

CONTRACT (AGREEMENT) NO. 0000241

BETWEEN

NEW JERSEY TRANSIT CORPORATION

AND

FOR OPERATING MOTOR BUS PASSENGER SERVICE

This Agreement for Local Bus Service (hereinafter "Agreement" or "Contract") made as of _____ 20____, between the New Jersey Transit Corporation (hereinafter "NJ TRANSIT"), a public instrumentality of the State of New Jersey and _____ having its principal place of business at _____ (hereinafter the "Carrier" collectively, "the Parties").

WITNESSETH:

WHEREAS, the Board of Directors of NJ TRANSIT, at its meeting of _____, authorized the NJ TRANSIT President and CEO (Executive Director) or his designee, to enter into this Contract with the Carrier for a regular route motor bus scheduled passenger service operated by private carriers in the State of New Jersey and for the leasing and/or subleasing of bus equipment pursuant to the New Jersey Public Transportation Act of 1979 (N.J.S.A. 27:25-1, et seq.) (the "Act"); and

WHEREAS, NJ TRANSIT has determined that all routes set forth in **Exhibit A** are essential, and that such services would not otherwise be provided or made available without State assistance; and

WHEREAS, NJ TRANSIT deems it advisable, subject to the availability of funds, to provide such regular route motor bus scheduled passenger service in accordance with the schedules attached as **Exhibit B**; and

WHEREAS, NJ TRANSIT determined that the Carrier is eligible to operate regular route motor bus scheduled passenger service under the Contract with NJ TRANSIT; and

WHEREAS, NJ TRANSIT determined that it is in the public interest to lease to the Carrier certain buses to be utilized exclusively on the routes set forth in attached **Exhibit A**.

WHEREAS, the said Carrier, for and in consideration of the payments hereinafter specified and agreed to be made by NJ TRANSIT, hereby covenants and agrees to commence and complete the work as follows:

NOW, THEREFORE, in consideration of the mutual covenants and conditions herein contained, the Parties hereto covenant and agree with each other as follows:

1. **CARRIER SERVICES:** The Carrier, at the direction of NJ TRANSIT, shall provide to NJ TRANSIT services in conformance with the description of services, deliverables, standards of performance, and acceptance criteria under this Agreement as set forth in **Attachment A** of this Agreement (Scope of Services) annexed hereto and made a part hereof.

2. **COMPENSATION:** This Agreement is a fixed fee contract. NJ TRANSIT will, subject to the availability of funds and audits, pay the Carrier for work identified in **Attachment A** of this Agreement (Scope of Services). See **Exhibit M** (Method of Calculating Payment to Carrier and Contract Amounts), annexed hereto and made part hereof. Payment shall only be made for work that is actually performed and accepted by NJ TRANSIT. The Carrier shall submit monthly invoices pursuant to this Agreement no later than two (2) weeks after the end of the month. The invoices shall be detailed in accordance with procedures and formats prescribed by NJ TRANSIT.

Prompt Payment: The Carrier agrees to pay each Subcontractor and Supplier under this Agreement for satisfactory performance of completed work under its subcontract no later than ten (10) Calendar Days from the receipt of each payment the Carrier receives from NJ TRANSIT. The Carrier shall ensure that all lower tier Subcontractors and Suppliers are paid all invoiced amounts that meet all applicable requirements within fifteen (15) Calendar Days from the time the Subcontractor receives payment from the Carrier.

Costs incurred above the Agreement amounts as set forth in **Exhibit M** (Method of Calculating Payment to Carrier and Contract Amounts) are not reimbursable, except as authorized by the Contracting Officer in writing in accordance with Article 5, MODIFICATION OF AGREEMENT. For purposes of this Agreement and all exhibits, attachments, and appendices, the Contracting Officer for NJ

TRANSIT shall be the Chief of Procurement & Support Services or their designees within NJ TRANSIT's Procurement Department.

3. LIMITATION OF FUNDS:

A.) The Carrier estimates that performance of this Agreement will not cost NJ TRANSIT more than the estimated amount as set forth in **Exhibit M** (Method of Calculating Payment to Carrier and Contract Amounts) . The Carrier agrees to make every effort to perform the work as set forth in **Attachment A** of this Agreement (Scope of Services) and all obligations under this Agreement within the estimated amount as set forth in **Exhibit M** (Method of Calculating Payment to Carrier and Contract Amounts).

B.) The Purchase Order specifies the amount presently available for payment by NJ TRANSIT and allotted to the Scope of Services and the tasks the allotted amount will cover. The Parties contemplate that NJ TRANSIT will allot additional funds incrementally to the Purchase Order up to the full estimated cost as set forth in **Exhibit M** (Method of Calculating Payment to Carrier and Contract Amounts) inclusive of all fees. The Carrier agrees to perform, or to have performed, work on the Agreement up to the point at which the total amount paid and payable by NJ TRANSIT under the Agreement approximates, but does not exceed, the total amount actually allotted by NJ TRANSIT for each of the tasks identified in the Agreement. The Purchase Order is for invoicing purposes only and its attached Terms and Conditions are not part of this Agreement.

C.) Unless explicitly required by other provisions of this Agreement:

1.) NJ TRANSIT is not obligated to reimburse the Carrier for costs incurred in excess of the amount allotted in total by NJ TRANSIT for this Agreement; and

2.) No notice, communication, or representation in any form other than that specified by the Contracting Officer in writing shall affect the amount allotted by NJ TRANSIT to this Agreement. NJ TRANSIT is not obligated to reimburse the Carrier for any costs in excess of the total costs and fees as set forth in **Exhibit M** (Method of Calculating Payment to Carrier and Contract Amounts), whether incurred during the course of the Agreement or as a result of termination.

3.) Change Orders shall not be considered an authorization to exceed the amount allotted by NJ TRANSIT as set forth in **Exhibit M** (Method of Calculating Payment to Carrier and Contract Amounts) unless they contain a statement increasing the amount allotted.

4.) Nothing in this clause shall affect the right of NJ TRANSIT to terminate this Agreement.

4. EFFECTIVE DATE AND TERM OF AGREEMENT: This Agreement shall become binding upon the Parties hereto when executed on behalf of NJ TRANSIT by the Contracting Officer or his/her designee. The Carrier shall commence work upon the Scope of Services on the first scheduled date of service as stipulated in **Attachment A** of this Agreement (Scope of Services) upon receipt of a written Notice to Proceed to that effect which shall be issued on behalf of NJ TRANSIT by its Contracting Officer or his/her designee upon the execution of the Agreement by NJ TRANSIT. The term of this Agreement shall be for a period of five (5) years from the date the Carrier receives the Notice to Proceed.

5. MODIFICATION OF AGREEMENT:

A.) Changes to this Contract, or the Scope of Services set forth in **Attachment A** of this Agreement (Scope of Services) and **Exhibit B** of this Agreement shall only be effective if reduced, modified or expanded within the scope of this Agreement in writing ("contract modifications") executed by NJ TRANSIT'S Contracting Officer or his/her designee and the Carrier.

Except as provided in Paragraph B, below, in the event that NJ TRANSIT requires a reduction, expansion, or modification of the Scope of Services of this Agreement, the Contracting Officer will issue to the Carrier a written notification which specifies such reduction, expansion, or modification. Compensation for any modification will be paid in accordance with **Exhibit M**.

B.) Notwithstanding Paragraph A. above, the Contracting Officer may at any time, by written order, make changes within the Scope of Services of this Agreement to the work to be performed by the Carrier. If any such change causes an increase or decrease in the estimated cost of, or the time required for, the performance of any part of the work under this Agreement, whether or not changed by the order, the Contracting Officer may make such adjustments as are appropriate and equitable and shall modify the Agreement in writing accordingly. Failure to agree to any adjustment shall be a dispute

within the meaning of Article 37, DISPUTES. However, nothing in this clause shall excuse the Carrier from proceeding with the Agreement as changed.

C.) Unless specified in a written contract modification, the Carrier shall not make any change, reduction, modification or expansion of the Scope of Services within or beyond the scope of this that would have the effect of reducing, expanding, restructuring, or eliminating Contracted Service in any way, except at the express written direction of NJ TRANSIT. Agreement shall serve to modify the terms and conditions of this Agreement. Any service modification of a permanent nature may be implemented only by an amendment to this Agreement signed by the Carrier and the designated representative of NJ TRANSIT.

D.) The Carrier shall cooperate in providing information to NJ TRANSIT in relation to any service or fare changes proposed or effectuated by NJ TRANSIT and the Carrier shall assist NJ TRANSIT in carrying out the provisions of the service or fare change. When requested to do so by NJ TRANSIT, the Carrier will assist NJ TRANSIT by posting notices and maintaining the postings in accordance with applicable laws and regulations. NJ TRANSIT will provide the Carrier with the currently valid schedules and public timetables for all Contracted Service. The Carrier shall make such material available to the public in its buses, at the Carrier's offices, at major terminals, and via ticket agents.

6. STATUS REPORTS: RESERVED

7. **REVIEWS:** Until the completion of the Scope of Services by the Carrier and the final payment made by NJ TRANSIT, the Carrier shall allow representatives of NJ TRANSIT to visit the offices and other places of work of the Carrier periodically without prior notice to monitor the Carrier's work completed or in progress pursuant to this Agreement. NJ TRANSIT will, within a reasonable time, review and act upon all documents submitted by the Carrier. Both Parties agree that if either party deems it advisable to hold either a conference or any inspection of work in progress, all Parties shall be notified and may participate.

8. **ACCEPTANCE OF THE CARRIER'S WORK:** All services and deliverables that the Carrier must provide and deliver to NJ TRANSIT as set forth in **Exhibit A** (Scope of Services), shall be provided and delivered to the designated NJ TRANSIT Project Manager. The Project Manager will examine and inspect the deliverables and shall have the right in his/her reasonable judgment to refuse to

accept any services or deliverables if they do not meet the requirements of the Scope of Services. Such inspection does not relieve the Carrier of its liability regarding any deficiencies in the performance of the Scope of Services or deliverables, whether obvious or not. If any deliverables are not accepted, NJ TRANSIT may terminate this Agreement, in whole or in part, in accordance with Article 16, TERMINATION OF THE AGREEMENT FOR CAUSE.

9. OVERPAYMENTS: If at any point NJ TRANSIT determines that the Carrier has been overpaid, NJ TRANSIT shall notify the Carrier in writing of the overpayment. The Carrier shall repay the amount of overpayment to NJ TRANSIT within thirty (30) Calendar Days of said notification, including interest as applicable. In the event of failure by the Carrier to remit the overpayment amount within the time period set forth above, NJ TRANSIT reserves its right to pursue recovery of said amount pursuant to the terms of this Agreement and any means available at law.

10. ASSIGNMENT, SUBCONTRACT AND DISPOSITION APPROVAL: The Carrier shall not sell, transfer or otherwise assign this Agreement or its interest therein to any other Parties without the prior written consent of NJ TRANSIT'S Contracting Officer or his/her designee. The Carrier shall not, without the prior written approval of NJ TRANSIT'S Contracting Officer or his/her designee, assign or subcontract any of the Scope of Services under this Agreement. Neither shall any assignee or Subcontractor, without the prior written approval of NJ TRANSIT, further assign or subcontract any of the work to be performed pursuant to this Agreement.

The terms of this Agreement shall be incorporated into and made part of any assignment or subcontract pursuant to this Agreement. As a condition of obtaining NJ TRANSIT's approval of any proposed assignee or Subcontractor, the Carrier shall provide NJ TRANSIT with sufficient documentation regarding the proposed Subcontractor or assignee for NJ TRANSIT's review and approval and shall provide to NJ TRANSIT a copy of the agreement established between the Carrier and its Subcontractor or assignee. Any assignment or subcontract of work to be performed under this Agreement entered into without prior written approval by NJ TRANSIT's Contracting Officer or his/her designee, shall be void and unenforceable unless NJ TRANSIT's Contracting Officer or his/her designee subsequently gives written approval or consent.

If the Carrier's assignee or Subcontractor fails to perform in accordance with the terms of its assignment or subcontract, the Carrier shall complete or pay to have completed the work which the assignee or Subcontractor failed to complete at no additional cost to NJ TRANSIT.

Any assignment made in contravention of this Section may, in NJ TRANSIT's discretion, automatically, simultaneously, and immediately terminate this Agreement.

