

**PARTICIPATING ADDENDUM**  
**for WASHINGTON STATE TRANSIT BUS COOPERATIVE AGREEMENT (Lead Agency)**  
**Contract # 06719**  
**Between Proterra and State of Iowa**

**1.1 Scope**

This participating addendum covers the contract #06719 led by the State of Washington for Heavy Duty Bus for use by state agencies and other governmental entities located in the State of Iowa authorized by State of Iowa statutes to utilize State contracts with the prior approval of the State of Iowa - Chief Procurement Officer. The Contract, as now or hereafter amended, is incorporated into this addendum ("Participating Addendum") as if set forth at length. Issues of interpretation and eligibility for participation are solely within the authority of the State of Iowa - Chief Procurement Officer.

**1.2 Participation**

Use of specific cooperative contracts by agencies, political subdivisions, and other entities (including cooperatives) authorized by State of Iowa statutes to use state contracts are subject to the prior approval of the respective State Chief Procurement Official. Issues of interpretation and eligibility for participation are solely within the authority of the State Chief Procurement Official.

Within the State of Iowa, all state agencies, state facilities, cities, counties or education entities or any entity funded in part with state tax dollars, are eligible purchasers and authorized to purchase Products and Services under the terms of this Participating Addendum in lieu of a separate competitive selection process. (Exception: State of Iowa executive branch agencies must purchase according to applicable system standards and seek approval from the State of Iowa - Office of the Chief Information Officer when required as directed by Iowa Administrative Code before purchasing from this contract.)

**1.3 Order of Precedence**

1. The Special Terms attached hereto as Attachment 2;
2. The State of Iowa Participating Addendum ("PA");
3. The Lead Agency's Master Agreement (includes negotiated Terms & Conditions)
4. The Lead Agency's Solicitation including all Addendums; and
5. Contract Vendor's response to the Solicitation

These documents shall be read to be consistent and complementary. Any conflict among these documents shall be resolved by giving priority to these documents in the order listed above. Contract Vendor terms and conditions that apply to this Master Agreement are only those that are expressly accepted by the Lead State and must be in writing and attached to the Master Agreement as an Exhibit or Attachment. No other terms and conditions shall apply, including terms and conditions listed in the Contract Vendor's response to the Solicitation, or terms listed or referenced on the Contract Vendor's website, in the Contract Vendor quotation/sales order or in similar documents subsequently provided by the Contract Vendor. The solicitation language prevails unless a mutually agreed exception has been negotiated.

**1.4 Terms**

The Agency is agreeing to the terms of the Master Agreement only to the extent the terms are not in conflict with applicable law.

**1.5 Modifications or Additions to the Contract**

**1.5.1 Reports**

The Contractor shall submit quarterly reports to the State of Iowa Contract Administrator showing all sales made quarterly against this Participating Addendum within the State of Iowa. Such reports will show the quantities and dollar volume of purchases by each Purchaser.

**1.5.2 Pricing**

Contractor's stated prices on the WASHINGTON STATE TRANSIT BUS COOPERATIVE AGREEMENT Partners website shall be discounted using the discounts and price lists approved and agreed to with the Contractor's Pricing List. The stated discounts are considered to be the minimum discount offered. The Contractor may offer, within written quotes, a higher discount than the approved minimum discount for volume purchases or for competitive reasons. Minimum discounts listed in pricelist must be held firm for the duration of the Contract's term. Agencies shall be allowed to negotiate further discounting for large volume purchases.

**1.5.3 Invoicing**

For the duration of the contract, all product pricing shown on invoices submitted to the State shall:

- Not fall short of the discounts quoted on the Pricing List.
- Items covered under this contract are FOB Destination and shipping charges are not to be included on any invoice unless the Agency has ordered expedited shipment. For expedited shipment, Agency would submit their order including related shipping charges, which may not exceed the cost of delivery by the carrier.
- Be verifiable against the manufacturer's then current retail price list.

**1.5.4 Administrative Fee**

Without affecting the approved Product or Service prices or discounts specified in the Contract and this Participating Addendum, the State of Iowa shall be entitled to receive a one percent (1.00%) administrative fee on all sales made within the State of Iowa against this agreement. The administration fee due to the State of Iowa shall be paid quarterly by Contractor directly to the Participating State, made payable to the "Iowa Department of Administrative Services".

Send to:

State of Iowa – DAS/Central Procurement  
Attention: DAS – CPFSE COO  
1305 E. Walnut St.  
Des Moines, IA 50319

**1.5.5 Payment Terms**

Payment Terms shall be Net 60 days. Per Iowa Code § 8A.514 the State of Iowa is allowed sixty (60) days to pay an invoice submitted by a Contractor. Payments may be made via a State or political subdivision "Purchasing Card" with no additional charge.

**1.5.6 Terms and Conditions**

The terms and conditions found in Attachment 1 shall govern this Participating Addendum.

**1.6 Orders**

Any Order placed by an entity ordering under this Participating Addendum for a Product and/or Service available from this Master Agreement shall be deemed to be a sale under (and governed by the prices and other terms and conditions) of the Master Agreement unless the parties to the Order agree in writing that another contract or agreement applies to such Order.

**1.7 Primary Contacts**

The primary contact individuals for this Participating Addendum are as follows (or their named successors):

Contractor

Name	Proterra Operating Company, Inc.
Address	1815 Rollins Rd. Burlingame, CA 94010
Telephone	864-438-0000
Fax	864-281-1894
E-mail	cpayne@proterra.com

State of Iowa

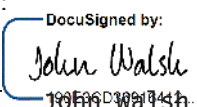

Name	David Kupid
Address	1305 East Walnut Street, Des Moines, IA 50319
Telephone	515-745-2796
E-mail	David.kupid@iowa.gov

The Parties will keep and maintain current at all times a primary point of contact for administration of this Participating Addendum.

**1.8 Entire Agreement**

This Participating Addendum and the Contract (including all amendments and attachments thereto) constitute the entire agreement between the parties concerning the subject matter of this Participating Addendum and replaces any prior oral or written communications between the parties, all of which are excluded. There are no conditions, understandings, agreements, representations or warranties, expressed or implied, that are not specified herein. This Participating Addendum may be modified only by a written document executed by the parties hereto.

IN WITNESS WHEREOF, the parties have executed this Addendum as of the date of execution by both parties below.

Contractor	State of Iowa
By:  John Walsh	By:  David Kupid
Name: John Walsh	Name: David Kupid
Title: CCO	Title: Purchasing Agent III
Date: 10/27/2021	Date: 10/27/2021

**ATTACHMENT 1**  
**ADDITIONAL TERMS AND CONDITIONS**

**1.1 Definitions**

The following words shall be defined as set forth below:

**“Bid Proposal”** means the Contractor’s quote, bid, or proposal submitted in response to the Competitive Bidding Document.

**“Competitive Bidding Document”** means the Request for Proposals, Request for Bids, or Request for Quotation (and any addenda thereto) identified in the Contract that was issued to solicit the goods.

**“Contract”** means the collective documentation memorializing the terms of the agreement between the State and the Contractor identified on the Contract Declarations & Execution Page(s) and includes the signed Contract Declarations & Execution Page(s), the Special Terms, these General Terms for Goods Contracts, any Special Contract Attachments, any signed certifications, and all other attachments to the Contract Declarations & Execution Page (s).

**“Contract Declarations & Execution Page(s)”** means the document that contains basic information about the Contract and incorporates by reference the Contractor’s Bid Proposal in response to the Competitive Bidding Document, these General Terms and Conditions for Goods Contracts, the final pricing documentation for goods, and the Special Terms. However, no objection or amendment by a Contractor to the Competitive Bidding Document requirements shall be incorporated by reference into this Contract unless the State has accepted the Contractor’s objection or amendment in writing.

