

## WisGo Services Agreement

This WisGo Services Agreement (this “Agreement” or “Contract”) is made and entered into as of the \_\_\_\_\_ (the “Effective Date”) by and between Milwaukee Transportation Services, Inc., a quasi-governmental instrumentality of Milwaukee County and operator of Milwaukee County Transit System located at 1942 North 17<sup>th</sup> Street, Milwaukee, Wisconsin 53205 (“Contractor” or “MTS”) and \_\_\_\_\_ with its principal place of business at \_\_\_\_\_ (“\_\_\_\_\_” or “Customer”). Customer and Contractor are each a “Party” and together, the “Parties”.

### RECITALS

- A. MTS has procured from Cubic Transportation Systems, Inc. (“Cubic”) the Umo-branded software-as-a-service application and related support and professional services pursuant to a contract with Cubic (“Cubic Contract”) and has the ability to distribute and provide Customer access to the foregoing as the WisGo™ system (“WisGo”).
- B. Customer desires to utilize WisGo in accordance with the provisions of this Agreement.

The Parties agree as follows:

### AGREEMENT

#### 1 DEFINITIONS

- 1.1 Capitalized terms not defined elsewhere in the Agreement have the following meanings:
- 1.2 “Back Office” means the elements of the WisGo Services hosted in the public cloud.
- 1.3 “Bankcard Payments” means any credit, debit and prepaid debit card payments for Customer’s products and services by End Users.
- 1.4 “Business Day” means Monday, Tuesday, Wednesday, Thursday, or Friday beginning at 12:00 midnight Pacific Time, excluding the Holidays and Non-Working Periods.
- 1.5 “Calendar Day” or “Day” means any day shown on the calendar beginning at 12:00 midnight Pacific Time, including Saturdays, Sundays, Holidays, and Non-Working Periods.
- 1.6 “Card” means Umo Pass Cards, as defined in Exhibit A1.
- 1.7 “Card Services” means the services set out in Exhibit A8.
- 1.8 “Contract Year” means each calendar year commencing on the Effective Date, or, where applicable, the anniversary of the Effective Date.
- 1.9 “Customer Data” means the data collected through or generated by the WisGo Services or use of the WisGo Services by Users, relating to Users’ use of WisGo Services or Customer’s transportation services, and analytics, reporting, results, or other information in respect of such data, excluding the WisGo User Profile.
- 1.10 “Customer Obligations” means the Customer obligations set out in Exhibit D for each WisGo Service.
- 1.11 “Customer User” means an end-user that accesses the administrative, reporting and customer service functions of the WisGo Services in the capacity of an employee, contractor, or agent of the Customer.
- 1.12 “Documentation” means the operating manuals, user manuals, guides, service descriptions, service specifications, training materials, technical manuals, and support material relating to the WisGo Services or Equipment, if and as made available by Contractor.
- 1.13 “End User” means a consumer end-user of the WisGo Services other than a Customer User. This includes transit riders, and employees, contractors, and agents of the Customer accessing the WisGo Services when

utilizing the WisGo Services in their capacity as a consumer transit rider to plan and pay for transportation services.

- 1.14 "End User Profile" means data provided by End Users that is not specific to Customer such as the End User login, account-name, email, stored payment credentials and other such data provided by End Users in establishing and populating their account on the WisGo Services. End User Profile does not include data provided by End Users that is specific to the End User's relationship with the Customer (or any customer of the WisGo Services), such as transaction data, purchase history with the Customer, etc., which data is Customer Data.
- 1.15 "Equipment" means the physical hardware detailed in Exhibit B, or any such other physical hardware provided to the Customer under this Contract, that is sold to the Customer or otherwise required to be delivered to Customer for use in conjunction with the Software to provide the Services to the Users and the Customer.
- 1.16 "Fees" means the fees payable by Customer as described in Exhibit E for the Services and Equipment as described in Exhibit B.
- 1.17 "Holidays" means public holidays observed by either Party.
- 1.18 "Implementation Services" means the services required to configure and implement the WisGo Services on behalf of Customer as set forth in Exhibit B.
- 1.19 "Intellectual Property Rights" means trade secret rights, rights in know-how, databases moral rights, copyrights, patents, trademarks (and the goodwill represented thereby), and similar rights of any type under the laws of any governmental authority, domestic or foreign, including all applications for and registrations of any of the foregoing.
- 1.20 "Marketing Tool Kit" means marketing materials made available to the Customer for use by the Customer in its own marketing of the WisGo Services including graphics, videos and similar materials.
- 1.21 "Merchant Acquirer" means an entity that provides acquiring or electronic payment processing services in respect of settling funds to the Customer's account(s) for all End User purchases in the WisGo Services.
- 1.22 "Merchant of Record" means the party that holds the contractual relationship with a Merchant Acquirer for the acceptance of credit and debit card payments as it relates to the WisGo Services.
- 1.23 "Mobility Service Operator" means a third party organization that operates vehicles or transit services or behalf of Customer under an agreement with Customer.
- 1.24 "Non-Working Periods" means the Days each year designated by Contractor as excluded from the Business Days.
- 1.25 "Operating Year" means the calendar year commencing on Operating Period Start Date for the first such year and anniversary of the Operating Period Start Date for each subsequent year.
- 1.26 "Personal Information" means any Customer Data or WisGo Data that can or could reasonably be used to identify, contact or locate the person to whom such information pertains, any information from which such identification or contact information can or could be derived, and any other similar information as defined by any law. Personal Information includes, but is not limited to: credit, debit, and other payment cardholder information.
- 1.27 "Professional Services" means any additional services that Contractor shall provide or source as the parties agree in writing pursuant to a Statement of Work or similar document.
- 1.28 "Services" means the Implementation Services, WisGo Services, the Support Services, Professional Services and related Documentation .
- 1.29 "Services Commencement Date" means the date at which the WisGo Service is first utilized by the Customer for commercial purposes.

- 1.30 "Software" means the software applications provided as part of the Services consisting of Equipment firmware and the consumer facing mobile app to access the WisGo Services.
- 1.31 "Support Services" means the support services for WisGo Services as set forth in Exhibit C.
- 1.32 "Term" means the term of the Contract as defined in Section 11.1.
- 1.33 "Umo Privacy Policy" means the Cubic privacy policy set out at <https://umomobility.com/app/privacy-policy/> as updated from time-to-time .
- 1.34 "USD" means United States Dollars and is the currency for all prices and fees under this Agreement.
- 1.35 "Users" means End Users and Customer Users.
- 1.36 "User Terms and Conditions" means the terms and conditions governing an End User's use of the WisGo Services, as set out at <https://umomobility.com/pass/terms-and-conditions/> as updated from time-to-time.
- 1.37 "WisGo Data" means the End User Profile and any other data, analytics, reporting, results, and other information, excluding Customer Data.
- 1.38 "WisGo Services" means the software and services described in the Exhibit A, which are the same or substantially the same software and services provided to Contractor by Cubic pursuant to the Cubic Contract.

## **2 THE SERVICES; LICENSE GRANTS, AND RESTRICTIONS**

- 2.1 Contractor shall, during the Term, provide or have provided to Customer the Services as set out in Exhibit A and make available all Documentation to the Customer on and subject to the terms of this Agreement to the extent permitted by the Cubic Contract. Contractor shall, in addition, through its third party licensors provide and maintain the network, computers, software, infrastructure, and telecommunications systems necessary to provide the WisGo Services, including all Back Office components, in accordance with this Agreement.
- 2.2 Contractor grants to Customer:
  - 2.2.1 a limited, non-exclusive, non-sublicensable sublicense during the Term, to use the Software and Services during the Term solely in connection with Customer's transit operations, including any Mobility Service Operators, and use and copy the Documentation (other than Documentation relating to the Equipment manufactured by a third party OEM and resold to Customer) solely for Customer's internal business operations.
  - 2.2.2 a limited, non-exclusive, non-transferable, non-sublicensable sublicense during the Term to use the Equipment Software and the Documentation related to the Equipment solely for Customer's internal business operations. Customer shall have no rights to copy, modify or decompile such Software but shall be entitled to copy the Documentation as set forth above, unless copying such Documentation, in whole or in part, is prohibited by the applicable third party OEM that owns such Documentation, in which case Customer's use of such Documentation is subject to the third party OEM terms, if any, to be provided or otherwise available to the Customer.
  - 2.2.3 a limited, non-exclusive, non-transferable, non-sublicensable sublicense during the Term to use and display the WisGo and Cubic trademarks, service marks, and logos, including the Umo trademarks and logos, as made available by WisGo (the "WisGo Marks") (i) solely in connection and as necessary to carry out its obligations under this Agreement and (ii) to market and promote the WisGo Services. Any goodwill which may be acquired through the use of the WisGo Marks shall inure solely to the benefit of Contractor and its licensors. Customer shall abide by any usage guidelines as may be provided to Customer. Contractor reserves the right to update, replace, or retire any WisGo Marks or usage guidelines at any time upon sixty (60) Days' prior written notice. In such event, Customer shall cease use of the updated, replaced, or retired WisGo Marks as soon as commercially practical thereafter. Contractor shall have no liability for any costs incurred by the Customer in respect of its reasonable use of or changes to the WisGo Marks.

- 2.2.4 a limited, non-exclusive, non-transferable, non-sublicensable sublicense during the Term to use, modify, distribute, display, create derivative works from, and adopt for its own purposes materials in the Marketing Tool Kit (other than the WisGo Marks) to market and promote the WisGo Services. Customer shall abide by such usage guidelines as may be provided to Customer in writing.
- 2.3 Except to the extent expressly permitted under this Agreement, Customer shall not, and shall not permit any third party to:
  - 2.3.1 copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Services, Software, and/or Documentation (as applicable) in any form or media or by any means, or attempt to do the same;
  - 2.3.2 reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Services or Software, or attempt to do the same;
  - 2.3.3 access all or any part of the Services and Documentation in order to build a product or service which competes with the Services and/or the Documentation;
  - 2.3.4 use any equipment other than the Equipment as described in Exhibit B in conjunction with the Services; or
  - 2.3.5 license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, use, or make available, the Services, Software, and/or Documentation to or on behalf of any third party other than Users.
- 2.4 Customer shall use all reasonable efforts to prevent any unauthorized access to, or use of, the Services and/or the Documentation. Customer shall promptly notify Contractor in the event of any such unauthorized access or use of which Customer becomes aware.
- 2.5 The WisGo Services may be updated at any time. Contractor will use commercially reasonable efforts to help ensure that such updates and changes do not materially and negatively impact the performance or functionality of the WisGo Services and if Contractor becomes aware of such impact, Contractor will provide notice of such impact to the extent feasible. Use and enablement of major new features in the WisGo Services may be subject to additional fees or terms.
- 2.6 Certain aspects of the Services may be performed by third-party subcontractors. Such subcontractor personnel shall not be the employees of, or have any other contractual relationship with Customer.
- 2.7 Contractor represents and warrants that it has exclusive title to the Software and Documentation or otherwise has the right to grant the sublicense to Customer in accordance with this Contract.
- 2.8 **Affirmative Action:** The Contractor assures that it will undertake an affirmative action program as required by Milwaukee County Code of General Ordinances (MCCGO) 56.17(1d), to insure that no person shall, on the grounds of race, creed, color, national origin, or sex be excluded from participating in any employment activities covered in MCCGO 56.17(1d). The Contractor assures that no person shall be excluded, on these grounds, from participating in or receiving the services or benefits of any program or activity covered by this subpart. The Contractor assures that it will require that its covered organizations provide assurances to the Contractor that they similarly will undertake affirmative action programs and that they will require assurances from their suborganizations, as required by MCCGO 56.17(1d), to the same effect.
- 2.9 **NON-DISCRIMINATION AND EQUAL EMPLOYMENT OPPORTUNITY PROGRAMS:** In the performance of work or execution of this Contract, the Contractor shall not discriminate against any employee or applicant for employment because of race, color, national origin or ancestry, age, sex, sexual orientation, gender identity and gender expression, disability, marital status, family status, lawful source of income, or status as a victim of domestic abuse, sexual assault or stalking, which 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 apprenticeships. When a violation of the non-discrimination and equal opportunity provisions of this section has been determined by Customer, Contractor shall immediately be informed of the violation.

- 2.10 **PROHIBITED PRACTICES:** The following practices are prohibited during the Term of this Contract: Customer hereby attests that it is familiar with Milwaukee County's Code of Ethics, which states, in part, "No person may offer to give to any County officer or employee or his immediate family, and no County officer or employee or his immediate family, may solicit or receive anything of value pursuant to an understanding that such officer's or employee's vote, official actions or judgement would be influenced thereby" and will not offer or give anything of value to any Contractor employee.
- 2.11 **PUBLIC RECORDS:** Both Parties understand that Contractor is bound by the public records law, and as such, all of the terms of this Contract are subject to and conditioned on the provisions of Wis. Stat. § 19.21, et seq. Customer hereby agrees that it shall be obligated to assist Contractor in retaining and timely producing records that are subject to the Wisconsin Public Records Law upon any statutory request having been made, and that any failure to do so shall constitute a material breach of this Contract, whereupon the Customer shall then and in such event be obligated to indemnify, defend and hold Contractor harmless from liability under the Wisconsin Public Records Law occasioned by such breach. Customer shall be paid its reasonable costs in respect of any such assistance. Except as otherwise authorized by Contractor in writing, records that are subject to the Wisconsin Public Records Law shall be maintained for a period of three years after receipt of final payment under this Contract.

### **3 EQUIPMENT**

- 3.1 Contractor shall provide Customer with Equipment as set forth in Exhibit B. Contractor provides no warranty or guarantee with respect to any Equipment; provided applicable warranties from third-party Equipment suppliers will be provided to the Customer as feasible and Contractor will pass through such warranties to Customer to the fullest extent permitted and otherwise facilitate Customer's access to such warranties from any third-party Equipment OEM warranty.
- 3.2 Title to the Equipment and risk of loss for the Equipment shall transfer to Customer on delivery unless otherwise provided in Exhibit B. For the purpose of this clause, Equipment shall be deemed delivered on the earlier of being received at a Customer controlled site or on installation, whichever first occurs.
- 3.3 Contractor may substitute or replace the Equipment at no cost to Customer with alternative Equipment at any time during the Term provided that such alternative Equipment complies with the Federal Buy America requirements and provides materially equivalent functionality as the replaced Equipment including a materially equivalent remaining warranty.

### **4 FEES AND PAYMENT**

- 4.1 Customer Fees and Payment.
- 4.1.1 The Fees payable for the provision of the Services are set forth in Exhibit E. Fees are exclusive of any taxes, duties or withholdings of any nature whatsoever. Unless otherwise stated in Exhibit E, Contractor shall invoice Fees monthly in arrears. Fees for Implementation Services shall be invoiced in accordance with the milestone schedule set forth in Exhibit E.
- 4.1.2 Customer shall pay in full all invoices submitted by Contractor within 30 days of the date of submittal. All fees are stated, and payment shall be made, in USD. Any undisputed amounts remaining unpaid following the payment due date and all payments disputed by Customer in good faith that are paid following the resolution of such dispute shall bear interest accruing from the original payment due date through the date that such amounts are paid at the lower interest rate of (a) 1.0% per month and (b) the highest interest rate allowed by law. Without limitation of Contractor's other rights or remedies, in the event that Customer fails to timely pay any invoiced amounts that are not the subject of a good-faith dispute, Contractor may, after providing written notice to Customer and an additional 30 business days to pay such undisputed amounts, suspend access to all or part of the Services and Contractor shall be under no obligation to provide any or all the Services until all such undisputed amounts are paid.
- 4.1.3 Unless otherwise stated in Exhibit E, Customer shall make payment for Equipment upon delivery.

- 4.1.4 State Prompt Pay Law, Section 66.285, does not apply to this Agreement.
- 4.1.5 Contractor shall provide Customer with monthly billings, listing actual cost, which shall include, but not be limited to, the following:
- a) Name and address of Contractor
  - b) Invoice date and number
  - c) Remittance name and address
  - d) Name, title, and phone number of persons to notify in event of defective invoice
- 4.1.6 Customer represents that as of the Effective Date of this Agreement, it is exempt from Federal Excise Taxes and Wisconsin State Sales Taxes. Invoices submitted by Contractor will not include such taxes. Contractor's inclusion of taxes on invoices may delay payment. In the event Customer is no longer exempt from either Federal Excise Taxes or Wisconsin State Sales Taxes, Customer will promptly notify Contractor, in writing, of its change in tax exempt status and Contractor will invoice Customer for applicable taxes commencing from the date the Customer's change in tax exempt status goes into effect.
- 4.2 Payments to Customer.
- 4.2.1 If Customer is entitled to a share of revenue generated in connection with certain Services as indicated in the applicable Exhibit, Contractor shall pay Customer within thirty (30) Days of the calendar quarter during which the applicable revenue was collected by Contractor.
- 4.2.2 Each payment will be accompanied by a report stating in reasonable detail the basis upon which payment is made.

## **5 DATA AND SECURITY**

- 5.1 Between the Parties, Customer shall own all right, title, and interest in and to the Customer Data. As between the Parties, Customer Data shall be treated as Customer's Confidential Information and WisGo Data shall be treated as Contractor's Confidential Information. Notwithstanding the foregoing, Customer expressly grants the rights to Contractor and its subcontractors to use the Customer Data for purposes of providing Services to the Customer under this Agreement.
- 5.2 Customer will use commercially reasonable efforts to ensure that Customer Data within Customer or its subcontractor's possession, custody, or control is subject to the data security procedures set forth in Exhibit G.
- 5.3 WisGo Data will be collected, used, processed, and shared in accordance with the User Terms and Conditions and the Umo Privacy Policy.
- 5.4 Contractor and its licensors, including without limitation Cubic, may use WisGo Data collected via the WisGo Services from an End User in accordance with the Umo Privacy Policy, in connection with (a) business operations, on an aggregate, anonymous basis such that any use or disclosure does not permit a third party to associate any particular data with the Customer or any User and (b) if required by court order, law or governmental agency. In addition, Contractor and its licensors may use WisGo Data and data derived from Customer's use of the Services, including Customer Data, on an aggregate and anonymous basis for Contractor's and Cubic's internal business purposes, including to operate, manage, maintain, and improve products and services, including the Services.
- 5.5 In the event Contractor becomes aware of any incident that may result in the unauthorized access, processing, exfiltration, destruction, disclosure or use of any Customer Data or any Personal Information, it will notify Customer within five (5) days of becoming aware of the same.

## **6 WARRANTY DISCLAIMER**

- 6.1 EXCEPT FOR THE EXPRESS REPRESENTATIONS AND WARRANTIES MADE BY CONTRACTOR IN THIS AGREEMENT, INCLUDING ITS EXHIBITS, AND TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, NEITHER CONTRACTOR NOR ITS LICENSORS MAKE ANY REPRESENTATIONS OR WARRANTIES. EXCEPT AS EXPRESSLY SET FORTH HEREIN, THE SERVICES AND EQUIPMENT ARE MADE AVAILABLE TO CUSTOMER "AS IS". TO THE MAXIMUM EXTENT PERMITTED BY LAW, CONTRACTOR EXPRESSLY DISCLAIMS ANY AND ALL REPRESENTATIONS AND WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE, MERCHANTABILITY, NONINFRINGEMENT, TITLE OR IMPLIED WARRANTIES ARISING FROM COURSE OF DEALING OR COURSE OF PERFORMANCE. WITHOUT LIMITATION OF THE FOREGOING, CONTRACTOR WILL HAVE NO LIABILITY FOR ANY: (A) ERRORS, MISTAKES, OR INACCURACIES, IN DATA AS PROVIDED TO CONTRACTOR; (B) ANY UNAUTHORIZED ACCESS TO OR USE OF THE SERVICES BY ANY THIRD PARTY UNLESS SUCH ACCESS OR USE IS THROUGH OR BY CONTRACTOR ; (C) ANY INTERRUPTION OF TRANSMISSION TO OR FROM THE SERVICES AS A RESULT OF A THIRD PARTY PROVIDER ; (D) ANY BUGS, VIRUSES, TROJAN HORSES, OR THE LIKE, WHICH MAY BE TRANSMITTED ON OR THROUGH THE SERVICES ; AND (E) ANY LOSS OR DAMAGE OF ANY KIND INCURRED BY CUSTOMER AS A RESULT OF ANY INFORMATION OR DATA PROVIDED, TRANSMITTED, OR OTHERWISE MADE AVAILABLE BY CUSTOMER OR CUSTOMER USERS OR ANY THIRD PARTY ENGAGED BY THE CUSTOMER.

## **7 CUSTOMER OBLIGATIONS**

- 7.1 Customer shall:
- 7.1.1 provide Contractor with:
- a) all cooperation in relation to this Agreement as agreed upon in Exhibit A, Exhibit B, Exhibit D, or as otherwise reasonably requested by Contractor; and
  - b) all reasonable access to such information as may be reasonably requested in order to provide the Services, including but not limited to Customer Data;
- 7.1.2 carry out all Customer responsibilities set out in this Agreement in accordance with any timeframes agreed in writing between the Parties, including the Customer Obligations set out in Exhibit D. The Customer shall be liable for any reasonable and demonstrable costs related to such adjustment to the extent arising from such Customer failure;
- 7.1.3 obtain and shall maintain all necessary licenses, consents, and permissions that are required for the Customer, its subcontractors and personnel to perform their obligations under this Agreement;
- 7.1.4 ensure that it maintains its network and systems; and
- 7.1.5 be solely responsible for procuring and maintaining its network connections and telecommunications links from its systems to Customer's data centers, and all problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to Customer's network connections or telecommunications links or otherwise caused by the public Internet.

## **8 PROPRIETARY RIGHTS**

- 8.1 The Parties acknowledge that Customer is not getting any proprietary customizations to the WisGo Services or Equipment. As a result, Customer acknowledges and agrees that Contractor and/or its licensors own all intellectual property rights in the Services, Equipment, the Documentation, and all modifications, improvements and derivative works thereof. Except to the extent expressly set forth in this Agreement, (a) Contractor does not grant to Customer any license, express or implied, to Contractor's or its licensors' Intellectual Property Rights and (b) nothing in this Contract the performance thereof, or that might otherwise be implied by law, will operate to grant Customer any right, title, or interest, implied or



otherwise, in or to Contractor's or its licensors' intellectual property. Contractor, on behalf of itself and its licensors, expressly reserves all Intellectual Property Rights not expressly granted under this Agreement.

## **9 INDEMNITY**

### **9.1 Intellectual Property Rights Indemnity.**

9.1.1 Subject to Section 9.1.3, if an action is brought by a third party against Customer or its respective directors or employees (a "Customer Indemnified Party") claiming that Services, Software, Documentation, WisGo Marks, Marketing Tool Kit or Equipment or the use or receipt of any foregoing infringes or misappropriates a third-party United States Intellectual Property Right, Contractor will defend such Customer Indemnified Party at Contractor's expense, indemnify Customer from any liabilities, losses, settlements, judgments, costs and expenses (including but not limited to attorneys' fees and costs) incurred as a result of such claim, and pay the damages and costs finally awarded against such Customer Indemnified Party in such action, but only if:

- a) Customer notifies Contractor promptly and without delay upon learning of such claim, however, Customer's failure to notify Contractor shall not affect Contractor's obligation to indemnify Customer unless such failure to notify Contractor materially prejudices Contractor's ability to defend against the action;
- b) Contractor has sole control over the defense of the claim; and
- c) Customer provides Contractor with all available information and assistance reasonably requested to defend such claim.

