence or an intentional act of an agent or employee of NJ TRANSIT is the cause. NJ TRANSIT shall, as soon as practicable, after a claim has been made against it, give written notice thereof to the Contractor along with full and complete particulars of the claim. If the suit is brought against NJ TRANSIT, NJ TRANSIT shall immediately forward to the Contractor every demand, complaint, notice, summons, pleading, or other process received by NJ TRANSIT or its representatives.

In the defense of any such claims, demands, suits, actions and proceedings, the Contractor shall not raise or introduce, without the express written permission in advance of the Attorney General of the State of New Jersey, any defense involving in any way the immunity of NJ TRANSIT or the State of New Jersey, the jurisdiction of the tribunal over NJ TRANSIT or the State of New Jersey, or the provisions of any statute respecting suits against NJ TRANSIT or the State of New Jersey.

### **15. Limitation of Liability**

In no event, regardless of cause or legal theory, shall Contractor be liable for any incidental, special, indirect, consequential, or punitive damages, loss of profits, revenue, production, beneficial use, goodwill, reputation or interest, whether real or alleged, even if advised of the possibility of such. In no event shall Contractor's liability for matters exceed the total contract price, except to the extent arising from: (a) third party bodily injury and property damage claims, and/or (b) intellectual property infringement claims, and/or (c) the fraud, gross negligence or willful misconduct of the Contractor.

### **16. Environmental Indemnity Clause**

The Contractor shall conduct all activities in compliance with all applicable federal, state and local laws, rules and regulations designed to prevent or control the discharge of substances into the land, water and air and to protect individual health and safety. The Contractor will indemnify, hold harmless and defend

NJ TRANSIT, the State of New Jersey, their directors, officers, employees, agents and assigns from and against any and all suits, actions, proceedings, costs, fines, penalties and claims arising from or alleged to have arisen from its violation of any such environmental, health or safety laws, rules or regulations whenever such suits, actions, claims or proceedings shall be commenced, or whenever such costs are accrued, except for any violations, if any, at the NJ TRANSIT facility existing prior to the Contractor's activities. The Contractor shall take reasonable and necessary precautions to prevent the discharge of hazardous substances, including asbestos and petroleum products, onto NJ TRANSIT property or into the environment, including the air. Failure to comply will be considered grounds for default, and NJ TRANSIT may cancel the contract in accordance with Section 18, "Termination for Default". The indemnification obligations hereunder shall survive the completion or termination of this Contract.

## **17. Termination for Convenience**

(a) NJ TRANSIT may terminate performance of work under this contract in whole or, from time to time, in part if the Contracting Officer determines that a termination is in NJ TRANSIT's interest. The Contracting Officer shall terminate by delivering to the Contractor a Notice of Termination specifying the extent of termination and the effective date.

(b) After receipt of a Notice of Termination, and except as directed by the Contracting Officer, the Contractor shall immediately proceed with the following obligations, regardless of any delay in determining or adjusting any amounts due under this clause:

- (1) Stop work as specified in the notice.
- (2) Place no further subcontracts or orders (referred to as subcontracts in this clause) for materials, services, or facilities, except as necessary to complete the continued portion of the contract.
- (3) Terminate all subcontracts to the extent they relate to the work terminated.
- (4) Assign to NJ TRANSIT, as directed by the Contracting Officer, all right, title, and interest of the Contractor under the subcontracts terminated, in which case NJ TRANSIT shall have the right to settle or to pay any termination settlement proposal arising out of those terminations.
- (5) With approval or ratification to the extent required by the Contracting Officer, settle all outstanding liabilities and termination settlement proposals arising from the termination of subcontracts; the approval or ratification will be final for purposes of this clause.
- (6) As directed by the Contracting Officer, transfer title and deliver to NJ TRANSIT (i) the fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced or acquired for the work terminated, and (ii) the completed or partially completed plans, drawings, information, and other property that, if the contract had been completed, would be required to be furnished to NJ TRANSIT.
- (7) Complete performance of the work not terminated.
- (8) Take any action that may be necessary, or that the Contracting Officer may direct, for the protection and preservation of the property related to this contract that is in the possession of the Contractor and in which NJ TRANSIT has or may acquire an interest.
- (9) Use its best efforts to sell, as directed or authorized by the Contracting Officer, any property of the types referred to in subparagraph (b)(6) of this clause; provided, however, that the Contractor (i) is not required to extend credit to any purchaser and (ii) may acquire the property under the conditions prescribed by, and at prices approved by, the Contracting Officer. The proceeds of any transfer or disposition will be applied to reduce any payments to be made by NJ TRANSIT under this contract, credited to the price or cost of the work, or paid in any other manner directed by the Contracting Officer.

(c) The Contractor shall submit complete termination inventory schedules no later than 120 calendar days from the effective date of termination, unless extended in writing by the Contracting Officer

upon written request of the Contractor within this 120-day period.

(d) After expiration of the plant clearance period as defined in subpart 49.001 of the Federal Acquisition Regulation, the Contractor may submit to the Contracting Officer a list, certified as to quantity and quality, of termination inventory not previously disposed of, excluding items authorized for disposition by the Contracting Officer. The Contractor may request NJ TRANSIT to remove those items or enter into an agreement for their storage. Within fifteen (15) calendar days, NJ TRANSIT will accept title to those items and remove them or enter into a storage agreement. The Contracting Officer may verify the list upon removal of the items, or if stored, within forty-five (45) calendar days from submission of the list, and shall correct the list, as necessary, before final settlement.

(e) After termination, the Contractor shall submit a final termination settlement proposal to the Contracting Officer in the form and with the certification prescribed by the Contracting Officer. The Contractor shall submit the proposal promptly, but no later than 1 year from the effective date of termination, unless extended in writing by the Contracting Officer upon written request of the Contractor within this 1-year period. However, if the Contracting Officer determines that the facts justify it, a termination settlement proposal may be received and acted on after 1 year or any extension. If the Contractor fails to submit the proposal within the time allowed, the Contracting Officer may determine, on the basis of information available, the amount, if any, due the Contractor because of the termination and shall pay the amount determined.

(f) Subject to paragraph (e) of this clause, the Contractor and the Contracting Officer may agree upon the whole or any part of the amount to be paid or remaining to be paid because of the termination. The amount may include a reasonable allowance for profit on work done. However, the agreed amount, whether under this paragraph (f) or paragraph (g) of this clause, exclusive of costs shown in subparagraph (g)(3) of this clause, may not exceed the total contract price as reduced by (1) the amount of payments previously made and (2) the contract price of work not terminated. The contract shall be modified, and the Contractor paid the agreed amount. Paragraph (g) of this clause shall not limit, restrict, or affect the amount that may be agreed upon to be paid under this paragraph.

(g) If the Contractor and the Contracting Officer fail to agree on the whole amount to be paid because of the termination of work, the Contracting Officer shall pay the Contractor the amounts determined by the Contracting Officer as follows, but without duplication of any amounts agreed on under paragraph (f) of this clause:

- (1) The contract price for completed supplies or services accepted by NJ TRANSIT (or sold or acquired under subparagraph (b)(9) of this clause) not previously paid for, adjusted for any saving of freight and other charges.
- (2) The total of --
  - (i) The costs incurred in the performance of the work terminated, including initial costs and preparatory expense allocable thereto, but excluding any costs attributable to supplies or services paid or to be paid under subparagraph (g)(1) of this clause;
  - (ii) The cost of settling and paying termination settlement proposals under terminated subcontracts that are properly chargeable to the terminated portion of the contract if not included in subdivision (g)(2)(i) of this clause; and
  - (iii) A sum, as profit on subdivision (g)(2)(i) of this clause, determined by the Contracting Officer under 49.202 of the Federal Acquisition Regulation, in effect on the date of this contract, to be fair and reasonable; however, if it appears that the Contractor would have sustained a loss on the entire contract had it been completed, the Contracting Officer shall allow no profit under this subdivision (iii) and shall reduce the settlement to reflect the indicated rate of loss.