**“Contractor”** means the provider of the goods under the Contract.

**“Product”** refers to any other products, goods, materials or items that are ordered, developed, produced, delivered, installed, licensed, performed, provided, or otherwise made available, under or through this Contract or Order. The term “Product” includes all related, provided, or supplied Documentation, updates, source code, upgrades, and enhancements.

**“Purchase Instrument”** means the documentation issued by the State to the Contractor for a purchase of goods in accordance with the terms and conditions of the Contract. It may include an identification of the items to be purchased, the delivery date and location, the address where the Contractor should submit the invoices, and any other requirements deemed necessary by the State. Any pre-printed contract terms and conditions included on Contractor’s forms or invoices shall be null and void.

**“Special Contract Attachments”** means any attachment to this Contract indicated on the Contract Declarations & Execution page(s).

**“Special Terms”** means the Contract attachment entitled “Special Terms” that contains terms specific to this Contract, including but not limited to any amendments to these General Terms and Conditions for Services Contracts. If there is a conflict between the General Terms and Conditions for Goods Contracts and the Special Terms, the Special Terms shall prevail.

**“State”** means the State of Iowa, the state agency identified on the Contract Declarations & Execution Page(s), and all state agencies, boards, and commissions, and any political subdivisions making purchases off of this Contract as permitted by the Competitive Bidding Document.

**1.2 Availability of Contract to Other Entities**

All other agencies of the State of Iowa and all political subdivisions of the State of Iowa may make purchases pursuant to the Contract as permitted by the Competitive Bidding Document.

**1.3 Duration of Contract**

The term of the Contract shall begin and end on the dates specified on the Contract Declarations & Execution Page(s), unless extended or terminated earlier in accordance with the applicable terms and conditions. The State may exercise any applicable extension by giving the Contractor written notice of the extension decision at least thirty (30) days prior to the expiration of the initial term or renewal term.

**1.4 Description of Goods**

**1.4.1 Specifications in Competitive Bidding Documents**

The Contractor shall provide goods that comply with the specifications contained in the Competitive Bidding Document identified by bid number in the Contract Declarations & Execution Page(s).

**1.4.2 Product Shipment and Delivery**

All products shall be shipped F.O.B. Destination. Destination shall be the location(s) specified in the Purchase Instrument. Contractor bears all risk of loss during shipment of goods. The Contractor shall properly package goods. The State will not accept noticeably damaged goods. The State reserves the right to inspect the goods at a reasonable time subsequent to delivery in the event the State is unable to perform an adequate inspection of the goods at the time of delivery. If the State discovers damaged or defective goods not readily apparent at the time of delivery, the State shall have the right to return goods at no cost to the State, regardless of when the damage or defect is discovered.

**1.4.3 Non-Exclusive Rights**

The Contract is not exclusive. The State reserve the right to select other contractors to provide goods similar or identical to goods described in the Contract during the term of the Contract.

**1.4.4 No Minimums Guaranteed**

The Contract does not guarantee any minimum level of purchases.

**1.5 Compensation**

**1.5.1 Pricing**

The Contractor will be compensated in accordance with the payment terms outlined in the Contract Payment Terms and Scope of Work described in the Special Terms.

The Contractor shall submit, on the frequency established on the Contract Declarations & Execution Page(s) an invoice for Deliverables rendered in accordance with this Contract. The invoice shall comply with all applicable rules concerning payment of such claims. The Agency shall verify the Contractor's performance of the Deliverables outlined in the invoice before making payment. The Agency shall pay all approved invoices in arrears and in conformance with [Iowa Code 8A.514](#). The Agency may pay in less than sixty (60) days, but an election to pay in less than sixty (60) days shall not act as an implied waiver of Iowa Code § 8A.514.

Unless otherwise agreed in writing by the parties, the Contractor shall not be entitled to receive any other payment or compensation from the State for any Deliverables provided by or on behalf of the Contractor under this Contract. The Contractor shall be solely responsible for paying all costs, expenses and charges it incurs in connection with its performance under this Contract.

**1.5.2 Billings**

The Contractor shall submit, on a regular basis an invoice for goods supplied to the State under the Contract at the billing address specified in the Purchase Instrument. The invoice shall comply with all applicable rules concerning payment of such claims. The State shall verify the Contractor's performance of the services outlined in the invoice before making payment. The State shall pay all approved invoices in arrears and in accordance with applicable provisions of Iowa law.

**1.5.3 Delay of Payment Due to Contractor's Failure**

If the State determines that the Contractor has failed to perform or deliver any service or product as required by the Contract, the Contractor shall not be entitled to any compensation under the Contracts until such service or product is performed or delivered. In this event, the State may withhold that portion of the Contractor's compensation which represents payment for goods that were not delivered.

**1.5.4 Setoff Against Sums Owed by the Contractor**

In the event that the Contractor owes the State any sum under the terms of the Contract, pursuant to any judgment, or pursuant to any law, the State may set off the sum owed to the State against any sum owed by the State to the Contractor in the State's sole discretion, unless otherwise required by law. The Contractor agrees that this provision constitutes proper and timely notice under the law of setoff.

**1.6 Termination**

**1.6.1 Immediate Termination by the State**

The State may terminate this Contract for any of the following reasons effective immediately without advance notice:

**1.6.1.1** In the event the Contractor is required to be certified or licensed as a condition precedent to providing goods, the revocation or loss of such license or certification will result in immediate termination of the Contract

effective as of the date on which the license or certification is no longer in effect;

- 1.6.1.2 The State determines that the actions, or failure to act, of the Contractor, its agents, employees or subcontractors have caused, or reasonably could cause, a person's life, health or safety to be jeopardized;
- 1.6.1.3 The Contractor fails to comply with confidentiality laws or provisions;
- 1.6.1.4 The Contractor furnished any statement, representation or certification in connection with the Contract or the bidding process which is materially false, deceptive, incorrect or incomplete.

**1.6.2 Termination for Cause**

The occurrence of any one or more of the following events shall constitute cause for the State to declare the Contractor in default of its obligations under its Contract.

- 1.6.2.1 The Contractor fails to deliver or has delivered nonconforming goods or fails to perform, to the State's satisfaction, any material requirement of its Contract or is in violation of a material provision of the Contract, including, but without limitation, the express warranties made by the Contractor;
- 1.6.2.2 The State determines that satisfactory performance of its Contract is substantially endangered or that a default is likely to occur;
- 1.6.2.3 The Contractor fails to make substantial and timely progress toward performance of the Base and/or Subsequent Contracts;
- 1.6.2.4 The Contractor becomes subject to any bankruptcy or insolvency proceeding under bankruptcy laws; the Contractor terminates or suspends its business; or the State reasonably believes that the Contractor has become insolvent or unable to pay its obligations as they accrue consistent with applicable federal or state law;
- 1.6.2.5 The Contractor has failed to comply with applicable federal, state and local laws, rules, ordinances, regulations and orders when performing within the scope of the Contract;
- 1.6.2.6 The Contractor has engaged in conduct that has or may expose the State or the State to liability, as determined in the State's sole discretion; or
- 1.6.2.7 The Contractor has infringed any patent, trademark, copyright, trade dress or any other intellectual property rights of the State, the State, or a third party.

**1.6.3 Notice of Default**

If there is a default event caused by the Contractor, the State shall provide written notice to the Contractor requesting that the breach or noncompliance be remedied

within the period of time specified in the State's written notice to the Contractor. If the breach or noncompliance is not remedied by the date of the written notice, the State may:

- 1.6.3.1** Immediately terminate its Contract without additional written notice; and/or,
- 1.6.3.2** Procure substitute goods from another source and charge the difference between the current contract and the substitute contract to the defaulting Contractor; and/or,
- 1.6.3.3** Enforce the terms and conditions of the Contract and seek any legal or equitable remedies.