9.1.2 In no event shall Contractor or its subcontractors or licensors have any obligations under Section 9.1, nor shall it or its employees, agents or sub-contractors be liable to Customer, to the extent that the alleged infringement is based on:

- a) a modification of the Services, Equipment, or Documentation by Customer or anyone under the Customer's direction ;
- b) Customer's use of the Services or Equipment in a manner contrary to the formal written instructions given to Customer or in violation of this Agreement or any applicable Documentation; or
- c) Customer's continued, unreasonable use of the Services, Equipment, or Documentation after reasonable notice of the alleged or actual infringement.

9.1.3 The foregoing is Customer's sole and exclusive rights and remedies, and Contractor's (including Contractor's employees', agents' and subcontractors') entire obligations and liability, for infringement of any third party patent, copyright, trademark, database right or right of confidentiality.

9.2 Customer Indemnity. If an action is brought by a third party against Contractor or its respective directors or employees (a "Contractor Indemnified Party") as a result of the Customer's (a) misuse or unlawful use of the Services, Software, Documentation, WisGo Marks, Marketing Tool Kit or Equipment or (b) any actual or alleged breach of this Agreement, Customer will defend such Contractor Indemnified Party at Customer's expense, indemnify Contractor Indemnified Party from any liabilities, losses, settlements, judgments, costs and expenses (including but not limited to attorneys' fees and costs) incurred as a result of such claim, and pay the damages and costs finally awarded against such Contractor Indemnified Party in such action, but only if:

- a) Contractor Indemnified Party notifies Customer promptly and without delay upon learning of such claim, however, Contractor Indemnified Party's failure to notify Customer shall not affect Customer's obligation to indemnify Contractor Indemnified Party unless such failure to notify Customer materially prejudices Customer's ability to defend against the action;
- b) Customer has sole control over the defense of the claim; and



- c) Contractor Indemnified Party provides Customer with all available information and assistance reasonably requested to defend such claim.

## **10 CORRECTIVE ACTION PLANS**

- 10.1 If Customer reasonably believes that Contractor is in material breach of this Agreement and such breach or default is capable of being cured, then prior to issuing written notice of such a breach, Customer shall notify Contractor that a plan is required to remedy such material breach (a "Corrective Action Plan").
- 10.2 If Contractor fails to provide a Corrective Action Plan within thirty (30) Business Days of such notification or fails to comply with the Corrective Action Plan, then Customer shall be entitled to issue a Default Notice.
- 10.3 The Parties acknowledge that breach of any confidentiality provisions (including but not limited to those relating to the protection of all Personal Information) may cause irreparable harm to the other Party or to any third-party to whom the other Party owes a duty of confidence, and that the injury to the other party or to any third-party may be difficult to calculate and inadequately compensable in damages. The Parties each agree that the other is entitled to obtain injunctive relief (without proving any damage sustained by it or by any third-party) or any other remedy against any actual or potential breach of such confidentiality provisions.

## **11 TERM AND TERMINATION**

- 11.1 This Agreement shall, unless otherwise terminated as provided in this Section 11, commence on the Effective Date and continue for a period of thirty-six (36) months from the Service Commencement Date (the "Initial Term"). This Agreement may be renewed for two (2) successive one (1)-year periods (each, a "Renewal Term") unless either Party gives 180 days-notice to terminate prior to the end of the then-current Term. "Term" means the Initial Term and any Renewal Terms that have been exercised.
- 11.2 Either Party may, subject to Section 10.1, terminate this Agreement if either Party breaches or defaults on any of the material provisions of this Agreement and such breach is not cured within thirty (30) Days after that Party receives written notice from the other Party (a "Default Notice"), then in addition to all other rights and remedies of law or equity or otherwise, then the Party not in default shall have the right to terminate this Agreement without any charge or liability, at any time thereafter.
- 11.3 Either Party may terminate this Agreement by giving written notice if the other Party does not make a payment that they have been given written notice of to the other Party within sixty (60) Calendar Days of the date such amount is due.
- 11.4 In addition, this Agreement will terminate immediately in the event the Cubic Contract is terminated or otherwise expires.
- 11.5 Upon the expiration or termination of this Agreement for any reason:
- 11.5.1 All rights and licenses granted under this Agreement to Customer shall immediately terminate;
- 11.5.2 Each Party shall return and make no further use of any equipment, property, Documentation and other items (and all copies of them) belonging to the other Party if requested to do so by the other Party;
- 11.5.3 Contractor shall destroy or otherwise dispose of any of the Customer Data in its possession utilizing industry acceptable practices for the secure destruction and disposal of data, no later than sixty (60) Days after the effective date of the termination of this Agreement, provided such destruction does not violate Public Records Law .
- 11.5.4 Any rights, remedies, obligations, or liabilities of the Parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the Agreement which existed at or before the date of termination shall not be affected or prejudiced; and
- 11.5.5 Sections [ ] will survive any termination or expiration of this Agreement.

## 12 SUSPENSION OF SERVICES

- 12.1 WisGo Services may be suspended in the event that Contractor or its licensors, reasonably believe that:
- 12.1.1 Customer or a User is engaged in or has experienced any activity that materially harms WisGo Services, or the ability to operate and maintain the WisGo Services or the network used to provide the same;
  - 12.1.2 a security incident has occurred that threatens the security or stability of the WisGo Services or the network used to provide the same; or
  - 12.1.3 Customer or any Customer Users has engaged in any fraudulent or illegal activity or any activity that could result in legal liability.
- 12.2 Contractor will use reasonable efforts under the circumstances to:
- 12.2.1 provide prior written notice of such suspension, which notice shall include a reasonable explanation and description of the basis for its intended suspension to allow Customer to respond (to the extent practicable), mitigate and/or cure the underlying circumstances, if curable; and
  - 12.2.2 limit such suspension to the extent necessary to mitigate the prospective harm. Any such suspension may continue until the event causing such suspension has been cured or until Contractor has received satisfactory assurances that such event will not recur. To the extent the issue that gave rise to a suspension is caused by Customer, Customer shall take all reasonable measures to remedy the issues as expeditiously as possible.

## 13 FORCE MAJEURE

- 13.1 Neither Party shall have any liability to the other under this Agreement if a Party is prevented from or delayed in performing its obligations under this Agreement, or from carrying on its business, by acts, events, omissions or accidents beyond its reasonable control, including, without limitation, strikes, lock-outs or other industrial disputes (whether involving the workforce of the Party or any other party), failure of a utility service or transport or telecommunications network, act of God, war, epidemic, pandemic, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default or service failures of suppliers or sub-contractors, provided that the other Party is notified of such an event and its expected duration.

## 14 LIMITS OF LIABILITY

- 14.1 NO CONSEQUENTIAL DAMAGES. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, NEITHER PARTY WILL HAVE ANY LIABILITY FOR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES (INCLUDING, AS A RESULT OF ANY DELAY IN RENDERING SERVICE, LOSS OF DATA, LOSS OF USE OR, THE DIRECT OR INDIRECT LOSS OF PROFIT OR REVENUE) ARISING OUT OF OR IN CONNECTION WITH THESE TERMS, HOWEVER CAUSED, AND UNDER WHATEVER CAUSE OF ACTION OR THEORY OF LIABILITY BROUGHT (INCLUDING UNDER ANY CONTRACT, NEGLIGENCE OR OTHER TORT THEORY OF LIABILITY) EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
- 14.2 LIABILITY CAP. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL EITHER PARTY'S LIABILITY FOR ANY CLAIM ARISING OUT OF OR IN CONNECTION WITH THESE TERMS (WHEN AGGREGATED WITH ITS LIABILITY FOR ALL OTHER CLAIMS ARISING OUT OF OR IN CONNECTION WITH THESE TERMS) EXCEED THE GREATER OF (A) \$250,000 or (B) THE AMOUNTS PAID BY CUSTOMER TO CUBIC DURING THE 12-MONTH PERIOD IMMEDIATELY PRECEDING THE INCIDENT GIVING RISE TO SUCH LIABILITY.
- 14.3 EXCEPTIONS. THE EXCLUSIONS AND LIMITATIONS OF LIABILITY IN THIS SECTION 14 SHALL NOT APPLY TO (A) A BREACH BY A PARTY OF ITS CONFIDENTIALITY OBLIGATIONS UNDER THIS AGREEMENT; (B) A PARTY'S INDEMNIFICATION OBLIGATIONS UNDER SECTION 9 OF THIS AGREEMENT (OR ANY AMOUNTS PAID OR PAYABLE IN CONNECTION WITH SUCH OBLIGATIONS); (C) CUSTOMER'S BREACH OF SECTION 2.2.1 (D)

CUSTOMER'S PAYMENT OBLIGATIONS; (E) FRAUD, WILLFUL MISCONDUCT, OR GROSS NEGLIGENCE OF A PARTY, OR (F) DAMAGES FOR PERSONAL INJURY, DEATH, OR PROPERTY DAMAGE TO THE EXTENT RESULTING FROM EITHER PARTY'S OR ITS PERSONNEL'S OR SUBCONTRACTOR'S NEGLIGENCE OR MISCONDUCT

**15 CONFIDENTIALITY** Each Party may be given access to Confidential Information from the other Party in order to perform its obligations under this Agreement. A Party's Confidential Information shall not be deemed to include information that:

- 15.1.2 is or becomes publicly known other than through any act or omission of the receiving Party;
  - 15.1.3 was in the other Party's lawful possession before the disclosure without any restrictions on use or disclosure;
  - 15.1.4 is lawfully disclosed to the receiving Party by a third party without restriction on disclosure; or
  - 15.1.5 is independently developed by the receiving Party, which independent development can be shown by written evidence.
- 15.2 Each Party shall hold the other's Confidential Information in confidence and, unless required by law, not make the other's Confidential Information available to any third party or use the other's Confidential Information for any purpose other than the implementation of this Agreement.
- 15.3 Each Party shall take all reasonable steps to ensure that the other's Confidential Information to which it has access is not disclosed or distributed by its employees or agents in violation of the terms of this Agreement.
- 15.4 Customer acknowledges that specifications, technical information, designs and other detailed information of operational performance or architecture of the WisGo Services, and the results of any performance tests of the Services, constitute Contractor's Confidential Information.
- 15.5 Contractor acknowledges that the Customer Data is the Confidential Information of Customer.
- 15.6 If a Party is required to disclose the Confidential Information of the other Party in accordance with judicial or governmental order or requirement, it shall promptly notify the other Party so that the other Party may contest the order or requirement or seek confidential treatment for such information.
- 15.7 No Party shall make, or permit any person to make, any public announcement concerning this Agreement without the prior written consent of the other Party (such consent not to be unreasonably withheld or delayed), except as required by law, any governmental or regulatory authority (including, without limitation, any relevant securities exchange), any court or other authority of competent jurisdiction.

## **16 ASSIGNMENT**

- 16.1 Neither Party may, without the prior written consent of the other Party, assign or transfer its rights or obligations under this Agreement.
- 16.2 Notwithstanding Section 16.1, Contractor in its discretion, may assign the Agreement in connection with the sale of all or substantially all its assets, equity interests or business or to any affiliated entity.
- 16.3 Subject to the foregoing, this Agreement will bind and inure to the benefit of the Parties, their respective successors and permitted assigns, as set out herein. Any attempted assignment in violation of this Section 16 shall be null and void.

## **17 FEDERAL TERMS AND CONDITIONS**

- 17.1 This Agreement is subject to a financial assistance contract between Customer and the United States of America (hereinafter "Federal Government"), acting through the Department of Transportation (hereinafter "U.S. DOT"), and Federal Transit Administration (hereinafter "FTA"). Contractor agrees that it must comply with all applicable FTA regulations, policies, procedures and directives as set forth in Exhibit H.

## **18 CONFLICT**

- 18.1 If there is an inconsistency between any of the provisions in the main body of this Agreement and the Exhibits, the provisions in the main body of this Agreement shall prevail.

## **19 VARIATION**

- 19.1 Except as otherwise provided herein, no amendment to, or waiver of, any provision of this Agreement will be effective unless in writing and signed by both Parties.

## **20 NO WAIVER**

- 20.1 No failure or delay by a Party to exercise any right or remedy provided under this Agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

## **21 RIGHTS AND REMEDIES**

- 21.1 Except as expressly provided in this Agreement, the rights and remedies provided under this Agreement are in addition to, and not exclusive of, any rights or remedies provided by law.

## **22 SEVERANCE**

- 22.1 Each provision of this Agreement shall be viewed as separate and distinct, and in the event that any provision shall be deemed by a court of competent jurisdiction to be illegal, invalid or unenforceable, the court or arbitrator finding such illegality, invalidity or unenforceability shall modify or reform these Terms to give as much effect as possible to such provision. Any provision which cannot be so modified or reformed shall be deleted and the remaining provisions of these Terms shall continue in full force and effect.

## **23 ENTIRE AGREEMENT**

- 23.1 This Agreement, and any documents referred to in it, constitute the whole agreement between the Parties and supersede any previous arrangement, understanding or agreement between them relating to the subject matter they cover.
- 23.2 Each of the Parties acknowledges and agrees that in entering into this Agreement it does not rely on any undertaking, promise, assurance, statement, representation, warranty or understanding (whether in writing or not) of any person (whether party to this Agreement or not) relating to the subject matter of this Agreement, other than as expressly set out in this Agreement.

## **24 NO PARTNERSHIP OR AGENCY**

- 24.1 Nothing in this Agreement is intended to or shall operate to create a partnership between the Parties, or authorize either Party to act as agent for the other, and neither Party shall have the authority to act in the name or on behalf of or otherwise to bind the other in any way (including, but not limited to, the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power). The Agreement will not create an employment, partnership or agency relationship between Customer and Contractor's partners, affiliates (or any of Contractor's directors, officers, employees, agents, partners, affiliates, volunteers or subcontractors).

## 25 THIRD-PARTY RIGHTS

- 25.1 This Agreement does not confer any rights on any person or party (other than the Parties to this Agreement and, where applicable, their successors and permitted assigns).

## 26 NOTICES

- 26.1 Any notice required to be given under this Agreement shall be in writing of by mail. If in writing, it shall be delivered by hand or sent by pre-paid first-class mail or internationally recognized overnight courier to the other Party at its address set out below, or such other address as may have been notified by that Party for such purposes.

### Notices to Customer:

City of Waukesha  
Attn: Brian Engelking  
2311 Badger Dr  
Waukesha, WI 53188  
bengelki@waukesha-wi.gov

### Notices to Contractor:

Milwaukee Transportation Services, Inc.  
Attn: Chief Financial Officer  
1942 N 17 St  
Milwaukee, WI 53205  
thosch@mcts.org

- 26.2 A notice delivered by hand or by internationally recognized overnight courier shall be deemed to have been received when delivered. A correctly addressed notice sent by pre-paid first-class mail shall be deemed to have been received three days after it is sent.

## 27 GOVERNING LAW

- 27.1 This Agreement and the rights and obligations of the Parties hereunder shall be construed in accordance with and governed by the laws of State of Wisconsin without regard to its laws on personal jurisdiction. The Parties hereby agree that the United Nations Convention on Contracts for the International Sale of Goods will not apply to this Agreement or any related transaction between the Parties.

## 28 DISPUTES

If a dispute about or arising from this Agreement which cannot be resolved informally by the Parties, the Parties will escalate such dispute to senior management, with the intention of reaching a good faith resolution within 30 Business Days. In the event of any dispute under this Agreement that cannot be resolved within the 30 Business Day period, the Parties agree that the dispute will be resolved by any court of competent jurisdiction sitting in Milwaukee, Wisconsin and hereby consent to personal jurisdiction over them by the court. The court shall have the discretion to award the prevailing Party its reasonable attorneys' fees and costs.

## 29 COMPLIANCE WITH LAWS

- 29.1 Each Party, in exercising its right and performing its obligations under this Agreement, shall comply with all applicable laws and governmental rules and regulations. Customer acknowledges and agrees that in event there is a change in law or regulation that causes a material change in cost to Contractor, then the Fees set out in Exhibit E may be adjusted to reflect a reasonable share of such change in costs that is reflective of the volume of Services consumed by Customer compared to that consumed by all other customers of the Services.
- 29.2 Contractor hereby declares and affirms that, to the best of its knowledge, none of its officers, directors, or partners or employees directly involved in obtaining contracts has been convicted of bribery, attempted bribery, or conspiracy to bribe under the laws of any state or the federal government.

### 30 COUNTERPARTS.

This Agreement may be executed in counterparts, each of which is deemed an original, but all of which together are deemed to be one and the same agreement. A signed copy of this Agreement delivered by facsimile, e-mail, or other means of electronic transmission is deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

The Parties have executed this Agreement by their duly authorized representatives in one or more counterparts, each of which shall be deemed an original, effective as of the Effective Date.

**MILWAUKEE TRANSPORTATION SERVICES, INC.**

**City of Waukesha**

By: \_\_\_\_\_  
(Authorized Signature)

By: \_\_\_\_\_  
(Authorized Signature)

Name: \_\_\_\_\_  
(Print or Type)

Name: \_\_\_\_\_  
(Print or Type)

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

## **Exhibit A**

### **Umo™ Services Description**

**The WisGo Services included this Agreement are as follows:**

- A1 Umo Pass™ Services**
- A2 Umo Pay™ Services**
- A3 Umo Rewards™ Services**
- A4 Intentionally Omitted**
- A5 Transition Out Services**
- A6 Intentionally Omitted**
- A7 Intentionally Omitted**
- A8 Card Services**



## **Exhibit A1**

### **WisGo Services Description - Umo Pass™**

#### **1 UMO PASS SERVICE ADDITIONAL DEFINITIONS**

1.1 The following additional defined terms apply to this Exhibit:

1.1.1 “Umo Pass Feature Matrix” means the Umo Pass Feature Matrix included as Attachment 1 to this Exhibit A1.

#### **2 UMO PASS SERVICE DESCRIPTION**

2.1 The Umo Pass Service is a cloud-based electronic fare collection service provided on an as-a-service basis.

2.2 The Umo Pass Service shall provide the following functionality and as further described in the Umo Pass Feature Matrix:

2.2.1 Configure products and fare rules;

2.2.2 Process fare and other mobility transactions through Umo Pass compatible devices;

2.2.3 Enable the purchase of fare and other supported mobility services products through a mobile application and end-user website;

2.2.4 Enable the Customer to support End Users using web-based support and end-user account management functions;

2.2.5 Enable the Customer to set-up and administer special fare programs and institutional program partners;

2.2.6 Enable the Customer to create and export reports for financial reporting and service management including transaction level reports; and

2.2.7 Other functionality detailed in the Umo Pass Feature Matrix.

#### **3 UMO PASS SPECIFIC CONTRACTOR OBLIGATIONS**

3.1 Configure product and fare rules on behalf of the Customer as the same are provided by Customer.

3.2 Configure any such other Umo Pass Service parameters that cannot be configured by the Customer itself through the Umo Pass Service configuration tools.

3.3 Manage the procurement of Cards if requested by the Customer.

3.4 Manage the encoding of Cards unless otherwise operationally agreed between the Parties.

#### **4 UMO PASS SPECIFIC CUSTOMER OBLIGATIONS**

4.1 Determine the fare rules and products to be configured on the Umo Pass Service.

4.2 Validate and in a timely manner approve fare rule and configuration changes

4.3 Procure Cards. Customer will be responsible for purchase of Cards in accordance with Contractor’s published brand guidelines and together with the Card specification (as updated from time to time).

4.4 Perform Card distribution to the extent distribution is not performed by Contractor under the WisGo Services.

4.5 Perform fare product sales through physical sales locations (such as, but not limited to, Customer ticket windows).

- 4.6 Encourage and promote use of the Umo Pass Services through rider alerts, social media and demonstration events. The Customer will consider ways to incentivize the transition from cash to Umo Pass Services use.
- 4.7 Establish and implement a phased rollout schedule for introduction of fare products and fare media, to be supplied by Customer.
- 4.8 Operate and maintain an AVL system capable of providing driver login and bus route and location information (as per Attachment 3 to this Exhibit), or perform manual login of readers to routes to the Umo Pass Service via the Umo Pass administrative portal.
- 4.9 Provide the mobile data plans or network connections for use by the Validators and other Equipment that are identified in writing to Customer as necessary to communicate with the Umo Pass Service.
- 4.10 Enter into and maintain where applicable into inter-agency or inter-operator agreements with the Mobility Service Operators.

## 5 ADDITIONAL UMO PASS SPECIFIC TERMS

NOT USED

## 6 ATTACHMENT 1 – UMO PASS FEATURE MATRIX

The following table provides a summary of features available to the Customer through the Umo Pass Service.