(3) The reasonable costs of settlement of the work terminated, including --

- (i) Accounting, legal, clerical, and other expenses reasonably necessary for the preparation of termination settlement proposals and supporting data;
- (ii) The termination and settlement of subcontracts (excluding the amounts of such settlements); and
- (iii) Storage, transportation, and other costs incurred, reasonably necessary for the preservation, protection, or disposition of the termination inventory.

(h) Except for normal spoilage, and except to the extent that NJ TRANSIT expressly assumed the risk of loss, the Contracting Officer will exclude from the amounts payable to the Contractor under paragraph (g) of this clause, the fair value as determined by the Contracting Officer, of property that is destroyed, lost stolen, or damaged so as to become undeliverable to NJ TRANSIT or to a buyer.

(i) The cost principles and procedures of part 31 of the Federal Acquisition Regulation, in effect on the date of this contract, shall govern all costs claimed, agreed to, or determined under this clause.

(j) The Contractor shall have the right of appeal, under the Disputes clause, from any determination made by the Contracting Officer under paragraph (e), (g), or (l) of this clause, except that if the Contractor failed to submit the termination settlement proposal or request for equitable adjustment within the time provided in paragraph (e) or (l), respectively, and failed to request a time extension, there is no right of appeal.

(k) In arriving at the amount due the Contractor under this clause, there shall be deducted --

- (1) All unliquidated advance or other payments to the Contractor under the terminated portion of this contract;
- (2) Any claim which NJ TRANSIT has against the Contractor under this contract; and
- (3) The agreed price for, or the proceeds of sale of, materials, supplies, or other things acquired by the Contractor or sold under the provisions of this clause and not recovered by or credited to NJ TRANSIT.

(l) If the termination is partial, the Contractor may file a proposal with the Contracting Officer for an equitable adjustment of the price(s) of the continued portion of the contract. The Contracting Officer shall make any equitable adjustment agreed upon. Any proposal by the Contractor for an equitable adjustment under this clause shall be requested within ninety (90) calendar days from the effective date of termination unless extended in writing by the Contracting Officer.

(m) (1) NJ TRANSIT may, under the terms and conditions it prescribes, make partial payments and payments against costs incurred by the Contractor for the terminated portion of the contract, if the Contracting Officer believes the total of these payments will not exceed the amount to which the Contractor will be entitled.

(2) If the total payments exceed the amount finally determined to be due, the Contractor shall repay the excess to NJ TRANSIT upon demand, together with interest computed at the rate established by the Secretary of the Treasury under 50 U.S.C. App. 1215(b)(2). Interest shall be computed for the period from the date the excess payment is received by the Contractor to the date the excess is repaid. Interest shall not be charged on any excess payment due to a reduction in the Contractor's termination settlement proposal because of retention or other disposition of termination inventory until ten (10) calendar days after the date of the retention or disposition, or a later date determined by the Contracting Officer because of the circumstances.

## **18. Termination for Default**

NJ TRANSIT may, by written notice of default to the Contractor, terminate the whole or any part of this Contract for any breach of the Contract including but not limited to: if the Contractor fails to make delivery of the goods or materials or to perform the services within the time specified herein or any extension thereof; or if the Contractor fails to perform any of the other provisions of the Contract, so as to endanger performance of this Contract in accordance with its terms, and in either of these two circumstances does not cure such failure within a period of ten (10) calendar days (or such longer period as the Contracting Officer may authorize in writing) after receipt of notice from the Contracting Officer specifying such failure.

If the Contract is terminated in whole or in part for default, NJ TRANSIT may procure, upon such terms and in such manner as the Contracting Officer may deem appropriate, items similar to those so terminated. The Contractor shall be liable to NJ TRANSIT for any excess costs for such similar goods, materials or services and shall continue the performance of this Contract to the extent not terminated under the provisions of this clause.

Except for the default of Subcontractors, the Contractor shall not be liable for any excess costs if the failure to perform the Contract arises out of causes beyond the control and without the fault or negligence of the Contractor. If the failure to perform is caused by the default of a Subcontractor, and if such default arises out of causes beyond the control of both the Contractor and Subcontractor, and without the fault or negligence of either of them, the Contractor shall not be liable for any excess costs for failure to perform, unless the goods, materials or services to be furnished by the Subcontractor were obtainable from other sources in sufficient time to permit the Contractor to meet the required delivery schedule.

If, after notice of termination of this Contract under the provisions of this clause, it is determined for any reason that the Contractor was not in default under the provisions of this clause, or the default was excusable under provisions of this clause, the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to Section 17, "Termination for Convenience".

## **19. Disputes**

For disputes arising in the performance of this Contract, the parties' representatives with direct knowledge of a given dispute shall first attempt to resolve the dispute in good faith. If the parties' representatives fail to reach resolution of the dispute within a reasonable time under the circumstances, then either party may request, by written notice, that the dispute be escalated to the parties' senior representatives. Within ten (10) days of receipt of such written notice, each party shall identify such senior representative(s), and they shall thereafter promptly meet either in person or telephonically to discuss and attempt to resolve the dispute in good faith.

Thereafter, disputes arising in the performance of this Contract which are not resolved by agreement of the parties shall be decided in writing by the authorized representative of the Contracting Officer. This decision shall be final and conclusive unless within ten (10) calendar days from the date of receipt of its copy, the Contractor mails or otherwise furnishes a written appeal to the Contracting Officer. In connection with any such appeal, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the Contracting Officer shall be binding upon the Contractor and the Contractor shall abide by the decision. The New Jersey Contractual Liability Act, N.J.S.A. 59:13-1 et seq., shall govern any action which may be brought by the Contractor as a result of NJ TRANSIT's decision.

## **20. No Third-Party Beneficiaries**

It is specifically agreed between the parties executing this Contract that it is not intended by any of the provisions of any part of the Contract to create the public or any member thereof a third party beneficiary hereunder, or to authorize anyone not a party to the Contract to maintain a suit for personal injuries or property damage pursuant to the terms or provisions of the Contract.

It is the further intent of NJ TRANSIT and the Contractor in executing this Contract that no individual, firm, corporation or any combination thereof, which supplies materials, labor, services or equipment to the Contractor for the performance of the Work becomes thereby a third party beneficiary of this Contract. NJ TRANSIT and the Contractor understand that such individual, firm, corporation or combination thereof, has no right to bring an action in the courts of this State against the State or NJ TRANSIT, by virtue of this lack of standing and also by virtue of the provisions of the New Jersey Contractual Liability Act, N.J.S.A. 59:13-1, et seq.

## **21. Personal Liability of Public Officials**

In carrying out the provisions of the Contract, or in exercising power or authority granted to them by or within the scope of the Contract, there shall be no liability upon any NJ TRANSIT employee, either personally or as officials of the State, as in all such matters they act solely as agents and representatives of the State.

## **22. NJ TRANSIT Representatives**

The individuals authorized by NJ TRANSIT to order goods, materials or services in the Specification and to act for NJ TRANSIT are the Contracting Officer, and his designee.

The Chief of Procurement and Support Services, or his designee, shall be the Contracting Officer.