**1.6.4 Termination Upon Notice**

Following 30 days' written notice, the State may terminate its Contract in whole or in part without the payment of any penalty or incurring any further obligation to the Contractor. Following termination upon notice, the Contractor shall be entitled to compensation, upon submission of invoices and proper proof of claim, for goods provided under the Contract to the State up to and including the date of termination.

**1.6.5 Termination Due to Lack of Funds or Change in Law**

The State shall have the right to terminate its Contract without penalty by giving 30 days' written notice to the Contractor as a result of any of the following:

- 1.6.5.1** Adequate funds are not appropriated or granted to allow the State to operate as required and to fulfill its obligations under the Contract;
- 1.6.5.2** Funds are de-appropriated or not allocated or if funds needed by the State, at the State's sole discretion, are insufficient for any reason;
- 1.6.5.3** The State's authorization to operate is withdrawn or there is a material alteration in the programs administered by the State;
- 1.6.5.4** The State's duties are substantially modified.

**1.6.6 Remedies of the Contractor in Event of Termination by the State**

In the event of termination of the Contract for any reason by the State, the State shall pay only those amounts, if any, due and owing to the Contractor for goods actually rendered up to and including the date of termination of the Contract and for which the State is obligated to pay pursuant to its Contract or Purchase Instrument. Payment will be made only upon submission of invoices and federal or state law to the extent allowed by applicable federal or state law including proper proof of the Contractor's claim. This provision in no way limits the remedies available to the State under the Contract in the event of termination. The State shall not be liable for any of the following costs:

- 1.6.6.1** The payment of unemployment compensation to the Contractor's employees;
- 1.6.6.2** The payment of workers' compensation claims, which occur during the Contract or extend beyond the date on which the Contract terminates;
- 1.6.6.3** Any costs incurred by the Contractor in its performance of the Contract, including, but not limited to, startup costs, overhead or other costs associated with the performance of the Contract;
- 1.6.6.4** Any taxes that may be owed by the Contractor in connection with the performance of the Contract, including, but not limited to, sales taxes, excise taxes, use taxes, income taxes or property taxes.

**1.6.7 The Contractor's Termination Duties**

Upon receipt of notice of termination or upon request of the State, the Contractor shall:

- 1.6.7.1** Cease work under the Contract and take all necessary or appropriate steps to limit disbursements and minimize costs, and furnish a report within thirty (30) days of the date of notice of termination, describing the status of all work under the Contract, including, without limitation, results accomplished, conclusions resulting therefrom, and any other matters the State may require.
- 1.6.7.2** Immediately cease using and return to the State, any personal property or materials, whether tangible or intangible, provided by the State to the Contractor.
- 1.6.7.3** Comply with the State's instructions for the timely transfer of any active files and work product produced by the Contractor under the Contract.
- 1.6.7.4** Cooperate in good faith with the State, its employees, agents and contractors during the transition period between the notification of termination and the substitution of any replacement Contractor.
- 1.6.7.5** Immediately return to the State any payments made by the State for goods that were not delivered or rendered by the Contractor.

**1.7 Confidential Information**

**1.7.1 Access to Confidential Data**

The Contractor's employees, agents, and subcontractors may have access to confidential data maintained by the State to the extent necessary to carry out its responsibilities under the Contract. The Contractor shall presume that all information received pursuant to the Contract is confidential unless otherwise designated by the State. If it is reasonably likely the Contractor will have access to the State's confidential information:

- 1.7.1.1** The Contractor shall provide to the State a written description of its policies and procedures to safeguard confidential information;
- 1.7.1.2** Policies of confidentiality shall address, as appropriate, information conveyed in verbal, written, and electronic formats;
- 1.7.1.3** The Contractor must designate one individual who shall remain the responsible authority in charge of all data collected, used, or disseminated by the Contractor in connection with the performance of the Contract; and
- 1.7.1.4** The Contractor shall provide adequate supervision and training to its agents, employees and subcontractors to ensure compliance with the terms of the Contract.

**1.7.2 Ownership**

The private or confidential data shall remain the property of the State at all times.

**1.7.3 No Dissemination of Confidential Data**

No confidential data collected, maintained, or used in the course of performance of the Contract shall be disseminated except as authorized by law and with the written consent of the State, either during the period of the Contract or thereafter. Any data supplied to or created by the Contractor shall be considered the property of the State. The Contractor must return any and all data collected, maintained, created or used in the course of the performance of the Contract, in whatever form it is maintained, promptly at the request of the State.

**1.7.4 Subpoena**

In the event that a subpoena or other legal process is served upon the Contractor for records containing confidential information, the Contractor shall promptly notify the State and cooperate with the State or the State in any lawful effort to protect the confidential information.

**1.7.5 Reporting of Unauthorized Disclosure**

The Contractor shall immediately report to the State any unauthorized disclosure of confidential information.

- 1.7.6** If Contractor requests confidential treatment with respect to any information or material contained within its Bid Proposal and if a judicial or administrative proceeding is initiated to compel the release of such material, Contractor shall, at its sole expense, appear in the proceeding or otherwise obtain an order restraining the release of such material from a court of competent jurisdiction. Agency may release the information or material with or without advance notice to Contractor if no judicial or administrative proceeding is initiated and Agency determines the information or material is not confidential under Iowa or other applicable law, or if Contractor failed to properly request confidential treatment under the RFP, or if Contractor rescinds its request for confidential treatment.

**1.7.7 Survives Termination**

The Contractor's confidentiality obligation under the Contract shall survive termination of the Contracts.

## **1.8 Indemnification**

**1.8.1** The Contractor agrees to indemnify and hold harmless the State of Iowa, the States, its officers, employees, volunteers and agents (collectively the indemnified parties) from any and all costs, expenses, losses, claims, damages, liabilities, settlements and judgments, including reasonable value of the time spent by the Attorney General's Office, and the costs and expenses and reasonable attorneys' fees of other counsel required to defend the indemnified parties, related to or arising from:

**1.8.1.1** Any breach of the Contract;

**1.8.1.2** Any negligent, intentional or wrongful act or omission of the Contractor or any employee, agent or subcontractor utilized or employed by the Contractor;

**1.8.1.3** Any failure of goods to comply with applicable specifications, warranties, and certifications under the Contract;

**1.8.1.4** The negligence or fault of the contractor in design, testing, development, manufacture, or otherwise with respect to the goods or any parts thereof provided under the Contract;

**1.8.1.5** Claims, demands, or lawsuits that, with respect to the goods or any parts thereof, allege product liability, strict product liability, or any variation thereof;

**1.8.1.6** The Contractor's performance or attempted performance of the Contract, including any employee, agent or subcontractor utilized or employed by the Contractor;

**1.8.1.7** Any failure by the Contractor to comply with the Compliance with the Law provision of the Contract;

**1.8.1.8** Any failure by the Contractor to make all reports, payments and withholdings required by federal and state law with respect to social security, employee income and other taxes, fees or costs required by the Contractor to conduct business in the State of Iowa or United States;

**1.8.1.9** Any infringement of any copyright, trademark, patent, trade dress, or other intellectual property right; or

**1.8.1.10** Any failure by the Contractor to adhere to the confidentiality provisions of the Contract.

## **1.8.2 Survives Termination**

The indemnification obligation of the Contractor shall survive termination of the Contract.

## **1.9 Insurance**

### **1.9.1 Insurance Requirements**

The Contractor, and any subcontractor, shall maintain in full force and effect, with insurance companies licensed by the State of Iowa, at the Contractor's expense, insurance covering its work during the entire term of this Contract and any extensions or renewals. The Contractor's insurance shall, among other things, be occurrence based and shall insure against any loss or damage resulting from or related to the Contractor's performance of this Contract regardless of the date the claim is filed or expiration of the policy. The State of Iowa and the purchasing agency shall be named as additional insureds or loss payees, or the Contractor shall obtain an endorsement to the same effect, as applicable.