Summary of Umo Pass Service Features
<b>Umo Pass Feature Matrix</b>
<b>Fare Rule Support including</b>
Fare Types & Base Fares by Fare Type (Passenger Group)
Passes (Calendar, Time, Trip)
Closed-loop Stored Value
Transfers
Fare Capping
Special Fare Program Passes
Special Fare Program Positive List
Discount and Special Fare Program Benefit Codes
Passback Features and Restrictions
Open Payments (contactless EMV Cards and mobile wallets at Validators)
<b>Mobile Application</b>
Purchase Fare Products, Passes & Stored Value
Manage Account
Transaction History
Use Mobile (QR Code) for Onboard Validation
Use Mobile EMV Bank Or Credit Card for Onboard Validation

<b>Summary of Umo Pass Service Features</b>
Trip Planning
Where's My Bus
Loyalty Program
Visually Validated Product And Account Status
Accessibility Features
Short term changes and service alerts
Passenger chat (requires the Customer to utilize a compatible message provider (Twitter, Slack or similar) within their customer service operations
Passenger survey capability / rate my experience
<b>Passenger Website</b>
Purchase Fare Products, Passes & Stored Value
Manage Account
Transaction History
Visually Validated Product And Account Status
Accessibility Features
<b>Account Top-up And Product Purchase Via Web And Mobile</b>
Payment Options
Credit/Debit Cards
Stored Value (pre-paid cash value in the account)
Apple Pay
Google Pay
<b>Fare Media Options</b>
Umo Cards
Mobile Application Umo QR Code
Printed Tickets with Umo QR Code
Third Party ID Cards (example compatible employee or student cards)
Contactless Credit And Debit Cards
<b>Device Options</b>
Bus Validator with contactless EMV and barcode support
Station Validator with contactless EMV and barcode support
Tablet Based Driver Control Unit
Handheld validation and fare inspection device

<b>Summary of Umo Pass Service Features</b>
Ticket Vending Machine / Sales Kiosk
Retail Point Of Sale Device
<b>Fare Product Sales Network</b>
Web-based Merchant Portal for use by ticket windows, retailers and institutional resellers / partners
Mobile Application
Passenger Website
InComm Retail Reload Network (optional, subject to separate InComm agreement)
Autoload Pass Products & Stored Value
Customer or 3rd Party Website Integration API
TVMs/Kiosks
Benefit Code Redemptions
Payment SDK
<b>Customer Service Agent Support</b>
Web-based customer service agent interface
Account History
Concession / Fare type Management
Account adjustments
Lost Card Replacement
Card account to mobile account conversion
Mobile account to Card account conversion
<b>Administration</b>
Define and manage user roles and permissions
Configure and manage institutional program partners and resellers
Manage Customer configurable branding elements
<b>Fraud Management</b>
Dynamic QR Code
Anti-Passback Configuration
Managed and Publish A Negative List Of Blocked Accounts to Validators
Product high-usage reporting
<b>Reporting</b>
Comprehensive reporting including reports addressing
Customer accounts

<b>Summary of Umo Pass Service Features</b>
Sales analysis and reconciliation
Fare payment and product usage analysis
Detailed transaction export and analysis
Device event analysis
Regional program views
Customer User configurable reports
Customer Management Dashboard
Data Export And Integration
Excel download
CSV download
Data Extract API
<b>Device / Asset Management</b>
Real-time device monitoring
Remote device control / diagnostics
Device status dashboard
Over the air software updates
Configurable e-mail alerts
Remote manual driver login
<b>Open Application Programming Interfaces (APIs and SDKs)</b>
Third Party Mobile Application Integration SDK
Trip Planning Integration Into Customer Website
Data Export
Positive List Maintenance
Ticket Vending Machine / Sales Kiosk
Reader Assignments
CAD / AVL Integration
Route / real-time bus import via GTFS and GTFS-RT
Self-service Tokens Issuance
Virtual ticket sales via Customer web site
<b>Security, Data Privacy, Reliability</b>
Customer definable role-based access control
Credit and debit card tokenization

## 7 ATTACHMENT 2 –CARD SPECIFICATION

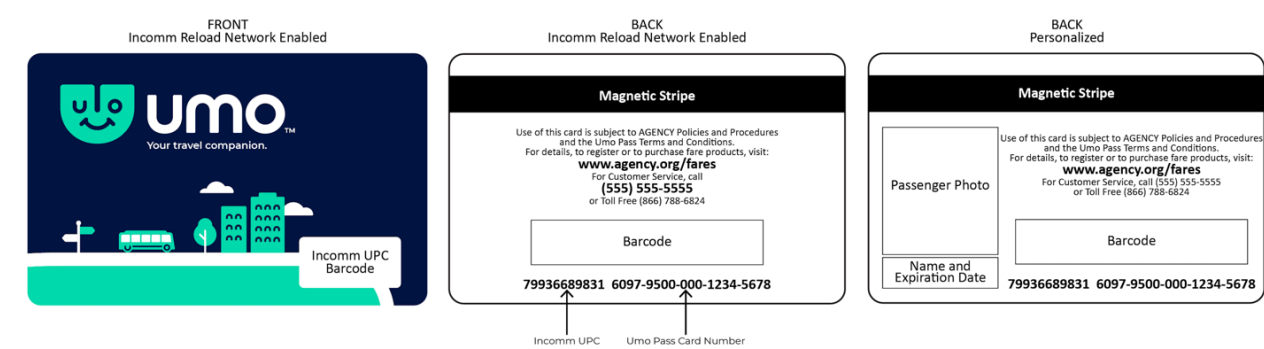
This attachment provides the preliminary Card specification for closed-loop Cards to be used with WisGo Services. Contractor will be responsible for compliant cards and distribution to Customer.

### Umo Card Specifications

#### Requirements:

- Clean and free of burrs and sharp edges
- Compliant with ISO/IEC 14443 parts 1-3 and ISO/IEC 18092
- Dimensions compliant with ISO/IEC 7810 and ISO/IEC 7813
- Encoded by Cubic for use in the Umo Pass System
- Chip type: MIFARE® DESFire EV2 2K or other, compatible chip type approved by Cubic
- Chip permanent unique identifier (“UID”), confirmed by Cubic as unique within the Umo Pass system
- Card numbers: Unique Card number (sixteen (16) digits or longer), provided by Cubic (e.g., in Excel file), printed on Card in dimensions and format shown below
- Bar code: Card number; printed within the dimensions shown below using the Code 128 bar code format
- Cross-reference Table: Linking UID and printed Card number
- Front of Card
  - Two-colour (2-colour) graphics extending to all four (4) edges. Any Card design with more than two (2) pantone colors are subject to additional fees
  - Umo Pass logo: within area shown below
  - Customer-approved logo (“Customer Logo”) and design graphic (“Customer Design Graphic”): may be printed within the areas shown below; final printer-ready graphic file(s) prepared and approved by Cubic
  - InComm enabled Cards require UPC Bar Code 2: UPC-A format printed on the Card face
- Back of Card: Black, static text as shown below with Card number and corresponding bar code
  - InComm enabled Cards require the following
    - Card printed bar code using Code 128-C bar code format
    - Unique thirty-digit (30-digit) number and twelve-digit (12-digit) UPC
    - HI-coercivity magnetic stripe encoded to use in InComm Reload Network

Note: All measurements in millimeters. Text shown on back of Card not to scale.



### *Umo Card specifications*

## 8 ATTACHMENT 3 – AVL COMPATIBILITY REQUIREMENTS

8.1 The Umo Pass Services have the following requirements for integration with CAD/AVL systems:

### 8.1.1 Standard integration via GTFS and GTFS-RT

The standard integration for the automatic import of route and bus location information from CAD/AVL systems into the Umo Pass Services is via data feeds conforming to the real-time and static General Transit Feed Specification (<https://gtfs.org/>) via an internet accessible location that enables Cubic to automatically look for an import updated files.

Compatibility requirements include:

8.2 Route identifiers, stop identifiers, and trip identifiers must be consistent across the GTFS Static and GTFS Realtime.

8.3 GTFS-RT must contain unique vehicle identifiers for each vehicle in the fleet.

### 8.3.1 Custom integration via the CAD/AVL system API

Integration via GTFS is the preferred and most common integration. Alternatively, Cubic can integrate on professional services, directly with CAD/AVL systems where the CAD/AVL system provides a suitable API, and the Customer securing acceptable access to such API through the Customer's commercial agreement with the CAD/AVL vendor.

Compatibility requirements include:

8.4 Consistent naming of key data elements such route identifiers, stop identifiers, and trip identifiers across both the scheduled and real-time information available via the API; and

8.5 Where the CAD/AVL is utilized for real-time information only, naming convention to ensure such data elements are consistent between the GTFS static feed and the real-time API data.



## Umo Exhibit A2

### WisGo Services Description - Umo Pay™

#### 1 UMO PAY SERVICE DESCRIPTION

- 1.1 The Umo Pay Service is a cloud-based tokenization and payment gateway provided on an as-a-service basis.
- 1.2 The Umo Pay Service shall provide the following functionality and as further described in the Umo Pay Feature Matrix (Attachment 1 to this Exhibit A2):
  - 1.2.1 Open Payment Processing:
    - a) Process contactless EMV fare and mobility payment taps from physical or virtual (through compatible mobile wallets such as Apple Pay and Google Pay) bank and debit cards issued by compatible card schemes at Umo Pay certified devices (Mobility Payment Taps);
    - b) Route Mobility Payment Taps to the Umo Pass Service for fare calculation and recording;
    - c) Route resulting bank and debit card transactions to applicable merchant acquiring service for authorization and settlement.
    - d) Tokenization
    - e) Securely encrypt and store bank and debit card credentials in a PCI-DSS certified tokenization solution;
  - 1.2.2 E-commerce Transaction Processing
    - a) Process credit and debit card payment transactions from the Umo Pass Service mobile application, Umo Pass Service end-user web-site and Umo Pass Service customer service interface to the applicable merchant acquiring service for authorization and settlement
  - 1.2.3 Negative List Maintenance
    - a) Maintain and make available to Umo Pay certified devices a list of blocked credit and debit card credentials;
  - 1.2.4 Other functionality detailed in the Umo Pay Feature Matrix.

#### 2 UMO PAY SPECIFIC CUBIC OBLIGATIONS

- 2.1 Configure and maintain the configuration of the Umo Pay Service;
- 2.2 Ensure compatibility and maintain certification of the Umo Pay Service with the Umo Pay standard product supported merchant acquiring service;
- 2.3 Ensure the on-going compliance of the Umo Pay Service with the PCI-DSS standard;
- 2.4 Integrate and maintain the integration between the Umo Pay Service and the Umo Pass Service

#### 3 ADDITIONAL UMO PAY SPECIFIC TERMS

- 3.1 The Customer shall bear any fraud or revenue risk as it relates to the acceptance of credit and debit cards by the Customer on the WisGo Services except when such fraud or revenue risk is caused by the gross negligence or willful misconduct of Cubic.

#### 4 ATTACHMENT 1 – UMO PAY FEATURE MATRIX

<b>Umo Pay Feature Matrix</b>
-------------------------------

<b>Supported Payment Use Cases</b>
Card present payments from Umo Pay Services certified fare payment devices
Card-not-present payments initiated from the Umo Pass Service
Card present payments from Umo Pay Services certified sales devices (example ticket vending machine payment terminals)
Refunds initiated through the Umo Pass Service
<b>Tokenization</b>
Encrypted storage of bank and debit card information in compliance with PCI-DSS
<b>Risk Management</b>
Negative list maintenance
Negative publishing to devices capable of utilizing negative for off-line risk management
<b>Supported Credit And Debit Card Brands</b> (Subject to the Customer providing a compatible Merchant Facility through a Merchant Acquirer supported by the Umo Pay Services)
Mastercard
Visa
American Express
Discover
<b>Supported Merchant Acquirers</b>
First Data Merchant Services

## **Exhibit A3**

### **WisGo Services Description - Umo Rewards**

#### **1 UMO REWARDS SERVICE DESCRIPTION**

- 1.1 Umo Rewards is a cloud-based service that provides loyalty and content publishing specifically designed for Customer to securely monetize your transit devices for extra revenue while delivering a rewarding rider experience.
- 1.2 Umo Rewards offer three (3) main services, including hyper targeted content publishing, analytics-driven loyalty rewards campaigns, and Card-linked offers.
  - 1.2.1 Umo Rewards content publishing provides ad-serving capabilities to display personalized, location-based rich-media ads without disrupting user experience. Content includes third-party offers, ads, promotional messaging, links to third-party services, or other online commerce offerings on Customer devices or Cubic-owned devices in connection with Customer networks, including mobile app, website, ticket vending machines ("TVM"), and transit gates.
  - 1.2.2 Loyalty rewards campaigns allow Contractor to launch data-driven campaigns to drive desired transit rider behavior with loyalty-based incentives. Eligible End Users who opt-in to the loyalty rewards program and accept Customer's offerings will be awarded with loyalty points based on their riding activities.
  - 1.2.3 Card-linked offers is a feature that allows loyalty users to link their credit card with Umo Rewards. End Users will get loyalty points credit for every dollar spent on their linked Card with participating merchants.
- 1.3 Loyalty rewards are earned from loyalty rewards campaigns, and/or from Card-linked offers on Umo Rewards platform.
- 1.4 Umo Rewards enables loyalty End Users with self-service loyalty redemption capabilities, giving Users options to redeem for free transit passes, transit cash balance, or rewards Cards for shopping online, or at local stores and restaurants.
- 1.5 Umo Rewards provides Customer with revenue share generated from the content publishing activities.
- 1.6 Agencies or sponsors may purchase loyalty rewards value to give to End Users.
- 1.7 Umo Rewards provides Contractor with ability to run their own promotional content in the Umo App consuming up to twenty-five percent (25%) of all impressions served provided there are three (3) ad spaces are enabled. There is no cost to the Contractor or Customer for the consumption of the aforementioned impressions utilizing their own content.

#### **2 UMO REWARDS SPECIFIC CONTRACTOR OBLIGATIONS**

- 2.1 Umo Rewards Loyalty and Advertising Product Package: Umo Rewards provides full loyalty and advertising platform functionalities.
- 2.2 Advertiser relationship and communications management: Umo Rewards manages the entire relationship and communications with advertisers, ranging from relationship building, ad platform sales and marketing, product feature updates, and all other communications.
- 2.3 Advertiser Contract, Billing, and Payment Collection Management: Umo Rewards secures a smooth advertiser activation process from advertiser contract signing, ad content fulfilling, billing, and payment collection. The entire legal and contract negotiation, closing, and billing are handled by Umo Rewards sales, contract specialists, and ad legal consultants, saving Customer extra resources to focus on other projects.

- 2.4 Ad Operation Management: Umo Rewards acts as the authorized agent on behalf of Customer in onboarding advertisers, reviewing ad campaign plan and content, activating, monitoring, and reporting campaign performance. Our ad operation management team ensures that advertisers can roll out their ad campaigns to the market quickly, and all ad content meets industry's and Customer's advertising policy and editorial guidelines.
- 2.5 Loyalty Program Management: Umo Rewards fulfills loyalty awards when End Users interact with the ads or use loyalty-based transit service offered by Customer and enables End Users to redeem loyalty points for any available transit service products.
- 2.6 Umo Rewards provides all computation regarding the awarding, management, and redemption of loyalty points within the Umo Rewards platform.
- 2.7 Accounting Record Keeping and Financial Settlement Management: Umo Rewards manages accounting record keeping and financial settlement management services for all loyalty-based advertising programs for Customer. We keep track of ad campaign and loyalty revenue, ad operational costs, and prepare detail periodical financial settlement statements, breakdown by advertisers, campaigns, and revenue share calculations. Umo Rewards shall send Contractor quarterly financial settlement statement via email within fifteen (15) Business Days since end of previous quarter. Contractor will pass through reports and payments to Customer within 15 days.
- 2.8 As WisGo is a shared platform, MTS manages the Umo Rewards program setup including but not limited to frequency of ads, placement/location of advertising within the app, and approval of ads referenced in Section 1.7 above.

### **3 UMO REWARDS SPECIFIC CUSTOMER OBLIGATIONS**

- 3.1 Share Customer's advertising policy for alignment with Umo Rewards advertising policy.
- 3.2 Ensure that there is no conflict between Umo Rewards and any other advertising commitment made by Customer and, to the extent any conflict does arise, promptly resolve that conflict in a manner that does not detriment the revenue earned by Umo Rewards.
- 3.3 Market the Umo Rewards program to the Customer's End Users to increase adoption, if desired.
- 3.4 Allow fare products to be redeemed for rewards value earned by End Users.

**Exhibit A4**

**Merchant Of Record Services**

Intentionally Omitted

**Exhibit A5**  
**Transition Out Services**

**1 TRANSITION OUT SERVICES**

- 1.1 Contractor will support the Customer as reasonably required to transition the Customer out of the WisGo Services on termination if required, including but not limited to:
  - 1.1.1 Preparing and delivering to the Customer in a mutually agreed data format an export of the Customer Data
  - 1.1.2 Providing knowledge support as reasonably required by Customer staff or contractors to take receipt and utilize the exported Customer Data
- 1.2 Transition out services will be provided on a time and materials basis using rates in Exhibit E.
- 1.3 Transition out services are not available for such Customer Data of a highly PCI-DSS or privacy sensitive nature such as tokenized credit and debit card details.

**Exhibit A6**  
**InComm Services**

**1 INCOMM SERVICES**

- 1.1 Additional terms apply where the Customer exercises the option to utilize the InComm Retail Network for the load of stored value and/or Umo Card distribution.
- 1.2 Section 2 of this Exhibit A6 provides sample terms the Customer can expect with respect to the InComm Services.
- 1.3 The Parties acknowledge the terms applicable to the InComm Services will require further negotiation between the Parties in order for the Customer, Contractor, and InComm agreeing to specific services, scope and terms.
- 1.4 Contractor and Customer agree to negotiate the InComm Services terms in good faith where the Customer chooses to bring the InComm Services in scope to this agreement based on the following commercial principals:
  - 1.4.1 The Customer acknowledges that InComm offers a standard service which InComm may vary or terminate from time-to-time.
  - 1.4.2 Contractor's primary role is one of a service manager responsible for the technical integration between InComm network and WisGo Pass and, if so required by InComm's service offering, forward any funds settled by InComm to the Customer. Contractor's liabilities for the InComm Services performance will be limited to Contractor's performance of its work-scope in providing the technical integration and managing such settlement of funds as applicable.
  - 1.4.3 Since InComm's current business model involves settling funds net of InComm fees and commissions, the Customer will pay any fees and commissions assessed by InComm ("InComm Fees").
  - 1.4.4 Customer has the option to enable one of two InComm Services, as follows:
    - a) "InComm Standard Reload Services" which enables WisGo End Users with an InComm Services compatible WisGo Card to add stored value at InComm locations supporting WisGo reloads.
    - b) "InComm Transit Services" which enables additional functionality as set-out in Clause 2 including the ability for WisGo End Users to utilize the Umo App at compatible InComm locations to identify their account for reload and enables distribution of WisGo Cards by InComm.
- 1.5 The InComm Services option must be exercised within 60 days of the Effective Date.

**2 ATTACHMENT 1 – INCOMM SERVICES SAMPLE TERMS**

**2.1 INCOMM SERVICES DESCRIPTION**

- 2.1.1 Program. Interactive Communications International, Inc. ("InComm") will provide products and services associated with the production, retail distribution, loading and reloading of electronic fare media, which shall be implemented at Customer's option, subject to final approval by InComm, over time as set forth herein and the "InComm Network Statement of Work" included herein as Attachment 1.1 to this Exhibit A6 ("InComm Services").
- 2.1.2 Work Share. Contractor, InComm and Customer shall perform the tasks listed in the InComm Network Statement of Work.
- 2.2 InComm Fees



- 2.2.1 Load Fees are applicable for loading and/or reloading of stored value to Umo Pass Accounts within the InComm Reload Network at an associated InComm retailer and are not applicable for any loading and/or reloading of Umo Pass Accounts on the Umo Pass Passenger Portal, Mobile App, Merchant Portal or Administrative Console or any other sales channel supported by the Umo Pass Hosted Services other than the InComm Reload Network.
- 2.2.2 Load Fees are a percentage based on the total stored value loaded for pre-existing Umo Pass Accounts and Umo Pass Accounts created by the sale of a Umo Pass Card by the retailer as part of the same transaction ("InComm Commission"). The stored value is added to the Umo Pass Account associated with the fare media (e.g. Umo Pass Card, smartphone) presented by the Umo End User. Load/Reload Fees are inclusive of the amounts to be paid to InComm and/or an InComm retailer. Net Proceeds, less Load/Reload Fees, shall be transmitted to the Customer's designated account.
- 2.2.3 Card Distribution Fees are applicable for each Umo Card sold/activated through the InComm Services
- 2.2.4 The InComm Fees as of the effective date are as follows:
  - a) InComm Commission when using the InComm Standard Reload Services: 3.5%
  - b) InComm Commission when using the InComm Transit Services: 5%
  - c) Card Distribution Fee when using the InComm Transit Services: \$1.00 per card sold
- 2.2.5 The Customer acknowledges that the InComm Fees are set by InComm and may be varied by InComm with notice.
- 2.3 Flow Of Funds
  - 2.3.1 For Standard Reload Services, InComm's business practice currently is to settle directly to the Customer net of InComm Fees.
- 2.4 Data. The Customer acknowledges that InComm Services are performed utilizing technology and operational services in the United States. Further, the Customer acknowledges that the InComm Service is a third-party service provided and operated independently of Cubic. The sole obligation of Cubic is to provide the technical interface to InComm and manage InComm on half of the Customer.
- 2.5 The Customer will provide any required forms and other information as reasonably required by Contractor to facilitate the settlement of funds to a Customer nominated bank account.
- 2.6 Retailer Participation: The Customer acknowledges that neither InComm nor Contractor can compel retailers that are part of the InComm Retail Network to offer or participate in the sale of the Umo Loads or Umo Card distribution. InComm will provide Cubic, and Cubic will provide to the Customer an updated list of participating retailers as needed from time-to-time.
- 2.7 Termination Rights.
  - 2.7.1 The Customer acknowledges that InComm shall have the right to terminate the InComm Services for convenience with notice.
  - 2.7.2 Customer acknowledges that InComm shall have the right to terminate services it provides to Contractor upon which Contractor relies upon under this Agreement immediately upon written notice to Customer and Contractor in the event that (i) InComm or any InComm retailer is deemed, or (ii) InComm reasonably determines that InComm or any InComm retailer may be deemed, a "seller of prepaid access" or "provider of prepaid access" (as each term is defined under 31 CFR 1010.100(ff) or any successor provision) as a result of their respective activities related to participation in the Retail Sales Network or Retail Distribution Network. In the event of InComm termination of services for this or any other reason, Cubic shall have the right to immediately terminate provision of the InComm Services to Customer.
  - 2.7.3 In the event of InComm Services termination, Cubic will make commercially reasonable efforts to actively pursue a replacement retail network solution in a timely manner to avoid any disruption of services to client.

### 3 ATTACHMENT 1.1 – INCOMM NETWORK STATEMENT OF WORK

3.1 The following table summarizes the functionality available through the InComm Standard Reload Services and InComm Transit Services

InComm Feature By Services Offering	InComm Standard Reload Services	InComm Transit Services
Cash stored value load – Umo Cards	Yes	Yes
Cash stored value load – Umo App	No	Yes
Card distribution through InComm locations	No	Yes

3.2 The following scope items are applicable to both the InComm Standard Reload Services and InComm Transit Services

Task	Cubic	InComm	Customer
Retailer recruitment, relationship management and contract management		X	
Reload Network setup, training, management and maintenance		X	
Retailer funds collection and reconciliation		X	
Retailer commission payment		X	
Retailer marketing program management		X	
Retailer technical support		X	
Customer Reload Network account creation and management	X	X	X
Customer-specific Reload Network configuration and testing	X	X	
Customer Code creation	X		
Umo Pass Card Specification creation, maintenance and distribution	X		
Customer-specific testing with Retailer systems	X	X	
Customer funds remittance and reconciliation		X	X
Customer fee calculation and collection		X	
Customer reload program marketing			X
Accept and process end-user requests for reloads of stored value to Umo Pass accounts		X	
Submit stored value reload requests to Umo Pass account		X	
Reload Network transaction reporting	X	X	
Integration with Umo Pass Services	X	X	
Reload Network – Umo Pass Services Interface setup, operation and maintenance	X	X	
Accept and process stored value reload transactions from InComm	X		

Accept reloaded stored value for fare payments on the Umo Pass Services	X		X
Umo Pass Services support to end-users			X

### 3.3 The following scope items are applicable in addition for only the InComm Transit Services

Task	Cubic	InComm	Customer
Procure cards packaged for distribution through the InComm Services	X		X
Card Distribution Network setup, training, management and maintenance		X	
Accept and process passenger requests for Umo Card purchase, activation and loading		X	
Customer Card Distribution Network account creation and management		X	
Customer UPC creation		X	
Card production and packaging	X		Option
Card re-order processing	X		Option
Card package warehousing and distribution		X	
Customer-specific Card Distribution Network configuration and testing		X	
Card sales transaction reporting	X	X	
Integration with Umo WisGo Services for card distribution and mobile re-load	X	X	
Accept and process card sales, activation and load requests from Incomm	X		
Accept Incomm-sold cards and stored value for fare payments on Customer vehicles	X		X

**Exhibit A7**  
**Intentionally Omitted**

## **Exhibit A8**

### **Card Services**

#### **1 CARD SERVICES DESCRIPTION**

- 1.1 Card Services comprises of the following services as further described in this section
  - 1.1.1 Card Procurement (Optional)
  - 1.1.2 Card Encoding (Required)
- 1.2 Card Procurement comprises of Contractor ordering and managing the delivery of Cards from qualified Card manufacturers ("**Card Orders**")
  - 1.2.1 Card Orders will be placed by the Customer by placing a Card Order request
  - 1.2.2 Card Orders will be delivered to Cubic's service facility for Card Encoding or, where encoded by the manufacturer to work the WisGo Services and then delivered directly to the Customer's nominated ship to location
  - 1.2.3 The minimum order quantity shall be five thousand (2,000)
- 1.3 Card Encoding comprises Contractor encoding Cards to be compatible with the WisGo Services by placing a card image and associated security keys onto the Cards
  - 1.3.1 Card Encoding is a required service where Cards are not encoded by the Card manufacturer as part of the ordering process
  - 1.3.2 Card Encoding will be performed by Cubic at one (1) of its operational facilities in Canada or the United States.