## **23. Contractor Representatives**

The individual(s) authorized by the Contractor to act on its behalf are:

Name	<u>Jack Norris</u>
Title	<u>Senior Sales Manager, Business and Development</u>
Address	<u>Riverwood Tech Campus, Building 4</u>
	<u>West Henrietta, NY 14586</u>
Phone	<u>585-613-5879</u>

## **24. Communications**

Communications shall be in writing and shall be sent personally, or by facsimile, email or regular, registered, or certified mail addressed to the representatives of NJ TRANSIT and of the Contractor designated to receive such communications. Telephone calls may be used to expedite communications but shall not be official communications unless confirmed in writing.

Communications shall be considered received at the time actually received by the addressee or designated agent.

## **25. Equal Employment Opportunity**

The parties to this Contract do hereby agree that the provisions of N.J.S.A. 10:2-1 through 10:2-4 and N.J.S.A. 10:5-31 et seq. (P.L. 1975, c.127) set forth in the State of New Jersey Equal Employment Opportunity Provisions for Goods and Services Contracts, annexed hereto in Attachment 1, are hereby made a part of this Contract.

In accordance with N.J.S.A. 10:2-1 through 10:2-4 as amended and supplemented and the rules and regulations promulgated pursuant thereto, the Contractor agrees that:

a. In the hiring of persons for the performance of work under this contract or any subcontract hereunder, or for the procurement, manufacture, assembling or furnishing of any such materials, equipment, supplies or services to be acquired under this contract, no contractor, nor any person acting on behalf of such contractor or subcontractor, shall, by reason of race, creed, color, national origin, ancestry, marital status, gender identity or expression, affectional or sexual orientation or sex, discriminate against any person who is qualified and available to perform the work to which the employment relates;

b. No contractor, subcontractor, nor any person on his behalf shall, in any manner, discriminate against or intimidate any employee engaged in the performance of work under this contract or any subcontract hereunder, or engaged in the procurement, manufacture, assembling or furnishing of any such materials, equipment, supplies or services to be acquired under such contract, on account of race, creed, color, national origin, ancestry, marital status, gender identity or expression, affectional or sexual orientation or sex;

c. There may be deducted from the amount payable to the contractor by the contracting public agency, under this contract, a penalty of \$50.00 for each person for each calendar day during which such person is discriminated against or intimidated in violation of the provisions of the contract; and

d. This contract may be canceled or terminated by the contracting public agency and all money due or to become due hereunder may be forfeited, for any violation of this section of the contract occurring after notice to the contractor from the contracting public agency of any prior violation of this section of the contract.

## **26. Equal Opportunity For Individuals with Disabilities**

The Contractor and NJ TRANSIT agree that the provisions of Title II of the Americans With Disabilities Act of 1990 (the "Act") (42 U.S.C. § 12101 et seq.), which prohibits discrimination on the basis of disability by public entities in all services, programs, and activities provided or made available by public entities, and the rules and regulations promulgated thereto, are made a part of this Contract. In providing any aid, benefit, or service on behalf of NJ TRANSIT pursuant to this Contract, the Contractor agrees that the performance shall be in strict compliance with the Act. In the event that the Contractor, its agents, servants, employees, or subcontractors violate or are alleged to have violated the Act during the performance of this Contract, the Contractor shall defend NJ TRANSIT and the State of New Jersey in any action or administrative proceeding commenced pursuant to this Act. The Contractor shall indemnify, protect, and save harmless NJ TRANSIT and the State, their agents, servants, and employees from and against any and all suits, claims, losses, demands, or damages of whatever kind or nature arising out of or claimed to arise out of the alleged violation. The Contractor shall, at its own expense, appear, defend, and pay any and all charges for legal services and any and all costs and other expenses arising from such action or administrative proceeding or incurred in connection therewith. In any and all complaints brought pursuant to the owner's grievance procedure, the Consultant agrees to abide by any decision of the owner.



which is rendered pursuant to such said grievance procedure. If any action or administrative proceeding results in an award of damages against NJ TRANSIT or the State or if NJ TRANSIT or the State incur any expense to cure a violation of the Act which has been brought pursuant to its grievance procedure, the Contractor shall satisfy and discharge the same at its own expense.

NJ TRANSIT shall, as soon as practicable after a claim has been made against it, give written notice thereof to the Contractor along with full and complete particulars of the claim. If any action or administrative proceeding is brought against NJ TRANSIT or any of its agents, servants, and employees, NJ TRANSIT shall expeditiously forward or have forwarded to the Contractor every demand, complaint, notice, summons, pleading or other process received by it or its representatives.

It is expressly agreed and understood that any approval by NJ TRANSIT of the services provided by the Contractor pursuant to this Contract will not relieve the Contractor of the obligation to comply with the Act and to defend, indemnify, protect, and save harmless NJ TRANSIT pursuant to this paragraph.

The Contractor expressly understands and agrees that the provisions of this indemnification clause shall in no way limit the Contractor's obligations assumed in this Contract, nor shall they be construed to relieve the Contractor from any liability, nor preclude NJ TRANSIT from taking any other actions available to it under any other provisions of this Contract or otherwise at law.

## **27. Utilization of Disadvantaged Business Enterprises**

Currently DBE is not contemplated but in the event the parties mutually agree that DBE is required, the following applies:

The term "disadvantaged business enterprise" means a for-profit small business concern that is owned and controlled by one or more socially and economically disadvantaged persons, as defined by 49 C.F.R. Part 26. Such disadvantage may arise from cultural, racial, chronic economic circumstances or background or other similar cause. Such persons would include, but not be limited to, Black Americans (not of Hispanic origin); Hispanic Americans; Native Americans; Asian-Pacific Americans; Subcontinent Asian Americans; and Women, regardless of race or ethnicity.

NJ TRANSIT's DBE Program is accorded the same priority as compliance with all other legal obligations required by the USDOT. Contractors shall comply with the DBE Program requirements in the award and administration of NJ TRANSIT contracts. Failure by the Contractor to carry out these requirements shall constitute a breach of the contract, which may result in the termination of the contract or other such remedy, as NJ TRANSIT deems appropriate.

Should the actual contract amount increase or decrease, through approved change order(s), the Office of Business Development (OBD) must be informed. OBD will determine if this will result in an adjustment to DBE participation to reflect the assigned DBE goal, as applicable.

The Contractor shall fully comply with the requirements and provisions set forth in the New Jersey Transit Corporation DBE Requirements for Federal Procurement Activities.

## **28. Covenant Against Contingent Fees**

The Contractor warrants, in accordance with the Non Collusion Affidavit attached hereto in Attachment 1, 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 the

Contractor for the purpose of securing business. For breach or violation of this warranty NJ TRANSIT shall have the right to annul this Contract without liability or at its discretion, to deduct from the Contract price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage or contingent fee.

## **29. Audit, Inspection and Record Retention**

Pursuant to N.J.S.A. 52:15C-14(d) the Contractor and all subcontractors and suppliers shall maintain and retain all records, data, documents, reports, and materials relating to the Contract and contract work and shall permit authorized representatives of NJ TRANSIT, the Comptroller General of the United States, the U.S. Department of Transportation, the FTA, the State of New Jersey and the Office of the State Comptroller and their duly authorized representatives, upon request to inspect, audit and photocopy all project work, materials, payroll, and all data and records of the Contractor relating to products, transactions or services provided under its performance and its subcontracts and assignees, if any, under this Contract from the effective date hereof through and until the expiration of five (5) years after completion of and final payment for the Contract Work.

NJ TRANSIT, the State of New Jersey, the USDOT, the FTA and the Comptroller General of the United States and their duly authorized representatives also shall have the right to examine all aspects of the products, transactions and services and specifically the right to conduct interviews, on-site visits, surveillance, field activities and head counts and to perform financial audits and operational reviews as deemed necessary to prevent, remediate or mitigate fraud, waste and abuse. Any inspection, audit or review or lack thereof shall not relieve the Contractor of responsibility for satisfactory performance of the Scope of Services. Contractor shall maintain a true and correct set of records for all financial and operational data in sufficient detail to permit reasonable verification or correction of charges and performance in accordance with this Contract.