### **1.9.2 Types and Amounts of Insurance Required**

Unless otherwise requested by the State in writing, the Contractor shall cause to be issued insurance coverages insuring the Contractor and/or subcontractors against all general liabilities, product liability, personal injury, property damage, and (where applicable) professional liability in the amount specified on the Contract Declarations and Execution page for each occurrence. In addition, the Contractor shall ensure it has any necessary workers' compensation and employer liability insurance as required by Iowa law.

### **1.9.3 Certificates of Coverage**

All insurance policies required by this Contract shall remain in full force and effect during the entire term of this Contract and any extensions or renewals thereof and shall not be canceled or amended except with the advance written approval of the State. The Contractor shall submit certificates of the insurance, which indicate coverage and notice provisions as required by this Contract, to the State upon execution of this Contract. The certificates shall be subject to approval by the State. The insurer shall state in the certificate that no cancellation of the insurance will be made without at least thirty (30) days' prior written notice to the State. Approval of the insurance certificates by the State shall not relieve the Contractor of any obligation under this Contract.

### **1.9.4 Waiver of Subrogation Rights**

The Contractor shall obtain a waiver of any subrogation rights that any of its insurance carriers might have against the State. The waiver of subrogation rights shall be indicated on the certificates of insurance coverage supplied to the State.

## **1.10 Performance Bond**

When applicable, the Contractor shall post a performance bond in an amount equal to the amount shown on the Contract Declarations & Execution Page(s) and provide a copy of the bond to the State within (10) days of execution of this Contract. The Contractor shall pay the cost of the bond. In the event that the Contractor or any subcontractor or any officer, director, employee or agent of the Contractor or any subcontractor or any parent or subsidiary corporation of the Contractor or any subcontractor fails to fully and faithfully perform any material requirement of this Contract, including without limitation the Contractor's obligation to indemnify the State and pay damages to the State, the performance bond shall be forfeited to the State. The bond shall

be in a form customarily used in the Contractor's industry and shall be written by a surety authorized to do business in Iowa and that is acceptable to the State. The bond shall be in effect at all times during the term of this Contract and any extensions or renewals thereof and for one (1) year following the conclusion of the Contract. The Contractor warrants that it will maintain the required performance bond coverage as described herein without any lapse in coverage. A lapse of the bond will be a material breach of the Contract and shall be considered cause for the State to declare the Contractor in default under this Contract.

## **1.11 Warranties**

### **1.11.1 Construction of Warranties Expressed in the Contract with Warranties Implied by Law**

All warranties made by the Contractor and/or subcontractors in all provisions of the Contract and the Contractor's Bid Proposal, whether or not the Contract specifically denominates the Contractor's and/or subcontractors' promise as a warranty or whether the warranty is created only by the Contractor's affirmation or promise, or is created by a description of the materials, goods to be provided, or by provision of samples to the State shall not be construed as limiting or negating any warranty provided by law, including without limitation, warranties which arise through course of dealing or usage of trade, the warranty of merchantability, and the warranty of fitness for a particular purpose. The warranties expressed in the Contract are intended to modify the warranties implied by law only to the extent that they expand the warranties applicable to the goods provided by the Contractor. The provisions of this Section apply during the term of the Contract and any extensions or renewals thereof.

### **1.11.2 Warranty – Nonconforming Goods**

All goods delivered by Contractor to the State shall be free from any defects in design, material, or workmanship. If any goods offered by the Contractor are found to be defective in material or workmanship, or do not conform to Contractor's warranty, the State shall have the option of returning, repairing, or replacing the defective goods at Contractor's expense. Payment for goods shall not constitute acceptance. Acceptance by the State shall not relieve the Contractor of its warranty or any other obligation under the Contract.

### **1.11.3 Compliance with Federal Safety Acts**

Contractor warrants and guarantees to the State that the goods provided under the Contract are in compliance with Sections 5 and 12 of the Federal Trade Commission Act; the Fair Packaging and Labeling Act; the Federal Food, Drug, and Cosmetic Act; the Consumer Product Safety Act; the Federal Environmental Pesticide Control Act; the Federal Hazardous Substances Act; the Fair Labor Standards Act; the Wool Products Labeling Act; the Flammable Fabrics Act; the Occupational Safety and Health Act; the Office of Management and Budget 2 CFR part 200 and the Anti-Kickback Act of 1986.

### **1.11.4 Concepts, Materials, and Goods Produced**

Contractor represents and warrants that all the concepts, materials, and goods produced, or provided to the State pursuant to the terms of the Contract shall be wholly original

with the Contractor or that the Contractor has secured all applicable interests, rights, licenses, permits or other intellectual property rights in such concepts, materials, and goods. The Contractor represents and warrants that the concepts, materials, and goods and the State's use of same and the exercise by the State of the rights granted by the Contract shall not infringe upon any other work, other than material provided by the Contract to the Contractor to be used as a basis for such materials, or violate the rights of publicity or privacy of, or constitute a libel or slander against, any person, firm or corporation and that the concepts, materials and works will not infringe upon the copyright, trademark, trade name, trade dress patent, literary, dramatic, statutory, common law or any other rights of any person, firm or corporation or other entity. The Contractor represents and warrants that it is the owner of or otherwise has the right to use and distribute the goods contemplated by the Contract.

**1.11.5 Conformity with Contractual Requirements**

The Contractor represents and warrants that the goods provided in accordance with the Contract will appear and operate in conformance with the terms and conditions of the Contract.

**1.11.6 Authority to Enter into Contract**

The Contractor represents and warrants that it has full authority to enter into the Contract and that it has not granted and will not grant any right or interest to any person or entity that might derogate, encumber or interfere with the rights granted to the State.

**1.11.7 Obligations Owed to Third Parties**

The Contractor represents and warrants that all obligations owed to third parties with respect to the activities contemplated to be undertaken by the Contractor pursuant to the Contract are or will be fully satisfied by the Contractor so that the State will not have any obligations with respect thereto.

**1.11.8 Title to Property**

The Contractor represents and warrants that title to any property assigned, conveyed or licensed to the State is good and that transfer of title or license to the State is rightful and that all property shall be delivered free of any security interest or other lien or encumbrance.

**1.11.9 Industry Standards**

The Contractor represents and expressly warrants that all aspects of the goods provided or used by it shall at a minimum conform to the standards in the Contractor's industry. This requirement shall be in addition to any express warranties, representations, and specifications included in the Contract, which shall take precedence.

**1.11.10 Data Processing Warranty**

Contractor warrants that each item of hardware, software, firmware, or a custom designed and developed software program or a system which is developed or delivered under, or used by Contractor in connection with its performance of, this Contract, shall accurately process data, including, but not limited to, calculating, comparing and sequencing, from, into, between and among the nineteenth, twentieth and twenty-first

centuries, including leap year calculations, when used in accordance with the item's documentation provided by Contractor.

**1.11.10.1** If the items to be developed and delivered under this Contract are to perform as a system with other hardware and/or software, then the warranty shall apply to the items developed and delivered as the items process, transfer, sequence data, or otherwise interact with other components or parts of the system. This warranty shall survive the term of this Contract. The remedies available to the State for a breach of warranty includes, but is not limited to, repair or replacement of non-compliant items or systems.

**1.11.10.2** Nothing in this warranty shall be construed to limit any rights or remedies of the State under this Contract with respect to defects in the items other than the Data Processing Warranty.