#### **2 CONTRACTOR OBLIGATIONS**

- 2.1 With respect to Card Procurement
  - 2.1.1 Make reasonable commercial efforts to process Card Orders in a timely fashion
  - 2.1.2 Obtain quotes and place the order with the most appropriate manufacturer on obtaining authorization from the Customer
  - 2.1.3 Manage orders with manufacturers until received and make all reasonable commercial efforts to resolve issues with orders
- 2.2 With respect to Card Encoding
  - 2.2.1 Perform Card Encoding to agreed timelines for each Card Order taking into account the size of the Card Order, available staffing and Card Encoding obligations to other customers
  - 2.2.2 Ship the encoded cards on the completion of encoding in bulk to the MTS designated receiving location
- 2.3 General
  - 2.3.1 Provide as reasonably requested by the Customer input on expected lead-times for Card Orders and Card Encoding

#### **3 CUSTOMER OBLIGATIONS**

- 3.1 With respect to Card Procurement
  - 3.1.1 Monitor stock levels of Cards and initiate Card Orders to maintain supply taking into account manufacturing and shipping lead-times

#### **4 ADDITIONAL CARD SERVICES TERMS**

- 4.1 Encoding at the point of manufacturing is not available at this time. If and when select vendors offer Cards encoded at the point of manufacturing, the Card Encoding services will not be required for Cards ordered through manufacturers enabled and certified to encode Cards. Customer acknowledges that there will be costs to both the card manufacturer and Contractor to implement and maintain the capability for a card manufacturer to encode cards at the point of manufacturing which will be reflected in the cost of the Card.
- 4.2 For fare media procured by Contractor, title and risks shall pass to the Customer on the fare media being delivered to the Customer's specified delivery location
- 4.3 For Cards procured by the Customer and encoded by Cubic, Cubic shall not have title at any time to the procured cards. Cubic shall have risk in the cards while cards are encoded at the encoding facility. Risk in cards shall be with the Customer or the card manufacture as applicable at all other times.

**Exhibit B**  
**Implementation Services**

**1 SERVICE DESCRIPTION**

- 1.1 Implementation Services are the activities executed to supply, install, configure, verify, and commission the Services:
  - 1.1.1 WisGo Services described in Exhibit A.
  - 1.1.2 Support Services described in Exhibit C.
- 1.2 The Implementation Services will incorporate updates to the WisGo Services hardware and features available prior to Services Commencement Date.
- 1.3 During the mobilization period Contractor will establish an implementation plan that defines the implementation approach and controls including, but not limited to:
  - 1.3.1 Communication protocol.
  - 1.3.2 Delivery of Documentation.
  - 1.3.3 Project execution and governance including variation management.
- 1.4 As part of the implementation plan each Party will nominate personnel responsible for implementation as follows:
  - 1.4.1 Point of contact accountable for the day-to-day management, coordination, and execution of the Implementation Services.
  - 1.4.2 Executive sponsor.
  - 1.4.3 Steering committee membership.

**2 EQUIPMENT SUPPLY**

- 2.1 Contractor will supply Equipment as set out in Exhibit E:
- 2.2 The Bus Validator Mounting Assembly Kit includes mounts for either horizontal or vertical stanchions provided such stanchions are readily available. If maintaining hand-rail space is important to the Customer, installation may require additional parts which may include “T-Clamps” and a small pole so to lower the Validator under stanchions. Similarly, a “Figure-8” clamp can be used to put a second parallel stanchion to better control position and height. Such parts and associated installation scope if required would be added to scope through the agreed variation process.
- 2.3 In addition to the purchased Bus Validators and Validator Installation Kits, Contractor will be responsible for providing as reasonably required cabling, connectors, in-line fuses and other parts to connect the Bus Validators to the vehicle power systems.
- 2.4 An individual item of Equipment is deemed delivered in accordance of Clause 3.2 of the Agreement on the earlier of:
  - 2.4.1 The item being installed by Contractor on a vehicle
  - 2.4.2 The item being delivered by Contractor to an Authorized Mobility Services Provider or Mobility Service Operator under the direction and agreement by the Customer
  - 2.4.3 The item having been received by the Customer at the Customer’s nominated receiving location for such item
- 2.5 Contractor will be responsible for:



- 2.5.1 Specification of the Equipment.
- 2.5.2 Execution of the hardware installation verification.
- 2.5.3 Supply of the Equipment.
- 2.5.4 Qualification of suppliers.
- 2.5.5 Verification of the supplied equipment to the specification and required certifications, standards, and quality.
- 2.5.6 Supply chain management.
- 2.5.7 Logistics, receipt, and storage.
- 2.6 The Customer will be responsible for:
  - 2.6.1 Defining the representative sample of the fleet ("prototypes").
  - 2.6.2 Assembling the prototype vehicles for the purpose of hardware installation verification.
  - 2.6.3 Providing access to Contractor personnel, including Cubic, to perform the hardware installation verification.

### **3 EQUIPMENT INSTALLATION AND COMMISSIONING**

- 3.1 Contractor will install and commission the Mobile Validator Equipment detailed in Section 2 in each bus operated by a Mobility Service Operator.
- 3.2 Contractor will be responsible for:
  - 3.2.1 In-person execution of the prototype hardware installation verification.
  - 3.2.2 Desktop Survey of the vehicle fleet.
  - 3.2.3 Development of the installation plan.
  - 3.2.4 Provision and maintenance of the installation drawings and guidelines.
  - 3.2.5 Qualification of the installation subcontractor including verification of required insurance, capability, experience, licensing, permits, and compliance to human and industrial resource requirements.
  - 3.2.6 Coordination and management of the subcontractor.
  - 3.2.7 Verification and quality assurance of the work performed by the subcontractor.
- 3.3 The Customer will be responsible for
  - 3.3.1 Coordinating and making buses available from the Mobility Service Operators in accordance with the quantities and locations defined in the Implementation Schedule.
  - 3.3.2 Provisioning at least [REDACTED] vehicles for installation for each installation shift. Installation shifts may be scheduled from [REDACTED]
  - 3.3.3 Providing photos and other information as reasonably required by Contractor to perform the Desktop Survey
  - 3.3.4 Provide a team to complete an 'in-person' survey of the fleet and collaborate on installation plans.
  - 3.3.5 Having onsite resources available to confirm that the installation and commissioning of the Equipment has been completed in accordance with the installation and commissioning Documentation.
  - 3.3.6 Provision to Contractor and enablement of cellular SIM cards in accordance with the installation plan and schedule.
- 3.4 Contractor will install and commission the Platform Validator Equipment detailed in Section 2 for each station. [only applicable to certain contracts]
- 3.5 Contractor will be responsible for:

- 3.5.1 In-person execution of the prototype hardware installation verification.
- 3.5.2 Survey of station installation site.
- 3.5.3 Development of the installation plan.
- 3.5.4 Provision and maintenance of the installation drawings and guidelines.
- 3.5.5 Qualification of the installation subcontractor including verification of required insurance, capability, experience, licensing, permits, and compliance to human and industrial resource requirements.
- 3.5.6 Coordination and management of the subcontractor
- 3.5.7 Verification and quality assurance of the work performed by the subcontractor.
- 3.6 The Customer will be responsible for:
  - 3.6.1 Ensuring equipment mounting locations are level, of appropriate dimensions, and installed with conduit placed appropriately to serve the platform validator being installed.
  - 3.6.2 Testing of electrical and communication cabling prior to installation.
  - 3.6.3 Providing photos and other information as reasonably required to perform the installation site survey.
  - 3.6.4 Providing access to the sites as reasonably required to perform the installation
  - 3.6.5 Having onsite resources available to confirm that the installation and commissioning of the Equipment has been completed in accordance with the installation and commissioning Documentation.

#### **4 CONFIGURATION**

- 4.1 Contractor will configure the Services, including but not limited to:
  - 4.1.1 Fare policy definition.
  - 4.1.2 Transport Network Topology (GTFS).
  - 4.1.3 Configurable branding elements.
  - 4.1.4 User accounts.
  - 4.1.5 Payment gateways and third-party interfaces.
  - 4.1.6 Asset definition and record keeping for Equipment.
- 4.2 The Customer will be responsible for:
  - 4.2.1 Provision of required configuration inputs that are the responsibility of the Customer and Mobility Service Operators or other third parties.
  - 4.2.2 Delivery of inputs according to schedule.
  - 4.2.3 Approval of configuration Documentation.

#### **5 CERTIFICATION**

- 5.1 Contractor shall secure the necessary certifications required for the provision of the Services and the supply and installation of the Equipment.
- 5.2 Contractor will be responsible for:
  - 5.2.1 Application, verification, and remediation of required certifications.
  - 5.2.2 Providing PCI-DSS Attestation of Compliance for the applicable WisGo Services annually.
- 5.3 The Customer will be responsible for:

- 5.3.1 PCI-DSS certification for the Mobility Service Operators responsibilities, including compliance by Mobility Service Operator personnel.

## **6 SERVICE COMMISSIONING**

- 6.1 Contractor will coordinate the commissioning and enablement of the Services for each Mobility Service Operator.
- 6.2 Contractor will be responsible for:
  - 6.2.1 Verifying completion of the preceding or dependent configuration, installation, and commissioning activities.
  - 6.2.2 Delivery of train-the-trainer training to each Mobility Service Operator including all user manuals and training materials.
  - 6.2.3 Enablement of the Services.
  - 6.2.4 Post-commissioning monitoring and tuning of the configuration through to acceptance and transition to operations.
- 6.3 The Customer will be responsible for:
  - 6.3.1 Managing the enrollment of participants.

## **7 TRAINING**

- 7.1 Contractor will provide training for the following roles at mutually agreed times:
  - 7.1.1 Fare program administrators including in the use of Customer's configurable system parameters
  - 7.1.2 Back-office staff (including financial operations staff and on the use of reports)
  - 7.1.3 Front office/customer service personnel
  - 7.1.4 Bus operators
  - 7.1.5 Bus and station maintenance staff
- 7.2 The Customer may record training sessions and print or duplicate training materials for internal reference and use or incorporate the training materials and content into the Customer's own training materials and documents.
- 7.3 Contractor will be responsible for:
  - 7.3.1 Provision of training materials, which may be supplied in electronic format including recorded video presentations.
  - 7.3.2 Delivery of in-person or in-camera train-the-trainer format training.
- 7.4 The Customer will be responsible for:
  - 7.4.1 Provision of facilities for delivery of training, including but not limited to conference or meeting rooms, audio-visual equipment, Internet connectivity, consumables.
  - 7.4.2 Provision of suitability of qualified trainees.

## **8 TVM INTEGRATION SUPPORT [DELETE WHERE NOT APPLICABLE]**

- 8.1 Contractor will make the TVM API available to Customer's chosen TVM vendor and will provide such integration support as is reasonably required by the TVM vendor to utilize the API and develop and test the integration to the WisGo Services.

## **9 TRANSITION TO OPERATIONS**

- 9.1 Contractor will establish the WisGo Services set out in Exhibit A and the Support Services set out in Exhibit C prior to the earliest applicable Services Commencement Date.
- 9.2 Contractor will coordinate with the Customer to execute the soft launch prior to the go-live.
- 9.3 Contractor will support the Customer in the Customer's performance of configuration validation testing during the Soft Launch Period.
- 9.4 Contractor shall maintain a register of Incidents raised by the Customer. If there is an Incident deemed to be critical, urgent or moderate that impacts the completion of Soft Launch, Contractor shall resolve said Incident

## **10 DOCUMENTATION**

- 10.1 Contractor will submit implementation Documentation to the Customer during the Implementation Services. Standard Documentation is not subject to Customer review and approval.
- 10.2 Standard Documentation consists of the following:
  - 10.2.1 Installation and commissioning records for Equipment.
  - 10.2.2 Configuration Documentation.
  - 10.2.3 Certification Documentation.
  - 10.2.4 Operator Implementation Checklist.
- 10.3 Non-Standard Documentation
  - 10.3.1 To the extent that Contractor provides any non-standard Documentation then such Documentation shall be subject to review and approval by the Customer. Documents shall be comprehensive, and include, where applicable, step-by-step instructions, explanatory pictures, required parts and components (with quantity, description, and part numbers), and relevant as-built wiring diagrams.
  - 10.3.2 Customer shall complete any required review within ten (10) Business Days of submittal and to extent that any changes are required, Customer shall act reasonably in determining those changes and shall provide a detailed summary of the required changes.
  - 10.3.3 Providing any subsequent submittal incorporates the proposed Customer changes or as otherwise agreed prior to that submittal, the Customer shall confirm approval of that Documentation within five (5) Business Days of re-submittal.

## **11 ACCEPTANCE**

- 11.1 The Customer shall within 30 days from the date Contractor notifies the Customer in writing that the WisGo Services are ready for acceptance testing either:
  - a) Confirm in writing that the WisGo Services are accepted; or
  - b) provide a list of issues ("Draft Acceptance Issue List") that in the Customer's reasonable belief need to be resolved in order for the Customer to reach Final Acceptance.
- 11.2 The Parties will work together promptly in good faith to mutually review the Draft Acceptance Issue List and create a mutually agreed list of issues that require resolution for Final Acceptance ("Final Acceptance Issue List"). If there is a dispute on what issues constitute a failure to meet the requirements set-out in this Agreement, the WisGo Services description or the Compliance Matrix, such dispute will be resolved as per Article 8 (Disputes) of this Agreement.

- 11.3 Contractor will then resolve issues in the Final Acceptance Issue List and notify the Customer, in writing, when, in Contractor's opinion, such issues are resolved and request that the Customer again review the WisGo Services in accordance with Clause 11.1.
- 11.4 "Final Acceptance" will be achieved on the Customer confirming that the WisGo Services are accepted in accordance with Clause 11.1 (a)
- 11.5 Notwithstanding 11.1 and 11.1.2 above, the Implementation Services are deemed automatically accepted if the Customer fails to issue a Draft Acceptance Issue List.

## 12 SCHEDULE

12.1 Contractor will be responsible for:

- 12.1.1 Maintaining a register of implementation milestones reflecting the planned, forecast, and actual delivery dates.
- 12.1.2 Maintaining a register of schedule integration milestones for management of alignment between Contractor master program and the Customer program of related or dependent work.
- 12.1.3 Delivery of an implementation status report no more frequently than monthly including:
- a) Milestone registers current as at the close of the preceding month.
  - b) A Level 2 schedule printed to PDF format, where Level 2 is defined by AACE International Recommended Practice No. 91R-16.
  - c) Planned, forecast, and actual dates for enablement of WisGo Services.

12.1.4 Scheduling the Implementation Services such that Holidays and non-working periods are Non-Working Days for Customer and Operators except by joint agreement.

12.2 The Customer will be responsible for:

- 12.2.1 Maintaining the Customer's schedules, schedule data and scheduling procedures.
- 12.2.2 Providing content and inputs to the master program and planning registers when requested.

## 13 ATTACHMENT 1.1 – VALIDATOR SPECIFICATION

Validator Specification – Access IS VAL100	
Display	Full color, 4.3" LCD Antireflective/antiglare/toughened 420 × 272 resolution
Processor and RAM	Dual core, 1 GHz

Media Interfaces	<p>EMV Level 1 and Level 2. PCI-SRED 5.1 Compliant, 4 SAM slots Payment Schemes Supported:</p> <ul style="list-style-type: none"> <li>• Visa</li> <li>• MasterCard</li> <li>• Discover, American Express</li> <li>• Interac Flash available for certification</li> </ul> <p>Barcode Support:</p> <ul style="list-style-type: none"> <li>• Linear: EAN, UPC, Code 2 of 5, Interleaved 2 of 5, IATA 2 of 5, Code 39, Code 128</li> <li>• 2D: IATA resolution 792, PDF417, Aztec, DataMatrix and QR Codes</li> <li>• Performance: Will read 2D barcodes from paper, mobile phone and tablet</li> </ul> <p>Reads NFC-enabled mobile phones and contactless smart and banking cards. NFC tags supported:</p> <ul style="list-style-type: none"> <li>• Milfare 1K/4K, Classic Tags, Milfare UL, Milfare Plus</li> <li>• ISO14443-4 Type A, ISO14443-4 Type B, HID iClass tags (only CSN read supported)</li> <li>• NXP iCode tags</li> <li>• Apply pay/VAS Payment</li> </ul>
User Interfaces	<p>Sound: Speaker with digital control for audio playback LED indicators 4 x RGB LEDs</p>

Connectivity	<p>Communication 3G*/4G*/GPRS* (*Optional)  Connection: USB, Ethernet, GPS, Wi-Fi, Bluetooth, 4/Bluetooth Low Energy RS232</p>
Tolerances	<p>Operating temperature: -20C to 50C  Storage temperature: -30C to 70C  Humidity: 0-95%RH, non-condensing  IP54 rated</p>
Operating System	<p>Linux OS</p>
Voltage	<p>Supports 10.5-33 VDC</p>

## 14 ATTACHMENT 2 – PRELIMINARY MILESTONE AND LEVEL 2 IMPLEMENTATION SCHEDULE

14.1 The following table lists the Level 1 Project Milestones .

Project Milestone
MOBILIZATION - NTP
MOBILIZATION - Kick off completed
MOBILIZATION – Implementation Planning
MOBILIZATION - Configuration Data Gathering
MOBILIZATION - Bus Equipment Delivery
MOBILIZATION - Bus Equipment Installation

TRAINING - Umo Platform MCTS training complete
MOBILIZATION – Bus Soft Launch
MOBILIZATION- Bus Full Launch
MOBILIZATION – Platform Validator Equipment Delivery
MOBILIZATION – Platform Validator Equipment Installation
MOBILIZATION – BRT Soft Launch
MOBILIZATION – BRT Full Launch
FINAL ACCEPTANCE
PROJECT COMPLETION

#### 14.2 Baseline project schedule

Contractor will work with Cubic to prepare to and agree with Customer a baseline level 2 implementation project schedule within 45 days of the Effective Date. This schedule will be incorporated into this Agreement on both Parties approving such baseline Schedule.

## Exhibit C

### Umo Support Services and Service Levels

The purpose of this schedule is to describe the services and service levels for the WisGo Services. All Support Services will be provided directly by Cubic and Contractor will support and assist Customer in obtaining such Support Services.

The following table sets-out which Support Services described in this Exhibit C have been purchased and are included in this Agreement:

Umo Support Services Element	Included / Not Included
Supplier Help Desk	Included
Software Maintenance Services	Included
Configuration Services	Included
Hardware Maintenance Services	Included
Warranty	Included
Extended Warranty	None
Service Delivery Management	Included

Table 1: Included Support Services

#### 1 UMO SUPPORT SERVICES AND SERVICE LEVELS

##### 1.1 Supplier's Help Desk

1.1.1 For the purposes of this Exhibit C, an "Incident" is an issue with the WisGo Services impacting the availability of functionality or services. All Incident and support requests should be logged through Cubic's Help Desk either via a Cubic notified phone or email. Cubic Help Desk operating hours twenty-four (24) hours each day. Any Incident and support requests logged outside the normal operating hours shall be responded during the following Business Day.

1.1.2 Cubic's Help Desk will provide technical and knowledge support to the Customer including:

- a) to log and record Incidents registered by the Customer through creation tickets in Cubic's service management tool;
- b) to escalate Incidents to relevant resolver groups and provide overall Incident management;
- c) to log and record service requests registered by the Customer in Cubic's service management tool;
- d) to assist the Customer with general enquiries in connection with the WisGo Services;
- e) Launch the RMA process

1.1.3 Cubic Help Desk will remain the overall owner of Incidents and will update Cubic's service management system on current status and activities carried out within each Incident. Cubic Help Desk will also be responsible for the tracking and closure of tickets within Cubic's Service Management System.

1.1.4 Where applicable any resolver groups will provide the Customer with:

- a) instructions on how to resolve the issue being experienced; and/or
- b) results of diagnostics and investigations with details on what actions will be carried out by Cubic to resolve the Incident; and/or
- c) the deployment of a workaround; and/or
- d) to notify the customer that the Incident is to be resolved through the release of software.