The Contractor further agrees to include in all its subcontracts hereunder a provision to the effect that the subcontractor agrees that it will keep all Contract records and that NJ TRANSIT, the Comptroller General of the United States, the U.S. Department of Transportation, the FTA the State of New Jersey and the Office of the State Comptroller, or any of their duly authorized representatives, shall, until the expiration of five (5) years after payment under the subcontract, have access to and the right to examine any books, documents, and other records related to the subcontractor's performance under the subcontract.

The periods of access and examination described above, for records which relate to (1) appeals under the "Disputes" clause of the Contract, (2) litigation or the settlement of claims arising out of the performance of this Contract, or (3) costs and expenses of this Contract as to which exception has been taken by NJ TRANSIT the Comptroller General of the United States, the U.S. Department of Transportation or the State of New Jersey or any of their duly authorized representatives, shall continue until such appeals, litigation, claims, or exceptions have been disposed of.

## **30. Interest of Members of Congress**

No member of, or delegate to, the Congress of the United States shall be admitted to any share or part of this Contract or to any benefit arising therefrom.

## **31. Prohibited Interest**

No member, officer, or employee of NJ TRANSIT or its subsidiaries shall have any interest, direct or indirect, in this Contract or the proceeds thereof. No former member, officer or employee of NJ TRANSIT or its subsidiaries who, during his or her tenure, had a direct, substantial involvement with

matters that are closely related to this Contract, shall have any interest, direct or indirect, in this Contract or the proceeds thereof.

### **32. Insurance**

Prior to the execution of this contract by NJ TRANSIT and before commencing any performance hereunder, the Contractor shall provide the following coverage under its corporate insurance policy:

(a) Commercial General Liability Insurance, in accordance with standard ISO Commercial General Liability policy form, with a limit of USD \$1,000,000 (required by contract) per occurrence and in the aggregate for bodily injury, including death and property damage;

(b) Business Automobile Liability Insurance for all owned, non-owned or hired vehicles used by Contractor in performance of the Work or Services, with a combined single limit per accident of USD \$1,000,000 for bodily injury, including death, and property damage.

(c) Excess or Commercial Umbrella Liability over the policies described in (a) and (b) with a limit of USD \$4,000,000 per occurrence. (Vendor may provide any combination of primary GL and Excess or Follow Form Umbrella products)

NJ TRANSIT and the other "Indemnified Parties" defined in Section 14, are to be covered as additional insureds on the policies required in this Section 31.

Furthermore, all insurance policies shall contain a waiver of subrogation endorsement in the benefit of the additional insureds and shall be primary and non-contributory. Any insurance or self-insurance maintained by the additional insureds shall not contribute to any loss.

Any excess or umbrella policies shall provide coverage on a follow form basis for the scheduled underlying general liability, commercial auto liability, and/or employer's liability policies.

All insurance policies shall be written with companies authorized to do business in the State of New Jersey, and with a financial strength rating of A-X or better by A.M. Best.

Contractor shall furnish NJ TRANSIT with original Certificates of Insurance. The failure to obtain the required documents prior to commencement of any work shall not waive the Contractor's obligation to provide them.

### **33. Business Registration Notice**

In accordance with N.J.S.A. 52:32-44, all New Jersey and out of State business organizations must obtain a Business Registration Certificate (BRC) from the Department of Treasury, Division of Revenue, prior to a contract being awarded or authorized by NJ TRANSIT.

The Contractor shall maintain a list of the names of any subcontractors and their current addresses, updated as necessary during the course of the contract performance. The Contractor shall submit a complete and accurate list to NJ TRANSIT before final payment is made for goods or services rendered under the Contract. The Contractor shall not enter into any contract with a Subcontractor unless the Subcontractor first provides proof of valid business registration.

If the Contractor fails to provide a copy of a business registration as required pursuant to N.J.S.A. 52:32-44 or that provides false information of business registration under the requirements of that section,

pursuant to N.J.S.A 54:49-4.1 it shall be liable for a penalty of \$25 for each day of violation, not to exceed \$50,000 for each business registration copy not properly provided to NJ TRANSIT.

The Contactor and any subcontractor providing goods or performing services under the contract, and each of their affiliates, shall, during the term of the contract, collect and remit to the Director of the Division of Taxation in the Department of the Treasury the use tax due pursuant to the “Sales and Use Tax Act”, P.L. 1966, c, 30 (N.J.S.A. 54:32B-1 et seq.) on all their sales of tangible personal property delivered into the State.

### **34. Out-of-State Corporations**

If the Contractor is a corporation organized under laws of a state other than New Jersey, the Contractor shall have a certificate of authority to do business in New Jersey in accordance with N.J.S.A. 14A:13-3. In addition, pursuant to N.J.S.A. 14A: 4-1 et seq., the Contractor shall maintain a registered agent having a business office in New Jersey and shall file with the Secretary of State the name of said agent and address of said office and provide a copy thereof to NJ TRANSIT.

Inquiries should be directed to:

State of New Jersey  
Department of Treasury  
Division of Revenue and Enterprise Services  
PO Box 628  
Trenton, NJ 08625  
[www.state.nj.us/njbgs](http://www.state.nj.us/njbgs)  
[\(609\) 292-9292](tel:(609)292-9292)

### **35. Restriction of Gifts**

The Contractor, its officers, representatives, agents, Subcontractors and employees agree not to give any present nor make any gift of money or any other gift or gratuity in any form whatsoever to any director, officer, or employee of NJ TRANSIT, his or her relatives or agents.

### **36. Source Disclosure Requirements (For Services Procurement Only)**

Under N.J.S.A. 52:34-13.2, all contracts primarily for services awarded by NJ TRANSIT shall be performed within the United States, except when the Contracting Officer certifies in writing a finding that a required service cannot be provided by a Contractor or Subcontractor within the United States and the certification is approved by the Executive Director of NJ TRANSIT.

All Contractors seeking a contract primarily for services with NJ TRANSIT must disclose the location, by country, where services under the contract, including subcontracted services, will be performed.

If any of the services cannot be performed within the United States, the Contractor shall state with specificity the reasons why the services cannot be so performed. NJ TRANSIT’s Contracting Officer shall determine whether sufficient justification has been provided by the Contractor to form the basis of his certification that the services cannot be performed in the United States and whether to seek the approval of the Executive Director.

If, during the term of the Contract, the Contractor or Subcontractor, who had on contract award declared that services would be performed in the United States, proceeds to shift the performance of the services outside the United States, the Contractor shall be deemed to be in breach of its Contract, which Contract shall be subject to termination for default pursuant to Section 18, unless previously approved by the Contracting Officer and the Executive Director. During the contract term, the Contractor shall submit a subsequent Source Disclosure Certification within five (5) calendar days of NJ TRANSIT's request.

### **37. Disclosure of Investment Activities in Iran**

Pursuant to N.J.S.A. 52:32-58, any person or entity that submits a proposal or otherwise proposes to enter into or renew a contract must complete the certification to attest, under penalty of perjury, that neither the person or entity, nor any of its parents, subsidiaries, or affiliates, is identified on the Department of Treasury's Chapter 25 list as a person or entity engaging in investment activities in Iran. The Chapter 25 list is found on the Division's website at <http://www.state.nj.us/treasury/purchase/pdf/Chapter25List.pdf>. Contractors must review this list prior to completing the Disclosure of Investment Activities in Iran Certification attached hereto in Attachment 1. If NJ TRANSIT finds a person or entity to be in violation of law, NJ TRANSIT shall take action as may be appropriate and provided by law, rule or contract, including but not limited to, imposing sanctions, seeking compliance, recovering damages, declaring the party in default and seeking debarment or suspension of the party.