## **1.12 Product Recall**

In the event that any of the goods are found by the Contractor, the State, or any governmental agency or court having jurisdiction to contain a defect, serious quality or performance deficiency, or not to be in compliance with any standard or requirement so as to require or make advisable that such goods be reworked or recalled, the Contractor will promptly communicate all relevant facts to the State and undertake all corrective actions, including those required to meet all obligations imposed by laws, regulations, or orders, and shall file all necessary papers, corrective action programs, and other related documents, provided that nothing contained in this section shall preclude the State from taking such action as may be required of it under any such law or regulation. The Contractor shall perform all necessary repairs or modifications at its sole expense except to any extent that the Contractor and the State shall agree to the performance of such repairs by the State upon mutually acceptable terms.

## **1.13 Contract Administration**

### **1.13.1 Incorporation of Documents**

The parties acknowledge that the Contract consists of these contract terms and conditions as well as the Competitive Bidding Document and the Bid Proposal. The Competitive Bidding Document and the Contractor's Bid Proposal are incorporated into the Contract by reference, except that no objection or amendment by a Contractor to the Competitive Bidding Document requirements shall be incorporated by reference into the Contract unless the State has explicitly accepted the Contractor's objection or amendment in writing. If there is a conflict between the Contract, the Competitive Bidding Document and the Bid Proposal, the conflict shall be resolved according to the following priority, ranked in descending order: (1) the Contract; (2) the Competitive Bidding Document; (3) the Bid Proposal.

**1.13.2 Intent of References to Competitive Bidding Documents**

The references to the parties' obligations, which are contained in this document, are intended to supplement or clarify the obligations as stated in the Competitive Bidding Document and the Contractor's Bid Proposal. The failure of the parties to make reference to the terms of the Competitive Bidding Document or the Contractor's Bid Proposal in this document shall not be construed as creating a conflict and will not relieve the Contractor of the contractual obligations imposed by the terms of the Competitive Bidding Document and the Contractor's Bid Proposal. The contractual obligations of the State cannot be implied from the Contractor's Bid Proposal.

**1.13.3 Compliance with the Law; Nondiscrimination in Employment**

The Contractor, its employees, agents, and subcontractors shall not engage in discriminatory employment practices which are forbidden by federal or state law, executive orders, and rules of the Iowa Department of Administrative Services. The Contractor, its employees, agents, and subcontractors shall comply with all applicable federal, state, and local laws, rules, ordinances, regulations, orders when performing under the Contract, including without limitation, all laws applicable to the prevention of discrimination in employment (e.g., Iowa Code chapter 216 and section 19B.7) and the use of targeted small businesses as subcontractors and suppliers.

Upon the State's written request, the Contractor shall submit to the State a copy of its affirmative action plan, containing goals and time specifications, and accessibility plans and policies as required under Iowa Administrative Code chapter 11—121.

The Contractor, its employees, agents and subcontractors shall also comply with all federal, state, and local laws, including any permitting and licensure requirements, in carrying out the work performed under this Contract.

In the event Contractor contracts with third parties for the performance of any of the Contractor obligations under this Contract as set forth in section 1.13.8, Contractor shall take such steps as necessary to ensure such third parties are bound by the terms and conditions contained in this section.

Notwithstanding anything in this Contract to the contrary, Contractor's failure to fulfill any requirement set forth in this section shall be regarded as a material breach of this Contract and the State may cancel, terminate, or suspend, in whole or in part, this Contract. The State may further declare Contractor ineligible for future state contracts in accordance with authorized procedures or the Contractor may be subject to other sanctions as provided by law or rule.

**1.13.4 Amendments**

The Contract may be amended in writing from time to time by mutual consent of the parties. All amendments to the Contract must be in writing and fully executed by the parties.

**1.13.5 Third-Party Beneficiaries**

There are no third-party beneficiaries to the Contract. The Contract is intended only to benefit the State and the Contractor.

**1.13.6 Choice of Law and Forum**

The laws of the State of Iowa shall govern and determine all matters arising out of or in connection with this Contract without regard to the choice of law provisions of Iowa law. Any and all litigation commenced in connection with this Contract shall solely be brought in the District Court for the State of Iowa in the county where venue is appropriate. Alternatively, if venue is proper in federal court, suit shall solely be brought in the United States District Court for the Northern or Southern District of Iowa, wherever jurisdiction is appropriate. Nothing contained in this provision shall be construed as waiving any immunity to suit or liability, including without limitation sovereign immunity or Eleventh Amendment immunity, which may be available to the State.

**1.13.7 Assignment and Delegation**

The Contract may not be assigned, transferred or conveyed in whole or in part without the prior written consent of the State. For the purpose of construing this clause, a transfer of a controlling interest in the Contractor shall be considered an assignment.

**1.13.8 Use of Third Parties**

The State acknowledges that the Contractor may contract with third parties for the performance of any of the Contractor obligations under the Contract. All subcontracts shall be subject to prior approval by the State. The Contractor may enter into these contracts to complete the project provided that the Contractor remains responsible for all goods delivered under the Contract and for the acts and omissions of all subcontractors, agents, and employees. All restrictions, obligations and responsibilities of the Contractor under the Contract shall also apply to the subcontractors. Any contract with a subcontractor must also preserve the rights of the State. The State shall have the right to request the removal of a subcontractor from the Contract for good cause.

**1.13.9 Integration**

The Contract represents the entire Contract between the parties. The parties shall not rely on any representation that may have been made which is not included in the Contract.

**1.13.10 Headings or Captions**

The paragraph headings or captions used in the Contract are for identification purposes only and do not limit or construe the contents of the paragraphs.

**1.13.11 Not a Joint Venture**

Nothing in the Contract shall be construed as creating or constituting the relationship of a partnership, joint venture, (or other association of any kind or agent and principal relationship) between the parties thereto. Each party shall be deemed to be an independent contractor contracting for goods and acting toward the mutual benefits expected to be derived herefrom. No party has the authority to enter into any contract or create an obligation or liability on behalf of, in the name of, or binding upon another party to the Contract.

**1.13.12 Joint and Several Liability**

If the Contractor is a joint entity, consisting of more than one individual, partnership, corporation or other business organization, all such entities shall be jointly and severally liable for carrying out the activities and obligations of the Contract, and for any default of activities and obligations.

**1.13.13 Supersedes Former Contracts or Agreements**

Unless otherwise specified in the Contract, this Contract supersedes all prior contracts or agreements between the State and the Contractor for the goods provided in connection with the Contract.

**1.13.14 Waiver**

Except as specifically provided for in a waiver signed by duly authorized representatives of the State and the Contractor, failure by either party at any time to require performance by the other party or to claim a breach of any provision of the Contract shall not be construed as affecting any subsequent right to require performance or to claim a breach.

**1.13.15 Notice**

Any and all notices, designations, consents, offers, acceptances or any other communication provided for herein shall be given in writing by a reliable carrier which shall be addressed to the person who signed the Contract on behalf of the party at the address identified in the Contract Declarations & Execution Page(s) at the address specified on the forms. Each such notice shall be deemed to have been provided:

**1.13.15.1** At the time it is actually received; or,

**1.13.15.2** Within one day in the case of overnight hand delivery, courier or services such as Federal Express with guaranteed next day delivery; or,

**1.13.15.3** Within five (5) days after it is deposited in the U.S. Mail in the case of registered U.S. Mail. From time to time, the parties may change the name and address of a party designated to receive notice. Such change of the designated person shall be in writing to the other party and as provided herein.

**1.13.16 Cumulative Rights**

The various rights, powers, options, elections and remedies of any party provided in the Contract shall be construed as cumulative and not one of them is exclusive of the others or exclusive of any rights, remedies or priorities allowed either party by law, and shall in no way affect or impair the right of any party to pursue any other equitable or legal remedy to which any party may be entitled as long as any default remains in any way unremedied, unsatisfied or undischarged.