11. INDEMNIFICATION: The Carrier shall have full control over the actual operation of the Contracted Service to be provided under this Agreement. The Carrier shall defend, indemnify, protect and save harmless the State of New Jersey, NJ TRANSIT, the U.S. Department of Transportation (USDOT), the Federal Transit Administration (FTA) (if the Agreement is in whole or part Federally funded), and their directors, officers, employees, servants and agents ("Indemnified Parties") from and against all suits, actions, claims, demands or damages of whatsoever kind or nature arising out of or related to the performance of this Agreement, including, but not limited to, expenditures for and costs of investigations, hiring of expert witnesses, court costs, counsel fees, settlements, judgments or otherwise, brought because of any injuries or damage received or sustained by any person, persons, or property on account of the operations of said Carrier or its Subcontractor in the performance of the work, specified in this Agreement because of any act, omission, neglect, or misconduct of said Carrier or its Subcontractor in the performance of the work specified in this Agreement; or from any claims or amounts arising or recovered under the Worker's Compensation Act, or any other law, ordinance, order, or decree, by reason of or arising out of: i) any component of the Contracted Service; ii) any material misrepresentation by the Carrier or breach by the Carrier of any representation, warranty, covenant, agreement, or obligation of Carrier made herein; iii) any negligence or omission of the Carrier; iv) any violation of Law by the Carrier; iv) any failure of the Carrier to perform any part of the Contracted Service; v) any consequential, special, incidental, or indirect damages for which any of the Indemnified Parties, or anyone acting for or on their behalf, becomes liable; vi) a breach of this Agreement by the Carrier; or vii) any incident involving (a) the failure to secure and maintain NJ TRANSIT's buses in any of the Indemnifying Parties' possession, custody or control, or for which Carrier is otherwise responsible, or (b) a compromise or disruption to NJ TRANSIT buses caused by or attributable to the Carrier's acts or omissions.

. So much of the money due the said Carrier under and by virtue of this Agreement as may be considered necessary by NJ TRANSIT for such purpose may be retained for the use of NJ TRANSIT; except that money due to the Carrier will not be withheld when the Carrier produces satisfactory evidence that it is adequately protected by the insurance coverages required in Article 12, INSURANCE. NJ TRANSIT will, as soon as practicable after a claim has been made against it, give written notice thereof to the Carrier along with full and complete particulars of the claim. If the suit is brought against NJ TRANSIT, NJ TRANSIT will forward to the Carrier every claim, demand, complaint, notice, summons, pleading or other process received by NJ TRANSIT. The foregoing obligation shall not be limited by the existence of any insurance policy and shall survive the termination of this Agreement for any reason. No insurance policy shall limit the Carrier's obligation under this agreement for damage to or loss or destruction of property of any kind, by whomsoever owned, caused by, resulting from, or arising out of the performance of this Agreement by Carrier.

NJ TRANSIT shall have the right, but not the obligation, to participate, to the extent, it deems appropriate, in the defense of the matter and must concur in the terms of any settlement or other voluntary disposition of the matter. In the defense of any such claims, demands, suits, actions and proceedings, the Carrier shall not raise or introduce, without the express written permission in advance of the Office of the Attorney General of the State of New Jersey, any defense involving in any way the immunity of NJ TRANSIT or the State of New Jersey, the jurisdiction of the tribunal over NJ TRANSIT or the State of New Jersey, or the provisions of any statutes respecting suits against NJ TRANSIT or the State of New Jersey.

The Carrier is an independent firm contracting with NJ TRANSIT to provide specialized services. The Carrier, its officers, partners, employees, agents, and servants are not to be deemed employees, agents, extensions of staff or servants of NJ TRANSIT. The Carrier assumes full responsibility for liability arising out of its conduct and the conduct of its Subcontractors whether by action or inaction. NJ TRANSIT assumes no liability or responsibility for the acts of the Carrier, its officers, partners, employees, agents, or servants, by virtue of entering into this Agreement.

The Carrier expressly understands and agrees that the provisions of this Indemnification clause shall in no way limit the Carrier's obligations assumed in this Contract, nor shall they be construed

to relieve the Carrier from any liability, no preclude NJ TRANSIT from taking any other actions available to it under any other provisions of this Agreement or otherwise at law.

12. INSURANCE:

Prior to the execution of this Agreement by NJ TRANSIT and before commencing any performance hereunder, the Carrier shall maintain and pay all premiums on the policies of insurance policies for coverages as hereinafter described which shall be maintained for the entire duration of the Agreement. The insurance policies shall be written on ISO occurrence forms, with contractual liability language, covering the obligations assumed by the Carrier under this Agreement, including but not limited to products liability, vandalism, dishonest acts, and related cyber liability exposures. The insurance policies shall contain an endorsement to the effect that cancellations or any material change to the insurance policies that adversely affect the interests of NJ TRANSIT in such insurance policies shall not be effective for less than thirty (30) days after written notice thereof of NJ TRANSIT.

The Carrier is fully responsible for the satisfactory completion of all of its subcontracted work of all tiers associated with the project. The Carrier shall be solely liable and responsible to NJ TRANSIT for any actions, claims, and quality of the work product by any subcontractor, subconsultant, or supplier of any tier hired by the Carrier or their agents to perform work as part of this Agreement.

The Carrier is responsible for the work product of all subconsultants, subcontractors, or suppliers including but not limited to: hiring, verification of qualifications, determination of scope of work, and for setting appropriate insurance requirements commercially reasonable for their trade and given the exposures contained in the scope of the subconsultant, subcontractor, or supplier agreement.

The Carrier shall carry and maintain, in its name as Insured, the following minimum insurance coverages:

a. Commercial General Liability Insurance using ISO Occurrence Form CG0001 10/93 or equivalent. The insurance policy shall provide a minimum amount of \$10,000,000 each occurrence, \$10,000,000 personal and advertising injury, \$10,000,000 per project general aggregate, and \$10,000,000 products completed operations aggregate. Coverage provided under this liability insurance policy shall be on an occurrence basis and shall include, but not be limited to, bodily injury and property damage coverage including products liability/completed operations coverage, premises operations liability,

blanket contractual liability, personal injury liability, advertising injury coverage, independent carriers liability, mobile equipment, damage from explosion, collapse and underground hazards, and cross liability and severability of interests clause. Additional insured endorsement CG2026 11/85, together with ISO Form CG 20 10 10 01, and CG 20 37 10 01, or equivalent, (but only if modified to include both ongoing and completed operations and written on a broad form) naming NJ TRANSIT and the State of New Jersey and the Indemnified Parties and coverage must apply on a primary and non-contributory basis. The insurance policies shall contain a waiver of subrogation in the benefit of the Indemnified Parties. Coverage shall be required and maintained in force for a minimum of three (3) years following acceptance of the overall Agreement, regardless of any beneficial occupancy by NJ TRANSIT during the Agreement term.

b. Commercial Automobile Liability Insurance applicable to all owned, non-owned, hired or leased vehicle with a minimum of \$5,000,000 combined single limit for bodily injury and property damage.

c. Workers' Compensation Insurance in compliance with the laws of the state where the work is to be performed and Employer Liability Insurance as follows: Employer's Liability: \$1,000,000 each accident / \$1,000,000 each employee disease / \$1,000,000 policy limit – disease. In the event the Carrier, its Members, or its Contracting Parties, if any, are considered a railroad, Employers Liability coverage shall be extended to cover the Federal Employers Liability Act with a limit of not less than \$10,000,000 each accident, illness or occurrence.

d. Security and Privacy Liability (Cyber) insurance with a limit of not less than \$5,000,000 per any one claim covering actual or alleged acts, errors, or omissions committed by Carrier, its agents, employees or any other person or entity. The insurance policy shall also extend to include the intentional, fraudulent, or criminal acts of Carrier, its agents, or employees and all other persons or entities. The insurance policy shall expressly provide, but not be limited to, coverage for the following perils: (i) unauthorized use of and/or access to Company Systems, Carrier's computer system or any other system in which Carrier has stored Company Data; (ii) defense of any regulatory action involving a Security Incident; (iii) failure to protect Confidential Information from disclosure; and (iv) Notification Related Costs, whether or not required by statute. The insurance policy required to be maintained by Carrier shall include, without limitation, coverage for legal fees; notifications; investigation/forensic and restoration costs; crisis

management/public relations; credit monitoring/identity protection services; call center expenses; network interruption and extra expense/business interruption; and cyber threat extortion costs.

Should it be required, NJ TRANSIT will provide Railroad Protective Liability Insurance coverage for this Agreement to cover NJ TRANSIT.

With respect to the liability insurance required above, except Professional Liability and Security and Privacy (Cyber) Liability, NJ Transit, the State of New Jersey, and the Indemnified Parties shall be named as Additional insured per endorsement CG2026 11/85, together with ISO Form CG 20 10 10 01, and CG 20 37 10 01, or equivalent, (but only if modified to include both ongoing and completed operations and written on a broad form). Insurance coverage maintained by Carrier must apply on a primary and non-contributory basis. The insurance policies shall contain a waiver of subrogation for the benefit of the Indemnified Parties. There shall be no coverage exceptions for property containing or adjacent to railroad facilities or other transportation facilities, and to provide the policy endorsement evidencing the contractual exclusion related to construction activities, or any access whatsoever, within fifty (50) feet of the railroad has been deleted. There shall be no coverage exclusions for third party over action claims or claims of an insured vs. insured. Coverage shall be required and maintained in force for a minimum of three (3) years following acceptance of the overall Agreement, regardless of any beneficial occupancy by NJ TRANSIT during the Agreement term.

All insurance policies must be written by insurance companies authorized to do business in New Jersey with an A.M. Best and Company rating of "A- / X" or better (or equivalent rating). All insurance policies shall contain an endorsement that if the insurance policy is canceled, non-renewed or is subject to any material reduction in limits, the Insurer will provide written notice to NJ TRANSIT at least thirty (30) Calendar Days prior to the occurrence of such event in accordance with Article 36, NOTIFICATION with a copy to NJ TRANSIT'S Senior Director of Risk Management as follows:

NJ TRANSIT
283-299 Market Street, Suite 800
Newark, New Jersey 07102-5009
Attn: Senior Director, Risk Management

The foregoing insurance coverage is not intended to nor does it limit the liability of the Carrier to hold the Indemnified Parties harmless. All the insurance policies required to be maintained

hereunder shall be primary and non-contributory and any insurance or self-insurance maintain by NJ TRANSIT or any of the Indemnified Parties shall not contribute to any loss. Further, any self-insurance retention shall be evidenced and approved by NJ TRANSIT. If approved, such self-insured retention and/or deductible maintained by the Carrier, or its contracting Parties, shall cover any liability imposed upon the Carrier and its Affiliates with respect to the operations and obligations assumed by the Carrier. The Carrier represent that such deductible or retentions provide NJ TRANSIT and the Indemnified Parties with all rights and protections that would be provided by traditional independent insurance, including but not limited, defense obligations that insurers are required to undertake under liability policies pursuant to the terms of this agreement. If the Carrier carries higher limits than those required hereunder, or other coverages, those shall be made available to pay claims and provide defense.

The Carrier shall provide NJ TRANSIT with evidence of the Carrier's insurance policies. Said insurance policies shall be maintained in full force and effect by the Carrier and assignee, if any, from the effective date of this Agreement until completion of and final payment for the Scope of Services. If the Carrier or assignee shall fail or refuse to renew its insurance policies, as necessary, NJ TRANSIT may cancel or refuse to make payment of any further monies due under this Agreement. In lieu of requiring its assignees or Subcontractors to carry coverage as outlined herein, the Carrier may elect to cover them under its policies of insurance.

If the Carrier, its assignees or any Subcontractor is required to perform work on property or facilities owned by NJ TRANSIT, the Carrier will be required to satisfy the insurance requirements set forth. The Carrier will require its assignees or any Subcontractors to maintain insurance limits that are commercially reasonable for their trade. If the Carrier, its assignees or any Subcontractor is required to perform work on property or facilities owned by a third party (e.g. Amtrak), the Carrier, its assignees or any Subcontractor will be required to satisfy the insurance requirements set forth by the third-party property owner. NJ TRANSIT reserves the right to increase the limits of insurances or require additional coverages.

13. AUDIT AND INSPECTION OF RECORDS:

Pursuant to N.J.S.A. 52:15C-14(d) and N.J.A.C. 19:70-1-6, the Carrier shall maintain all

documentation related to products, transactions or services under this contract for a period of five years from the date of final payment. Such records shall be made available to the New Jersey Office of the State Comptroller upon request.

Pursuant to 2 CFR 200.337, the Carrier and all subcontractors and suppliers shall maintain and retain all records, data, documents, reports, and materials relating to the Contract and contract work and shall permit authorized representatives of NJ TRANSIT, the Comptroller General of the United States, the U.S. Department of Transportation, the FTA, and their duly authorized representatives, upon request to inspect, audit and photocopy all project work, materials, payroll, and all data and records of the Carrier relating to products, transactions or services provided under its performance and its subcontracts and assignees, if any, under this Contract from the effective date hereof through and until the expiration of five (5) years after completion of and final payment for the Contract Work.