##### 1.2 Software Maintenance Services



- 1.2.1 Any updates for the WisGo Service will be made available to the same extent the same is available to Contractor. Intentional downtime for system maintenance or upgrades may be scheduled as set forth in Section 1.2.2 below.
- 1.2.2 Scheduled maintenance of the WisGo Services may be scheduled during non-core business hours. Non-core business hours are defined as 12:00 am to 4:00 am (Pacific Time Zone). Cubic maintains a standing scheduled maintenance window of either 12:00 am – 4:00 am (Pacific Time Zone) or 2:00 am – 6:00 am (Pacific Time Zone) once a month on Sunday (“Scheduled Downtime”). Scheduled Downtime may be scheduled outside of the current once-a-month schedule by providing notification to Customer at least 24 hours in advance; this notification will be provided via the agreed upon communication protocol to designated support representatives.
- 1.2.3 Additionally, any downtime caused by factors outside of Contractor’s reasonable control do not factor in to the Monthly Uptime Percentage calculation, including any force majeure event, Internet service, cloud hosting, cellular or communications network provider availability outside of the WisGo platform, any downtime resulting from outages of third-party connections or utilities, and actions or inactions of the Customer (“Excluded Downtime”).
- 1.3 Configuration Services. Configuration Services consist of:
  - 1.3.1 Configuration management and control.
  - 1.3.2 Provision and maintenance of configuration Documentation.
  - 1.3.3 Coordination and management of the configuration of the services in conjunction with the Customer.
- 1.4 Hardware Maintenance Services
  - 1.4.1 Customer is responsible for all “first level” of support to address hardware defects in accordance with any maintenance instructions including but not limited to de-installation of faulty Equipment, replacement with a spare, and return of the faulty Equipment if needed.
  - 1.4.2 Where Customer is unable to rectify and hardware fault, Customer may report to Cubic any hardware failure with the following information:
    - a) Date the Equipment defect was discovered,
    - b) Equipment type,
    - c) Equipment serial number,
    - d) Detailed description of the Equipment defect,
    - e) Detailed description of Customer first-level support steps taken to resolve the issue, and
    - f) A statement as to whether the Equipment repair should be covered under warranty
  - 1.4.3 If the Equipment defect cannot be repaired remotely, Cubic shall provide a Return Merchandise Authorization Number (“RMA”) to Customer authorizing the return of faulty/defective Equipment to be repaired or replaced under warranty as per the Warranty and Extended Warranty clause below.
  - 1.4.4 Customer shall be responsible for all costs of shipping repairs for Equipment not covered under a valid warranty, including Equipment returned with no fault found or with issues not covered by an applicable warranty. Cubic shall be responsible for all costs of shipping repaired or replaced units to Customer.
    - a) Unless otherwise agreed between the Parties during the implementation phase, the assumed RMA model will involve returning Equipment for warranty service directly to Cubic on being issued a RMA. Cubic will then ship replacement units and repaired units to designated equipment management location.
  - 1.4.5 Cubic shall perform the following maintenance activities on all Equipment sent into Cubic for repair:
    - a) Confirmation of whether the hardware is under warranty,

- b) Take receipt of equipment sent to Cubic and verify an RMA number was issued,
- c) Investigate the alleged Equipment defect,
- d) Perform any necessary repairs on the Equipment as applicable, and
- e) Test the Equipment to ensure it is in good working order in accordance with the Documentation

## 1.5 Warranty and Extended Warranty

- 1.5.1 Cubic proprietary Equipment, including the Access IS Platform Validator, and the Access IS VAL100, shall be covered by a one-year (1- year) warranty commencing from the date of first production use of such hardware as per Clause 6 of the Agreement ("Standard Warranty Period"). For Cubic proprietary equipment not intended for immediate production that is part of the use (such as spares or additional equipment orders), the date of first production use shall be deemed 3 months from the date of delivery.
- 1.5.2 All Cubic proprietary Equipment, including the Access IS Platform Validator, and the Access IS VAL100, shall be further covered by an Extended Warranty Period commencing from the end of the Standard Warranty Period for such period set out in Table 1 to this Exhibit C.
- 1.5.3 All other Equipment shall only be warranted to the extent there is an OEM warranty applicable, copies of which will be provided to Customer.
- 1.5.4 Cubic's warranty liability is limited to the repair or replacement of the defects not caused by misuse or abuse, normal wear and tear, or due to a failure to be maintained in accordance with the any written manuals, training materials or formal written maintenance instructions issued to Customer defined as defects in the materials and manufacturer's production of the product.
- 1.5.5 Warranty repairs may only be completed by Cubic.
- 1.5.6 Consumable parts including brackets, cables, batteries, and accessories are excluded from the warranty. Customer may purchase such parts from Cubic or a third party providing that Customer shall be responsible for costs of repairing any damage caused to the Equipment caused by the use of any non-conforming consumable part not purchased from Cubic.
- 1.5.7 Where the Parties identify a systemic issue suspected of impacting a high percentage of units of a particular equipment under warranty, the Parties shall discuss and agree in good faith a remediation plan that identifies commercially reasonable steps to remediate such issue. Any remediation steps above and beyond the warranty obligations under this agreement shall be at the discretion of Cubic.

### 1.5.1

## 1.6 Non-Warranty Repair

- 1.6.1 All Equipment sent into Cubic for repair not under warranty will still require an RMA prior to shipping and will be subject to Cubic's then current and published repair fees and policies. A minimum fee will be charged even if the device is found to have no fault or defect.
- 1.6.2 By submitting the non-warranty Equipment for repair, Customer agrees to pay Cubic's then current fees for parts, materials and labor needed for repairs.
- 1.6.3 Neither Contractor nor Cubic shall be under any obligation to perform non-Warranty repairs under this Section. Where no Return Merchandise Authorization is given, Cubic is not responsible for any unreceived, lost or misdirected Equipment.
- 1.7 Substitution. Equipment may be substituted or replaced at no cost to Customer with alternative Equipment at any time during the Term providing such Equipment shall provide at least the same functionality as the original Equipment.

## 1.8 Service Delivery Management

- 1.8.1 Cubic will assign a service delivery manager ("Service Delivery Manager") to act as the primary person responsible for managing the service relationship between the Customer and Cubic under this Agreement.

1.8.2 The Service Delivery Manager has primary responsibility to:

- a) Track and manage to resolution configuration and other change requests in relation to the WisGo Services;
- b) Manage and resolve service delivery issues as an escalated point of contact;
- c) Meet regularly (monthly or as otherwise mutually agreed with the Customer) to review the Contractor's service performance with the Customer; and
- d) Participate and support the Customer as commercially reasonably requested in long-term service planning discussions as it relates to the WisGo Services including interactions between the WisGo Services and other technology solutions procured by the Customer.

## 2 UMO SERVICE LEVELS

Cubic will use reasonable endeavors to achieve the target service level set out in this service level description. Cubic shall not be in breach of contract nor shall have any liability, to the Customer in the event the service levels are not met.

### 2.1 Umo Services Target Availability

The following availability targets apply to the WisGo Services Back-Office. For the purpose of this clause WisGo Services includes the Umo Pass Passenger Portal, other web-based user interface portals provided by the WisGo Services and centrally hosted elements of WisGo Services utilized by the Umo App connected to the Umo Pay Services.

Service Uptime target (see Measurements)	99.9%
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### 2.2 Severity Level Definition for Incidents

Incidents are classified as per the Severity Level 1 through 4 defined in the table below.

Severity Level	Severity Level Definition
Severity Level 1 – Critical (S1)	<p>A widespread Incident impacting critical functions that produces a major business impact, including significant loss of revenue or expense; negative impact to many customers and/or internal Users; system-wide issue impacting devices or production applications; WisGo Services are operating at a seriously degraded level such that normal business operations cannot be conducted.</p> <p>Examples: The ability to process transaction or make product purchases are unavailable.</p>
Severity Level 2 – Urgent (S2)	<p>Incident produces substantial business impact with non-trivial loss of revenue or expense; substantial negative impact to multiple customers and/or Users; device or production application functionality is severely limited, or is experiencing continual or repeated Incidents; WisGo Services are operating at a degraded level such that normal business operations are severely impacted.</p> <p>Examples: End Users are unable to access information in their accounts (such as, transaction history); critical reporting functions are unavailable or</p>

Severity Level	Severity Level Definition
	working incorrectly for Customer Users; WisGo Services response times are significantly degraded; route planning data returns wrong stop sequences
Severity Level 3 – Moderate (S3)	<p>Incident produces limited business impact and negligible loss of revenue or expense; little negative impact to Users; Incident limited to a discrete component of production application functionality; work-arounds available allowing Users to circumvent or avoid the issue; WisGo Services are operating at a degraded level such that normal business operations are minimally impeded.</p> <p>Examples: Issues where there is a reasonable workaround available; inability to configuration change that is not time critical in nature; usability issues that severely degrade the User experience.</p>
Severity Level 4 – Cosmetic (S4)	<p>Incident produces little or no business impact with no loss of revenue or expense; little or no negative impact to Users. Incident limited to a discrete component of production application functionality and does not prevent business operations to function.</p> <p>Examples: spelling mistake; errors in documentation; minor usability issues; issues where there are easy to use workarounds available.</p>

### 2.3 Target Service Levels for Incidents

This section describes the Service Levels that apply to Severity Level 1 through 4. When raising a potential Incident, the Customer shall provide a reasonable and clear description of the nature of the suspected Incident, how MTS operations are impacted, and any other information reasonably requested by Cubic to investigate and resolve the Incident. Resolution may include providing any of a permanent fix, roll-back, workaround temporary fix or temporary bypass of a failure. Where a temporary fix or work around reduces the severity of an Incident, resolution target times will be adjusted to the adjusted severity level.

### 2.3.1 Lodgment and response target service levels

Service Incident Target Response SLA				
Priority	Response Time	Service Window	Lodgment	Time Zone
S1	2 hours	24 x 7	Phone	CST
S2	4 hours	24 x 7	Phone or email	CST
S3	1 Business Day	08:00 to 18:00 Business Days	Email	CST
S4	5 Business Days	08:00 to 18:00 Business Days	Email	CST

### 2.3.2 Resolution

#### a) Umo Back-office Services

Service Incident Target Resolution Times SLA			
Priority	Target Resolution Time	Resolution Window	Progress Updates
S1	4 hours	24 x 7	Yes
S2	24 hours	As reasonably required to meet target resolution times	Yes
S3	30 Business Days	Business hours commercially reasonable efforts Business hours	On request
S4	At Umo discretion		Release notes

#### b) Umo App – Incidents requiring a new app release or roll-back

Service Incident Target Resolution Times SLA			
Priority	Target Resolution Time	Resolution Window	Progress Updates
S1	24 hours	24 x 7	Yes
S2	48 hours	As reasonably required to meet target resolution times	Yes
S3	3 Business Days	Business hours	On request
S4	At Umo discretion	Business hours	Release notes

#### c) Devices Software – incidents related to Cubic developed and maintained device software

Service Incident Target Resolution Times SLA			
Priority	Target Resolution Time	Resolution Window	Progress Updates
S1	24 hours	24 x 7	Yes
S2	48 hours	24 x 7	Yes
S3	3 Business Days	Business hours	On request
S4	At Umo discretion	Business hours	Release notes

d) Third-party commercial-off-the shelf vendor software or applications

Target resolution and update availability is provided as per each respective third-party vendor's applicable commercial service agreements and support arrangements.

2.4 Exclusions

2.4.1 Target service levels do not apply to faults outside Cubic's control – for example a fault with the merchant acquiring solution impacting service functionality. Third-party service provider issues will be managed on a commercially reasonable efforts basis.

2.4.2 This exclusion does NOT apply to our Service Uptime target service levels as it relates to the use of public cloud services to host the WisGo Services, or where a public cloud services provider has a service issue impacting all services utilized by Cubic.

2.5 Measurements

Definition	Measurement
Response Time	The clock shall commence from the time that the Service Incident or Service Request is logged in Cubic's service management system and its associated unique reference number is advised to the Customer. The clock shall stop at the time that Cubic's resources commence investigation of actions. This shall be recorded within Cubic's service management system.
Resolution Time	The clock shall commence from the time that the Service Incident or Service Request is logged in Cubic's service management system and its associated unique reference number is advised to the Customer. The clock shall stop at the time that Cubic's resources contact the Customer either by telephone or by email to instruct the Customer on the steps to be taken by the Customer to resolve the Incident or at the time of issuance of a workaround; temporary fix; software release or patch to the Customer. For mobile applications or any software that require an application store approval process (for example Apple or Google approval), the incident is deemed resolved and the resolution time clock is stopped is defined at the time Cubic makes a new release available to the applicable app store for review. For device software, resolution time is defined as the time to make a new release available for distribution through the applicable device management solution.
Service Uptime	Back-office services uptime is measured through Cubic's monitoring systems as the number of minutes the back-office services are operating in any one calendar month divided by the number of minutes in the calendar month excluding any scheduled down-time. For the purpose of this measurement, operating means the back-office services are not impacted by a Severity 1 incident. A monthly Service Uptime report will be provided electronically within 10 Business Days of the end of each calendar month.

## **Exhibit D**

### **General Customer Obligations**

#### **1 GENERAL**

- 1.1 Provide general User customer support services for the WisGo Services including pass redemption, refunds, and instruction on use and troubleshooting common problems.
- 1.2 Provide basic maintenance for Equipment, such as daily cleaning of equipment and protection of equipment from damage and temperatures above or below reader tolerances specifications, if and as required in Equipment Documentation and training materials.
- 1.3 Implement and execute PCI-DSS practice as required by and applicable to the Customer as requested by Contractor as Merchant of Record.
- 1.4 Permit Contractor and its subcontractor's reasonable access to Customer's buses, installation sites and to the premises in which Customer conducts its business and furnish to Cubic other information as Cubic may reasonably request for performance of the Services, each at mutually agreed upon times and locations.
- 1.5 Return malfunctioning readers for repair/replacement in accordance with the return maintenance authority processes as set forth in Exhibit C.
- 1.6 Unless specifically agreed otherwise in writing, provide and maintain the cellular data services required for the Equipment to communicate with the WisGo Services as contemplated by Section 4.9 of Exhibit A1.
- 1.7 Public relations and marketing in Customer's discretion.
- 1.8 Manage third-parties that the Customer sources or Customer partners that will integrate with the Services.
- 1.9 Responsible for validating WisGo Services readiness for revenue service.

## **Exhibit E**

### **Fees**

Unless otherwise specifically stated otherwise, all amounts are in USD and exclusive of taxes as further set out in Article 4 of this Agreement.

#### **1 CAPITAL COSTS**

- 1.1 The following fees are payable for the Implementation Services and Equipment (“Capital Costs”)

*insert chart*

- 1.2 Contractor shall be entitled to invoice the Customer for the milestone-based Capital Costs on providing reasonable documentation to Customer to demonstrate completion of the following milestones:

*update as appropriate*

- 1.3 Fare Media (Capital Cost Items FM1 and FM2) shall be invoiceable and payable on delivery.



## **2 UMO SERVICES TRANSACTION, SUPPORT AND MAINTENANCE FEES**

2.1 The following fees shall be payable on the Customer first utilizing the WisGo Services for commercial purposes:

2.1.1 A **"Fixed Support And Maintenance Fee"** of **\$TBD** per calendar month

2.1.2 **"Transaction Fees"**:

- a) Transaction Fees are calculated as \$0.035 per Billable Transaction. Transaction Fees are calculated based on the **"Billable Transactions"** in the calendar month being invoiced. A Billable Transaction is defined as an electronically recorded boarding utilizing the WisGo Services.
- b) A monthly minimum Transaction Fee of **\$TBD** applies (**"Monthly Minimum Transaction Fee"**). If in any one calendar month, the Transaction Fees as calculated on a per transaction basis above are less than the Monthly Minimum Transaction Fee, the Monthly Minimum Transaction Fee is charged instead.

2.2 Fees in this Clause 2 are invoiced monthly in arrears.

## **3 OPEN PAYMENTS (CONTACTLESS EMV ACCEPTANCE OPTION)**

3.1 The Customer has the option to enable the Open Payments feature of the WisGo Services

3.2 The following fees shall be payable on the Customer first utilizing the Open Payments feature for production purposes:

3.2.1 An Open Payments End-point Fee of \$ per Validator (Bus or Station) per year.

3.2.2 An Open Payments Transaction Fee of \$0.01 per tap performed at a Validator using a contactless EMV payment card. This fee is in addition to the Transaction Fees

3.3 Fees in this Clause 3 are invoiced monthly in arrears.

## **4 OTHER RECURRING FEES**

4.1 As Contractor will remain the Merchant of Record on the WisGo application, all credit card fees will be paid by Contractor and passed through to Customer, without markup, on a monthly basis as a billable expense or a reduction in Customer revenue earned.

## **5 CARD ENCODING**

5.1 A Card Encoding Fee of \$0.23 shall apply per Card encoded by Cubic subject to the minimum batch being 5,000 Cards. This fee is inclusive of shipping the encoded cards to a Customer designated location in the United States. It assumes under this scenario that the Customer is responsible for the purchasing cost, import duties (if applicable) and shipping costs of Cards to Cubic's encoding facility in the United States.

5.2 Card Encoding Fees shall be invoiced and payable upon Cubic shipping the Cards to the Customer's designated location following encoding.

## **6 ADDITIONAL EQUIPMENT**

6.1 The Customer may procure Equipment under this Agreement, in addition to the quantities in the initial equipment order set-out in Clause 1.

6.2 The following table sets-out the pricing for additional Contractor Equipment as of the Effective Date:

Item	Reference Price
Mobile Validator 3	\$
Cubic Platform Validator	\$

- 6.3 The reference pricing includes 1-year warranty, Cubic overhead, general and admin expenses, handling and margin. It excludes shipping and installation.
- 6.4 Pricing and lead Times. Additional equipment or services pricing and lead times are subject to change and will be confirmed by means of a quote for each additional order requested by the Customer. Lead times will be confirmed at time of quote.

## 7 ADDITIONAL FARE MEDIA

- 7.1 As of the Effective Date, the following reference pricing applies to additional orders of Fare Media procured by Cubic on behalf of the MTS in addition to the Fare Media included in Clause 1.1

Item	Price
Card purchased and encoded by Cubic	\$ per additional card. Minimum order of 5,000 cards.
Paper Tokens	\$ per Paper Token. Minimum order of 1,000 Paper Tokens.

- 7.2 Card pricing assumes 2 pantone color design and excludes any special packaging. Pricing is inclusive of card encoding.
- 7.3 Pricing and lead Times. Additional fare media pricing is subject to change and will be confirmed by means of a quote taking into account then prevailing cards costs, card design and packaging requirements. Lead times will be confirmed at time of quote.

## 8 FEES ESCALATION AND INDEXATION

- 8.1 The following fees will automatically increase by 3% per year on the anniversary date of the WisGo Services first being utilized for production purposes.

Fixed Support And Maintenance Fee
Open Payments End-point Fee
Point Of Sale Support And Maintenance Fee
Card Encoding Fee

## 9 PAYMENTS TO CUSTOMER FOR UMO REWARDS

- 9.1 In respect of the optional Umo Rewards Services set out in Exhibit A3, Contractor shall pay Customer twenty-five percent (25%) of the Net Sponsored Content Revenue (the "Customer Revenue Share") where:
- 9.1.1 "Net Sponsored Content Revenue" means (i) the amount actually paid by sponsors calculated based on the number of impressions of Sponsored Content on the Umo App within the Customer's service area less (ii) any applicable third-party brokerage or commissions fees.
- 9.1.2 "Sponsor" means any entity that pays Contractor in respect of the display of Sponsored Content.
- 9.1.3 "Sponsored Content" means any content provided by Sponsors that is approved by Cubic and displayed on the Umo App in the Customer's service area

- 9.2 The Customer Revenue Share shall be payable no later than forty-five (45) days from end of each quarter via cheque or electronic payment. The end dates for each quarter in each calendar year shall be 31<sup>st</sup> March, 30<sup>th</sup> June, 30<sup>th</sup> September, and 31<sup>st</sup> December.

## **10 CHANGE ORDERS**

- 10.1 If Customer wishes to order any additional Equipment or extend the Services to additional Authorized Mobility Services Providers, then the pricing for such order shall be applicable as set out above. The additional requirement including the schedule for implementation shall be documented in a change order to be executed between the Parties. Contractor shall have no obligation to provide any such Services prior to execution of that change order.
- 10.2 Where the Parties mutually agree other changes to the Services provided under this Agreement, such changes, including any agreed changes to the Fees, schedule or scope, will be documented in the form of a written change order signed by both Parties in accordance with Clause 18 of the Agreement.
- 10.3 The Fees set out in this Exhibit E and the schedule set out in Exhibit B (Implementation Services) are based on Customer's performance of its obligations in this Agreement and the assumptions set out in this Agreement. To the extent that Customer fails to perform these obligations in accordance with the agreed timeframes, or these assumptions are incorrect, Contractor will promptly notify Customer, and the Parties will work to implement any changes schedule and price shall be adjusted in accordance with Clause 7.1.2 of the Agreement.

## **11 TERMINATION FEE**

- 11.1 If Customer terminates the Agreement in accordance with Section 11.4 of the Agreement, the following Fees shall be payable to Contractor on the termination date (the "Termination Fee"):
- 11.2 Payment in full for the cost for any Services performed or Equipment supplied or ordered prior to the date of termination that have not already been paid for.
- 11.2.1 Breakage costs related to early termination of any subcontract or supplier agreements including any committed costs.
- 11.2.2 Reasonable and demonstrable demobilization costs including any related to subcontracted or outsourced personnel.
- 11.2.3 Any costs related to any transition services required including but not limited to the Transition Services set out in Exhibit A5.
- 11.2.4 For the initial Term of the Agreement, the Customer will pay the 25% of the Operations and Maintenance Fees remaining for the Term from when the Agreement was terminated for convenience. For any subsequent extensions, the Customer will pay fifteen percent (15%) of any fees that would have been payable for the remainder of the contract Term had the Agreement not been terminated for convenience
- 11.2.5 Contractor shall be entitled to include direct costs, overheads, indirect costs allocation and a reasonable level of profit in any claim for costs.

## **EXHIBIT G**

### **SECURITY**

Contractor shall source the WisGo Services in accordance with the following security policies:

- a) Contractors Compliance Matrix Sec 2.6
- b) Cubic's Acceptable Use of Technology Policy
- c) Cubic's Mobile Device Policy
- d) Cubic's Information Security Manual

The foregoing policies as provided to Customer prior to the Effective Date are incorporated into this Agreement with this reference. Contractor will provide annual copies of the foregoing policies to Customer on an annual basis. Contractor may modify and update the foregoing policies, provided such modification or update does not materially decrease any security referenced in the foregoing policies.

## Exhibit H

### Required Federal Terms

#### U.S. GOVERNMENT REQUIRED CLAUSES

**Fly America Requirements** – Applicability – all contracts involving transportation of persons or property, by air between the U.S. and/or places outside the U.S. These requirements do not apply to micro-purchases (\$10,000 or less, except for construction contracts over \$2,000).

Contractor shall comply with 49 USC 40118 (the “Fly America” Act) in accordance with General Services Administration regulations 41 CFR 301-10, stating that recipients and subrecipients of Federal funds and their contractors are required to use US Flag air carriers for US 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. Contractor shall submit, if a foreign air carrier was used, an appropriate certification or memorandum adequately explaining why service by a US 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. Contractor shall include the requirements of this section in all subcontracts that may involve international air transportation.

**Buy America Requirements** – Applicability – Construction Contracts and Acquisition of Goods or Rolling Stock (valued at more than \$150,000)

Contractor shall comply with 49 USC 5323(j) and 49 CFR 661, stating that Federal funds may not be obligated unless steel, iron, and manufactured products used in FTA-funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 CFR 661.7, and include software, microcomputer equipment and small purchases (currently less than \$150,000) made with capital, operating, or planning funds. Separate requirements for rolling stock are stated at 5323(j)(2)(C) and 49 CFR 661.11. Rolling stock must be manufactured in the US and have a minimum 60% domestic content for FY2016 and FY2017, a minimum 65% domestic content for FY2018 and FY2019 and a minimum 70% domestic content for FY2020 and beyond. A bidder or offeror shall submit appropriate Buy America certification to the recipient with all bids on FTA-funded contracts, except those subject to a general waiver. Proposals not accompanied by a completed Buy America certification shall be rejected as nonresponsive. This requirement does not apply to lower tier subcontractors.

**Charter Bus Requirements** – Applicability – Operational Service Contracts. These requirements do not apply to micro-purchases (\$10,000 or less, except for construction contracts over \$2,000).

Contractor shall comply with 49 USC 5323(d) and (g) and 49 CFR 604, which state that recipients and subrecipients of FTA assistance may provide charter service for transportation projects that uses equipment or facilities acquired with Federal assistance authorized under the Federal transit laws (except as permitted by 49 CFR 604.2), or under 23 U.S.C. 133 or 142, only in compliance with those laws and FTA regulations, “Charter Service,” 49 CFR part 604, the terms and conditions of which are incorporated herein by reference.

**School Bus Requirements** – School Bus Requirements – Applicability – Operational Service Contracts. These requirements do not apply to micro-purchases (\$10,000 or less, except for construction contracts over \$2,000). Pursuant to 69 USC 5323(f) or (g) as amended by MAP-21, 23 USC 133, 23 USC 142, and 49 CFR 605, recipients and subrecipients of FTA assistance shall not engage in school bus operations exclusively for transportation of students and school personnel in competition with private school bus operators unless qualified under specified exemptions. When operating exclusive school bus service under an allowable exemption, recipients and subrecipients shall not use federally funded equipment, vehicles, or facilities. Violations. If a Recipient or any Third-Party Participant that has operated school bus service in violation of FTA’s School Bus laws and regulations,

FTA may: (1) Require the Recipient or Third-Party Participant to take such remedial measures as FTA considers appropriate, or (2) Bar the Recipient or Third Party Participant from receiving Federal transit funds.