**1.13.17 Severability**

If any provision of the Contract is determined by a court of competent jurisdiction to be invalid or unenforceable, such determination shall not affect the validity or enforceability of any other part or provision of the Contract. Further, if any provision of the Contract is determined to be unenforceable by virtue of its scope, but may be

made enforceable by a limitation of the provision, the provision shall be deemed to be amended to the minimum extent necessary to render it enforceable under the applicable law.

**1.13.18 Time is of the Essence**

Time is of the essence with respect to the performance of the terms of the Contract. Contractor shall ensure that all personnel providing goods to the State are responsive to the State's requirements and requests in all respects.

**1.13.19 Authorization**

Contractor represents and warrants that:

**1.13.19.1** It has the right, power and authority to enter into and perform its obligations under the Contract.

**1.13.19.2** It has taken all requisite action (corporate, statutory or otherwise) to approve execution, delivery and performance of the Contract, and the Contract constitutes a legal, valid and binding obligation upon itself in accordance with its terms.

**1.13.20 Successors in Interest**

All the terms, provisions, and conditions of the Contract shall be binding upon and inure to the benefit of the parties hereto and their respective successors, assigns and legal representatives.

**1.13.21 Record Retention and Access**

The Contractor shall maintain books, records and documents which sufficiently and properly document and calculate all charges billed to the State throughout the term of the Contract for a period of at least five (5) years following the date of final payment or completion of any required audit, whichever is later. Records to be maintained include both financial records and service records. The Contractor shall permit the Auditor of the State of Iowa or any authorized representative of the State and where federal funds are involved, the Comptroller General of the United States or any other authorized representative of the United States government, to access and examine, audit, excerpt and transcribe any directly pertinent books, documents, papers, electronic or optically stored and created records or other records of the Contractor relating to orders, invoices or payments or any other documentation or materials pertaining to the Contract, wherever such records may be located. The Contractor shall not impose a charge for audit or examination of the Contractor's books and records. If an audit discloses incorrect billings or improprieties, the State reserves the right to charge the Contractor for the cost of the audit and appropriate reimbursement. Evidence of criminal conduct will be turned over to the proper authorities.

**1.13.22 Solicitation**

The Contractor warrants that no person or selling agency (except bona fide employees or selling agents maintained for the purpose of securing business) has been employed or retained to solicit and secure the Contract upon an agreement or understanding for commission, percentage, brokerage or contingency.

**1.13.23 Immunity from Liability**

Every person who is a party to the Contract is hereby notified and agrees that the State, and all of its employees, agents, successors, and assigns are immune from liability and suit for or from Contractor's and/or subcontractors' activities involving third parties and arising from the Contract.

**1.13.24 Public Records**

The laws of the State of Iowa require procurement records to be made public unless otherwise provided by law.

**1.13.25 Clean Air and Water Certification**

Contractor certifies that none of the facilities it uses to produce goods provided under the Contract are on the Environmental Protection Agency (EPA) List of Violating Facilities. Contractor will immediately notify the State of the receipt of any communication indicating that any of Contractor's facilities are under consideration to be listed on the EPA List of Violating Facilities

**1.13.26 Debarred, Suspended, and Ineligible Status**

Contractor certifies that the Contractor and/or any of its subcontractors have not been debarred, suspended, or declared ineligible by any agency of the State of Iowa or as defined in the Federal Acquisition Regulation (FAR) 48 C.F.R. Ch.1 Subpart 9.4. Contractor will immediately notify the State if Contractor is debarred by the State or placed on the Consolidated List of Debarred, Suspended, and Ineligible Contractors by a federal entity.

**1.13.27 Use of Name or Intellectual Property**

Contractor agrees it will not use the name or any intellectual property, including but not limited to, any State trademarks or logos in any manner, including commercial advertising or as a business reference, without the expressed prior written consent of the specific State agency involved.

**1.13.28 Taxes**

The State is exempt from Federal excise taxes, and no payment will be made for any taxes levied on Contractor's employee's wages. The State is exempt from State and local sales and use taxes on the Deliverables. [State of Iowa Tax Exempt Letter](#)

**1.13.29 Certification Regarding Sales and Use Tax**

By executing the Contract the Contractor certifies it is either (a) registered with the Iowa Department of Revenue, collects, and remits Iowa sales and use taxes as required by the Iowa Code chapter 423; or (b) not a "retailer" or a "retailer maintaining a place of business in this state" as those terms are defined in Iowa Code subsections 423.1(47) & (48). The Contractor also acknowledges that the State may declare the Contract void if the above certification is false. The Contractor also

understands that fraudulent certification may result in the State or its representative filing for damages for breach of contract.

**1.13.30 Contractor Assignments of Rights -Antitrust Claims**

In consideration of the mutual promises contained herein, Contractor, through its duly authorized agent, conveys, sells, assigns, and transfers to the State of Iowa all rights, title, and interest in and to all causes of action it may now or hereafter acquire under the anti-trust laws of the United States and the State of Iowa relating to the subject of the Contract.

**1.13.31 Delays or Impossibility of Performance**

Neither party shall be in default under the Contract if performance is prevented, delayed or made impossible to the extent that such prevention, delay, or impossibility is caused by a "force majeure." The term "force majeure" as used in this Contract includes an event that no human foresight could anticipate or which if anticipated, is incapable of being avoided. Circumstances must be abnormal and unforeseeable, so that the consequences could not have been avoided through the exercise of all due care, such as acts of God, war, civil disturbance and other similar causes. The delay or impossibility of performance must be beyond the control and without the fault or negligence of the parties. "Force majeure" does not include: financial difficulties of the Contractor or any parent, subsidiary, affiliated or associated company of Contractor; claims or court orders that restrict Contractor's ability to deliver the Deliverables contemplated by this Contract; strikes; labor unrest; or supply chain disruptions. If delay results from a subcontractor's conduct, negligence or failure to perform, the Contractor shall not be excused from compliance with the terms and obligations of the Contract unless the subcontractor or supplier is prevented from timely performance by a "force majeure" as defined in this Contract. If a "force majeure" delays or prevents the Contractor's performance, the Contractor shall immediately use its best efforts to directly provide alternate, and to the extent possible, comparable performance. Comparability of performance and the possibility of comparable performance shall be determined solely by the Agency. The party seeking to exercise this provision and not perform or delay performance pursuant to a "force majeure" shall immediately notify the other party of the occurrence and reason for the delay. The parties shall make every effort to minimize the time of nonperformance and the scope of work not being performed due to the unforeseen events. Dates by which performance obligations are scheduled to be met will be extended only for a period of time equal to the time lost due to any delay so caused.

**1.13.32 Obligations Beyond Contract Term**

The Contract shall remain in full force and effect to the end of the specified term or until terminated or canceled pursuant to the Contract. All obligations of the Contractor incurred or existing under the Contract as of the date of expiration, termination or cancellation will survive the termination, expiration or conclusion of the Contract.

**1.13.33 Counterparts**

The parties agree that the Contract has been or may be executed in several counterparts, each of which shall be deemed an original and all such counterparts shall together constitute one and the same instrument.

**1.13.34 Further Assurances and Corrective Instruments**

The parties agree that they will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements hereto and such further instruments as may reasonably be required for carrying out the expressed intention of the Contract.

## **Attachment 2 Special Terms**

1. Precedence. The Special Terms herein take precedence over all other terms here to the extent they conflict. These Special Terms consist of:

- a. Special Terms contained herein.
- b. If this purchase uses FTA funds, the Provisions Applicable to FTA Funded Purchases in Exhibit 1 shall apply.
- c. Option Tracker set forth as Exhibit 2 hereto
- d. Customer Technical Specifications set forth as Exhibit 3 hereto.
- e. Warranty Provisions as set forth as Exhibit 4 hereto.

In case of any conflict among these documents, the order of precedence shall be in the same order set forth in paragraph (a) above.