NJ TRANSIT, the State of New Jersey, the USDOT, the FTA and the Comptroller General of the United States and their duly authorized representatives also shall have the right to examine all aspects of the products, transactions and services and specifically the right to conduct interviews, on-site visits, surveillance, field activities and head counts and to perform financial audits and operational reviews as deemed necessary to prevent, remediate or mitigate fraud, waste and abuse. Any inspection, audit or review or lack thereof shall not relieve the Carrier of responsibility for satisfactory performance of the Scope of Services. Carrier shall maintain a true and correct set of records for all financial and operational data in sufficient detail to permit reasonable verification or correction of charges and performance in accordance with this Contract. The Carrier further agrees to include in all its subcontracts hereunder a provision to the effect that the subcontractor agrees that it will keep all Contract records and that NJ TRANSIT, the Comptroller General of the United States, the U.S. Department of Transportation, the FTA the State of New Jersey and the Office of the State Comptroller, or any of their duly authorized representatives, shall, until the expiration of five (5) years after payment under the subcontract, have access to and the right to examine any books, documents, and other records related to the subcontractor's performance under the subcontract.

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

14. SUSPENSION OF WORK: NJ TRANSIT may, for any reason, issue a stop order directing the Carrier to suspend work under the Agreement for a specific time. The Carrier shall be paid for goods ordered, goods delivered, or services requested and performed until the effective date of the stop order. The Carrier shall resume work upon the date specified in the stop order, or upon such other date as the Contracting Officer, or his or her designee may thereafter direct in writing. The period of suspension shall be deemed added to the Carrier's approved schedule of performance. The Contracting Officer or his or her designee shall make an equitable adjustment, if any is required, to the Agreement price. The Carrier shall provide whatever information that the Contracting Officer or his or her designee may require related to the equitable adjustment.

15. TERMINATION OF THE AGREEMENT FOR CONVENIENCE: NJ TRANSIT may terminate the Carrier's services in whole or in part for any reason at any time before completion. In that event, the Carrier will be given written notice by the Contracting Officer of such termination specifying the effective date thereof. Compensation will be paid to the Carrier pursuant to the terms of Article 2, COMPENSATION for the work actually performed prior to such date. All documents begun or completed by the Carrier pursuant to this Agreement shall become the property of NJ TRANSIT. After receipt of such written notice, the Carrier shall not incur any new obligations without the prior written approval of the Contracting Officer and shall cancel as many outstanding obligations so related as possible. NJ TRANSIT will evaluate each obligation deemed non-cancellable by the Carrier in order to determine its eligibility for inclusion in compensable costs. No damages of any nature shall be claimed against NJ TRANSIT in the event it exercises this right of termination.

16. TERMINATION OF THE AGREEMENT FOR CAUSE: NJ TRANSIT may terminate this Agreement in whole or in part at any time if the Carrier has materially failed to comply with terms of the Agreement. In the event of such failure, NJ TRANSIT will promptly give written notification to the Carrier of its intent to terminate and the reasons therefor. The Carrier shall have ten (10) Calendar Days or such additional time as NJ TRANSIT may grant, after receipt of notice to cure its failure. If the failure is not cured to the satisfaction of NJ TRANSIT, NJ TRANSIT may terminate this Agreement (in whole or in part) effective immediately.

After receipt of notice of termination, the Carrier shall not incur any new obligations without the approval of NJ TRANSIT and shall cancel as many outstanding obligations as possible. NJ TRANSIT will evaluate each obligation deemed non-cancellable by the Carrier in order to determine its eligibility for inclusion in compensable costs. Compensation shall be made for Scope of Services as set forth in **Exhibit A** pursuant to the terms of this Agreement for work actually performed, completed and approved by NJ TRANSIT prior to the date of termination.

If this Agreement or any part thereof is terminated for cause, NJ TRANSIT may procure services similar to those so terminated. The Carrier shall be liable to NJ TRANSIT for any reasonable excess costs incurred for such similar services. The Carrier shall refrain from any actions that may impede or delay the smooth transition of service to another third party or to NJ TRANSIT. Any actions or omissions by the Carrier that adversely affect the transition process shall be at the Carrier's sole expense, and the Carrier shall be liable for all costs incurred by NJ TRANSIT as a result thereof. At the request of NJ TRANSIT, the Carrier must continue to provide service beyond the contracted end date at its current contracted rates, month-to-month, for up to 180 days.

No damages of any nature shall be claimed against NJ TRANSIT in the event it exercises this right of termination. The rights and remedies available to NJ TRANSIT in this Article shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Agreement.

If, after notice of termination of this Agreement under the provisions of this Article, it is determined for any reason that the Carrier was not in default under the provisions of this Article, or that the default was excusable under the provisions of this Article, the rights and obligations of the Parties shall be

the same as if the notice of termination had been issued pursuant to Article 15, TERMINATION FOR CONVENIENCE.

17. BUSINESS REGISTRATION NOTICE: Pursuant to N.J.S.A. 52:32-44, NJ TRANSIT (“Contracting Agency”) is prohibited from entering into a contract with an entity unless the Proposer/Carrier and each Subcontractor/Subconsultant that is required by law to be named in a Proposal has a valid Business Registration Certificate on file with the Division of Revenue and Enterprise Services within the Department of the Treasury.

Prior to contract award or authorization, the Carrier shall provide the Contracting Agency with its proof of Business Registration and that of any named Subcontractor(s)/Subconsultant(s).

Subcontractors/Subconsultants named in a Proposal shall provide proof of Business Registration to the Proposer, who in turn, shall provide it to the Contracting Agency prior to the time a contract, purchase order, or other contracting document is awarded or authorized.

During the course of contract performance:

(1) The Carrier shall not enter into a contract with a Subcontractor/Subconsultant unless the Subcontractor/Subconsultant first provides the Carrier with a valid proof of Business Registration.

(2) The Carrier shall maintain and submit to the Contracting Agency a list of Subcontractors/Subconsultants and their addresses that may be updated from time to time.

(3) The Carrier and any Subcontractor/Subconsultant providing goods or performing services under this Agreement, and each of their affiliates, shall collect and remit to the Director of the Division of Taxation in the Department of the Treasury, the use tax due pursuant to the Sales and Use Tax Act, (N.J.S.A. 54:32B-1 et seq.) on all sales of tangible personal property delivered into the State. Any questions in this regard can be directed to the Division of Taxation at (609)292-6400. Form NJ-REG can be filed online at <http://www.state.nj.us/treasury/revenue/busregcert.shtml>.

Before final payment is made under this Agreement, the Carrier shall submit to the Contracting Agency a complete and accurate list of all Subcontractors/Subconsultants used and their addresses.

Pursuant to N.J.S.A. 54:49-4.1, a business organization that fails to provide a copy of a Business Registration as required, or that provides false Business Registration information, shall be liable for a penalty of \$25 for each day of violation, not to exceed \$50,000, for each proof of Business Registration not properly provided under a contract with a contracting agency.

18. OUT-OF-STATE CORPORATIONS: If the Carrier is a corporation organized under laws of a state other than New Jersey, the Carrier shall have a certificate of authority to do business in New Jersey in accordance with N.J.S.A. 14A:13-3. In addition, pursuant to N.J.S.A. 14A:4-1 et seq., the Carrier shall maintain a registered office in New Jersey, have a registered agent with a business office in New Jersey and shall file with the Division of Revenue and Enterprise Services the name of said agent and address of said office.

Inquiries should be directed to:

State of New Jersey
Department of Treasury
Division of Revenue and Enterprise Services
PO Box 628 Trenton, New Jersey 08625 -0308
www.state.nj.us/njbgs

19. POLITICAL CONTRIBUTION DISCLOSURE:

The Carrier is advised of its responsibility to file an annual disclosure statement on political contributions with the New Jersey Election Law Enforcement Commission (ELEC), pursuant to N.J.S.A. 19:44A-20.27, et seq., if the Carrier receives contracts valued at \$50,000 or more from a public entity in a calendar year. It is the Carrier's responsibility to determine if filing is necessary. Failure to so file can result in the imposition of financial penalties by ELEC. Additional information about this requirement is available from ELEC at 888-313-3532 or at www.elec.state.nj.us.

20. SOURCE DISCLOSURE:

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

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

If any of the services cannot be performed within the United States, the Carrier shall certify with specificity the reasons why the services cannot be so performed. NJ TRANSIT'S Contracting Officer will determine whether sufficient justification has been provided by the Carrier to form the basis of his/her certification that the services cannot be performed in the United States and whether to seek the approval of the President and CEO (Executive Director).

B.) Breach of Contract for Shift of Services outside the United States.

If, during the term of the Agreement, the Carrier or Subcontractor, who had on contract award certified that services would be performed in the United States, proceeds to shift the performance of the services outside the United States, the Carrier shall be deemed to be in breach of the Agreement, which shall be subject to termination for cause pursuant to Article 16, TERMINATION OF THE AGREEMENT FOR CAUSE, unless previously approved by NJ TRANSIT.

21. USE OF BRAND NAME PRODUCTS IN DESIGN: Carriers engaged to

prepare specifications or to perform design work, or both, for NJ TRANSIT shall prepare such specifications to encourage full and open competition. A situation considered to be restrictive of competition involves specifying only a "brand name" product instead of allowing "an equal" product to be offered and listing the products' salient characteristics. Accordingly, Carriers engaged in preparing specifications or performing design work for NJ TRANSIT are required to include the salient characteristics of a product when it is identified by "brand name" and allow for an equivalent. Carriers may define salient characteristics by using language similar to the following:

A.) 'Original Equipment Manufacturer (OEM) part #123 or approved equal that complies with the original equipment manufacturer's requirements or specifications and will not compromise any OEM warranties'; or

B.) 'Original Equipment Manufacturer part #123 or approved equal that is appropriate for use with and fits properly in [describe the bus, engine, or other].

22. PATENT RIGHTS AND RIGHTS IN DATA:

A.) Rights in Data

1.) The term "subject data" as used herein means recorded information, whether or not copyrighted, that is delivered or specified to be delivered under

this Agreement. The term includes graphic or pictorial delineations in media such as drawings or photographs; text in specifications or related performance or design-type documents; machine forms such as punched cards; magnetic tape, or computer memory printouts; and information retained in computer memory. Examples include, but are not limited to, computer software, engineering drawings, and associated lists, specifications, standards, process sheets, manuals, technical reports, catalog item identifications, and related information. The term does not include financial reports, cost analyses, and similar information incidental to contract administration.

2.) All "subject data" first produced in the performance of this Agreement shall be the sole property of NJ TRANSIT. The Carrier agrees not to assert any rights at common law or equity and not to establish any claim to statutory copyright in such data. Except for its own internal use, the Carrier shall not publish or reproduce such data in whole or in part, or in any manner or form, nor authorize others to do so, without the written consent of NJ TRANSIT until such time as NJ TRANSIT may have released such data to the public.

3.) The Carrier agrees to grant and does hereby grant to NJ TRANSIT and to its officers, agents, and employees acting within the scope of their official duties, a royalty-free, nonexclusive, and irrevocable license throughout the world:

a.) To publish, translate, reproduce, deliver, perform, use, and dispose of, in any manner, any and all data not first produced or composed in the performance of this Agreement, but which is incorporated in the work furnished under this Agreement; and

b.) To authorize others to do so.

4.) The Carrier shall indemnify and save and hold harmless NJ TRANSIT, its officers, agents, and employees acting within the scope of their official duties against any liability, including costs and expenses, resulting from any willful or intentional violation by the Carrier of proprietary rights, copyrights, or rights of privacy, arising out of the publication, translation, reproduction, delivery, performance, use, or disposition of any data furnished under this Agreement.

5.) Nothing contained in this Article shall imply a license to NJ TRANSIT under any patent or be construed as affecting the scope of any license or other right otherwise granted to NJ TRANSIT under any patent.

6.) Paragraphs 3 and 4, above, are not applicable to material furnished to the Carrier by NJ TRANSIT and incorporated in the work furnished under the Agreement; provided that such incorporated material is identified by the Carrier at the time of delivery of such work.

7.) In the event that the project, which is the subject of this Agreement, is not completed, for any reason whatsoever, all data generated under this Agreement shall become subject data as defined in this clause and shall be delivered as NJ TRANSIT may direct.

B.) Patent Rights

1.) NJ TRANSIT shall own any patent or copyright to, and the right to patent or copyright, any plan, drawing, design, specification, report, software, study, survey, data, compositions of matter, manufactures, apparatus, appliances, processes of manufacture or types of construction or materials, regardless of medium (hereafter "Material") prepared by or for the Carrier, any Subcontractor, or by their respective Carriers, agents, officers or employees in connection with performance of the Scope of Services under this Agreement as set forth in **Attachments A and B**. Carrier deems all Material produced pursuant to this Agreement as work-made-for-hire under the Federal Copyright Law, United States Copyright Act, 17 U.S.C. § 101, and, to the extent not so deemed, the copyright thereto is hereby assigned to NJ TRANSIT. Upon completion of the services or the earlier termination of this Agreement, the Carrier shall deliver to NJ TRANSIT all such Material, including such documentation, certifications, and executed forms, assignments and agreements as may be necessary to enable NJ TRANSIT to fully own, patent or copyright such Material.