### **38. NJ TRANSIT's Code of Ethics for Vendors**

#### **A. General**

1. NJ TRANSIT considers the maintenance of public trust and confidence critical to its proper functioning. Vendors of NJ TRANSIT must avoid all situations where proprietary or financial interest, or the opportunity for financial gain, could lead to the favored treatment of any organization or individual. Vendors must also avoid circumstances and conduct which may not constitute actual wrongdoing, or conflict of interest, but might nevertheless constitute the appearance of questionable behavior to the general public, thus compromising the integrity of NJ TRANSIT.

2. This policy is based upon the principles established in the New Jersey Conflicts of Interest Law (N.J.S.A. 52:13 D-12 et seq.) and the regulations promulgated by the New Jersey State Ethics Commission thereunder, as well as the Plain Language Guide to Ethical Business Conduct for Companies Transacting Business with the State of New Jersey, promulgated by the New Jersey Department of the Treasury.

3. This Code of Ethics for Vendors shall be deemed to be a substantial and integral part of every NJ TRANSIT Invitation for Bid (IFB), Request for Proposal (RFP) and contract.

4. This policy is intended to augment, not to replace, existing law, regulations, administrative orders and the current Uniform Ethics Code.

#### **B. NJ TRANSIT Code of Ethics for Vendors**

##### **1. Gifts, Gratuities and Favors:**

a) A vendor shall not, either directly or indirectly, pay, offer to pay, or agree to pay any amount of money, fee, commission, compensation, gift, gratuity or other thing of value of any kind to any NJ TRANSIT Board Member or employee or to any member of their immediate family, or to any partnership, firm or corporation with which any such Board

Member or employee is employed or associated, or in which (s)he has an interest within the meaning of N.J.S.A. 52:13D-13g.

b) A vendor shall not give or offer any NJ TRANSIT Board Member, employee or their immediate family any amount of money, gift, loan or other thing of value regardless of whether it might be reasonably inferred that such amount of money, gift, loan, service or other thing of value was given or offered for the purpose of influencing the Board Member or employee in the discharge of his or her official duties. In addition, Board Members, employees and their immediate family are not permitted to accept breakfasts, lunches, dinners, alcoholic beverages, tickets to entertainment and/or sporting events, wagers or other items or consideration. A vendor may not "wine and dine" NJ TRANSIT Board Members, employees or their immediate family.

c) NJ TRANSIT Board Members and employees may not accept any food or beverages from any vendor with the exception of coffee, tea, soda, Danish, chips, pretzels, donuts or similar snacks, which may be provided to all attendees at a conference, seminar or business meeting. If food other than the above is provided (e.g., sandwich, pizza or a meal), the Board member or employee must pay the cost for the meal.

d) Any questions as to what is or is not acceptable or what constitutes proper conduct for an NJ TRANSIT Board Member or employee, and any solicitation of gifts, consideration or items of value by or on behalf of a NJ TRANSIT Board Member or employee, should be referred to:

Chief Ethics Officer  
NJ TRANSIT  
One Penn Plaza East, 8th Floor  
Newark, NJ 07105-2246  
(973) 491-8820

**2. Solicitation by NJ TRANSIT Board Member or employee:**

A vendor shall immediately report in writing the solicitation of any fee, commission, compensation, gift, gratuity or other thing of value by a NJ TRANSIT Board Member or employee, to NJ TRANSIT's Chief Ethics Officer, the New Jersey Attorney General and the State Ethics Commission.

**3. Business, commercial or entrepreneurial relationship:**

Whether or not pursuant to employment, contract or other agreement, expressed or implied, a vendor shall not, directly or indirectly, undertake any private business, commercial or entrepreneurial relationship with, or sell any interest in such vendor to any NJ TRANSIT Board Member or employee having any duties or responsibilities in connection with the purchase, acquisition or sale of any property or services by or to NJ TRANSIT or with any person, firm or entity with which (s)he is employed or associated or in which (s)he has an interest within the meaning of N.J.S.A. 52:13D-13g. Any relationships subject to this provision shall be reported in writing forthwith to NJ TRANSIT's Chief Ethics Officer.

**4. General Standards:**

a) A vendor shall not influence, or attempt to influence or cause to be influenced, any NJ TRANSIT Board Member or employee in his/her official capacity in any manner which might tend to impair the objectivity or independence of judgment of any Board Member or employee.

b) A vendor shall not request, influence, or attempt to request, influence or cause to be requested or influenced, any NJ TRANSIT Board Member or employee to use, or attempt to use, his/her official position in any manner to secure unwarranted privilege or advantage for the vendor or any other person.

**5. Protected/Confidential Information:**

- a) A vendor may not profit, directly or indirectly, from the use of any secret or confidential NJ TRANSIT information, knowledge or data that has been illicitly disclosed.
- b) Vendors and their employees may not use any secret or confidential NJ TRANSIT information, knowledge or data for any purposes other than complying with their contractual obligations to NJ TRANSIT.

**6. Intellectual Property:**

A vendor may not use NJ TRANSIT branding, logo or any promotional or marketing materials without prior written approval from the NJ TRANSIT Communications Department.

**7. Employment Offers:**

a) Current State Employees/Future Employment: If a vendor offers a job to a NJ TRANSIT employee, with whom they have direct and substantial contact, such offer or solicitation must be immediately disclosed to management and the Chief Ethics Officer. Please also note that NJ TRANSIT employees must secure prior approval for secondary employment. Depending on the vendor relationship with the employee, the vendor employment offer may be disapproved, and the NJ TRANSIT employee could be screened from taking any official action with respect to the particular vendor contracts, applications, or matters in the future.

b) Former State Employees: After leaving NJ TRANSIT, employees are under a lifetime ban against the use or provision of information not generally available to the public acquired during their employment. Additionally, former employees are prohibited from representing or assisting a vendor concerning a particular contract or other matter if they were substantially and/or directly involved in that particular contract or other matter while employed by NJ TRANSIT.

**8. Failure to Comply:**

A vendor's failure to comply with this policy may result in termination of the contract or debarment pursuant to N.J.A.C. 16:72-5.2. Additionally, violations of certain provisions of the Conflict of Interest Law are subject to a fine not to exceed \$1,000, or imprisonment not to exceed six months, or both.

**C. CROSS-REFERENCES**

New Jersey Uniform Ethics Code, available online at <https://www.state.nj.us/ethics/docs/ethics/uniformcode.pdf>

New Jersey Conflicts of Interest Law and regulations adopted thereunder (N.J.A.C. 19:61-1.1 et seq.), available online at <https://www.state.nj.us/ethics/statutes/conflicts/> and <https://www.state.nj.us/ethics/statutes/rules/>

Plain Language Guide to Ethical Business Conduct for Companies Transacting Business with the State of New Jersey, available online at <https://nj.gov/ethics/docs/ethics/plainlanguage.pdf>

### **39. Setting Off Tax Arrears Against Sums Owed**

Whenever a taxpayer under contract with the State of Jersey is indebted for any State Tax in accordance with N.J.S.A 54:49-19 the State of New Jersey shall seek to set off the indebtedness as follows:

Whenever any taxpayer under contract to provide goods or services to the State of New Jersey or its agencies or instrumentalities, and including the legislative and judicial branches of State government, is entitled to payment for the goods or services or on that construction project and at the same time the taxpayer is indebted for any State tax, the Director of the Division of Taxation shall seek to set off so much of that payment as may be necessary to satisfy the indebtedness. The Director, in consultation with the Director of the Division of Budget and Accounting in the Department of the Treasury, shall establish procedures and methods to effect a set-off. The Director shall give notice of the set-off to the taxpayer, the provider of goods or services or the contractor or subcontractor of construction, and provide an opportunity for a hearing within thirty (30) calendar days of such notice under the procedures for protests established under N.J.S.A. 54:49-18, but no request for conference, protest, or subsequent appeal to the Tax Court from any protest under this section shall stay the collection of the indebtedness. No payment shall be made to the taxpayer, the provider of goods or services or the contractor or subcontractor of construction projects pending resolution of the indebtedness. Interest that may be payable by the State pursuant to N.J.S.A. 52:32-32 et seq., to the taxpayer, the provider of goods and services or the contractor or subcontractor of construction projects shall be stayed.