### 2. FEES, PAYMENT, TAXES

- a. Fees. State of Iowa ("Customer") shall pay, and Contractor shall accept:

\_\_\_\_\_ Dollars (\$\_\_\_\_\_) per Bus ("Bus Unit Price"), for all \_\_\_( ) Buses initially purchased under this Agreement, for a total contract price of \_\_\_\_\_ Dollars (\$\_\_\_\_\_), BUT SPECIFICALLY EXCLUDING SALES TAX ("Total Price"). It is understood and agreed by Customer and Contractor that Contractor will be responsible for the collection (as an addition to the aforementioned total contract price) and remittance of sales tax, unless Customer provides exemption or similar documentation. Labor Rates for any work chargeable to Customer are based on the hourly rate of a Senior Field Service Technician, at \$145.00 per hour, subject to annual increase.

- b. Battery Replacement Payment and Payment for Contractor Extended Bus Warranty. Customer agrees that it will make payment for the Battery Replacement Program, the Contractor Extended Bus Warranty and/or any Replacement Plans or Extended Warranties (each as set forth in the applicable attachments hereto) with respect to each applicable Bus upon receiving an invoice from Contractor after Customer requests any such program or warranty.
- c. Customer shall be charged and shall make payments for spare parts and/or equipment at the unit prices itemized in the price schedule to be delivered by Contractor within sixty 60 calendar days after the delivery of said spare parts and/or equipment and receipt of a proper invoice.
- d. Unless otherwise set forth herein, Customer shall make all payments to Contractor no later than sixty (60) calendar days after receipt of an invoice from Contractor. Contractor may charge interest for late payment if payment is delayed after the payment due dates set forth in this Section 3. Interest will be charged at a rate not to exceed 1%.
- e. All payments due under this Agreement in excess of Twenty-Five Thousand Dollars (\$25,000) shall be made by wire unless otherwise mutually agreed in writing to Contractor Operating Company, Inc. pursuant to the following wiring instructions:

Bank of America Merrill Lynch  
Proterra Lockbox 741340  
PO Box 741340  
Los Angeles, CA 90074-1340  
ABA Number: 1210-0035-8  
Beneficiary Account Number: 1416800802  
SWIFT: BOFAUS3N  
Beneficiary Address: 1 Whitlee Ct., Greenville, SC 29607

- f. Unless otherwise provided in this Agreement, Contractor shall pay all federal, state and local taxes, and duties applicable to and assessable against any work, goods, services, processes and operations incidental to or involved in the Agreement, excluding sales taxes associated with the sale of the items set forth herein to Customer (i.e., for the avoidance of doubt, Customer shall pay any and all sales taxes associated with or resulting from purchases pursuant to this Agreement).

### 3. ADDITIONAL EQUIPMENT, SERVICES AND DELIVERABLES

The Total Price includes provision of driver manuals, maintenance and repair manuals, and parts manuals, and training as described in Section 10 hereof. Unless otherwise selected on the Option Tracker, the following items are not included in the Total Price and will be charged separately if purchased by Customer:

- Diagnostic laptop, software and tools
- Spare parts
- Training beyond that agreed in Section 10 hereof
- Printed documentation (such as driver manuals, maintenance and repair manuals, and parts manuals) beyond that described in Section 10 hereof
- Design, installation and management of charging stations

### 4. PROJECT MEETINGS; FINAL BUS DESIGN AND FINAL PRODUCTION SCHEDULE

- a. Contractor and Customer shall engage in mutually agreeable project meetings. Subject to Customer's prompt responses to Contractor's requests for information or feedback regarding technical specifications, Contractor shall provide Customer a detailed project schedule within four (4) weeks of Effective Date. Customer's failure to provide requested feedback or input within requested timeframes will impact the final project schedule (including build slots).
- b. After final bus configuration and specification options are determined, Contractor's Engineering Team will design the Bus and provide such design to Customer for review, along with a proposed final production schedule. Upon Customer approval, this design and schedule shall be deemed the "Final Bus Design" and "Final Production Schedule", each of which shall be incorporated by reference into this Agreement. Contractor shall build each Bus according to the Final Bus Design, and Customer shall accept each Bus built to Final Bus Design. The Final Bus Design shall supersede both the Option Tracker and Customer Technical Specification (if attached hereto), to the extent there are differences between such documents.

### 5. CHANGE ORDERS, LATE CHANGES

Unless there are changes mandated by applicable law, the Parties agree that no changes to the Final Bus Design can be made without a written mutually executed Change Order, the form of which is attached hereto as Attachment 5.

Any changes to the Final Bus Design must follow a strict change management process which includes pre-defined timelines that govern the reasonable time needed to properly design, validate, procure and deploy any Final Bus Design changes. For any and all changes requested by Customer after approval on the Final Bus Design, Contractor shall provide price and schedule adjustments (including adjustments to production build slot, shipping, and delivery) to account for the requested configurations and/or specifications changes. Contractor shall not be obligated to accommodate any requested changes until the parties mutually execute a Change Order covering all changes to the Final Bus Design, and associated price and schedule adjustments. Changes requested by Customer less than twenty-eight weeks from commencement of production (i.e. Station 1) of the first bus ("Late Changes") may not be able to be accommodated without additional charges to compensate Contractor for demobilization, remobilization, supply impacts, storage and handling costs, re-engineering costs, and other costs related to production changes. Any additional charges for Late Changes will be included in the relevant Change Order.

Customer acknowledges and agrees that any changes to fees, Late Change charges, change or delays to production schedule (including alternative build slots), shipment, or delivery, shall not be deemed a breach of this Agreement, affect or toll any warranties provided by Contractor, result in or cause any penalties, damages, claims or liabilities to Contractor, give Customer any termination right, affect or change payment terms (including any progress payments) and/or give Customer the right to reject any shipment or fail any inspection or acceptance test. In addition, notwithstanding anything to the contrary contained herein, Contractor may, in its sole and absolute discretion, utilize subcontractors to implement any mutually agreed upon changes.

#### 6. PRE-DELIVERY BUS TESTING; BUS DELIVERY AND ACCEPTANCE PROCEDURES

- a. Contractor's pre-delivery tests of all Buses shall be performed at Contractor's facility and may be witnessed by Customer's inspector(s), at Customer's discretion.
- b. Contractor agrees to deliver the Buses pursuant to the schedule agreed upon between Contractor and Customer in the pre-production meeting, or as otherwise agreed to by the Parties. Contractor and Customer shall coordinate the actual delivery to ensure Customer's facility is open and staff will be available. Delivery location for the Buses is \_\_\_\_\_. Delivery of Buses shall be determined by signed receipt of Customer's designated agent(s), at point of delivery and may be preceded by a cursory inspection of the Bus to confirm that the delivered Bus(es) is/are the same Bus(es), in the same condition, and including the same configuration, as those inspected and tested during the pre-delivery inspection, and Customer may not apply any criteria for accepting delivery of the Bus(es) that are different from the criteria applied in any pre-delivery test/inspection. Contractor shall provide required documentation for registering the Bus in the State of \_\_\_\_\_ to Customer at the time of delivery. Risk of loss on any Bus remains with Contractor until delivery to Customer, at which point risk of loss passes to Customer.
- c. After delivery of the Bus(es), Customer shall conduct reasonable tests on each Bus. A Bus will be deemed accepted by Customer so long as Contractor has complied in all material respects with the Final Bus Design. Customer shall electronically provide a notice of Acceptance in the form attached hereto as Attachment 6. Customer agrees and acknowledges that it must make its determination on

acceptance or non-acceptance no later than twelve (12) calendar days following receipt of each Bus or the Bus shall be deemed accepted. In the event of any non-acceptance, Customer shall provide Contractor a reasonably detailed description of the reasons for non-acceptance. Acceptance will not be completed until Contractor has made all reasonably requested repairs to the Bus in accordance with Section 9 below. NOTWITHSTANDING THE FOREGOING, PLACEMENT OF ANY BUS INTO SERVICE AT ANY TIME SHALL BE DEEMED ACCEPTANCE OF SUCH BUS.