2.) If the Material or portions of the Material may be patented or copyrighted by others or are subject to other protection from use or disclosure, then the Carrier must grant or secure for NJ TRANSIT, a royalty-free perpetual license to use the Material for any purpose, without additional compensation. NJ TRANSIT shall have the right to use or permit the use of Materials, and also any oral information received by NJ TRANSIT in connection with performance of the Scope of Services as

set forth in **Attachments A and B** of this agreement and any ideas or methods represented by such Materials, for any purposes and at any time without additional compensation.

3.) Subject to the provisions set forth in this section, the Carrier shall defend and indemnify NJ TRANSIT, against and save it harmless from all loss and expense incurred in the defense, settlement or satisfaction of any claims in the nature of infringement of any tangible or intangible property right including contract, patent, copyright, trademark or trade secret infringement or unfair competition arising out of or in connection with the use, in accordance with paragraphs 1 and 2 of this section, of such Materials or portions thereof which are patentable or which may be, or are, copyrighted or trademarked, or otherwise protected by law. If requested by NJ TRANSIT and if notified promptly in writing of any claim as to which the Carrier shall indemnify NJ TRANSIT the Carrier shall conduct all negotiations with respect to, and defend, such claim without expense to NJ TRANSIT. If NJ TRANSIT be enjoined from using the product of the Services or any portion thereof as to which the Carrier is to indemnify NJ TRANSIT against such claims, NJ TRANSIT may, at its option and without thereby limiting any other right it may have hereunder or at law or in equity, require the Carrier to provide at its own expense, equivalent substitutes for such product or affected portion thereof not subject to such injunction and not infringing any patent, copyright, trademark trade secret or other protection from use or disclosure, and if the Carrier shall fail to do so, the Carrier shall, at its expense, refund the cost of the offending product or portion thereof to NJ TRANSIT or take such steps as may be necessary to ensure compliance by NJ TRANSIT with such injunction, to the satisfaction of NJ TRANSIT.

4.) If any invention, improvement, or discovery of the Carrier is conceived or first actually reduced to practice in the course of or under this Agreement, which invention, improvement or discovery may be patentable under the laws of the United States of America or any foreign country, the Carrier shall immediately notify NJ TRANSIT.

5.) The rights and responsibilities of NJ TRANSIT and the Carrier with respect to such invention, improvement, or discovery will be determined in accordance with applicable laws, regulations, policies and any waiver thereof.

23. PUBLICATION AND PUBLICITY: The Carrier, its Subcontractors, assignees, employees or agents shall not release or publish any information or material generated from this project to

others outside of NJ TRANSIT without the express written permission of NJ TRANSIT except as specified in the Scope of Services.

24. EQUAL EMPLOYMENT OPPORTUNITY:

A) The Carrier hereby acknowledges that pursuant to N.J.A.C. 17:27-3.1, NJ TRANSIT cannot award a contract or pay money to any Carrier or Subcontractor which has not agreed and guaranteed to afford equal employment opportunity in performance of this Agreement in accordance with an affirmative action program and, except with respect to affectional or sexual orientation, approved under the terms established in N.J.A.C. 17:27.

MANDATORY EQUAL EMPLOYMENT OPPORTUNITY LANGUAGE FOR GOODS, GENERAL SERVICES, AND PROFESSIONAL SERVICES CONTRACTS (required by N.J.S.A. 10:5-31 et seq. and N.J.A.C. 17:27 et seq.)

During the performance of this Agreement the Carrier agrees as follows:

The Carrier or Subcontractor, where applicable, will not discriminate against any employee or applicant for employment because of age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex. Except with respect to affectional or sexual orientation and gender identity or expression, the Carrier will ensure that equal employment opportunity is afforded to such applicants in recruitment and employment and that employees are treated during employment, without regard to their age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex. Such equal employment opportunity shall include, but not be limited to the following: employment, upgrading, demotion, or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The carrier agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Public Agency Compliance Officer setting forth provisions of this nondiscrimination clause.

The Carrier or Subcontractor, where applicable will, in all solicitations or advertisements for employees placed by or on behalf of the carrier, state that all qualified applicants will receive consideration for employment without regard to age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex.

The Carrier or Subcontractor will send to each labor union, with which it has a collective bargaining agreement, a notice, to be provided by the agency contracting officer, advising the labor union of the carrier's commitments under this chapter and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

The Carrier or Subcontractor, where applicable, agrees to comply with any regulations promulgated by the Treasurer pursuant to N.J.S.A. 10:5-31 et seq., as amended and supplemented from time to time and the Americans with Disabilities Act.

The Carrier or Subcontractor agrees to make good faith efforts to meet targeted county employment goals established in accordance with N.J.A.C. 17:27-5.2. The Carrier or Subcontractor agrees to inform in writing its appropriate recruitment agencies including, but not limited to, employment agencies, placement bureaus, colleges, universities, and labor unions, that it does not discriminate on the basis of age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex, and that it will discontinue the use of any recruitment agency which engages in direct or indirect discriminatory practices.

The Carrier or Subcontractor agrees to revise any of its testing procedures, if necessary, to assure that all personnel testing conforms with the principles of job related testing, as established by the statutes and court decisions of the State of New Jersey and as established by applicable Federal law and applicable Federal court decisions.

In conforming with the targeted employment goals, the Carrier or Subcontractor agrees to review all procedures relating to transfer, upgrading, downgrading and layoff to ensure that all such actions are taken without regard to age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex, consistent with the statutes and court decisions of the State of New Jersey, and applicable Federal law and applicable Federal court decisions.

The Carrier shall submit to the public agency, after notification of award but prior to execution of a goods and services contract, one of the following three (3) documents:

- Letter of Federal Affirmative Action Plan Approval;
- Certificate of Employee Information Report; or
- Employee Information Report Form AA-302 (electronically provided by the Division and distributed to the public agency through the Division's website at: http://www.state.nj.us/treasury/contract_compliance).

The Carrier and its Subcontractor shall furnish such reports or other documents to the Division of Purchase & Property, CCAU, EEO Monitoring Program as may be requested by the office from time to time in order to carry out the purposes of these regulations, and public agencies shall furnish such information as may be requested by the Division of Purchase & Property, CCAU, EEO Monitoring Program for conducting a compliance investigation pursuant to N.J.A.C. 17:27-1.1 et seq.

C) Non-Discrimination: In accordance with the provisions of N.J.S.A. 10:2-1, the Carrier agrees that:

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

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

3) There may be deducted from the amount payable to the Carrier by the contracting public agency, under this Agreement, a penalty of \$50.00 for each person for each Calendar

Day during which such person is discriminated against or intimidated in violation of the provisions of the Agreement; and

4) This Agreement may be canceled or terminated by the contracting public agency and all money due or to become due hereunder may be forfeited, for any violation of this Article of the Agreement occurring after notice to the Carrier from the contracting public agency of any prior violation of this Article of the Carrier.

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

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

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

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

26. SMALL BUSINESS ENTERPRISES/DISABLED VETERAN-OWNED

BUSINESSES: As an aid in meeting the commitment of New Jersey's Small Business Enterprise (SBE)/Disabled Veteran-Owned Business (DVOB) Set-Aside Program, NJ TRANSIT has assigned an SBE goal on the gross sum amount of the proposal or contract for SBE and/or DVOB utilization. All Division of Revenue and Enterprise Services registered/certified SBE and/or DVOB firms, including suppliers, in accordance with N.J.S.A. 52:32-17 et seq.; N.J.S.A 52:32-31.1 et seq., and N.J.A.C. 17:13-1.1 et seq.; N.J.A.C. 17:14-1.11 et seq., or other applicable regulation, shall have the maximum opportunity to participate in the performance of this Agreement and any subcontract under it. NJ TRANSIT and the Carrier shall take all necessary and reasonable steps, in accordance with N.J.S.A. 52:32-17 et seq.; N.J.S.A 52:32-31.1 et seq., and N.J.A.C. 17:13-1.1 et seq.; N.J.A.C. 17:14-1.11 et seq., and the provisions set forth in **Attachment D** of this Agreement (SBE/DVOB Requirements and Forms), to ensure that SBE and/or DVOB firms have equal opportunity to participate. Failure by the Carrier to carry out the requirements of this Article shall be deemed a material breach of this Agreement.

NJ TRANSIT'S SBE/DVOB Program is accorded the same priority as compliance with all other legal obligations required under this Agreement. Carriers shall comply with the SBE/DVOB Program requirements in the award and administration of NJ TRANSIT contracts. Failure by the Carrier to carry out

these requirements shall constitute a breach of his Agreement, which may result in the termination of this Agreement or other such remedy, as NJ TRANSIT deems appropriate.

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

The Carrier shall fully comply with the requirements and provisions set forth in the New Jersey Transit Corporation SBE/DVOB Requirements as set forth in **Exhibit D**.

27. COMPLIANCE WITH FEDERAL, STATE AND LOCAL LAW:

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

27.1 Carrier must require its employees, including but not limited to operators, supervisors, maintenance personnel and dispatchers, as applicable, to take and successfully complete any training mandated by applicable federal or state laws or regulations. This obligation includes, without limitation, security-sensitive TSA training courses pursuant to 49 CFR Part 1584 et seq. and human trafficking training pursuant to New Jersey P.L. 2025, c.343. The omission of any specific training(s) in this provision shall not relieve Carrier of its responsibility to ensure compliance with all other legally required training(s) applicable to the services provided under this Agreement.

28. CONFLICT OF INTEREST: In the event that the Carrier deems that any work currently being performed by it on other projects or any work to be performed on future projects is in conflict directly or indirectly with this Agreement, the Carrier shall immediately so notify NJ TRANSIT. NJ TRANSIT, in its sole discretion, shall have the right to terminate this Agreement in accordance with Article 15, TERMINATION OF THE AGREEMENT FOR CONVENIENCE hereof.

29. CARRIER'S EMPLOYEES: The Carrier shall notify NJ TRANSIT of any changes to key management personnel employed on this project. All personnel employed on this project and their daily rates shall first be approved in writing by NJ TRANSIT prior to assignment to this project and, in addition, any employee of the Carrier or its Subcontractors declared undesirable by NJ TRANSIT shall be relieved of any work under this Agreement by the Carrier.

The Carrier must receive NJ TRANSIT'S prior written approval of any change in the project organization/manpower and Subcontractor project team approved for this project.

30. PROHIBITED INTEREST: No member, officer, or employee of NJ TRANSIT or its subsidiaries shall have any interest, direct or indirect, in this Agreement or the proceeds thereof. No former member, officer or employee of NJ TRANSIT or its subsidiaries who, during his tenure, had a direct, substantial involvement with matters that are closely related to this Agreement, shall have any interest, direct or indirect, in this Agreement or the proceeds thereof.

31. INTERESTS OF MEMBERS OF OR DELEGATES TO CONGRESS: No member of or delegate to the Congress of the United States shall be admitted to any share or part of this Agreement or to any benefit arising therefrom.

32. NJ TRANSIT CODE OF ETHICS FOR CARRIERS:

A.) General

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

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

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

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

B.) NJ TRANSIT Code of Ethics for Carriers

1.) Gifts, Gratuities and Favors

a.) A Carrier shall not, either directly or indirectly, pay, offer to pay, or agree to pay any amount of money, fee, commission, compensation, gift, gratuity or other thing of value of any kind to any NJ TRANSIT Board Member or employee or to any member of their immediate family, or to any partnership, firm or corporation with which any such Board Member or employee is employed or associated, or in which (s)he has an interest within the meaning of N.J.S.A. 52:13D-13g.

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

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

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

Chief Ethics Officer
NJ TRANSIT

Two Gateway
283-299 Market Street, 18th Floor
Newark, NJ 07102-5310
(973) 491-8820

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

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

3.) Business, commercial or entrepreneurial relationship:

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

4.) General Standards:

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

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

5.) Protected/Confidential Information:

a.) A Carrier may not profit, directly or indirectly, from the use of any secret or confidential NJ TRANSIT information, knowledge or data that has been illicitly disclosed.

b.) Carriers and their employees may not use any secret or confidential NJ TRANSIT information, knowledge or data for any purposes other than complying with their contractual obligations to NJ TRANSIT.

6.) Intellectual Property:

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

7.) Employment Offers:

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

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

8.) Failure to Comply:

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

CROSS-REFERENCES

New Jersey Uniform Ethics Code, available online at

<https://www.state.nj.us/ethics/docs/ethics/uniformcode.pdf>

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

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

33. POLITICAL ACTIVITY PROHIBITED: None of the funds or services contributed by NJ TRANSIT or the Carrier under this Agreement shall be used for any partisan political activity, or to further the election or defeat of any candidate for public office.

34. NONSOLICITATION: The Carrier warrants that it has not retained any party other than a bona fide employee working for the Carrier to solicit this Agreement, and that it has not paid or agreed to pay any outside party consideration in any form contingent upon securing this Agreement. For breach of this warranty, NJ TRANSIT shall have the right to terminate this Agreement for cause.

35. MERGER AND SEVERABILITY: This Agreement and its ancillary agreements and documents embody the entire agreement between the Parties. If any provision herein is held invalid, it shall be considered deleted herefrom and shall not invalidate the remaining provisions hereof.