**Cargo Preference** - Use of US-Flag Vessels – Applicability – Contracts involving equipment, materials or commodities which may be transported by ocean vessels. These requirements do not apply to micro-purchases (\$10,000 or less, except for construction contracts over \$2,000). Contractor shall: a. use privately owned US-Flag commercial vessels to ship at least 50% of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to the underlying contract to the extent such vessels are available at fair and reasonable rates for US flag commercial vessels; b. furnish within 20 working days following the loading date of shipments originating within the US or within 30 working days following the loading date of shipments originating outside the US, a legible copy of a rated, "on-board" commercial bill-of-lading in English for each shipment of cargo described herein to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590 and to the recipient (through contractor in the case of a subcontractor's bill-of-lading.) c. include these requirements in all subcontracts issued pursuant to this contract when the subcontract involves the transport of equipment, material, or commodities by ocean vessel.

**Seismic Safety** – Applicability – Construction of new buildings or additions to existing buildings. These requirements do not apply to micro-purchases (\$10,000 or less, except for construction contracts over \$2,000). Contractor agrees that any new building or addition to an existing building shall be designed and constructed in accordance with the standards required in USDOT Seismic Safety Regulations 49 CFR 41 and shall certify compliance to the extent required by the regulation. Contractor shall also ensure that all work performed under this contract, including work performed by subcontractors, complies with the standards required by 49 CFR 41 and the certification of compliance issued on the project.

**Energy Conservation** – Applicability – All Contracts except micro-purchases (\$10,000 or less, except for construction contracts over \$2,000) Contractor shall comply with mandatory standards and policies relating to energy efficiency, stated in the state energy conservation plan issued in compliance with the Energy Policy & Conservation Act.

**Clean Water** – Applicability – All Contracts and Subcontracts over \$150,000. Contractor shall comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 USC 1251 et seq. Contractor shall report each violation to the recipient and understands and agrees that the recipient shall, in turn, report each violation as required to FTA and the appropriate EPA Regional Office. Contractor shall include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with FTA assistance.

**Bus Testing** – Applicability – Rolling Stock/Turnkey

Contractor [manufacturer] shall comply with 49 USC A5323(c) and FTA's implementing regulation 49 CFR 665 and shall perform the following:

- 1) A manufacturer of a new bus model or a bus produced with a major change in components or configuration shall **provide a copy of the final test report** to the recipient prior to the recipient's final acceptance of the first vehicle.
- 2) A manufacturer who releases a report under para. 1 above shall provide notice to the operator of the testing facility that the report is available to the public.
- 3) If the manufacturer represents that the vehicle was previously tested, the vehicle being sold should have the identical configuration and major components as the vehicle in the test report, which must be provided to the recipient prior to the recipient's final acceptance of the first vehicle. If configuration or components are not identical, the manufacturer shall provide a description of the change and the manufacturer's basis

for concluding that it is not a major change requiring additional testing.

4) If the manufacturer represents that the vehicle is "grandfathered" (has been used in mass transit service in the US before Oct. 1, 1988, and is currently being produced without a major change in configuration or components), the manufacturer shall provide the name and address of the recipient of such a vehicle and the details of that vehicle's configuration and major components.

**Pre-Award & Post-Delivery Audit Requirements** – Applicability – Rolling Stock/Turnkey Contractor shall comply with 49 USC 5323(l) and FTA's implementing regulation 49 CFR 663 and submit the following certifications:

- 1) Buy America Requirements: Contractor shall complete and submit a declaration certifying either compliance or noncompliance with Buy America. If contractor certifies compliance with Buy America, it shall submit documentation listing:
  - A. Component and subcomponent parts of the rolling stock to be purchased identified by manufacturer of the parts, their country of origin and costs; and
  - B. The location of the final assembly point for the rolling stock, including a description of the activities that will take place at the final assembly point and the cost of final assembly.
  - C. Solicitation Specification Requirements: Contractor shall submit evidence that it will be capable of meeting the bid specifications.
  - D. Federal Motor Vehicle Safety Standards (FMVSS): Contractor shall submit 1) manufacturer's FMVSS self-certification sticker information that the vehicle complies with relevant FMVSS or 2) manufacturer's certified statement that the buses will not be subject to FMVSS regulations.

**Lobbying** – Applicability - Construction/Architectural and Engineering/Acquisition of Rolling Stock/Professional Service Contract/Operational Service Contract/Turnkey contracts over \$100,000

Byrd Anti-Lobbying Amendment, 31 U.S.C. 1352, as amended by the Lobbying Disclosure Act of 1995, P.L. 104-65 [to be codified at 2 U.S.C. § 1601, et seq.] - Contractors who apply or bid for an award of \$100,000 or more shall file the certification required by 49 CFR part 20, "New Restrictions on Lobbying." Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to the recipient.

**Access to Records and Reports** – Applicability – As shown below. These requirements do not apply to micro-purchases (\$10,000 or less, except for construction contracts over \$2,000)

The following access to records requirements apply to this Contract:

1. Where the purchaser is not a State but a local government and is an FTA recipient or a subgrantee of FTA recipient in accordance with 49 CFR 18.36(i), contractor shall provide the purchaser, the FTA, the US Comptroller General or their authorized representatives access to any books, documents, papers and contractor records which are pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions. Contractor shall also, pursuant to 49 CFR 633.17, provide authorized FTA representatives, including any PMO contractor, access to contractor's records and construction sites pertaining to a capital

project, defined at 49 USC 5302(a)1, which is receiving FTA assistance through the programs described at 49 USC 5307, 5309 or 5311.

2. Where the purchaser is a State and is an FTA recipient or a subgrantee of FTA recipient in accordance with 49 CFR 633.17, contractor shall provide the purchaser, authorized FTA representatives, including any PMO Contractor, access to contractor's records and construction sites pertaining to a capital project, defined at 49 USC 5302(a)1, which receives FTA assistance through the programs described at 49 USC 5307, 5309 or 5311. By definition, a capital project excludes contracts of less than the simplified acquisition threshold currently set at \$250,000.
3. Where the purchaser enters into a negotiated contract for other than a small purchase or under the simplified acquisition threshold and is an institution of higher education, a hospital or other non-profit organization and is an FTA recipient or a subgrantee of FTA recipient in accordance with 49 CFR 19.48, contractor shall provide the purchaser, the FTA, the US Comptroller General or their authorized representatives, access to any books, documents, papers and record of the contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions.
4. Where a purchaser which is an FTA recipient or a subgrantee of FTA recipient in accordance with 49 USC 5325(a) enters into a contract for a capital project or improvement (defined at 49 USC 5302(a)1) through other than competitive bidding, contractor shall make available records related to the contract to the purchaser, the Secretary of USDOT and the US Comptroller General or any authorized officer or employee of any of them for the purposes of conducting an audit and inspection.
5. Contractor shall permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
6. Contractor shall maintain all books, records, accounts and reports required under this contract for a period of not less than three (3) years after the date of termination or expiration of this contract, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case contractor agrees to maintain same until the recipient, FTA Administrator, US Comptroller General, or any of their authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. Re: 49 CFR 18.39(i)(11).

FTA does not require the inclusion of these requirements in subcontracts.

**Federal Changes** – Applicability – All Contracts except micro-purchases (\$10,000 or less, except for construction contracts over \$2,000)

Contractor shall comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement between the recipient and FTA, as they may be amended or promulgated from time to time during the term of the contract. Contractor's failure to comply shall constitute a material breach of the contract.

**Bonding Requirements** – Applicability – For those construction or facility improvement contracts or subcontracts exceeding \$250,000, FTA may accept the bonding policy and requirements of the recipient, provided that they meet the minimum requirements for construction contracts as follows:



a. A bid guarantee from each bidder equivalent to five (5) percent of the bid price. The "bid guarantees" shall consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of his bid, execute such contractual documents as may be required within the time specified.

b. A performance bond on the part to the Contractor for 100 percent of the contract price. A "performance bond" is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.

c. A payment bond on the part of the contractor for 100 percent of the contract price. A "payment bond" is one executed in connection with a contract to assure payment, as required by law, of all persons supplying labor and material in the execution of the work provided for in the contract. Payment bond amounts required from Contractors are as follows:

- (1) 50% of the contract price if the contract price is not more than \$1 million;
- (2) 40% of the contract price if the contract price is more than \$1 million but not more than \$5 million; or
- (3) \$2.5 million if the contract price is more than \$5 million.

d. A cash deposit, certified check or other negotiable instrument may be accepted by a grantee in lieu of performance and payment bonds, provided the grantee has established a procedure to assure that the interest of FTA is adequately protected. An irrevocable letter of credit would also satisfy the requirement for a bond.

#### Bid Bond Requirements (Construction)

(a) Bid Security - A Bid Bond must be issued by a fully qualified surety company acceptable to (Recipient) and listed as a company currently authorized under 31 CFR, Part 223 as possessing a Certificate of Authority as described thereunder.

(b) Rights Reserved - In submitting this Bid, it is understood and agreed by bidder that the right is reserved by (Recipient) to reject any and all bids, or part of any bid, and it is agreed that the Bid may not be withdrawn for a period of [ninety (90)] days subsequent to the opening of bids, without the written consent of (Recipient). It is also understood and agreed that if the undersigned bidder should withdraw any part or all of his bid within [ninety (90)] days after the bid opening without the written consent of (Recipient), shall refuse or be unable to enter into this Contract, as provided above, or refuse or be unable to furnish adequate and acceptable Performance Bonds and Labor and Material Payments Bonds, as provided above, or refuse or be unable to furnish adequate and acceptable insurance, as provided above, he shall forfeit his bid security to the extent of (Recipient's) damages occasioned by such withdrawal, or refusal, or inability to enter into an agreement, or provide adequate security therefor.

It is further understood and agreed that to the extent the defaulting bidder's Bid Bond, Certified Check, Cashier's Check, Treasurer's Check, and/or Official Bank Check (excluding any income generated thereby which has been retained by (Recipient) as provided in [Item x "Bid Security" of the Instructions to Bidders]) shall prove inadequate to fully recompense (Recipient) for the damages occasioned by default, then the undersigned bidder agrees to indemnify (Recipient) and pay over to (Recipient) the difference between the bid security and (Recipient's) total damages, so as to make (Recipient) whole.

The undersigned understands that any material alteration of any of the above or any of the material contained on this form, other than that requested, will render the bid unresponsive. Performance and Payment Bonding Requirements (Construction)

The Contractor shall be required to obtain performance and payment bonds as follows:

(a) Performance bonds

1. The penal amount of performance bonds shall be 100 percent of the original contract price, unless the (Recipient) determines that a lesser amount would be adequate for the protection of the (Recipient).
2. The (Recipient) may require additional performance bond protection when a contract price is increased. The increase in protection shall generally equal 100 percent of the increase in contract price. The (Recipient) may secure additional protection by directing the Contractor to increase the penal amount of the existing bond or to obtain an additional bond.

(b) Payment bonds

1. The penal amount of the payment bonds shall equal:
  - (i) Fifty percent of the contract price if the contract price is not more than \$1 million.
  - (ii) Forty percent of the contract price if the contract price is more than \$1 million but not more than \$5 million; or
  - (iii) Two and one half million if the contract price is more than \$5 million.
2. If the original contract price is \$5 million or less, the (Recipient) may require additional protection as required by subparagraph 1 if the contract price is increased.

Performance and Payment Bonding Requirements (Non-Construction)

The Contractor may be required to obtain performance and payment bonds when necessary to protect the (Recipient's) interest.

(a) The following situations may warrant a performance bond:

1. (Recipient) property or funds are to be provided to the contractor for use in performing the contract or as partial compensation (as in retention of salvaged material).
2. A contractor sells assets to or merges with another concern, and the (Recipient), after recognizing the latter concern as the successor in interest, desires assurance that it is financially capable.
3. Substantial progress payments are made before delivery of end items starts.
4. Contracts are for dismantling, demolition, or removal of improvements.

(b) When it is determined that a performance bond is required, the Contractor shall be required to obtain performance bonds as follows:

1. The penal amount of performance bonds shall be 100 percent of the original contract price, unless the

(Recipient) determines that a lesser amount would be adequate for the protection of the (Recipient).

2. The (Recipient) may require additional performance bond protection when a contract price is increased. The increase in protection shall generally equal 100 percent of the increase in contract price. The (Recipient) may secure additional protection by directing the Contractor to increase the penal amount of the existing bond or to obtain an additional bond.

(c) A payment bond is required only when a performance bond is required, and if the use of payment bond is in the (Recipient's) interest.

(d) When it is determined that a payment bond is required, the Contractor shall be required to obtain payment bonds as follows:

1. The penal amount of payment bonds shall equal:

- (i) Fifty percent of the contract price if the contract price is not more than \$1 million;
- (ii) Forty percent of the contract price if the contract price is more than \$1 million but not more than \$5 million; or
- (iii) Two and one half million if the contract price is increased.

#### Advance Payment Bonding Requirements

The Contractor may be required to obtain an advance payment bond if the contract contains an advance payment provision and a performance bond is not furnished. The (recipient) shall determine the amount of the advance payment bond necessary to protect the (Recipient).

#### Patent Infringement Bonding Requirements (Patent Indemnity)

The Contractor may be required to obtain a patent indemnity bond if a performance bond is not furnished and the financial responsibility of the Contractor is unknown or doubtful. The (recipient) shall determine the amount of the patent indemnity to protect the (Recipient).

#### Warranty of the Work and Maintenance Bonds

1. The Contractor warrants to (Recipient), the Architect and/or Engineer that all materials and equipment furnished under this Contract will be of highest quality and new unless otherwise specified by (Recipient), free from faults and defects and in conformance with the Contract Documents. All work not so conforming to these standards shall be considered defective. If required by the [Project Manager], the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

2. The Work furnished must be of first quality and the workmanship must be the best obtainable in the various trades. The Work must be of safe, substantial and durable construction in all respects. The Contractor hereby guarantees the Work against defective materials or faulty workmanship for a minimum period of one (1) year after Final Payment by (Recipient) and shall replace or repair any defective materials or equipment or faulty workmanship during the period of the guarantee at no cost to (Recipient). As additional security for these guarantees, the Contractor shall, prior to the release of Final Payment [as provided in Item X below], furnish separate Maintenance (or Guarantee) Bonds in form acceptable to (Recipient) written by the same corporate surety that provides the Performance Bond and Labor and Material Payment Bond for this Contract. These

bonds shall secure the Contractor's obligation to replace or repair defective materials and faulty workmanship for a minimum period of one (1) year after Final Payment and shall be written in an amount equal to ONE HUNDRED PERCENT (100%) of the CONTRACT SUM, as adjusted (if at all).

**Clean Air** – Applicability – All contracts over \$150,000. 1) Contractor shall comply with all applicable standards, orders or regulations pursuant to the Clean Air Act, 42 USC 7401 et seq. Contractor shall report each violation to the recipient and understands and agrees that the recipient will, in turn, report each violation as required to FTA and the appropriate EPA Regional Office. 2) Contractor shall include these requirements in each subcontract exceeding

\$150,000 financed in whole or in part with FTA assistance.

**Recycled Products** – Applicability – All contracts for items designated by the EPA, when the purchaser or contractor procures \$10,000 or more of one of these items during the current or previous fiscal year using Federal funds. The contractor agrees to comply with all the requirements of Section 6002 of the Resource Conservation and Recovery Act (RCRA), as amended (42 U.S.C. 6962), including but not limited to the regulatory provisions of 40 CFR Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 CFR Part 247.

**Davis-Bacon and Copeland Anti-Kickback Acts** – Applicability -Construction contracts and subcontracts, including actual construction, alteration and/or repair, including decorating and painting, over \$2,000

**(1) Minimum wages** - (i) All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR Part 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classifications and wage rates conformed under paragraph (1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers. (ii)(A) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

(1) Except with respect to helpers as defined as 29 CFR 5.2(n)(4), the work to be performed by the classification requested is not performed by a classification in the wage determination; and

(2) The classification is utilized in the area by the construction industry; and (3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination; and (4) With respect to helpers as defined in 29 CFR 5.2(n)(4), such a classification prevails in the area in which the work is performed. (B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary. (C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary. (D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii) (B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification. (iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof. (iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program. (v)(A) The contracting officer shall require that any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefor only when the following criteria have been met: (1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and (2) The classification is utilized in the area by the construction industry; and (3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary. (C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary. (D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(v) (B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(2) Withholding - The recipient shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the contract, the grantee may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(3) Payrolls and basic records - (i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs. (ii)(A) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the recipient for transmission to the Federal Transit Administration. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under section 5.5(a)(3)(i) of Regulations, 29 CFR part 5.

This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal Stock Number 029-005-00014-1), U.S. Government Printing Office, Washington, DC 20402. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. (B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following: (1) That the payroll for the payroll period contains the information required to be maintained under section 5.5(a)(3)(i) of Regulations, 29 CFR part 5 and that such information is correct and complete; (2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3; (3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract. (C) The weekly submission of a properly executed certification set forth on the

reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (a)(3)(ii)(B) of this section.

(D) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code. (iii) The contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the Federal Transit Administration or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

(4) Apprentices and trainees - (i) Apprentices - Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator of the Wage and Hour Division of the U.S. Department of Labor determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Bureau of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the Bureau, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved. (ii) Trainees - Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an



apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

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

(5) Compliance with Copeland Act requirements - The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

(6) Subcontracts - The contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the Federal Transit Administration may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

(7) Contract termination: debarment - A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

(8) Compliance with Davis-Bacon and Related Act requirements - All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

(9) Disputes concerning labor standards - Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

(10) Certification of Eligibility - (i) By entering into this contract, contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1). (ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1). (iii) The penalty for making false statements is prescribed in 18 USC 1001.

**Contract Work Hours & Safety Standards Act** – Applicability – Contracts over \$250,000

(1) Overtime requirements - No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of 40



hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of 40 hours in such workweek.

(2) Violation; liability for unpaid wages; liquidated damages - In the event of any violation of the clause set forth in para. (1) of this section, contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in para. (1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of 40 hours without payment of the overtime wages required by the clause set forth in para. (1) of this section.

(3) Withholding for unpaid wages and liquidated damages - the recipient shall upon its own action or upon written request of USDOL withhold or cause to be withheld, from any moneys payable on account of work performed by 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 & 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 in para. (2) of this section.

(4) Subcontracts - Contractor or subcontractor shall insert in any subcontracts the clauses set forth in this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. Prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in this section.

**No Government Obligation to Third Parties** - Applicability – All contracts except micro-purchases (\$10,000 or less, except for construction contracts over \$2,000)

(1) The recipient and contractor acknowledge and agree that, notwithstanding any concurrence by the US Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the US Government, the US Government is not a party to this contract and shall not be subject to any obligations or liabilities to the recipient, the contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

(2) Contractor agrees to include the above clause in each subcontract financed in whole or in part with FTA assistance. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

**Program Fraud and False or Fraudulent Statements or Related Acts** – Applicability – All contracts except micro-purchases (\$10,000 or less, except for construction contracts over \$2,000)

(1) Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 USC 3801 et seq. and USDOT regulations, "Program Fraud Civil Remedies," 49 CFR 31, apply to its actions pertaining to this project. Upon execution of the underlying contract, contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submittal, or certification, the US Government reserves the right

to impose the penalties of the Program Fraud Civil Remedies Act (1986) on contractor to the extent the US Government deems appropriate.

(2) If contractor makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submittal, or certification to the US Government under a contract connected with a project that is financed in whole or in part with FTA assistance under the authority of 49 USC 5307, the Government reserves the right to impose the penalties of 18 USC 1001 and 49 USC 5307(n)(1) on contractor, to the extent the US Government deems appropriate.

(3) Contractor shall include the above two clauses in each subcontract financed in whole or in part with FTA assistance. The clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

**Termination** – Applicability – All Contracts over \$10,000, except contracts with nonprofit organizations and institutions of higher learning, where the threshold is \$250,000

a. Termination for Convenience (General Provision) the recipient may terminate this contract, in whole or in part, at any time by written notice to contractor when it is in the recipient's best interest. Contractor shall be paid its costs, including contract close-out costs, and profit on work performed up to the time of termination. Contractor shall promptly submit its termination claim to the recipient. If contractor is in possession of any of the recipient's property, contractor shall account for same, and dispose of it as the recipient directs.

b. Termination for Default [Breach or Cause] (General Provision) If contractor does not deliver items in accordance with the contract delivery schedule, or, if the contract is for services, and contractor fails to perform in the manner called for in the contract, or if contractor fails to comply with any other provisions of the contract, the recipient may terminate this contract for default. Termination shall be effected by serving a notice of termination to contractor setting forth the manner in which contractor is in default. Contractor shall only be paid the contract price for supplies delivered and accepted, or for services performed in accordance with the manner of performance set forth in the contract.

If it is later determined by the recipient that contractor had an excusable reason for not performing, such as a strike, fire, or flood, events which are not the fault of or are beyond the control of contractor, the recipient, after setting up a new delivery or performance schedule, may allow contractor to continue work, or treat the termination as a termination for convenience.

c. Opportunity to Cure (General Provision) the recipient in its sole discretion may, in the case of a termination for breach or default, allow contractor an appropriately short period of time in which to cure the defect. In such case, the notice of termination shall state the time period in which cure is permitted and other appropriate conditions

If contractor fails to remedy to the recipient's satisfaction the breach or default or any of the terms, covenants, or conditions of this Contract within ten (10) days after receipt by contractor or written notice from the recipient setting forth the nature of said breach or default, the recipient shall have the right to terminate the Contract without any further obligation to contractor. Any such termination for default shall not in any way operate to preclude the recipient from also pursuing all available remedies against contractor and its sureties for said breach or default.

d. Waiver of Remedies for any Breach In the event that the recipient elects to waive its remedies for any breach by contractor of any covenant, term or condition of this Contract, such waiver by the recipient shall not limit its remedies for any succeeding breach of that or of any other term, covenant, or condition of this Contract.

e. Termination for Convenience (Professional or Transit Service Contracts) the recipient, by written notice, may terminate this contract, in whole or in part, when it is in the recipient's interest. If the contract is terminated, the recipient shall be liable only for payment under the payment provisions of this contract for services rendered before the effective date of termination.

f. Termination for Default (Supplies and Service) If contractor fails to deliver supplies or to perform the services within the time specified in this contract or any extension or if the contractor fails to comply with any other provisions of this contract, the recipient may terminate this contract for default. The recipient shall terminate by delivering to contractor a notice of termination specifying the nature of default. Contractor shall only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner or performance set forth in this contract.

If, after termination for failure to fulfill contract obligations, it is determined that contractor was not in default, the rights and obligations of the parties shall be the same as if termination had been issued for the recipient's convenience.

g. Termination for Default (Transportation Services) If contractor fails to pick up the commodities or to perform the services, including delivery services, within the time specified in this contract or any extension or if contractor fails to comply with any other provisions of this contract, the recipient may terminate this contract for default. The recipient shall terminate by delivering to contractor a notice of termination specifying the nature of default. Contractor shall only be paid the contract price for services performed in accordance with the manner of performance set forth in this contract.