### **40. Contractor's Certification of Eligibility**

The Contractor certifies that it is not listed on the State of New Jersey, Department of Labor and Workforce Development, Division of Wage and Hour Compliance, Prevailing Wage Debarment List or on the State of New Jersey, Department of Treasury, Consolidated Debarment Report.

The Contractor also certifies that it has no exclusions on the consolidated U.S. Government, System for Award Management (SAM) database.

### **41. Air Pollution**

The Contractor and its suppliers must comply with all governing air pollution criteria required by the Federal Transit Administration.

### **42. Buy America**

#### **(1) Surface Transportation Assistance Act Requirements**

Pursuant to Section 165 of the Surface Transportation Assistance Act of 1982 (P.L. 97-424, 49 U.S.C. § 5323(j) and the regulations found at 49 C.F.R. Part 661, the Contractor agrees that all steel, iron and manufactured products purchased or used as a result of this Contract must be domestic manufacture or origin unless a waiver of these provisions is granted by the FTA.

There are four (4) exemptions to this otherwise universal mandate:

- a. That their application would be inconsistent with the public interest;
- b. That such materials and products are not produced in the United States in sufficient and reasonable



available quantities and of a satisfactory quality;

- c. In the case of the procurement of rolling stock (including train control, communication and traction power equipment, and rolling stock prototypes) under the Federal Transit Act of 1964 (49 U.S.C. § 5301), that (A) the cost of components and subcomponents which are produced in the United States is more than 70 percent of the cost of all components of the rolling stock, and (B) final assembly of the vehicle or equipment described in this paragraph has taken place in the United States; and
- d. That inclusion of domestic material will increase the cost of the overall project by more than twenty-five percent (25%).

With respect to rolling stock only, but including train control, communications, traction power equipment, and rolling stock prototypes, less than 30 percent may be non-domestic manufacture, but final assembly of such products must take place in the United States.

## (2) Domestic Preferences for Procurements

a. In accordance with 2 C.F.R. 200.322, the Contractor is notified of NJ TRANSIT's preference, to the greatest extent practicable, for the purchase, acquisition, or use of goods, products, or materials, produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products).

b. For purposes of this section:

- (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 nonferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

## **43. Fly America Requirements**

The Contractor agrees to comply with 49 U.S.C. 40118 (the "Fly America" Act) in accordance with the General Services Administration's regulations at 41 C.F.R. Part 301-10, which provide that recipients and subrecipients of Federal funds and their contractors are required to use U.S. Flag air carriers for U.S. Government-financed international air travel and transportation of their personal effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter of necessity, as defined by the Fly America Act. The Contractor shall submit, if a foreign air carrier was used, an appropriate certification or memorandum adequately explaining why service by a U.S. flag air carrier was not available or why it was necessary to use a foreign air carrier and shall, in any event, provide a certificate of compliance with the Fly America requirements. The Contractor agrees to include the requirements of this section in all subcontracts that may involve international air transportation.

## **44. Cargo Preference-Use of U.S. Flag Vessel**

The Contractor agrees to utilize privately owned United States-flag commercial vessels to ship at least fifty percent (50%) of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, materials, or commodities pursuant to 46 C.F.R.

Part 381, to the extent such vessels are available at fair and reasonable rates for United States-flag commercial vessels.

The Contractor further agrees to furnish within twenty (20) working days following the date of loading for shipments originating within the United States, or within thirty (30) working days following the date of loading for shipment originating outside the United States, a legible copy of a rated "on-board" commercial ocean bill-of-lading in English for each shipment of cargo described in the Paragraph above to NJ TRANSIT (through the prime Contractor in the case of subcontractor bills-of-lading) and to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, D.C. 20590, marked with appropriate identification of the Project.

The Contractor further agrees to insert the substance of the provisions of this clause in all subcontracts issued pursuant to this Contract.

#### **45. Clean Water and Clean Air Acts**

44.1 The Contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. § 1251 et seq.:

(a) With the notification of violating facilities provisions of Executive Order No. 11738; "Administration of the Clean Air Act and the Federal Water Pollution Control Act with Respect to Federal Contracts, Grants, or Loans", 42 U.S.C. § 7606. The Contractor agrees to report each violation to NJ TRANSIT and understands and agrees that NJ TRANSIT will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

(b) With the provisions of the Safe Drinking Water Act of 1974, as amended, 42 U.S.C. § 300h et seq.

44.2 The Contractor agrees to comply with all applicable, standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq. The Contractor agrees to report each violation to NJ TRANSIT and understands and agrees that NJ TRANSIT will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

44.3 The Contractor agrees to include both the Clean Water and Clean Air requirements in each subcontract exceeding \$150,000. The \$150,000 limit includes indefinite quantities where the amount is expected to exceed \$150,000 in any year.

#### **46. Energy Conservation**

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

#### **47. Civil Rights**

During the performance of this Contract, the Contractor, for itself, its assignees and successors in interest and its subcontractor at every tier (hereinafter referred to as the "Contractor") agrees as follows:

##### **(a) Compliance with Regulations**

The Contractor shall comply with the Regulations relative to nondiscrimination in federally-assisted programs of the United States Department of Transportation, Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time (hereinafter referred to as the Regulations), which are

herein incorporated by reference and made a part of this Contract.

(b) Nondiscrimination

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

(c) Equal Employment Opportunity

The following equal employment opportunity requirements apply to the underlying contract:

(1) Race, Color, Religion, National Origin, Sex

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

(2) Age

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

(3) Disabilities

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

(d) The Contractor also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties.

(e) Information and Reports

The Contractor shall provide all information and reports required by the Regulations or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Recipient or NJ TRANSIT or the FTA to be pertinent to ascertain compliance with such Regulations, orders and instruction. Where any information is required or a Contractor is in the exclusive possession of another who fails or refuses to furnish this information, the

Contractor shall so certify to NJ TRANSIT, or the FTA, as appropriate, and shall set forth what efforts it has made to obtain the information.

(f) Sanctions for Noncompliance

In the event of the Contractor's noncompliance with the nondiscrimination provisions of this Contract, NJ TRANSIT shall impose such contract sanctions as it or the FTA may determine to be appropriate, including but not limited to:

(1) Withholding of payments to the Contractor under the Contract until the Contractor complies; and/or

(2) Cancellation, termination or suspension of the Contract, in whole or in part.

#### **48. Contract Cost Principles and Procedures**

Part 31 of the Federal Acquisition Regulations entitled "Contract Cost Principles and Procedures" is incorporated by reference in this Contract.

#### **49. Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – Lower Tier Covered Transaction**

By signing this agreement, the lower tier participant, defined as the Contractor and its subcontractors, is providing the certification set out below.

The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, NJ TRANSIT may pursue available remedies, including suspension and/or debarment.

The lower tier participant shall provide immediate written notice to NJ TRANSIT if at any time the lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

Certain terms used in this clause have the meanings set out in 2 C.F.R. Part 1200 and 2 C.F.R. Part 180.