36. NOTIFICATION: Any request, demand, authorization, direction, notice, consent, waiver or other document provided or permitted by this Agreement to be made upon, given or furnished to, or filed with one party by another party shall be in writing and shall be delivered by hand or by deposit in the mail of the United States, postage paid, in an envelope addressed as follows:

If to NJ TRANSIT:

Chief of Procurement & Support Services

NJ TRANSIT
Two Gateway
283-299 Market Street Suite #1000A
Newark, New Jersey 07102-5310
Attn: _____

With a copy to:

NJ TRANSIT

Two Gateway
283-299 Market Street
Newark, New Jersey 07102-5310

Attn: _____
Project Manager

If to the Carrier:

Attn: _____

Either party to the Agreement may redesignate the recipient or change the address of the recipient of notifications hereunder by notifying the other party to this Agreement, in writing, of such change.

37. DISPUTES: Disputes regarding whether a party has failed to make payments will first be submitted for resolution between the parties. Any and all disputes arising in the performance of this Agreement that are not resolved by mutual agreement of the Parties will be decided in writing by the authorized representative of the Contracting Officer and Senior Director of Private Carrier Affairs. This decision of the Contracting Officer's authorized representative shall be final and conclusive unless within ten (10) Calendar Days from the date of receipt of its copy of the decision, the Carrier mails or otherwise furnishes a written appeal to the NJ TRANSIT Chief of Procurement and Support Services. Such appeal must state with detail and specificity the facts and rationale for the disagreement with the decision made by the Contracting Officer and Senior Director of Private Carrier Affairs. In connection with any such appeal, the Carrier shall, in the manner prescribed by and at the discretion of the Chief of Procurement and Support Services or their designee, be afforded an opportunity to be informally heard by the Chief of Procurement and Support Services or their designee, and to offer evidence in support of its position. Pending a final decision of a dispute hereunder by the Contracting Officer after a timely appeal, the Carrier shall proceed diligently with performance of this Agreement in accordance with the decision of the authorized representative of the Contracting Officer. Upon review of the papers by the Chief of Procurement and Support Services, or their designee, of the Carrier's appeal, the Chief of Procurement and Support Services or their designee shall then make a final determination, which will constitute the agency's final decision on the matter. The New Jersey Contractual Liability Act, N.J.S.A. 59:13-1 et seq. shall govern any action which may be brought by the Carrier as a result of NJ TRANSIT's decision.

38. **SUCCESSORS:** This Agreement shall bind the heirs, representatives, successors, and assignees of the Carrier.

39. **GOVERNING LAW:** The Agreement shall be governed by and interpreted pursuant to the laws of the State of New Jersey.

40. **QUALITY ASSURANCE PLAN:** The Carrier shall perform all work consistent with the professional skill and care provided by practitioners of the same discipline under similar circumstances and conditions. The Carrier shall establish and maintain a Quality Assurance Plan, subject to NJ TRANSIT'S approval, setting forth the Carrier's policy for quality assurance and procedures for implementing that policy. Such plan must apply to all persons engaged in work under this Agreement, include regular and written procedures for performance of all Project activities, and provide sufficient information to senior managers to enable effective supervision of the Project. The procedures shall provide for sufficient documentation to allow review and audit by NJ TRANSIT, and NJ TRANSIT may, in its discretion, review the Carrier's implementation of the procedures.

41. **PROJECT SUPERVISION: RESERVED**

42. **SETTING OFF TAX ARREARS AGAINST SUMS OWED:** Whenever a taxpayer under contract with the State of New Jersey is indebted for any State Tax in accordance with N.J.S.A. 54:49-19, the State of New Jersey shall seek to set off the indebtedness as follows:

Whenever any taxpayer under contract to provide goods or services to the State of New Jersey or its agencies or instrumentalities, and including the legislative and judicial branches of State government, or under contract for construction projects of the State of New Jersey or its agencies or instrumentalities, and including the legislative and judicial branches of State government, is entitled to payment for the goods or services or on that construction project and at the same time the taxpayer is indebted for any State tax, the Director of the Division of Taxation shall seek to set off so much of that payment as may be necessary to satisfy the indebtedness. The Director, in consultation with the Director of the Division of Budget and Accounting in the Department of the Treasury, shall establish procedures and methods to effect a set-off. The Director shall give notice of the set-off to the taxpayer, the provider of goods or services or the carrier or subcontractor of construction projects and provide an opportunity for a hearing within thirty (30) Calendar Days of such notice under the procedures for protests established under N.J.S.A.

54:49-18, but no request for conference, protest, or subsequent appeal to the Tax Court from any protest under this Article shall stay the collection of the indebtedness. No payment shall be made to the taxpayer, the provider of goods or services or the carrier or subcontractor of construction projects pending resolution of the indebtedness. Interest that may be payable by the State pursuant to N.J.S.A. 52:32-32 et seq. to the taxpayer, the provider of goods and services or the carrier or subcontractor of construction projects shall be stayed.

43. DISCLOSURE OF INVESTMENT ACTIVITIES IN IRAN: Pursuant to N.J.S.A. 52:32-57, any person or entity that submits a bid or proposal or otherwise proposes to enter into or renew a contract must certify, prior to Contract award, that neither the person nor entity, nor any of its parents, subsidiaries, or affiliates, is identified on the New Jersey Department of the Treasury's Chapter 25 List as a person or entity engaged in investment activities in Iran. The Chapter 25 list is found on the Division's website at <https://www.state.nj.us/treasury/purchase/pdf/Chapter25List.pdf>. Vendors/Bidders must review this list prior to completing the below certification. If the Director of the Division of Purchase and Property finds a person or entity to be in violation of the law, they shall take action as may be appropriate and provided by law, rule or contract, including but not limited to, imposing sanctions, seeking compliance, recovering damages, declaring the party in default and seeking debarment or suspension of the party.¹

44. EQUAL PAY ACT: Pursuant to N.J.S.A. 34:11-56.14 (a), any employer, regardless of the location of the employer, who enters into a contract with a public body to perform qualifying services to the public body shall provide a report to the Commissioner of the New Jersey Department of Labor and Workforce Development, in a form promulgated by the Commissioner, of information regarding the compensation and hours worked by employees categorized by gender, race, ethnicity and job category.

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

LWD forms may be obtained from the online web site at:
[https://nj.gov/labor/forms_pdfs/equalpayact/mw563\(6-18\)annualequalpay.pdf](https://nj.gov/labor/forms_pdfs/equalpayact/mw563(6-18)annualequalpay.pdf)

¹ <https://www.nj.gov/treasury/purchase/forms/DisclosureofInvestmentActivitiesinIran.pdf>

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

46. EXTENSION: If in the opinion of the Contracting Officer, it is in the best interest of NJ TRANSIT to extend this Agreement, pending the completion of an on-going re-procurement process or for any other justifiable cause as authorized by law, the Carrier shall be so notified of the Contracting Officer's intent at least thirty (30) Calendar Days prior to the expiration date of this existing Agreement. The Carrier shall have fifteen (15) Calendar Days to respond to the Contracting Officer's request to extend the term and period of performance of this Agreement. If the Carrier agrees to the extension, all terms and conditions including pricing of this original Agreement shall apply unless more favorable terms for NJ TRANSIT have been negotiated.

47. NO THIRD PARTY BENEFICIARIES: It is specifically agreed between the Parties executing this Agreement that it is not intended by any of the provisions of any part of this Agreement to create the public or any member thereof a third party beneficiary hereunder, or to authorize anyone not a party to this Agreement to maintain a suit for personal injuries or property damage pursuant to the terms or provisions of this Agreement.

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

48. PERSONAL LIABILITY OF PUBLIC OFFICIALS: In carrying out the provisions of this Agreement, or in exercising power or authority granted to them by or within the scope of this Agreement,

there shall be no liability upon any NJ TRANSIT employee, either personally or as officials of the State, as in all such matters they act solely as agents and representatives of the State.

49. CERTIFICATION OF NON-INVOLVEMENT IN PROHIBITED ACTIVITIES IN RUSSIA

OR BELARUS PURSUANT TO N.J.S.A. 52:32-60.1: Pursuant to N.J.S.A. 52:32-60.1, et seq., any person or entity (hereinafter "Vendor ") that seeks to enter into or renew a contract with a State agency for the provision of goods or services, or the purchase of bonds or other obligations, must complete the certification indicating whether or not the Vendor is engaged in prohibited activities in Russia or Belarus; and whether the vendor is identified on the Office of Foreign Assets Control (OFAC) Specially Designated Nationals and Blocked Persons list of Vendors engaged in prohibited activities in Russia or Belarus.² If OFAC finds that a Vendor has made a certification in violation of the law, it shall take any action as may be appropriate and provided by law, rule or contract, including but not limited to, imposing sanctions, seeking compliance, recovering damages, declaring the party in default and seeking debarment or suspension of the party. Failure to complete and submit this certification prior to contract award will preclude award of a contract to the Proposer.

50. CONSULTANT'S CERTIFICATION OF ELIGIBILITY: The Carrier certifies that it is not listed on the State of New Jersey, Department of Labor and Workforce Development, Division of Wage and Hour Compliance, Prevailing Wage Debarment List, on the State of New Jersey, Department of Treasury, Consolidated Debarment Report, or on the Workplace Accountability in Labor List. The Consultant also certifies that it has no exclusions on the consolidated U.S. Government, System for Award Management (SAM) database.

51. ATTACHMENTS/EXHIBITS/APPENDICES: All of the following Attachments, Exhibits and Appendices, are annexed hereto and made a part of this Agreement.

- **Attachment A** – Scope of Services
- **Attachment B** – Cost Information
- **Attachment C** – NJ TRANSIT Travel and Business Reimbursement

² <https://www.nj.gov/treasury/administration/pdf/DisclosureofProhibitedActivitesinRussiaBelarus.pdf>

Guidelines

- **Attachment D** – SBE/DVOB Requirements and Forms
- **Attachment E** - Carrier Certifications
- **Attachment F** – Addenda
- **Exhibit A** - Route Description
- **Exhibit B** - Schedules
- **Exhibit C** - Supplemental Statistics
- **Exhibit D** - Customer Service Guidelines
- **Exhibit E** - Revenue Vehicles Operating the Service
- **Exhibit F** – Tariff Tables/Fares
- **Exhibit G** - Garage Description
- **Exhibit H** - Supplemental Reporting Requirements
- **Exhibit I** - Operator Requirements
- **Exhibit J** - Maintenance Standards and Requirements
- **Exhibit K** - Revenue Collection & Processing
- **Exhibit L** - Mandatory Equal Employment Opportunity Language
- **Exhibit M** - Method of Calculating Payment to Carrier and Contracts Amount
- **Exhibit N** - Important Notice to all Contractors and Consultants (Carriers)
- **Appendix A** - Additional Terms for Motor Bus Passenger Service
- **Appendix B** - Equipment Usage Requirements for Motor Bus Passenger Service
- **Appendix C** - Additional Provisions

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be duly executed the _____ day of _____ to be effective as of the day and year first above written.

CARRIER

WITNESS:

Name/Title

Signature

Signature

NEW JERSEY TRANSIT CORPORATION

WITNESS:

Contracting Officer or Duly Authorized Designee

Signature

Signature

APPENDIX A

ADDITIONAL TERMS FOR MOTOR BUS PASSENGER SERVICE

1. TERM; STANDARDS OF SERVICE; ON-TIME PERFORMANCE:

From start of scheduled service on January 1, 2027, until the end of the scheduled service day of December 31, 2031, unless terminated prior thereto as provided in this Contract, the Carrier shall provide regular route motor bus scheduled passenger service (hereinafter, "Contracted Service") over the routes set forth in attached **Exhibit A**, under the schedules set forth in attached **Exhibit B**. The Contracted Service includes the operation of motor buses from a designated terminal along specified routes for the purpose of picking up, discharging and transporting fare paying and otherwise eligible passengers and activities attendant to such passenger service. The parties understand and agree that the Carrier is an independent carrier and not an agent of NJ TRANSIT.

The Carrier shall provide the services outlined in this section in conformance with NJ TRANSIT standards for scheduled bus service, and such Contracted Service must be performed in a safe, careful, efficient, clean, and courteous manner. The Carrier shall conform the Contracted Service to the Customer Service guidelines provided in **Exhibit D**.

The Carrier shall maintain the routes and schedules outlined in **Exhibits A and B** with an average route coverage of no less than ninety-five (95%) percent at terminal points (starting and ending points of each route) of the trips as over any thirty (30) consecutive calendar days. NJ TRANSIT reserves the right to conduct spot checks of the Carrier, at NJ TRANSIT's discretion, to determine route coverage and on-time performance by the Carrier. For the purposes of on-time performance, a bus will be considered not on-time and therefore "off schedule" if it departs at any scheduled time point prior to or five (5) minutes after its scheduled departure time. Also, a bus shall be considered "off schedule" if a scheduled trip is commenced but not completed.