If this contract is terminated while contractor has possession of the recipient goods, contractor shall, as directed by the recipient, protect and preserve the goods until surrendered to the recipient or its agent. Contractor and the recipient shall agree on payment for the preservation and protection of goods. Failure to agree on an amount shall be resolved under the Dispute clause. If, after termination for failure to fulfill contract obligations, it is determined that contractor was not in default, the rights and obligations of the parties shall be the same as if termination had been issued for the recipient's convenience.

h. Termination for Default (Construction) If contractor refuses or fails to prosecute the work or any separable part, with the diligence that will insure its completion within the time specified, or any extension, or fails to complete the work within this time, or if contractor fails to comply with any other provisions of this contract, the recipient may terminate this contract for default. The recipient shall terminate by delivering to contractor a notice of termination specifying the nature of default. In this event, the recipient may take over the work and complete it by contract or otherwise, and may take possession of and use any materials, appliances, and plant on the work site necessary for completing the work. Contractor and its sureties shall be liable for any damages to the recipient resulting from contractor's refusal or failure to complete the work within specified time, whether or not contractor's right to proceed with the work is terminated. This liability includes any increased costs incurred by the recipient in completing the work.

Contractor's right to proceed shall not be terminated nor shall contractor be charged with damages under this clause if:

1. Delay in completing the work arises from unforeseeable causes beyond the control and without the fault or negligence of contractor. Examples of such causes include: acts of God, acts of the recipient, acts of another contractor in the performance of a contract with the recipient, epidemics, quarantine restrictions, strikes, freight embargoes; and

2. Contractor, within 10 days from the beginning of any delay, notifies the recipient in writing of the causes of delay. If in the recipient's judgment, delay is excusable, the time for completing the work shall be extended. The recipient's judgment shall be final and conclusive on the parties, but subject to appeal under the Disputes clauses.

If, after termination of contractor's right to proceed, it is determined that contractor was not in default, or that the delay was excusable, the rights and obligations of the parties will be the same as if termination had been issued for the recipient's convenience.

i. Termination for Convenience or Default (Architect & Engineering) the recipient may terminate this contract in whole or in part, for the recipient's convenience or because of contractor's failure to fulfill contract obligations. The recipient shall terminate by delivering to contractor a notice of termination specifying the nature, extent, and effective date of termination. Upon receipt of the notice, contractor shall (1) immediately discontinue all services affected (unless the notice directs otherwise), and (2) deliver to the recipient all data, drawings, specifications, reports, estimates, summaries, and other information and materials accumulated in performing this contract, whether completed or in process. If termination is for the recipient's convenience, it shall make an equitable adjustment in the contract price but shall allow no anticipated profit on unperformed services. If termination is for contractor's failure to fulfill contract obligations, the recipient may complete the work by contract or otherwise and contractor shall be liable for any additional cost incurred by the recipient.

If, after termination for failure to fulfill contract obligations, it is determined that contractor was not in default, the rights and obligations of the parties shall be the same as if termination had been issued for the recipient's convenience.

j. Termination for Convenience or Default (Cost-Type Contracts) the recipient may terminate this contract, or any portion of it, by serving a notice of termination on contractor. The notice shall state whether termination is for convenience of the recipient or for default of contractor. If termination is for default, the notice shall state the manner in which contractor has failed to perform the requirements of the contract. Contractor shall account for any property in its possession paid for from funds received from the recipient, or property supplied to contractor by the recipient. If termination is for default, the recipient may fix the fee, if the contract provides for a fee, to be paid to contractor in proportion to the value, if any, of work performed up to the time of termination. Contractor shall promptly submit its termination claim to the recipient and the parties shall negotiate the termination settlement to be paid to contractor. If termination is for the recipient's convenience, contractor shall be paid its contract close-out costs, and a fee, if the contract provided for payment of a fee, in proportion to the work performed up to the time of termination.

If, after serving a notice of termination for default, the recipient determines that contractor has an excusable reason for not performing, such as strike, fire, flood, events which are not the fault of and are beyond the control of contractor, the recipient, after setting up a new work schedule, may allow contractor to continue work, or treat the termination as a termination for convenience.

**Government-wide Debarment and Suspension (Nonprocurement)** – Applicability – Contracts over \$25,000

The Recipient agrees to the following: (1) It will comply with the requirements of 2 C.F.R. part 180, subpart C, as adopted and supplemented by U.S. DOT regulations at 2 C.F.R. part 1200, which include the following: (a) It will not enter into any arrangement to participate in the development or implementation of the Project with any Third Party Participant that is debarred or suspended except as authorized by: 1 U.S. DOT regulations, "Nonprocurement Suspension and Debarment," 2 C.F.R. part 1200, 2 U.S. OMB, "Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)," 2 C.F.R. part 180, including any amendments

thereto, and 3 Executive Orders Nos. 12549 and 12689, "Debarment and Suspension," 31 U.S.C.

§ 6101 note, (b) It will review the U.S. GSA "System for Award Management," <https://www.sam.gov>, if required by U.S. DOT regulations, 2 C.F.R. part 1200, and (c) It will include, and require each of its Third Party Participants to include, a similar provision in each lower tier covered transaction, ensuring that each lower tier Third Party Participant: 1 Will comply with Federal debarment and suspension requirements, and 2 Reviews the "System for Award Management" at <https://www.sam.gov>, if necessary to comply with U.S. DOT regulations, 2 C.F.R. part 1200, and (2) If the Recipient suspends, debar, or takes any similar action against a Third Party Participant or individual, the Recipient will provide immediate written notice to the: (a) FTA Regional Counsel for the Region in which the Recipient is located or implements the Project, (b) FTA Project Manager if the Project is administered by an FTA Headquarters Office, or (c) FTA Chief Counsel,

**Contracts Involving Federal Privacy Act Requirements** – Applicability - When a grantee maintains files on drug and alcohol enforcement activities for FTA, and those files are organized so that information could be retrieved by personal identifier, the Privacy Act requirements apply to all contracts except micro-purchases (\$10,000 or less, except for construction contracts over

\$2,000)

The following requirements apply to the Contractor and its employees that administer any system of records on behalf of the Federal Government under any contract:

(1) The Contractor agrees to comply with, and assures the compliance of its employees with, the information restrictions and other applicable requirements of the Privacy Act of 1974, 5 U.S.C. §552a. Among other things, the Contractor agrees to obtain the express consent of the Federal Government before the Contractor or its employees operate a system of records on behalf of the Federal Government. The Contractor understands that the requirements of the Privacy Act, including the civil and criminal penalties for violation of that Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of the underlying contract.

(2) The Contractor also agrees to include these requirements in each subcontract to administer any system of records on behalf of the Federal Government financed in whole or in part with Federal assistance provided by FTA.

**Civil Rights Requirements** – Applicability – All contracts except micro-purchases (\$10,000 or less, except for construction contracts over \$2,000)

The following requirements apply to the underlying contract:

The Recipient understands and agrees that it must comply with applicable Federal civil rights laws and regulations, and follow applicable Federal guidance, except as the Federal Government determines otherwise in writing. Therefore, unless a Recipient or Program, including an Indian Tribe or the Tribal Transit Program, is specifically exempted from a civil rights statute, FTA requires compliance with that civil rights statute, including compliance with equity in service:

a. Nondiscrimination in Federal Public Transportation Programs. The Recipient agrees to, and assures that each Third Party Participant will, comply with Federal transit law, 49 U.S.C. § 5332 (FTA's "Nondiscrimination" statute): (1) FTA's "Nondiscrimination" statute prohibits discrimination on the basis of: (a) Race, (b) Color, (c) Religion, (d) National origin, (e) Sex, (f) Disability, (g) Age, or (h) Gender identity and (2) The FTA "Nondiscrimination" statute's prohibition against discrimination includes: (a) Exclusion from participation, (b) Denial of program benefits, or (c) Discrimination, including discrimination in employment or business opportunity, (3) Except as FTA determines otherwise in writing: (a) General. Follow: 1 The most recent edition of FTA Circular 4702.1, "Title VI Requirements and Guidelines for Federal

Transit Administration Recipients,” to the extent consistent with applicable Federal laws, regulations, and guidance, and

2 Other applicable Federal guidance that may be issued, but (b) Exception for the Tribal Transit Program. FTA does not require an Indian Tribe to comply with FTA program-specific guidelines for Title VI when administering its projects funded under the Tribal Transit Program,

b. Nondiscrimination – Title VI of the Civil Rights Act. The Recipient agrees to, and assures that each Third Party Participant will: (1) Prohibit discrimination based on: (a) Race, (b) Color, or (c) National origin, (2) Comply with: (a) Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000d et seq., (b) U.S. DOT regulations, “Nondiscrimination in Federally-Assisted Programs of the Department of Transportation – Effectuation of Title VI of the Civil Rights Act of 1964,” 49 C.F.R. part 21, and (c) Federal transit law, specifically 49 U.S.C. § 5332, as stated in the preceding section a, and (3) Except as FTA determines otherwise in writing, follow: (a)

The most recent edition of FTA Circular 4702.1, “Title VI and Title VI-Dependent Guidelines for Federal Transit Administration Recipients,” to the extent consistent with applicable Federal

laws, regulations, and guidance. (b) U.S. DOJ, “Guidelines for the enforcement of Title VI, Civil Rights Act of 1964,” 28 C.F.R. § 50.3, and (c) Other applicable Federal guidance that may be issued,

c. Equal Employment Opportunity. (1) Federal Requirements and Guidance. The Recipient agrees to, and assures that each Third Party Participant will, prohibit discrimination on the basis of race, color, religion, sex, or national origin, and: (a) Comply with Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e et seq., (b) Facilitate compliance with Executive Order No. 11246, “Equal Employment Opportunity,” as amended by Executive Order No. 11375, “Amending Executive Order No. 11246, Relating to Equal Employment Opportunity,” 42 U.S.C. § 2000e note, (c) Comply with Federal transit law, specifically 49 U.S.C. § 5332, as stated in section a, and (d) Comply with FTA Circular 4704.1 other applicable EEO laws and regulations, as provided in Federal guidance, including laws and regulations prohibiting discrimination on the basis of disability, except as the Federal Government determines otherwise in writing, (2) General. The Recipient agrees to: (a) Ensure that applicants for employment are employed and employees are treated during employment without discrimination on the basis of their: 1 Race, 2 Color, 3 Religion, 4 Sex, 5 Disability, 6 Age, or 7 National origin, (b) Take affirmative action that includes, but is not limited to: 1 Recruitment advertising, 2 Recruitment, 3 Employment, 4 Rates of pay, 5 Other forms of compensation, 6 Selection for training, including apprenticeship, 7 Upgrading, 8 Transfers, 9 Demotions, 10 Layoffs, and 11 Terminations, but (b) Indian Tribe. Title VII of the Civil Rights Act of 1964, as amended, exempts Indian Tribes under the definition of “Employer”.

(3) Equal Employment Opportunity Requirements for Construction Activities. In addition to the foregoing, when undertaking “construction” as recognized by the U.S. Department of Labor (U.S. DOL), the Recipient agrees to comply, and assures the compliance of each Third Party Participant, with: (a) U.S. DOL regulations, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor,” 41 C.F.R. chapter 60, and (b) Executive Order No. 11246, “Equal Employment Opportunity,” as amended by Executive Order No.

11375, “Amending Executive Order No. 11246, Relating to Equal Employment Opportunity,” 42

U.S.C. § 2000e note,

d. Disadvantaged Business Enterprise. To the extent authorized by applicable Federal law, the Recipient agrees to facilitate, and assures that each Third-Party Participant will facilitate, participation by small business concerns owned and controlled by socially and economically disadvantaged individuals, also referred to as



"Disadvantaged Business Enterprises" (DBEs), in the Project as follows: 1) Requirements. The Recipient agrees to comply with: (a) Section 1101(b) of Map-21, 23 U.S.C. § 101 note, (b) U.S. DOT regulations, "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs," 49 C.F.R. part 26, and (c) Federal transit law, specifically 49 U.S.C. § 5332, as stated in section a, (2) Assurance. As required by 49 C.F.R. § 26.13(a), (b) DBE Program Requirements. Recipients receiving planning, capital and/or operating assistance that will award prime third-party contracts exceeding \$250,000 in a Federal fiscal year must: 1 Have a DBE program meeting the requirements of 49 C.F.R. part 26, 2 Implement a DBE program approved by FTA, and 3 Establish an annual DBE participation goal, (c) Special Requirements for a Transit Vehicle Manufacturer. The Recipient understands and agrees that each transit vehicle manufacturer, as a condition of being authorized to bid or propose on FTA-assisted transit vehicle procurements, must certify that it has complied with the requirements of 49 C.F.R. part 26, (d) the Recipient provides assurance that: The Recipient shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any DOT-assisted contract or in the administration of its DBE program or the requirements of 49 C.F.R. part 26. The Recipient shall take all necessary and reasonable steps under 49 C.F.R. part 26 to ensure nondiscrimination in the award and administration of DOT-assisted contracts. The Recipient's DBE program, as required by 49 C.F.R. part 26 and as approved by DOT, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the Recipient of its failure to carry out its approved program, the Department may impose sanctions as provided for under 49 C.F.R. part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. § 1001 and/or the Program Fraud Civil Remedies Act of 1986, 31 U.S.C. § 3801 et seq.,

(2) Exception for the Tribal Transit Program. FTA exempts Indian tribes from the Disadvantaged Business Enterprise regulations at 49 C.F.R. part 26 under Map-21 and previous legislation,

e. Nondiscrimination on the Basis of Sex. The Recipient agrees to comply with Federal prohibitions against discrimination on the basis of sex, including: (1) Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. § 1681 et seq., (2) U.S. DOT regulations, "Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance," 49 C.F.R. part 25, and (3) Federal transit law, specifically 49 U.S.C. § 5332, as stated in section a,

f. Nondiscrimination on the Basis of Age. The Recipient agrees to comply with Federal prohibitions against discrimination on the basis of age, including: (1) The Age Discrimination in Employment Act (ADEA), 29 U.S.C. §§ 621 – 634, which prohibits discrimination on the basis of age, (2) U.S. Equal Employment Opportunity Commission (U.S. EEOC) regulations, "Age Discrimination in Employment Act," 29 C.F.R. part 1625, which implements the ADEA, (3) The Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6101 et seq., which prohibits discrimination against individuals on the basis of age in the administration of programs or activities receiving Federal funds, (4) U.S. Health and Human Services regulations, "Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance," 45 C.F.R. part 90, which implements the Age Discrimination Act of 1975, and  
(5) Federal transit law, specifically 49 U.S.C. § 5332, as stated in section a,

g. Nondiscrimination on the Basis of Disability. The Recipient agrees to comply with the following Federal prohibitions pertaining to discrimination against seniors or individuals with disabilities: (1) Federal laws, including: (a) Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, which prohibits discrimination on the basis of disability in the administration of federally funded programs or activities, (b) The Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. § 12101 et seq., which requires that accessible facilities and services be made available to individuals with disabilities, 1 General. Titles I, II, and III of the ADA apply to FTA Recipients, but 2 Indian Tribes. While Titles II and III of the ADA apply to Indian Tribes, Title I of the ADA exempts Indian Tribes from the definition of "employer," (c) The Architectural Barriers Act of 1968, as amended, 42 U.S.C. § 4151 et seq., which requires that buildings and public accommodations be

accessible to individuals with disabilities, (d) Federal transit law, specifically 49 U.S.C. § 5332, which now includes disability as a prohibited basis for discrimination, and (e) Other applicable laws and amendments pertaining to access for elderly individuals or individuals with disabilities, (2) Federal regulations, including: (a) U.S. DOT regulations, "Transportation Services for Individuals with Disabilities (ADA)," 49 C.F.R. part 37, (b) U.S. DOT regulations, "Nondiscrimination on the Basis of Disability in Programs and Activities Receiving or Benefiting from Federal Financial Assistance," 49 C.F.R. part 27, (c) U.S. DOT regulations, "Transportation for Individuals with Disabilities: Passenger Vessels," 49 C.F.R. part 39, (d) Joint U.S. Architectural and Transportation Barriers Compliance Board (U.S. ATBCB) and U.S. DOT regulations, "Americans With Disabilities (ADA) Accessibility Specifications for Transportation Vehicles," 36 C.F.R. part 1192 and 49 C.F.R. part 38, (e) U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability in State and Local Government Services," 28 C.F.R. part 35, (f) U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities," 28 C.F.R. part 36, (g) U.S. EEOC, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. part 1630, (h) U.S. Federal Communications Commission regulations, "Telecommunications Relay Services and Related Customer Premises Equipment for Persons with Disabilities," 47 C.F.R. part 64, Subpart F, (i) U.S. ATBCB regulations, "Electronic and Information Technology Accessibility Standards," 36 C.F.R. part 1194, and (j) FTA regulations, "Transportation for Elderly and Handicapped Persons," 49 C.F.R. part 609, and (3) Other applicable Federal civil rights and nondiscrimination guidance,

h. Drug or Alcohol Abuse - Confidentiality and Other Civil Rights Protections. The Recipient agrees to comply with the confidentiality and civil rights protections of: (1) The Drug Abuse Office and Treatment Act of 1972, as amended, 21 U.S.C. § 1101 et seq., (2) The Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970, as amended, 42 U.S.C. § 4541 et seq., and (3) The Public Health Service Act, as amended, 42 U.S.C. §§ 290dd – 290dd-2, Access to Services for People with Limited English Proficiency. Except as the Federal Government determines otherwise in writing, the Recipient agrees to promote accessibility of public transportation services to people whose understanding of English is limited by following:

1) Executive Order No. 13166, "Improving Access to Services for Persons with Limited English Proficiency," August 11, 2000, 42 U.S.C. § 2000d-1 note, and (2) U.S. DOT Notice, "DOT Policy Guidance Concerning Recipients' Responsibilities to Limited English Proficiency (LEP) Persons," 70 Fed. Reg. 74087, December 14, 2005,

i. Other Nondiscrimination Laws. Except as the Federal Government determines otherwise in writing, the Recipient agrees to: (1) Comply with other applicable Federal nondiscrimination laws and regulations, and (2) Follow Federal guidance prohibiting discrimination.

j. Remedies. Remedies for failure to comply with applicable Federal Civil Rights laws and Federal regulations may be enforced as provided in those Federal laws or Federal regulations.

**Breaches and Dispute Resolution** – Applicability – All contracts over \$250,000

Disputes arising in the performance of this contract which are not resolved by agreement of the parties shall be decided in writing by the recipient's authorized representative. This decision shall be final and conclusive unless within ten days from the date of receipt of its copy, contractor mails or otherwise furnishes a written appeal to the recipient's CEO. In connection with such appeal, contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the recipient's CEO shall be binding upon contractor and contractor shall abide by the decision. FTA has a vested interest in the settlement of any violation of Federal law including the False Claims Act, 31 U.S.C. § 3729.

Performance During Dispute - Unless otherwise directed by the recipient, contractor shall continue performance under this contract while matters in dispute are being resolved.



Claims for Damages - Should either party to the contract suffer injury or damage to person or property because of any act or omission of the party or of any of his employees, agents or others for whose acts he is legally liable, a claim for damages therefore shall be made in writing to such other party within ten days after the first observance of such injury or damage.

Remedies - Unless this contract provides otherwise, all claims, counterclaims, disputes and other matters in question between the recipient and contractor arising out of or relating to this agreement or its breach will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within the residing State.

Rights and Remedies - Duties and obligations imposed by the contract documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by the recipient or contractor shall constitute a waiver of any right or duty afforded any of them under the contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

## **12 PATENT AND RIGHTS DATA –**

Contracts involving experimental, developmental, or research work (\$10,000 or less, except for construction contracts over \$2,000).

### **Patent Rights**

#### **A. General. The Recipient agrees that:**

- (1) Depending on the nature of the Project, the Federal Government may acquire patent rights when the Recipient or Third Party Participant produces a patented or patentable: (a) Invention, (b) Improvement, or (c) Discovery, (2) The Federal Government's rights arise when the patent or patentable information is: (a) Conceived under the Project, or (b) Reduced to practice under the Project, and (3) When a patent is issued or patented information becomes available as described in Patent Rights section A(2), the Recipient agrees to: (a) Notify FTA immediately, and (b) Provide a detailed report satisfactory to FTA,

#### **B. Federal Rights. The Recipient agrees that:**

- (1) Its rights and responsibilities, and the rights and responsibilities of each Third Party Participant, in that federally funded invention, improvement, or discovery will be determined as provided by applicable Federal laws, regulations, and guidance, including any waiver thereof, and (2) Unless the Federal Government determines otherwise in writing, irrespective of the Recipient's status or the status of any Third Party Participant as a large business, a small business, a State government, a State instrumentality, a local government, an Indian tribe, a nonprofit organization, an institution of higher education, or an individual, the Recipient agrees

to transmit the Federal Government's patent rights to FTA as specified in: (a) 35 U.S.C. § 200 et seq., and (b) U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 C.F.R. part 401, and

#### **C. License Fees and Royalties. As permitted by 49 C.F.R. parts 18 and 19:**

- (1) License fees and royalties for patents, patent applications, and inventions derived from the Project are program income, and (2) The Recipient has no obligation to the Federal Government with respect to those license fees or

royalties, except: (a) For compliance with 35 U.S.C. § 200 et seq., which applies to patent rights developed under a federally funded research-type project, and

(b) As FTA determines otherwise in writing.