The lower tier participant agrees by signing this agreement that it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized in writing by NJ TRANSIT.

The lower tier participant further agrees by signing this agreement that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – Lower Tier Covered Transaction", without modification, in all lower tier covered transactions (valued at \$25,000 or more) and in all solicitations for lower tier covered transactions.

A participant in a covered transaction may rely upon a certification of a participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. Each participant shall check the U.S. Government System for Award Management (SAM) database.

Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

Except for transactions authorized under the fifth paragraph above, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to all remedies available to the Federal Government, NJ TRANSIT may pursue available remedies including suspension and/or debarment.

The lower tier participant certifies by signing this agreement that neither it nor its "principals" (as defined 2 C.F.R. 180.995) is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency. A participant may decide the method and frequency by which it determines the eligibility of its principals.

When the lower tier participant is unable to certify to the statements in this certification, such participant shall submit a written explanation.

The lower tier participant shall also have no exclusions on the U.S. Government System for Award Management (SAM) database.

## **50. Limitations on Lobbying**

The Contractor and its subcontractors shall comply with 31 U.S.C. § 1352, entitled "Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions".

a.) No appropriated funds may be expended by the recipient of a Federal contract, grant, loan or cooperative agreement to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress or an employee of a Member of Congress in connection with any of the following covered Federal actions: the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any Federal contract, grant, loan or cooperative agreement.

b.) Any Contractor and any subcontractor at any tier who requests or receives a Federally-assisted contract or subcontract in excess of \$100,000 from NJ TRANSIT shall file with NJ TRANSIT the certification attached to this Contract and entitled "Certification for Contracts, Grants, Loans and Cooperative Agreements" which certifies that the Contractor or subcontractor, as applicable, has not made, and will not make, any payment prohibited by paragraph A.) of this Article.

c.) Any Contractor and any subcontractor who has made or has agreed to make any payment using nonappropriated funds (to include profits from any covered Federal action) which would be prohibited under paragraph A.) of this Article if paid for with appropriated funds, shall file with NJ TRANSIT a disclosure form entitled "Disclosure of Lobbying Activities", which is available from NJ TRANSIT.

d.) Any certification or disclosure form filed under paragraphs B.) and C.) of this Article shall be forwarded from tier to tier until received by NJ TRANSIT. Any certification or disclosure form shall be treated as a material representation of fact upon which all receiving tiers shall rely. All liability arising from an erroneous representation shall be borne solely by the tier filing that representation and shall not be shared by any tier to which the erroneous representation is forwarded.

e.) The prohibition on the use of appropriated funds does not apply in the case of a payment of reasonable compensation to an officer or employee of a Contractor or subcontractor if the payment is for agency and legislative liaison activities not directly related to a covered Federal action.

f.) The prohibition on the use of appropriated funds does not apply in the case of any reasonable payment to an officer or employee of a Contractor or subcontractor or to a person, other than an officer or employee of a Contractor or subcontractor, if the payment is for professional or technical services rendered directly in the preparation, submission or negotiation of any bid, proposal or application for a Federal contract, grant, loan or cooperative agreement.

## **51. Contract Work Hours and Safety Standards**

### **1. Nonconstruction Contracts**

The following requirements are applicable to any Contract subject to the overtime provisions of the Contract Work Hours and Safety Standards Act and not to any of the other statutes cited in 29 C.F.R. 5.1. The Contractor or subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years from the completion of the Contract for all laborers and mechanics, including guards and watchmen, working on the Contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. The records to be maintained under this clause shall be made available by the Contractor or subcontractor for inspection, copying, or transcription by authorized representatives of the FTA, the U.S. DOT, or the Department of Labor, and the Contractor or subcontractor will permit such representatives to interview employees during working hours on the job.

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

b. Violation: Liability For Unpaid Wages: Liquidated Damages. In the event of any violation of the requirements of 29 C.F.R. 5.5(b)(1), the Contractor and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such Contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a Territory, to such district or to such Territory) for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of 29 C.F.R. 5.5(b)(1) in the sum of \$25 for each calendar day on which such individual was required or permitted to work in excess of the standard work week of forty hours without payment of the overtime wages required by 29 C.F.R. 5.5(b)(1).

c. Withholding For Unpaid Wages And Liquidated Damages. The FTA or NJ TRANSIT shall upon its own action or upon written request of any authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Contractor or Subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other Federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such Contractor or Subcontractor for unpaid wages and liquidated damages as provided in the

clause set forth at 29 C.F.R. 5.5(b)(2).

2. Nonconstruction Subcontracts.

The Contractor or Subcontractor shall insert in any subcontracts the clauses set forth in this Section 51, "Nonconstruction Contracts", 1a through 1c and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in this Section 51.

**52. New Jersey Prevailing Wage Act (Construction and Maintenance-related Procurements Only)  
(NOT APPLICABLE TO THIS PROCUREMENT) -**

If applicable, the Contractor and each subcontractor shall comply with the New Jersey Prevailing Wage Act, N.J.S.A. 34:11-56.25 et seq., and this Act is hereby made a part of this Contract. All workers shall be paid not less than the prevailing wage rate as designated by the Commissioner of Labor and Industry or the Commissioner's duly authorized deputy or representative.

In the event it is found that any worker has been paid a rate of wages less than the prevailing wage required to be paid by this Contract, the Contracting Officer may terminate the Contractor's or Subcontractor's right to proceed with the work, or such part of the work as to which there has been a failure to pay required wages, and take such action the Contracting Officer deems necessary, including prosecuting the work to completion to the account of the Contractor.

NJ TRANSIT shall furnish as part of the Contract a copy of the prevailing minimum wage rates which shall be paid to the workers employed in the performance of the Contract.

Nothing contained in the Prevailing Wage Act shall prohibit the payment of more than the prevailing wage rate to any worker employed on the project.

The Contractor and each Subcontractor performing work for NJ TRANSIT who is subject to the provisions of the Prevailing Wage Act shall post the prevailing wage rates for each craft and classification involved, including the effective date of any changes thereof, in prominent and easily accessible places at the site of the work or at such place or places as are used by them to pay workers their wages.

The Contractor's signature on the proposal is its guarantee that neither it nor any Subcontractor it intends to contract with is currently listed by or on record with the Commissioner of Labor and Industry as one who failed to pay the prevailing wages according to the Prevailing Wage Act.

The Contractor and all of its Subcontractors performing work at the site must prepare their bids as to labor costs in accordance with the prevailing wage (valid for the date the bids are to be submitted) for the geographical area of the project site.

**53. Employee Protections-Construction Activities (For Construction Procurements Only) (NOT APPLICABLE TO THIS PROCUREMENT)**

If applicable, the Contractor agrees to comply, and assures the compliance by each subcontractor at any tier, with the following employee protection requirements for construction employees:

1. Davis-Bacon Act, as amended, 40 USC 3141-3148, the Davis-Bacon Act, 40 U.S.C. §§ 276a-276a(7), and U.S. DOL regulations, "Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction", 29 C.F.R. Part 5, and 29 C.F.R. Parts 1 & 3.

2. Contract Work Hours and Safety Standards Act, 40 U.S.C. 3701-3708, as amended, in particular with the requirements of section 102 of the Act, and U.S. DOL regulations, “Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction”, 29 C.F.R. Part 5; and with section 107 of the Act, and U.S. DOL regulations, “Safety and Health Regulations for Construction”, 29 C.F.R. Part 1926.;

3. Copeland “Anti-Kickback” Act, as amended, 18 U.S.C. § 874, and U.S. DOL regulations, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in part by Loans or Grants from the United States.” 29 C.F.R. Part 3.