In computing the percentage of on-time performance, only those buses operated by the Carrier that are "off-schedule" solely as a result of fires, strikes, storms, road accidents or detours that effect on-time performance, but which cannot reasonably be anticipated and are beyond the control of the Carrier, will be excluded from the calculation.

In the event that NJ TRANSIT determines that there are deficiencies in on-time performance in the

Contracted Service provided, NJ TRANSIT may, at its discretion, give notice in writing of such deficiencies to the Carrier. Upon receipt of such notice, the Carrier shall then remedy all the deficiencies within five (5) calendar days to NJ TRANSIT's satisfaction and respond in writing with the cause(s) for the reported problem and the remedy instituted by the Carrier.

At any time requested by NJ TRANSIT, the Carrier will submit to NJ TRANSIT, within seven (7) calendar days, other operations data in a format and form approved by NJ TRANSIT, showing all buses that operated "off-schedule" and the reasons therefore.

2. MISSED TRIPS:

Missed trips by the Carrier shall be defined for purposes of this Agreement as:

The 15 Minute Rule for Train Departures: Because of the need to allow sufficient time for passenger ticketing and transfers to departing trains, any scheduled bus or jitney trip which fails to arrive at the Atlantic City rail Terminal at least fifteen (15) minutes prior to the train's scheduled departure time will be considered a "Missed Trip."

The 15 Minute Rule for Train Arrivals: any scheduled bus which fails to arrive at the Atlantic City rail terminal to meet arriving trains within fifteen (15) minutes after the scheduled arrival of such train will be considered a "Missed Trip."

The 10 Minute Rule for Bus Departures: Any bus departing the Atlantic City rail terminal less than ten (10) minutes after the scheduled arrival of each train will be considered a "Missed Trip."

The following shall serve as an example of a "Missed trip" as defined above:

Example 1 (15 Minute Rule for Train Departures): The day's first shuttle bus is scheduled to be at the train terminal at 4:18 A.M. to meet Atlantic City Train scheduled to depart at 4:33 A.M. The bus arrives at the terminal at 4:22 and thus fails to reach the terminal at least 15 minutes prior to the 4:33 A.M. scheduled train departure. Such a trip will be considered a "Missed Trip."

Example 2 (15 Minute Rule for Train Arrivals): The train is scheduled to arrive at the terminal at 7:16 A.M. The bus arrives at 7:35 A.M. resulting in rail passengers incurring more than a fifteen (15) minute wait for the bus. Such a trip be considered a "Missed Trip."

Example 3 (10 Minute Rule for Bus Departures): The train is scheduled to arrive at the terminal at 7:16 A.M. The bus departs from the terminal at 7:22 A.M. The bus departed prior to its scheduled

departure time. Arriving train passengers may not have had ample time to reach the bus, thus missing the shuttle. Such a trip will be considered a "Missed Trip."

For the avoidance of doubt, where applicable and unless otherwise advised by NJ TRANSIT in writing, missed trips will be measured based on each train's scheduled time of arrival or departure, and not actual times.

The Carrier shall report in writing to NJ TRANSIT by the seventh (7th) calendar day of each calendar month each and every missed bus trip that occurred during the preceding month and the dates and reasons therefor. If no missed trips occurred during the preceding month, the Carrier must so report. Failures to report missed trips shall permit NJ TRANSIT to declare the Carrier to be in default of this Agreement. If a trip was missed as a result of fire(s), strikes, storm conditions (or other acts of nature), road accidents or detours, or other circumstances that cannot be reasonably anticipated and are beyond the control of the Carrier, such causes must be noted by the Carrier on the "Daily Report of Operations" and "Monthly Report of Operations." NJ TRANSIT shall consider the causes listed by the Carrier on a case-by-case basis and shall notify the Carrier of any assessment to be imposed as a result of such review. Payment for Contracted Services will be withheld until the required Daily Report of Operations and Monthly Report of Operations are received.

Failure by the Carrier to file such daily and monthly reports will not excuse the Carrier from any assessments provided by this Agreement. Failure to report missed trips, or any knowingly false report made to NJ TRANSIT, shall permit NJ TRANSIT to declare the Carrier to be in default of this Agreement.

3. MONTHLY SERVICE REPORTING:

A. Daily Report of Operations.

The Carrier shall prepare in writing and forward to NJ TRANSIT, on the forms set forth by NJ TRANSIT and attached as **Exhibit H**, a Daily Report of Operations, which shall include a report of all missed trips identified from the prior month's daily operations by the seventh (7th) calendar day of each month. If no missed bus trips occurred, the Carrier is required to indicate this fact on the daily report of operations. If a trip was "missed" as a result of fire(s), strikes, storm conditions (or other acts of nature), road accidents or detours, or other circumstances which cannot be reasonably anticipated, and are beyond the control of the Carrier, such causes must be noted by the Carrier on the Daily Report of Operations. NJ TRANSIT shall

consider the causes listed by the Carrier on a case-by-case basis and shall notify the Carrier of any assessment to be imposed as a result of such review.

Payment for Contracted Services will be withheld until such report is received. Failure of the Carrier to file such daily reports shall not excuse the Carrier from any other assessments provided by this Agreement.

B. Monthly Report of Operations.

In addition, the Carrier shall submit the Monthly Report of Operations to NJ TRANSIT by the seventh (7th) calendar day of each calendar month. The Monthly Report of Operations shall include a summary of each and every missed bus trip which occurred during the preceding month, including the dates and times of all such missed trips and the cause of the missed trip. If no "missed" trips occurred, the Carrier is required to indicate this fact on the Monthly Report of Operations. The Carrier's Senior Vice President (SVP) or Chief Financial Officer (CFO) or duly authorized designee will be required to sign off and attest to the following clause which will be included on each monthly report of operations submitted to NJ TRANSIT Private Carrier Affairs stating: **"I hereby certify, under perjury, that the information contained within this report is accurate to the best of my knowledge and that operated service statistics are fully supported by company records. I recognize that payment for services is subject to adjustment resulting from any subsequent audit by NJ TRANSIT."**

Payment for Contracted Services will be withheld until the Monthly Report of Operations is received. Failure of the Carrier to file such monthly reports shall not excuse the Carrier from any other assessments provided by this Agreement.

4. ASSESSMENTS OF DAMAGES:

A. Missed Trips

1. Missed trips as described in Section 2 above, which are properly and timely reported in the Daily Report of Operations by the Carrier to NJ TRANSIT, will be assessed damages in the amount of \$150.00 per trip.

2. Missed trips as described in Section 2 above that are not properly and timely reported in the Daily Report of Operations by the Carrier to NJ TRANSIT will be assessed damages in the amount of \$300.00 per trip.

3. Carrier will receive reports, at a frequency to be determined by NJ TRANSIT, depicting the trips missed as per NJ TRANSIT's electronic vehicle monitoring system(s). Any disputes of the missed trips as reported by the system(s) must be brought to the attention of NJ TRANSIT Private Carrier Affairs in writing within five (5) business days by the Carrier along with evidence of the completion of the disputed trip(s). Upon research and verification of the completion of the disputed trip(s), NJ TRANSIT Private Carrier Affairs will note the discrepancy and credit the Carrier for the completion of said trip(s). Trips that appear on the reports that are not disputed by the Carrier in writing within five (5) business days of receipt of the report will be considered confirmed as missed by the Carrier and are expected to be recorded on the Carrier's Daily Report of Operations and/or included on the Monthly Report of Operations, and will be assessed in accordance with sections 1 and 2 above.

4. Assessments made for missed trips shall be automatically deducted by NJ TRANSIT from amounts owed by NJ TRANSIT to the Carrier for work performed under this Agreement. Should the Carrier contest such assessments, an appeal shall be made pursuant to the dispute resolution provision in Section 37 of the Agreement.

5. PAYMENT TERMS:

During the term of this Agreement, the Carrier shall submit to NJ TRANSIT on or before the seventh (7th) calendar day of each calendar month a Monthly and Daily Report of Operations as outlined in Exhibit H, setting forth the operational statistics described in **Exhibits A, B, C, and H** for the preceding calendar month. Within twenty (20) calendar days from the receipt of such report, NJ TRANSIT shall, , pay to the Carrier an amount in accordance with **Exhibit M** attached hereto, less all assessments against the Carrier. Failure by the Carrier to submit the reports required in **Exhibit H** in a timely manner will result in NJ TRANSIT withholding of the monthly payment until such report(s) is(are) received. Each month's payment will represent payment for the Contracted Service provided by the Carrier during the preceding calendar month.

The Carrier shall pay all the expenses, fees, charges and any and all other costs relating directly or indirectly to the operation of the Contracted Service.

6. EMPLOYEE REQUIREMENTS:

The Carrier will have complete control over the employment of all personnel required to provide the

Contracted Service. Drivers must meet minimum qualification requirements as specified in Exhibit I.

The Carrier will issue to all operators uniforms of the type commonly accepted in the industry. Operators shall be always in uniform when on duty and when operating buses. The Carrier shall maintain and enforce a dress code for operators.

7. DRUG AND ALCOHOL TESTING:

The Carrier shall establish, implement and maintain a drug and alcohol testing program that complies with 49 C.F.R. Parts 40 and 655, produce any documentation necessary to establish its compliance with Parts 40 and 655, and permit any authorized representative of the United States Department of Transportation or any of its operating administrations, including but not limited to the Federal Transit Administration (FTA), the State of New Jersey, or NJ TRANSIT to inspect the facilities and records associated with the implementation of the drug and alcohol testing program as required under 49 C.F.R. Parts 40 and 655 and to review the testing process. The Carrier further agrees to certify its compliance with 49 C.F.R. Parts 40 and 655 within thirty (30) calendar days of the execution of this Agreement and to submit the FTA Alcohol and Drug Testing Management Information System (MIS) Data Collection Forms for each calendar year by February 15th of the following year to NJ TRANSIT's Senior Director of Private Carrier Affairs. To certify compliance, the Carrier shall use the "Substance Abuse Certifications" in the "Annual List of Certifications and Assurances for Federal Transit Administration Grants and Cooperative Agreements", which is published annually in the Federal Register.

8. HIRING AND TRAINING PROCESS

A. EMPLOYEE REQUIREMENTS

Provided the Carrier's hiring practices comply with minimum operator requirements in Exhibit I, the Carrier shall have complete control over the employment of all personnel required to provide the Contracted Service as outlined in **Exhibits A and B**. The Carrier will provide NJ TRANSIT with a plan detailing the type and number of employees required to provide the Contracted Service. The plan must include supervisory and management personnel requirements as well as requirements for drivers, mechanics, cleaners, clerical workers, etc. Driver requirements must, at a minimum, meet the requirements specified in **Exhibit I**. In addition, all drivers utilized by the Carrier in the operation of the Contracted Service must be capable of speaking, reading, writing, and understanding the English language. If a driver is found to be incapable of

speaking, reading, writing, and understanding the English language, NJ TRANSIT may require that the driver be removed from providing service on the contracted routes.

The Carrier shall certify that all its drivers are in possession of a valid driver's license qualifying them to operate the vehicles outlined in this Agreement. The Carrier shall, prior to assignment on this Agreement and annually thereafter, perform a license record check through the NJ Motor Vehicle Commission, or any other applicable state motor vehicle agency, for each operator to ensure adherence to all qualification requirements.

At no additional cost to NJ TRANSIT, the Carrier shall be required to issue, maintain, and remain current on, all federally mandated training requirements related to drivers and security-sensitive employees.

B. DRIVER TRAINING:

The Carrier will be responsible for all driver training and will certify that drivers are in possession of valid drivers' licenses for the equipment they will be operating and are familiar with routes, fares, transfer policies, and student, elderly and handicapped reduced fare policies. The Carrier will further ensure all relevant personnel are trained on the proper operation of the fare collection system, electronic vehicle monitoring systems, communications systems, ADA systems (wheelchair lift, kneeling system, PA system, securement system, etc.), and all other systems and/or hardware determined to be required by NJ TRANSIT. In addition, the Carrier will ensure that all drivers are instructed in safe and defensive driving skills, ADA equipment operation, courtesy, conflict de-escalation, passenger relations, and operation of all on-board fare collection and electronic vehicle monitoring systems. The Carrier will certify to NJ TRANSIT that all drivers have satisfactorily completed all mandatory training.

The Carrier will also instruct the drivers to complete driver day cards which include the collection and proper recording of the following information: route and trip, run number, arrival and departure time at terminals, passenger statistics, transfers issued and sold, and any other information deemed necessary by NJ TRANSIT to comply with fare collection and accounting procedures. Only NJ TRANSIT approved forms shall be used.

The Carrier shall perform periodic driver refresher training classes with its bus operators relative to their driving skills and provide NJ TRANSIT with a schedule for such refresher classes prior to implementation of the Contracted Service. The Carrier shall provide NJ TRANSIT with a copy of the

Carrier's written safety and operating rules. Each operator performing the Contracted Service under this Agreement must be provided with a copy of the Carrier's written safety and operating rules, which must be substantially similar to the written safety and operating rules utilized by NJ TRANSIT.