#### Rights in Data and Copyrights

A. Definition of "Subject Data." means recorded information: (1) Copyright. Whether or not copyrighted, and (2) Delivery. That is delivered or specified to be delivered under the Underlying Agreement,

B. Examples of "Subject Data." Examples of "subject data": (1) Include, but are not limited to:

(a) Computer software, (b) Standards, (c) Specifications, (d) Engineering drawings and associated lists, (e) Process sheets, (f) Manuals, (g) Technical reports, (h) Catalog item identifications, and (i) Related information, but (2) Do not include: (a) Financial reports,

C. Cost analyses, or (c) Other similar information used for Project administration, General Federal Restrictions. The following restrictions apply to all subject data first produced in the performance of the Recipient's Project supported by the Underlying Agreement:

(1) Prohibitions. The Recipient may not: (a) Publish or reproduce any subject data in whole or in part, or in any manner or form, or (b) Permit others to do so, but (2) Exceptions. The prohibitions of Rights in Data and Copyrights C(1) do not apply to: (a) Publications or reproductions for the Recipient's own internal use, (b) An institution of higher learning, (c) The portion of subject data that the Federal Government has previously released or approved for release to the public, or (d) The portion of data that has the Federal Government's prior written consent for release,

D. Federal Rights in Data and Copyrights. The Recipient agrees that: (1) License Rights. The Recipient must provide a license to its "subject data" to the Federal Government, which license is: (a) Royalty-free, (b) Non-exclusive, and (c) Irrevocable, (2) Uses. The Federal Government's license must permit the Federal Government to take the following actions provided those actions are taken for Federal Government purposes: (a) Reproduce the subject data, (b) Publish the subject data, (c) Otherwise use the subject data, and (d) Permit other entities or individuals to use the subject data, and

E. Special Federal Rights in Data for Research, Development, Demonstration, Deployment, and Special Studies Projects. In general, FTA's purpose in providing Federal funds for a research, development, demonstration, deployment, or special studies Project is to increase transportation knowledge, rather than limit the benefits of the Project to the Recipient and its Third Party Participants, therefore, the Recipient agrees that: (1) Publicly Available Report. When the Project is completed, it must provide a Project report that FTA may publish or make available for publication on the Internet, (2) Other Reports. It must provide other reports pertaining to the Project that FTA may request, (3) Availability of Subject Data. FTA may make available to any FTA Recipient or any of its Third Party Participants at any tier of the Project, either FTA's copyright license to the subject data or a copy of the subject data, except as the Federal Government determines otherwise in writing, (4) Identification of Information. It must identify clearly any specific confidential, privileged, or proprietary information submitted to FTA, (5) Incomplete Project. If the Project is not completed for any reason whatsoever, all data developed under the Project becomes "subject data" and must be delivered as the Federal Government may direct, but (6) Exception. Rights in Data and Copyrights Section E does not apply to an adaptation of automatic data processing equipment or program that is both: (a) For the Recipient's use, and (b) Acquired with FTA capital program funding,

F. License Fees and Royalties. As permitted by 49 C.F.R. parts 18 and 19: (1) License fees and royalties for copyrighted material or trademarks derived from Project are program income, and

(2) The Recipient has no obligation to the Federal Government with respect to those license fees or royalties, except: (a) For compliance with 35 U.S.C. § 200 et seq., which applies to patent rights developed under a federally funded research-type project, and (b) As FTA determines otherwise in writing,

G. Hold Harmless. Upon request by the Federal Government, the Recipient agrees that: (1) Violation by Recipient. (a) If it willfully or intentionally violates any: 1 Proprietary rights, 2 Copyrights, or 3 Right of privacy, and (b) Its violation occurs from any of the following uses of Project data: 1 Publication, 2 Translation, 3 Reproduction, 4 Delivery, 5 Use, or 6 Disposition, then (c) It will indemnify, save, and hold harmless against any liability, including costs and

expenses of: 1 The Federal Government's officers acting within the scope of their official duties, 2 The Federal Government's employees acting within the scope of their official duties, and 3 Federal Government's agents acting within the scope of their official duties, but (2) Exceptions. The Recipient will not be required to indemnify the Federal Government for any liability described in Rights in Data and Copyrights section G(1) if: (a) Violation by Federal Officers, Employees or Agents. The violation is caused by the wrongful acts of Federal employees or agents, or (b) State law. If indemnification is prohibited or limited by applicable State law,

H. Restrictions on Access to Patent Rights. Nothing in this Rights in Data and Copyrights section pertaining to rights in data either: (1) Implies a license to the Federal Government under any patent, or (2) May be construed to affect the scope of any license or other right otherwise granted to the Federal Government under any patent,

I. Data Developed Without Federal Funding or Support. The Recipient understands and agrees that in certain circumstances it may need to provide data developed without any Federal funding or support to FTA. Nevertheless: (1) Protections. Rights in Data and Copyrights Sections A, B, C, and D generally do not apply to data developed without Federal funding, even though that data may have been used in connection with the Project, and (2) Identification of Information. The Recipient understands and agrees that the Federal Government will not be able to protect data developed without Federal funding from unauthorized disclosure unless that data is clearly marked "Proprietary" or "Confidential," and

J. Requirements to Release Data. The Recipient understands and agrees that the Federal Government may be required to release Project data and information the Recipient submits to the Federal Government as required by: (1) The Freedom of Information Act, 5 U.S.C. § 552,

(2) Another applicable Federal law requiring access to Project records, (3) U.S. DOT regulations, "Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations," specifically 49 C.F.R. § 19.36(d), or

(4) Other applicable Federal regulations and guidance pertaining to access to Project records.

**Transit Employee Protective Provisions** – Applicability – Contracts for transit operations except micro-purchases (\$10,000 or less, except for construction contracts over \$2,000)

Public Transportation Employee Protective Arrangements. The Recipient agrees that 49 U.S.C. § 5333(b) requires employee protective arrangements to be in place as a condition of award of FTA assistance made available or appropriated for FTA programs involving public transportation operations. U.S. DOL recognizes the following categories of arrangements:

(1) U.S. DOL Certification. When its Project involves public transportation operations and is financed with funding made available or appropriated for 49 U.S.C. §§ 5307, 5309, 5312, 5337, or 5339, as amended by Map-21, or former 49 U.S.C. §§ 5308, 5309, 5312, or other provisions of law as required by the Federal Government, U.S. DOL must provide a Certification of employee protective arrangements before FTA may provide financial assistance for the Project. Therefore, the Recipient understands and agrees, and assures that any Third Party Participant providing public transportation operations will agree, that: (a) It must carry out the Project as provided in its U.S. DOL Certification, which contains the terms and conditions that U.S. DOL has determined to be fair and equitable to protect the interests of any employees affected by the Project, (b) It must comply with 49 U.S.C. § 5333(b), and any future amendments thereto, (c)

It will follow the U.S. DOL guidelines, “Guidelines, Section 5333(b), Federal Transit Law,” 29

C.F.R. part 215, except as U.S. DOL determines otherwise in writing, (d) It must comply with the terms and conditions of the U.S. DOL certification of public transportation employee protective arrangements for the Project, which certification is dated as identified on the Underlying Agreement, including: 1 Alternative comparable arrangements U.S. DOL has specified for the Project, 2 Any revisions U.S. DOL has specified for the Project, or 3 Both, and

(e) It must comply with the following documents and provisions incorporated by reference in and made part of the Underlying Agreement for the Project: 1 The U.S. DOL certification of public transportation employee protective arrangements for the Project, which certification is dated as identified on the Underlying Agreement, 2 The documents cited in that U.S. DOL certification for the Project, 3 Any alternative comparable arrangements that U.S. DOL has specified for the Project, and 4 Any revisions that U.S. DOL has specified for the Project, (2) Special Warranty. When its Project involves public transportation operations, and is financed with funding made available or appropriated for 49 U.S.C. § 5311, as amended by Map-21, for former 49 U.S.C. § 5311 in effect in FY 2012, or a previous fiscal year, or for section 3038 of TEA-21, as amended by section 3039 of SAFETEA-LU, U.S. DOL will provide a Special Warranty for those projects, including projects under the Tribal Transit Program. Therefore, the Recipient understands and agrees, and assures that any Third Party Participant providing public transportation operations will agree, that: (a) It must comply with Federal transit laws, specifically 49 U.S.C. § 5333(b),

(b) Follow the U.S. DOL guidelines, “Guidelines, Section 5333(b), Federal Transit Law,” 29

C.F.R. part 215, except as U.S. DOL determines otherwise in writing, (c) It will comply with the

U.S. DOL Special Warranty for its Project that is most current on the date when it executed the Underlying Agreement, and documents cited therein, including: 1 Any alternative comparable arrangements U.S. DOL has specified for the Project, 2 Any revisions U.S. DOL has specified for the Project, or 3 Both, and (d) It will comply with the following documents and provisions incorporated by reference in and made part of the Underlying Agreement: 1 The U.S. DOL Special Warranty for its Project, 2 Documents cited in that Special Warranty, 3 Alternative comparable arrangements U.S. DOL specifies for the Project, and 4 Any revisions that U.S. DOL has specified for the Project, and (3) Special Arrangements for 49 U.S.C. § 5310 Projects. The Recipient understands and agrees, and assures that any Third Party Participant providing public transportation operations will agree, that although pursuant to 49 U.S.C. § 5310, and former 49

U.S.C. §§ 5310 or 5317, FTA has determined that it was not “necessary or appropriate” to apply the conditions of 49 U.S.C. § 5333(b) to Subrecipients participating in the program to provide public transportation for seniors (elderly individuals) and individuals with disabilities, FTA reserves the right to make the following exceptions: (a) FTA will make case-by-case determinations of the applicability of 49 U.S.C. § 5333(b) for all transfers of funding authorized under title 23, United States Code (flex funds), and (b) FTA reserves the right to make other exceptions as it deems appropriate.

**Disadvantaged Business Enterprise (DBE)** – Applicability – Contracts over \$10,000 awarded on the basis of a bid or proposal offering to use DBEs

a. This contract is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs. The national goal for participation of Disadvantaged Business Enterprises (DBE) is 10%. The recipient's overall goal for DBE participation is listed elsewhere. If a separate contract goal for DBE participation has been established for this procurement, it is listed elsewhere.

b. The contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of this contract. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the municipal corporation deems appropriate. Each subcontract the contractor signs with a subcontractor must include the assurance in this paragraph (see 49 CFR 26.13(b)).

c. If a separate contract goal has been established, Bidders/offers are required to document sufficient DBE participation to meet these goals or, alternatively, document adequate good faith efforts to do so, as provided for in 49 CFR 26.53.

d. If no separate contract goal has been established, the successful bidder/offeror will be required to report its DBE participation obtained through race-neutral means throughout the period of performance.

e. The contractor is required to pay its subcontractors performing work related to this contract for satisfactory performance of that work no later than 30 days after the contractor's receipt of payment for that work from the recipient. In addition, the contractor may not hold retainage from its subcontractors or must return any retainage payments to those subcontractors within 30 days after the subcontractor's work related to this contract is satisfactorily completed or must return any retainage payments to those subcontractors within 30 days after incremental acceptance of the subcontractor's work by the recipient and contractor's receipt of the partial retainage payment related to the subcontractor's work.

f. The contractor must promptly notify the recipient whenever a DBE subcontractor performing work related to this contract is terminated or fails to complete its work, and must make good faith efforts to engage another DBE subcontractor to perform at least the same amount of work. The contractor may not terminate any DBE subcontractor and perform that work through its own forces or those of an affiliate without prior written consent of the recipient.

**Prompt Payment** – Applicability – All contracts except micro-purchases (\$10,000 or less, except for construction contracts over \$2,000)

The prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than 30 days from the receipt of each payment the prime contract receives from the Recipient. The prime contractor agrees further to return retainage payments to each subcontractor within 30 days after the subcontractors work is satisfactorily completed. Any delay or postponement of payment from the

above referenced time frame may occur only for good cause following written approval of the Recipient. This clause applies to both DBE and non-DBE subcontracts.

**Incorporation of Federal Transit Administration (FTA) Terms** – Applicability – All contracts except micro-purchases (\$10,000 or less, except for construction contracts over \$2,000)

The preceding provisions include, in part, certain Standard Terms & Conditions required by USDOT, whether or not expressly stated in the preceding contract provisions. All USDOT- required contractual provisions, as stated 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 Agreement. The contractor shall not perform any act, fail to perform any act, or refuse to comply with any request that would cause the recipient to be in violation of FTA terms and conditions.

**Drug & Alcohol Abuse and Testing** – Applicability – Operational service contracts except micro-purchases (\$10,000 or less, except for construction contracts over \$2,000)

The Contractor agrees to comply with the following Federal substance abuse regulations: a. Drug-Free Workplace. U.S. DOT regulations, "Drug-Free Workplace Requirements (Grants), "49 C.F.R. Part 32, that implements the Drug-Free Workplace Act of 1988 as amended, 41

U.S.C. §§ 8103 et seq., and 2 CFR part 182, b. Alcohol Misuse and Prohibited Drug Use. FTA Regulations, "Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations," 49 USC 5331, as amended by Map-21, 49 CFR part 40, 49 USC chapter 53, 49 CFR Part 655, to the extent applicable.

### **13 OTHER FEDERAL REQUIREMENTS:**

**Full and Open Competition** – In accordance with 49 U.S.C. § 5325(h) all procurement transactions shall be conducted in a manner that provides full and open competition.

**Prohibition Against Exclusionary or Discriminatory Specifications** – Apart from inconsistent requirements imposed by Federal statute or regulations, the contractor shall comply with the requirements of 49 USC 5323(h)(2) by refraining from using any FTA assistance to support procurements using exclusionary or discriminatory specifications.

**Conformance with ITS National Architecture** – Contractor shall conform, to the extent applicable, to the National Intelligent Transportation Standards architecture as required by SAFETEA-LU Section 5307(c), 23 U.S.C. Section 512 note and follow the provisions of FTA Notice, "FTA National Architecture Policy on Transit Projects," 66 Fed. Reg. 1455 et seq., January 8, 2001, and any other implementing directives FTA may issue at a later date, except to the extent FTA determines otherwise in writing.

**Access Requirements for Persons with Disabilities** – Contractor shall comply with 49 USC 5301(d), stating Federal policy that the elderly and persons with disabilities have the same rights as other persons to use mass transportation services and facilities and that special efforts shall be made in planning and designing those services and facilities to implement that policy.

Contractor shall also comply with all applicable requirements of Sec. 504 of the Rehabilitation Act (1973), as amended, 29 USC 794, which prohibits discrimination on the basis of handicaps, and the Americans with

Disabilities Act of 1990 (ADA), as amended, 42 USC 12101 et seq., which requires that accessible facilities and services be made available to persons with disabilities, including any subsequent amendments thereto.

**Notification of Federal Participation** – To the extent required by law, in the announcement of any third party contract award for goods and services (including construction services) having an aggregate value of \$500,000 or more, contractor shall specify the amount of Federal assistance to be used in financing that acquisition of goods and services and to express that amount of Federal assistance as a percentage of the total cost of the third party contract.

**Interest of Members or Delegates to Congress** - No members of, or delegates to, the US Congress shall be admitted to any share or part of this contract nor to any benefit arising therefrom.

**Ineligible Contractors and Subcontractors** - Any name appearing upon the Comptroller General's list of ineligible contractors for federally-assisted contracts shall be ineligible to act as a subcontractor for contractor pursuant to this contract. If contractor is on the Comptroller General's list of ineligible contractors for federally financed or assisted construction, the recipient shall cancel, terminate or suspend this contract.

**Other Contract Requirements** - To the extent not inconsistent with the foregoing Federal requirements, this contract shall also include those standard clauses attached hereto, and shall comply with the recipient's Procurement Guidelines, available upon request from the recipient.

**Compliance With Federal Regulations** - Any contract entered pursuant to this solicitation shall contain the following provisions: All USDOT-required contractual provisions, as set forth in FTA Circular 4220.1F, are incorporated by reference. Anything to the contrary herein notwithstanding, FTA mandated terms shall control in the event of a conflict with other provisions contained in this Agreement. Contractor shall not perform any act, fail to perform any act, or refuse to comply with any grantee request that would cause the recipient to be in violation of FTA terms and conditions. Contractor shall comply with all applicable FTA regulations, policies, procedures and directives, including, without limitation, those listed directly or incorporated by reference in the Master Agreement between the recipient and FTA, as 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.

**Real Property** - Any contract entered into shall contain the following provisions: Contractor shall at all times comply with all applicable statutes and USDOT regulations, policies, procedures and directives governing the acquisition, use and disposal of real property, including, but not limited to, 49 CFR 18.31-18.34, 49 CFR 19.30-19.37, 49 CFR Part 24, 49 CFR 5326 as

amended by Map-21, 49 CFR part 18 or 19, 49 USC 5334, applicable FTA Circular 5010, and FTA Master Agreement, as they may be amended or promulgated during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this contract.

**Access to Services for Persons with Limited English Proficiency** - To the extent applicable and except to the extent that FTA determines otherwise in writing, the Recipient agrees to comply with the policies of Executive Order No. 13166, "Improving Access to Services for Persons with Limited English Proficiency," 42 U.S.C. § 2000d 1 note, and with the provisions of

U.S. DOT Notice, "DOT Guidance to Recipients on Special Language Services to Limited English Proficient (LEP) Beneficiaries," 70 Fed. Reg. 74087, December 14, 2005.

**Environmental Justice** - Except as the Federal Government determines otherwise in writing, the Recipient agrees to promote environmental justice by following: (1) Executive Order No. 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations," February 11, 1994, 42



U.S.C. § 4321 note, as well as facilitating compliance with that Executive Order, and (2) DOT Order 5610.2, "Department of Transportation Actions To Address Environmental Justice in Minority Populations and Low-Income Populations," 62 Fed. Reg. 18377, April 15, 1997, and (3) The most recent and applicable edition of FTA Circular 4703.1, "Environmental Justice Policy Guidance for Federal Transit Administration Recipients," August 15, 2012, to the extent consistent with applicable Federal laws, regulations, and guidance,

**Environmental Protections** – Compliance is required with any applicable Federal laws imposing environmental and resource conservation requirements for the project. Some, but not all, of the major Federal laws that may affect the project include: the National Environmental Policy Act of 1969; the Clean Air Act; the Resource Conservation and Recovery Act; the Comprehensive Environmental Response, Compensation and Liability Act; as well as environmental provisions with Title 23 U.S.C., and 49 U.S.C. chapter 53. The U.S. EPA, FHWA and other federal agencies may issue other federal regulations and directives that may affect the project. Compliance is required with any applicable Federal laws and regulations in effect now or that become effective in the future.

**Geographic Information and Related Spatial Data** – Any project activities involving spatial data or geographic information systems activities financed with Federal assistance are required to be consistent with the National Spatial Data Infrastructure promulgated by the Federal Geographic Data Committee, except to the extent that FTA determines otherwise in writing.

#### **14 GEOGRAPHIC PREFERENCE**

All project activities must be advertised without geographic preference, (except in A/E under certain circumstances, preference for hiring veterans on transit construction projects and geographic-based hiring preferences as proposed to be amended in 2 CFR Part 1201 ).

#### **15 ORGANIZATIONAL CONFLICTS OF INTEREST**

The Recipient agrees that it will not enter into a procurement that involves a real or apparent organizational conflict of interest described as follows: (1) When It Occurs. An organizational conflict of interest occurs when the Project work, without appropriate restrictions on certain future activities, results in an unfair competitive advantage: (a) To that Third Party Participant or another Third Party Participant performing the Project work, and (b) That impairs that Third Party Participant's objectivity in performing the Project work, or (2) Other. An organizational conflict of interest may involve other situations resulting in fundamentally unfair competitive conditions, (3) Disclosure Requirements. Consistent with FTA policies, the Recipient must disclose to FTA, and each of its Subrecipients must disclose to the Recipient: (a) Any instances of organizational conflict of interest, or (b) Violations of federal criminal law, involving fraud, bribery, or gratuity violations potentially affecting the federal award, and (4) Failure to Disclose. Failure to make required disclosures can result in remedies for noncompliance, including debarment or suspension.

#### **16 FEDERAL SINGLE AUDIT REQUIREMENTS FOR STATE ADMINISTERED FEDERALLY AID FUNDED PROJECTS**

Non Federal entities that expend \$750,000 or more in a year in Federal awards from all sources

are required to comply with the Federal Single Audit Act provisions contained in U.S. Office of Management and Budget (OMB) Circular No. A 133, "Audits of States, Local Governments, and Non Profit Organizations" (replaced with 2 CFR Part 200, "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards" effective December 26, 2014 as applicable). Non Federal entities that expend Federal awards from a single source may provide a program specific audit, as defined in the Circular. Non Federal entities that expend less than the amount above in a year in Federal awards from all sources are exempt from Federal audit requirements for



that year, except as noted in Sec. 215 (a) of OMB Circular A-133 Subpart B--Audits, records must be available for review or audit by appropriate officials of the cognizant Federal agency the New York State Department of Transportation, the New York State Comptrollers Office and the U.S. Governmental Accountability Office (GAO).

Non Federal entities are required to submit a copy of all audits, as described above, within 30 days of issuance of audit report, but no later than 9 months after the end of the entity's fiscal year, to the New York State Department of Transportation, Contract Audit Bureau, 50 Wolf Road, Albany, NY 12232. Unless a time extension has been granted by the cognizant Federal Agency and has been filed with the New York State Department of Transportation's Contract Audit Bureau, failure to comply with the requirements of OMB Circular A-133 may result in suspension or termination of Federal award payments.

**Veterans Preference.** As provided by 49 U.S.C. § 5325(k), to the extent practicable, the Recipient agrees and assures that each of its Subrecipients:

- (1) Will give a hiring preference to veterans, as defined in 5 U.S.C. § 2108, who have the skills and abilities required to perform construction work required under a third party contract in connection with a Capital Project supported with federal assistance appropriated or made available for 49 U.S.C. chapter 53, and
- (2) Will not require an employer to give a preference to any veteran over any equally qualified applicant who is a member of any racial or ethnic minority, female, an individual with a disability, or a former employee.

## **17 SAFE OPERATION OF MOTOR VEHICLES.**

a. Seat Belt Use. The Recipient agrees to implement Executive Order No. 13043, "Increasing Seat Belt Use in the United States," April 16, 1997, 23 U.S.C. § 402 note, (62 Fed. Reg. 19217), by:

- (1) Adopting and promoting on-the-job seat belt use policies and programs for its employees and other personnel that operate company-owned vehicles, company-rented vehicles, or personally operated vehicles, and
- (2) Including a "Seat Belt Use" provision in each third party agreement related to the Award.

b. Distracted Driving, Including Text Messaging While Driving. The Recipient agrees to comply with:

- (1) Executive Order No. 13513, "Federal Leadership on Reducing Text Messaging While Driving," October 1, 2009, 23 U.S.C. § 402 note, (74 Fed. Reg. 51225),
- (2) U.S. DOT Order 3902.10, "Text Messaging While Driving," December 30, 2009, and
- (3) The following U.S. DOT Special Provision pertaining to Distracted Driving:

(a) Safety. The Recipient agrees to adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers, including policies to ban text messaging while using an electronic device supplied by an employer, and driving a vehicle the driver owns or rents, a vehicle Recipient owns, leases, or rents, or a privately-owned vehicle when on official business in connection with the Award, or when performing any work for or on behalf of the Award

(b) Recipient Size. The Recipient agrees to conduct workplace safety initiatives in a manner commensurate with its size, such as establishing new rules and programs to prohibit text messaging while driving, re-evaluating the existing programs to prohibit text messaging while driving, and providing education, awareness, and other outreach to employees about the safety risks associated with texting while driving, and

(c) Extension of Provision. The Recipient agrees to include the preceding Special Provision of section 34.b(3)(a) – (b) of this Master Agreement in its third party agreements, and encourage its Third Party Participants to comply with this Special Provision, and include this Special Provision in each third party subagreement at each tier supported with federal assistance.

## 18 CATALOG OF FEDERAL DOMESTIC ASSISTANCE (CFDA) IDENTIFICATION NUMBER

The municipal project sponsor is required to identify in its accounts all Federal awards received and expended, and the Federal programs under which they were received. Federal program and award identification shall include, as applicable, the CFDA title and number, award number and year, name of the Federal agency, and name of the pass-through entity.

**The CFDA number for the Federal Transit Administration.** Nonurbanized Area Formula (Section 5311) is 20.509. A Recipient covered by the Single Audit Act Amendments of 1996 and OMB Circular A-133, "Audits of States, Local Governments, and Non-Profit

Organizations," (replaced with 2 CFR Part 200, "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards" effective December 26, 2014 as applicable) agrees to separately identify the expenditures for Federal awards under the Recovery Act on the Schedule of Expenditures of Federal Awards (SEFA) and the Data Collection Form (SF-SAC) required by OMB Circular A-133. The Recipient agrees to accomplish this by identifying expenditures for Federal awards made under Recovery Act separately on the SEFA, and as separate rows under Item 9 of Part III on the SF-SAC by CFDA number, and inclusion of the prefix "ARRA" in identifying the name of the Federal program on the SEFA and as the first characters in Item 9d of Part III on the SF-SAC.