#### 7. REPAIRS OF BUSES AFTER NOTICE OF NON-ACCEPTANCE

- a. After receipt of notice of non-acceptance of a Bus, Contractor shall make commercially reasonable efforts to complete work on any identified non-conformities within fifteen (15) business days. In the event Contractor deems, in its sole discretion, that a repair will take longer than fifteen (15) business days, Contractor shall have such reasonable time as is necessary to complete the repair so long as Contractor commences to resolve the repair issue within such fifteen (15) business day period. Customer shall make the Bus available to complete repairs timely with Contractor's repair schedule.
- b. Contractor shall provide all parts, tools, and labor required to complete the repairs. Customer agrees that for the first thirty (30) day period following non-acceptance, Contractor shall have the right to perform repairs at Customer's facilities, provided that following such thirty (30) day period, at Customer's option, Contractor may be required to remove the Bus from Customer's facilities to complete repairs.
- c. Upon completion of repairs for any non-accepted Bus, Customer will conduct reasonable tests upon each repaired Bus, pursuant to Section 8(c).

#### 8. DOCUMENTS AND TRAINING

- a. Contractor shall provide driver manuals, maintenance and repair manuals, and parts manuals to Customer as indicated on the Options Tracker.
- b. Contractor shall supply training documents to Customer in Contractor's customary format and as reasonably determined by Contractor. Contractor agrees to provide driver and maintenance training as set forth in Options Tracker. In connection with such training, Customer agrees to provide Contractor reasonable access to Customer's data and information, and Customer shall have access to its own custom web portal, which contains the latest versions of all applicable manuals, videos, guidelines and other training materials. Contractor will provide high voltage safety training solely as associated with the Buses, however, Customer is solely responsible for developing general high voltage safety rules and guidelines for its facilities, and for providing general high voltage safety training to its employees as necessary.

#### 9. TOOLS AND EQUIPMENT

Contractor shall provide Customer with a comprehensive list of all tools, equipment, software, specialized diagnostic tools, and/or related equipment for the service, repair and overhaul of the Bus, including all major sub-systems. Proprietary software and computer hardware necessary to repair, service and/or diagnose all systems of the Bus shall be made reasonably available to Customer when required to repair the Bus, its systems, at no cost to Customer.

#### 10. FIELD SERVICE REPRESENTATIVE

Upon request, Contractor shall provide a field service representative to assist Customer's staff in the solution of engineering or design problems that may arise during the acceptance and warranty periods.

#### 11. PARTS AVAILABILITY

Contractor hereby agrees to make available the spare parts and equipment as set forth in the Option Tracker.

Contractor will not stock any service parts if those parts were ordered specifically for an individual customer configuration (i.e., not base vehicle parts). This includes, but is not limited to, windows, seats, flooring, ITS/CAD/AVL equipment, and any other specially requested or required parts. Contractor will endeavor to procure special orders parts on request but cannot provide or commit to availability or lead-time.

Unless otherwise agreed, all units and components procured under this Agreement, whether provided by suppliers or manufactured by Contractor, shall be duplicates in design, manufacture, and installation to assure interchangeability among Buses in this procurement. This interchangeability shall extend to the individual components as well as to their locations in the Buses.

#### 12. MATERIALS/ACCESSORIES RESPONSIBILITIES

Contractor shall be responsible for all materials and workmanship in the construction of the Buses and major subsystems, whether the same are manufactured by Contractor or purchased from a supplier, and as subject to the Warranty provisions set forth in Attachment 4 to this Agreement. This provision excludes fare boxes, radios, and any equipment supplied by Customer, except insofar as such equipment is damaged by the failure of a part or component for which Contractor is responsible, or except insofar as the damage to such equipment is solely caused by Contractor during the manufacture of the Buses.

#### 13. END OF LIFE BATTERY RETURN

Any battery packs which reach their end of life, including the battery pack on any retired Bus, will be returned to Contractor, at Contractor's cost. The parties will coordinate on the safe removal and shipment of the battery pack.

#### 14. TAX AND CARBON CREDITS

- a. In the event that Contractor is entitled to Federal or State tax credits, rebates or refunds conditioned on the sale of battery electric buses or charging stations to a public agency, Contractor shall not be required to rebate such amounts to Customer when Contractor takes the credit and/or realizes the refund or rebate.
- b. In the event that the sale/purchase of a Bus or Charging Station may generate credits or other benefits associated with reductions in carbon emissions, exhaust or emissions banking or other credits, refunds, rebates or incentives of any kind as a result of environmental attributes associated with the deployment of battery electric buses or use of charging stations, such incentives, refunds, rebates or credits shall be owned and attributable solely by Contractor.

## 15. DATA

In order to properly monitor the battery packs and other vehicle systems for warranty and service purposes, Contractor obtains various data points from major subsystems of the Bus, including the battery pack and charging system. Upon request, Contractor shall provide data that may be reasonably required to satisfy the requirements of any grants or other sources of funding used to purchase the Buses by Customer at an interval of no more frequently than once per month and for a total duration of no more than twelve (12) months.

## 16. ASSIGNMENT OR TRANSFER

Except for the rights of money due to Contractor pursuant to this Agreement, Contractor shall not assign, hypothecate, or transfer this Agreement or any interest herein to any other party without the prior written consent of Customer, which consent shall not be unreasonably withheld or delayed. Such consent of Customer shall not be required in the event of any transfer or assignment in connection with any merger, acquisition (whether stock or asset) or other change of control involving Contractor. Customer shall not assign, hypothecate, or transfer this Agreement or any interest herein to any other party without the prior written consent of Contractor, which consent shall not be unreasonably withheld or delayed. Any assignment, transfer or hypothecation other than in accordance with the terms of this Section 50 shall be null and void, and any assignees, hypothecates or transferees shall acquire no right or interest by reason of such attempted assignment, hypothecation or transfer.

## 17. INTELLECTUAL PROPERTY

- a. Intellectual Property. Customer and Contractor acknowledge that Customer is a transit agency and not a manufacturer of buses or charging stations and therefore has no interest in ownership of any rights in, to, or arising out of: (i) any patents; (ii) inventions, discoveries (whether patentable or not in any country), invention disclosures, improvements, trade secrets, proprietary information, know-how, technology, technical data and other intellectual property; (iii) copyrights, copyright registrations, mask works, mask work registrations, and applications therefor in the United States, and anywhere in the world, and all other rights corresponding thereto throughout the world; and (iv) any other proprietary rights ((i) through (iv) hereof collectively, the "Intellectual Property") in or to the technology associated with the charging stations and vehicles/buses that are the subject of this Agreement. As such, Customer and Contractor agree that Contractor shall own any Intellectual Property developed in connection with the buses and charging stations purchased through this Agreement, including, without limitation, any performance and other Bus and Charging Station data developed and any alterations or modifications to the charging stations or buses purchased under this Agreement whether made or developed by Customer or any other party (the "Developed Technology"). Customer hereby assigns and agrees to assign to Contractor, all right, title and interest in the Developed Technology (including all intellectual property rights therein) and the Intellectual Property. Customer shall, to the fullest extent, protect proprietary information, trade secrets and confidential commercial and financial information provided by Contractor. Customer will provide immediate notice in writing to Contractor of the existence of any claim that the goods furnished hereunder violate or infringe upon another third party's rights, and Customer shall reasonably cooperate with Contractor in connection with any such claim. Customer also agrees that it shall not, and shall not allow any third party to, directly or indirectly reverse engineer the Bus or Charging Station or otherwise obtain, share or use any confidential information of Contractor, including,

without limitation, any control or other software of Contractor provided with either the Bus or Charging Station.