C. ROAD SUPERVISION:

The Contracted Service provided by the Carrier shall be supervised by the Carrier's supervisors who will monitor the performance of the service with respect to schedule adherence, driver conformity to the Carrier's rules and regulations, driver adherence to the specified route, and accident investigations. Supervisors will maintain data sheets and will file reports of their findings with the Carrier and will furnish them to NJ TRANSIT, at NJ TRANSIT's request. Such data sheets and reports will be kept and made available to NJ TRANSIT during the term of this Agreement and for a period of five (5) years beyond termination of this Agreement.

Authorized NJ TRANSIT regional supervisors and road supervisors have the authority to oversee the Carrier's performance and the right to make temporary adjustments to time schedules and routes as may be necessary to meet variations resulting from weather conditions, special events or other circumstances, which NJ TRANSIT deems necessary. Carrier management will be informed of such changes.

D. SECURITY CLEARANCE:

As a condition of performing work at any NJ TRANSIT bus facility and for purposes of determining a person's qualifications as contracted personnel, the Carrier shall undertake a criminal history record national background check for all personnel assigned to work at any NJ TRANSIT Bus facility pursuant to regulations promulgated under N.J.A.C. 13:59-1.1 et seq. The Carrier shall bear the cost of the criminal history record background check. The Carrier shall be responsible for ensuring that employees have legal immigration status to be working in the United States.

The Carrier shall follow all instructions for obtaining a criminal history record background as available at: <https://www.nj.gov/oag/njsp/criminal-history-records/index.shtml>. The Carrier shall not permit any newly hired, rehired, or transferred employee to work in any NJ TRANSIT bus facility until the results of the criminal history record background check are returned to the Carrier. The Carrier shall review the results of that criminal history record background check prior to assigning personnel. It is the Carrier's

responsibility to work within the New Jersey State Police time schedule for turnaround time from initial submission to receipt of the results. This time schedule may be a critical factor in meeting the startup date of this contract. The Carrier shall be required to retain the results of an individual's criminal history background check for as long as that person is assigned to perform work at any NJ TRANSIT bus facility. The results of the criminal history background check will be made available to NJ TRANSIT Bus by the Carrier upon request by an authorized individual. Carrier's employees with questionable criminal background results may be prohibited from employment at all NJ TRANSIT facilities. Performance of such background checks with immigration law compliance shall be subject to periodic audits by State Auditors.

E. FARE SYSTEM AND ZONE STRUCTURE:

When applicable and as may be directed by NJ TRANSIT, the Carrier shall charge fares in strict adherence to NJ TRANSIT's fare structure. The Carrier shall abide by and comply with all NJ TRANSIT rules and policies on fares and zonal systems. Fares for the Contracted Service and routes of this Agreement are as described in **Exhibit F** and may be amended by NJ TRANSIT at any time.

The Carrier shall participate and instruct drivers in NJ TRANSIT's passenger transfer system. As part of that transfer system, the Carrier shall provide and accept transfers between and among the bus routes operated as described in **Exhibits A and B**, as well as between and among other routes operated by or for NJ TRANSIT, and the aforesaid routes described in **Exhibits A and B**. The Carrier shall instruct its drivers as to the proper administration of the transfer system, and the security of tickets and transfers. NJ TRANSIT monthly bus passes, monthly bus cards, electronic fare media and other fixed period passes or tickets must be honored, counted and accounted for by the Carrier in the same manner as all other tickets, transfers and cash fares.

9. INFORMATION

A. SCHEDULES

NJ TRANSIT is responsible for the printing of public timetables/schedules for the Contracted Service, to be distributed by the Carrier to passengers on buses and at Carrier terminals. NJ TRANSIT is responsible for distribution of timetables/schedules at all NJ TRANSIT-owned locations and/or other locations as determined by NJ TRANSIT.

B. ADVERTISING AND MARKETING:

NJ TRANSIT will assume, at its discretion, all responsibility for the advertising and marketing of the Contracted Service to be provided. This may include promotional activities required to launch the Contracted Service outlined in Section III, such as newspaper advertisements and the publication of informational brochures. Any other marketing efforts necessary to highlight special aspects of the Contracted Service will also be undertaken by NJ TRANSIT at its discretion. As provided and directed by NJ TRANSIT, the Carrier shall distribute and maintain a supply of public timetables and other public information items, including, but not, limited to the following: seat notices, hanger brochures, coupon books, free/discounted ride coupons (i.e.: New Residents Campaign), posters and flyers. All such items shall be supplied by NJ TRANSIT directly to the Carrier at no cost to the Carrier.

The Carrier shall be required from time to time, at no cost to NJ TRANSIT, to furnish a representative to attend public service forums to answer questions regarding the Contracted Service.

All advertising on the buses will be contracted through NJ TRANSIT. All advertising revenue will accrue to NJ TRANSIT.

C. PHONE SERVICES:

Public timetables provided by NJ TRANSIT and distributed by the Carrier will conspicuously list NJ TRANSIT's telephone number for obtaining scheduling information. In order to assist the riding public, the Carrier shall have already installed, or shall install a telephone for general information and lost and found and this telephone number will be conspicuously advertised in the public timetables provided by NJ TRANSIT and distributed by the Carrier. The Carrier will keep this telephone number operational throughout the term of this Agreement and will ensure that it be answered by qualified staff at all times during the scheduled operational hours of service.

10. EQUIPMENT:

NJ TRANSIT will provide no equipment for the contracted service. The Carrier shall utilize equipment specified in Exhibit E (Revenue Vehicles Operating the Service). The Carrier may not make any changes to the proposed fleet plan in Exhibit E without prior written approval of NJ TRANSIT.

11. FACILITY:

The Carrier shall provide a fully equipped garage consistent with NJ TRANSIT standards for garages from which to operate the Contracted Service. Carrier shall maintain such facility in compliance

with all applicable federal, state, and local laws and regulations. Any changes in the size, allocation of space for the Contracted Service, or the location or Equipment of the facility, as outlined in **Exhibit G**, must be approved by NJ TRANSIT at least one hundred twenty (120) calendar days prior to implementation of such proposed change.

12. INSPECTIONS:

NJ TRANSIT inspectors and its designated agents and representatives will, upon presentation of valid identification, have the unimpeded right to enter upon the Carrier's premises, and to enter and travel upon, or inspect any and all Equipment utilized in providing the Contracted Service, for the purpose of conducting inspections to determine whether the Carrier is in compliance with the terms of this Agreement. NJ TRANSIT will make a reasonable effort not to unduly interfere with the operations or maintenance schedules of the Carrier. NJ TRANSIT inspectors will, however, be allowed on the premises of the Carrier without the necessity of written permission or prior notice, but they will not enter onto the premises of the Carrier without identifying to the Carrier their status as NJ TRANSIT employees, agents, or representatives, and after confirming that they are in no way acting for or on behalf of the Carrier. All inspections will begin promptly upon presentation of each unit of equipment and will be carried through to completion as expeditiously as feasible.

13. FARE COLLECTION:

Currently, this service does not collect cash fares, nor does it utilize any other fare media such as tickets, transfers, monthly passes, etc. Should NJ TRANSIT decide to assign a fare, fee or tariff to this service in the future, an amendment to this agreement will be made and will include a copy of the tariff schedule for each route as **Exhibit F**. From that point forward, the Carrier will charge fares in strict adherence to NJ TRANSIT's fare structure. The Carrier will abide by and comply with all NJ TRANSIT rules and policies on fares and zonal systems. If and when fares are established, fares for the service and routes of this Agreement will be as described in **Exhibit F** and thereafter may be amended by NJ TRANSIT at any time.

The Carrier shall participate in NJ TRANSIT's passenger transfer system. As part of that transfer system, the Carrier shall provide and accept transfers between and among the bus routes operated as described in **Exhibits A and B**, as well as between and among other routes operated by or for NJ TRANSIT,

and the aforesaid routes described in **Exhibits A and B**. The Carrier shall instruct its drivers to the proper administration of the transfer system, the use of transfer cutters, and the security of transfers. The Carrier is also required to keep all records necessary for verifying transfer sales and reporting such transfer sales to NJ TRANSIT monthly bus passes, monthly bus cards and other fixed period passes or tickets must be honored, counted and accounted for by the Carrier in the same manner as all other tickets, transfers and cash fares.

14. NJ TRANSIT EMPLOYEE PASS:

All NJ TRANSIT employees with a valid NJ TRANSIT employee pass will have the right to free entry and travel upon the equipment used by the Carrier in its provision of the Contracted Service. Such right is contingent upon the display of said pass upon boarding.

APPENDIX B

EQUIPMENT USAGE REQUIREMENTS FOR MOTOR BUS PASSENGER SERVICE

1. INTENT AND PURPOSE:

This Appendix "B," Equipment Usage Requirements for Motor Bus Passenger Service ("Appendix B") sets forth the requirements for use of the equipment identified in **Exhibit E** (Revenue Vehicles Operating the Service). The purpose of this Appendix B is to set forth the terms and conditions under which Carrier is required to use its equipment in operating the service, to best facilitate the provision of bus passenger service by the Carrier as specified in Appendix "A" above. This Appendix B will terminate simultaneously, immediately and automatically upon the termination of this Agreement and as provided for in Appendix "A" above and Appendix "C" below.

Upon execution of this Agreement, any and all prior usage agreements between Carrier and NJ TRANSIT regarding any buses or equipment covered by this Agreement shall be deemed terminated.

2. EQUIPMENT:

"Equipment" means the motor bus or buses listed and separately described in Exhibit E (Revenue Vehicles Operating the Service), attached hereto and made a part hereof. Exhibit E lists all equipment owned by the Carrier to be used in this contracted service. The buses that are subject to this Appendix B must be equipped with all appropriate destination signs necessary to inform the public of final destinations and routing variations. All vehicles must be equipped with wheelchair lifts to provide service to passengers requiring accessibility.

For the avoidance of doubt, NJ TRANSIT will provide no equipment for the contracted service. In providing the service, the Carrier shall identify and utilize equipment specified in Exhibit E. The Carrier may not make any changes to the proposed fleet plan in Exhibit E without the prior written approval of NJ TRANSIT.

3. CARRIER WARRANTIES:

Carrier represents and warrants that the condition of the Equipment identified on Exhibit E is, at the time of execution of this Appendix B, in a state of good repair and operable for the service contemplated by this Agreement.

4. CONTRACTED SERVICE:

The Carrier shall use the Equipment identified as per their fleet plan specified in their proposal on the bus service specified in Exhibits A and B and pursuant to all terms and conditions applicable to this Agreement.

5. EMERGENCY USE BY NJ TRANSIT:

NJ TRANSIT, upon written request, in the event of any emergencies, may direct the carrier to operate service that is not the bus service specified in Exhibits A and B. These services may be in response to emergencies, including but not limited to riots, floods, calamities, and railroad or bus strikes, as may be directed by NJ TRANSIT.

6. NJ TRANSIT USE DURING STRIKES AGAINST CARRIER:

In the event of a strike by the employees of the Carrier that results in the stoppage or disruption of the Contracted Service, NJ TRANSIT will have the right to operate the Contracted Service itself, or by way of a third party in place of the while the Carrier is experiencing a strike. In the event that any such contingencies occur, NJ TRANSIT or one (1) or more third parties may provide the Contracted Service without the Carrier being entitled to, or otherwise being able to make claim for, compensation or damages. If NJ TRANSIT or a third party operates or subcontracts the Contracted Service on behalf of the Carrier during a strike against the Carrier, they will use their own equipment, and the Carrier will not be entitled to any payment or compensation whatsoever during the period of such operation by NJ TRANSIT or the third party.

7. CHARGES, FEES, AND EXPENSES:

The Carrier shall pay any and all expenses, taxes, charges, assessments, license fees, inspection fees, and other costs relating to the Contracted Service, including but not limited to, gross receipts taxes, highway use taxes, and vehicle excise taxes, whether such taxes, charges, fees, or other costs are levied against the Equipment operator or the Equipment owner.

The Carrier shall also pay all expenses, fees, charges, and taxes incurred in connection with the licensing, and registration of the Equipment, and all direct and indirect expenses in connection with the use and operation of the Equipment during the term of this Agreement, including, but not limited to, fuel, oil, grease, repairs, maintenance, insurance, and other such expenses.

The Carrier agrees that during the term of this Agreement it will duly and timely pay all charges due to the State of New Jersey, its agencies, NJ TRANSIT and its subsidiaries, and to any and all other governmental agencies. Any violation by the Carrier of the provisions of this Section shall permit NJ TRANSIT to declare the Carrier to be in default of this Agreement.