#### **54. Federal Provisions Related to Certain Telecommunications and Video Surveillance Services or Equipment**

The Contractor shall abide by 2 C.F.R. 200.216, which prohibits recipients and subrecipients of federal funds from entering into contracts (or extending or renewing a contract) to procure or obtain equipment, services, or systems that use covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. Covered telecommunications equipment means telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities). Additional prohibitions include:

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

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

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

The Contractor agrees to extend this provision to its subcontractors.

#### **55. Incorporation of Federal Transit Administration (FTA) Terms**

This Contract is funded in whole or in part by the United States Government and is subject to all Federal laws and regulations governing Federally-financed projects.

##### **(a) Changes to Federal Requirements**

The Contractor shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement between NJ TRANSIT and the FTA, as they may be amended or promulgated from time to time during the term of this Contract. Contractor’s failure to so comply shall constitute a material breach of this Contract unless the FTA determines otherwise.

##### **(b) Incorporation of FTA Terms**

These General Provisions include, in part, certain standard terms and conditions required by USDOT, whether or not expressly set forth in this Contract. All Contractual provisions required by USDOT, as set forth in FTA circular 4220.1F, are hereby incorporated by reference. Anything to the contrary herein



notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Contract. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any NJ TRANSIT requests which would cause NJ TRANSIT to be in violation of the FTA Master Agreement between NJ TRANSIT and the FTA.

#### **56. Exclusionary or Discriminatory Specifications**

Except where otherwise required by Federal statute or regulations, the Contractor agrees that it will comply with the requirements of 49 U.S.C. § 5323(h)(3) by refraining from using exclusionary or discriminatory specifications in the performance of the work.

#### **57. No Federal Government Obligations to Third Parties**

The Contractor agrees that, absent the Federal Government's express written consent, the Federal Government shall not be subject to any obligations or liabilities to the Contractor in connection with the performance of the Project. Notwithstanding any concurrence provided by the Federal Government in or approval of the Contract, the Federal Government continues to have no obligations or liabilities to the Contractor. The Contractor further agrees to include this clause in each subcontract financed in whole or in part with Federal assistance provided by the FTA.

#### **58. False or Fraudulent Statements and Claims**

The Contractor recognizes that the requirements of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. §§ 3801 et seq. and USDOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its actions pertaining to the Project. Accordingly, by signing the Contract, the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, or it may make pertaining to the Contract. In addition to other penalties that may be applicable, the Contractor also acknowledges that if it makes a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986, as amended, on the Contractor to the extent the Federal Government deems appropriate.

The Contractor also acknowledges that if it makes a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government in connection with an urbanized area formula project financed with Federal assistance authorized by 49 U.S.C. chapter 53, the Government reserves the right to impose on the Contractor the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1), to the extent the Federal Government deems appropriate. The Contractor further agrees to include this clause in each subcontract financed in whole or in part with Federal assistance provided by the FTA.

#### **59. Prevention of Drug and Alcohol Abuse in Transit**

If the Contractor is supporting NJ TRANSIT Bus Operations equipment maintenance, including engine, revenue vehicle, and parts rebuilding and overhaul, it shall establish and implement a drug and alcohol misuse prevention program in compliance with 49 C.F.R. parts 653 and 655

The Contractor shall certify its compliance by completing the Prevention of Drug and Alcohol Abuse in Transit Operations Certification attached hereto in Attachment 1.

## **60. Transition**

In the event that a new Contract has not been awarded prior to the expiration date of this Contract, including any extensions exercised, and the Contracting Officer elects to exercise this Contract transition, the Contractor shall continue the Contract under the same terms, conditions, and pricing until a new Contract can be completely operational. At no time shall this transition period extend more than 365 calendar days beyond the expiration date of this Contract, including any extensions exercised.

## **61. Extension**

If, in the opinion of the Contracting Officer, it is in the best interest of NJ TRANSIT to extend the Contract, the Contractor shall be so notified of the Contracting Officer's intent at least thirty (30) calendar days prior to the expiration date of the existing Contract. The Contractor shall have fifteen (15) calendar days to respond to the Contractor Officer's request to extend the term and period of performance of the Contract. If the Contractor agrees to the extension, all terms and conditions including pricing of the original Contract shall apply unless more favorable terms for NJ TRANSIT have been negotiated.

## **62. Use of Recovered Materials**

The Contractor agrees to provide a preference for those products and services that conserve natural resources, protect the environment, and are energy efficient by complying with and facilitating compliance with Section 6002 of the Resource Conservation and Recovery Act, as amended, 42 U.S.C. § 6962, and U.S. Environmental Protection Agency (U.S. EPA), "Comprehensive Procurement Guideline for Products Containing Recovered Materials," 40 C.F.R. part 247.

## **63. Asset Management Plan**

The Contractor shall provide in electronic format (e.g. CSV file format), for each part delivered, all pertinent information including the manufacturer's part number, serial number, quantity of parts provided, price per part, and the warranty period. The required information shall be included on an electronic Part History Book which shall include Field Modification Instructions (FMIs), as-built configuration validation, as well as any previously identified open items regarding the development of the part.

## **64. Equal Pay Act**

Pursuant to N.J.S.A. 34:11-56.13 and 56.14 (P.L. 2019, c. 9), also known as the Diane B. Allen Equal Pay Act, a contractor entering into a contract to perform "qualifying services" or "public work" for the State, or any agency or instrumentality of the State, shall provide the Commissioner of Labor and Workforce Development a report regarding the compensation and hours worked by employees categorized by gender, race, ethnicity, and job category. N.J.S.A. 34:11-56.14.

Information regarding the Diane B. Allen Equal Pay Act and its requirements may be obtained from the New Jersey Department of Labor and Workforce Development (LWD) web site at: <https://nj.gov/labor/equalpay/equalpay.html>.

Required forms may be obtained from that web site by clicking or going here: [https://nj.gov/labor/forms\\_pdfs/equalpayact/mw563\(6-18\)annualequalpay.pdf](https://nj.gov/labor/forms_pdfs/equalpayact/mw563(6-18)annualequalpay.pdf).

## 65. Attachments and/or Exhibits

The following Attachments and/or Exhibits are incorporated into this Contract:

### Attachment 1:

- Cost proposal
- Non-Collusion Affidavit
- Certification Regarding Debarment, Suspension and Other Responsibility Matters
- Contractors Certification of Eligibility
- Mandatory Equal Employment Opportunity (EEO) Language
- Buy America Certification
- Certification for Contracts, Grants, Loans and Cooperative Agreements
- Affidavit of Compliance/ NJ TRANSIT's Code of Ethics for Vendors
- Prevention of Drug and Alcohol Abuse in Transit Operations Certification
- Ownership Disclosure Form
- Source Disclosure Certification Form (For Service Procurements Only)
- Disclosure of Investment Activities in Iran
- 
- Certification of No Tax Liability or Felony Conviction

### Attachment 2: Specifications

IN WITNESS WHEREOF, the parties have caused this Contract to be executed effective the date set forth above. The representative signing on behalf of the Contractor shall have the authority to contractually bind the Contractor.

**CONTRACTOR**

ATTEST:

Debra L. Moberg  
Signature

Debra L. Moberg  
Typed Name

Notary Public, State of Missouri  
Typed Title

By: [Signature]  
Signature

Jeffrey Baker  
Typed Name

Vice President  
Typed Title

**NEW JERSEY TRANSIT CORPORATION**

ATTEST:

[Signature]  
Signature

By: Marc A McClellan  
Signature

This Contract has been reviewed and approved as to form by the Office of the Attorney General of New Jersey.

Matthew J. Platkin  
Acting Attorney General of New Jersey

By: [Signature]  
Deputy Attorney General

Date: 3/29/22