8. INSPECTION:

NJ TRANSIT and its designated agents and representatives, upon presentation of valid identification, shall have the unimpeded right to inspect the Equipment at any time and any place during the term of this Agreement. NJ TRANSIT shall make a reasonable effort to not unduly interfere with the operations or maintenance schedules of the Carrier. NJ TRANSIT inspectors shall be allowed on the premises of the Carrier without the necessity of written permission and without prior notice, but such persons shall not enter onto the premises of the Carrier without indicating to the Carrier their status as NJ TRANSIT employees, agents, or representatives. All inspections will begin promptly upon presentation of each unit of Equipment and will be carried through to completion as promptly as feasible. Inspections may take any form and may also include examination of the Carrier's maintenance procedures and the administration records of the Equipment.

9. REPAIRS, PARTS, AND SPECIAL REQUIREMENTS:

The Carrier shall make all necessary repairs to each unit of Equipment. The Carrier shall complete such work on a schedule without interruption of the Contracted Service. The design, quality, and component part, if any, used in such repairs will conform to all applicable U.S. Department of Transportation, Surface Transportation Board and manufacturers' requirements and to all applicable standards of NJ TRANSIT and the New Jersey Department of Transportation. Replacement parts on all Equipment must be new factory replacement parts, or better, or parts purchased from a reputable supply house which deals in new replacement parts equal to or better than original equipment. In no instance shall replacement parts be used which are rated less than manufacturers' specifications.

10. MAINTENANCE:

The Carrier shall maintain each unit of Equipment to be used in this contracted service, in a state of good repair and in accordance with the manufacturers' warranty and maintenance requirements as set forth in **Exhibit J** of the Agreement for Operating Motor Bus Passenger Service and Appendix B.

NJ TRANSIT has the right, at its discretion, to inspect each unit of Equipment and the Carrier's records with respect thereto any time as shall be reasonably necessary to confirm the Carrier's proper and timely maintenance of the Equipment. The Carrier shall correct promptly any unsatisfactory items reported by such inspections. In addition, NJ TRANSIT may order repairs to be made at the Carrier's expense at any time to ensure that each bus is in a state of good repair, and readily available for safe, efficient, and dependable service in accordance with NJ TRANSIT requirements. It is understood by the Carrier, however, that all repairs, maintenance, and inspections are the exclusive obligation and responsibility of the Carrier regardless of any or no inspections by NJ TRANSIT.

The Carrier is permitted to operate buses under the Agreement for Operating Motor Bus Passenger Service and Appendix B with rented tires or rented batteries, but retreaded tires are not permitted on the front axle of any Equipment under any condition. NJ TRANSIT may order tires replaced when tread depth, sidewall deteriorations, or deep cuts are deemed to make further operation unsafe.

Fuel used in all Equipment covered by this Agreement must meet the OEM engine manufacturer specifications for the particular type of equipment and prevailing environmental conditions, unless otherwise approved by NJ TRANSIT in writing.

The Carrier understands and agrees that maintaining each unit of Equipment in a state of good repair is an essential and material consideration of this Agreement. Minimum equipment maintenance standards and reporting requirements are specified in **Exhibit J**, Maintenance Standards and Requirements. The Carrier further agrees that any material failure to comply with the requirements of this Section may constitute grounds for the immediate termination of this Agreement without any advance notice.

11. PARTS INVENTORY

The Carrier shall establish and maintain an adequate spare parts inventory for the proper performance of the maintenance and repair of the Equipment to be used in this contracted service under this Agreement to minimize fleet downtime and avoid disruption of service.

12. DEPARTMENT OF TRANSPORTATION INSPECTIONS:

The Carrier will maintain all Equipment so that it will pass the inspections, when presented to the inspector, made by the New Jersey Department of Transportation, New Jersey Motor Vehicle Commission,

United States Department of Transportation, or any other regulatory body or entity authorized to inspect the Equipment. The Carrier will be responsible for all costs incurred which are required to enable each unit of Equipment to successfully pass each such inspection. Failure to comply with this requirement will constitute grounds for the immediate termination of this Agreement without any advance notice.

13. LAWS AND REGULATIONS:

The Carrier shall comply with all laws, regulations, requirements, and rules with respect to the possession, use, maintenance, and operation of each unit of Equipment. In case any part of such unit shall be required to be changed or replaced, or in case any additional or other part is required to be installed on such unit in order to comply with such laws, regulations, requirements, and rules, the Carrier agrees to make such changes, additions, or replacements. The Carrier agrees to maintain the Equipment in full compliance with such laws, regulations, requirements, and rules during the term of this Agreement.

14. TRANSITION OF SERVICE UPON TERMINATION OF AGREEMENT:

Upon termination of the Agreement for any reason, the Carrier agrees to cooperate with the smooth and successful transfer of the Contracted Service to the incoming successor contracted operator and/or NJ TRANSIT (the "Incoming Provider"). The Carrier will provide all information requested by NJ TRANSIT in a timely manner. Information for the smooth transfer of service may include, but may not be limited to, operating statistics, collective bargaining agreements, and any other information pertinent to operations.

The Carrier further agrees it shall not affect or engage in undue policy, procedural, operational arrangements, obstacles, or wage/cost adjustments which may inhibit the smooth transition of service provider management.

The Carrier shall refrain from any actions that may impede or delay the smooth transition of service to another third party or to NJ TRANSIT. Any actions or omissions by the Carrier that adversely affect the transition process shall be at the Carrier's sole expense, and the Carrier shall be liable for all costs incurred by NJ TRANSIT as a result thereof. At the request of NJ TRANSIT, the Carrier must continue to provide service beyond the contracted end date at its current contracted rates, month-to-month, for up to 180 days.

APPENDIX C

ADDITIONAL PROVISIONS

1. NEW JERSEY CONSCIENTIOUS EMPLOYEE PROTECTION ACT:

The Carrier will be subject to the provisions of the New Jersey Conscientious Employee Protection Act, N.J.S.A. 34:19-1 et seq. (CEPA), which states that it is unlawful for an employer, whether public or private, to discharge, suspend or demote an employee when: a) the employee discloses, or threatens to disclose, to a supervisor or a public body, a policy, activity, or practice of the employer that the employee reasonably believes is unlawful; b) the employee provides information to, or testifies before, a public body conducting an investigation or inquiring into the employer's violations of a law, rule, or regulation; or, c) the employee objects to, or refuses to participate in, any activity, policy, or practice which the employee reasonably believes is unlawful, fraudulent or criminal, or incompatible with a clear mandate of public policy concerning public health, safety, or welfare.

2. FRAUD:

Any evidence of any intentional misrepresentation by the Carrier, its officers, agents, or employees shall be forwarded to the Office of the Attorney General for appropriate action.

3. DISPUTES:

Disputes regarding whether a party has failed to make payments will first be submitted for resolution between the parties. Any and all disputes arising in the performance of this Agreement that are not resolved by mutual agreement of the Parties will be decided in writing by the authorized representative of the Contracting Officer and Senior Director of Private Carrier Affairs. The decision of the Contracting Officer's authorized representative will be final and conclusive unless, within ten (10) Calendar Days from the date of receipt of its copy of the decision, the Carrier mails or otherwise furnishes a written appeal to the NJ TRANSIT Chief of Procurement and Support Services. Such appeal must state in detail and specificity the facts and rationale for the disagreement with the decision made by the Contracting Officer and Senior Director of Private Carrier Affairs. In connection with any such appeal, the Carrier shall, in the manner prescribed by and at the discretion of the Chief of Procurement and Support Services or their designee, the Carrier shall be afforded an opportunity to be informally heard by the Chief of Procurement and Support Services or their designee, and to offer evidence in support of its position. Pending a final decision of a

dispute hereunder by the Contracting Officer after a timely appeal, the Carrier shall proceed diligently with performance of the Contract in accordance with the decision of the authorized representative of the Contracting Officer. Upon review of the papers by the Chief of Procurement and Support Services, or their designee, of the Carrier's appeal, the Chief of Procurement and Support Services or their designee shall then make a final determination, which will constitute the agency's final decision on the matter. The New Jersey Contractual Liability Act, N.J.S.A. 59:13-1 et seq., shall govern any action that may be brought by the Carrier as a result of NJ TRANSIT's decision.

4. ENTIRE AGREEMENT:

This Agreement and its ancillary agreements and documents embody the entire bus operating agreement and between the parties. Notwithstanding the division of this Agreement into multiple parts, this Agreement and its ancillary agreements and documents will be construed as one indivisible document and it may not be modified or terminated, except as specifically provided herein.

If any provision of this Agreement is found to be invalid, such invalidated provision will be considered deleted herefrom and will not invalidate the remaining provisions hereof, which will continue in full force and effect.

Except as otherwise provided herein, if the fulfillment by the Carrier of any provision of this Agreement would conflict with or fail to comply with the provisions of any applicable statute, regulation, or order of any state or federal agency or court, then non-fulfillment of such provisions will be excused solely to the extent and for the duration of the conflict or noncompliance.

5. SERVICE LEVEL CHANGES:

NJ TRANSIT reserves the right to make service level changes to the Agreement at any time by providing the Carrier with written notice signed by the NJ TRANSIT Senior Director of Private Carrier Affairs or his/her designee.

With regard to route or schedule changes, the NJ TRANSIT Senior Director of Private Carrier Affairs or his/her designee may, at any time by written order, make changes in the routes or schedules contained in attached **Exhibits A and B**. If any such service level change causes an increase or decrease in the Contract Miles, hours of service, or peak hour bus requirements, an equitable adjustment will be made in the Agreement price. In the event that an adjacent carrier currently under contract with NJ TRANSIT with

service in close geographic proximity as determined by NJ TRANSIT demonstrates an inability to successfully operate within the Standards of Service set forth in its contract, whether due to emergency causes, bankruptcy, contractual default, or any other reason NJ TRANSIT deems valid, NJ TRANSIT reserves the right to transfer any or all unsupported work scope, including bus routes, to this Agreement. Within five (5) calendar days after receipt of the written service level change, the Carrier shall provide NJ TRANSIT with a detailed statement of any objections it has to NJ TRANSIT's calculation of the change in Contracted Services miles, hours or peak bus requirements. Disagreements that cannot be resolved through negotiations will be resolved in accordance with the Section 10 of Appendix "C", "Disputes". Regardless of any disputes, the Carrier shall continue and proceed with the work ordered.

6. CARRIER FILING OBLIGATIONS:

In addition to other reports required elsewhere in this document, the Carrier shall submit reports to NJ TRANSIT, in a form prescribed by NJ TRANSIT, and Carrier shall do so within the time prescribed in **Exhibit H**. The Carrier shall also provide, as NJ TRANSIT may request, at any time, any additional information deemed necessary by NJ TRANSIT. Payment for Contracted Services will be withheld until the respective reports required by this Agreement are received by NJ TRANSIT. The Carrier's failure to file such monthly reports will not excuse the Carrier from any assessments provided for in this Agreement.

The Carrier shall also prepare and file, by the prescribed date, any and all reports or other documents required to be filed by the Carrier with any federal, state, local or any other governmental body. Additionally, the Carrier shall comply in a timely fashion with its obligations, including deadlines or due dates, to deposit and pay any sums due to any federal, state, local or any other governmental body pursuant to any statute, ordinance, regulation or otherwise, including, but not limited to, any fees, and taxes owed by the Carrier, and any sums withheld from employees' wages.

Upon request by NJ TRANSIT, the Carrier shall also prepare and deliver to NJ TRANSIT copies of any of the aforesaid materials, or proof of any of the aforesaid payments, including any such materials for companies affiliated with the Carrier that are directly or indirectly related to the Carrier's operations, obligations, or claims under this Agreement.

7. ACCIDENT AND INCIDENT REPORTS BY CARRIER:

The Carrier shall promptly notify NJ TRANSIT within one (1) hour of the occurrence of or

receipt of any type of information or notice by the Carrier of any and all incidents, accidents, property damage, personal injury or death. Furthermore, the Carrier shall notify NJ TRANSIT in writing within twenty-four (24) hours of the occurrence of or receipt of any type of information or notice by the Carrier of any and all incidents; accidents; property damage, personal injury resulting in, or ultimately likely to result in, damage or claims exceeding five thousand dollars (\$5,000) to any property or to any person; and any death regardless of the amount of damages or claims arising or occurring during the possession or operation of the Equipment during the provision of the Contracted Services or attendant activities under this Agreement. In the event of any loss, theft or destruction of the Equipment or damage thereto exceeding \$500 or exceeding the value of such Equipment, whichever is lower, the Carrier shall within twenty-four (24) hours of such loss, theft, destruction or damage, notify NJ TRANSIT both by telephone and in writing, and hold the Equipment and records available for inspection by NJ TRANSIT. Within fifteen (15) business days of any occurrence of loss, theft, destruction or damage of the Equipment, the Carrier shall advise NJ TRANSIT whether the Equipment can be repaired within one hundred-eighty (180) calendar days of said occurrence. In all instances, the Carrier shall either repair the Equipment to the standard or condition required under this Agreement or, when equipment has been damaged to the point where it would be considered a “total loss”, the Carrier will compensate NJ TRANSIT for the value of the Equipment at the time of loss as provided by NJ TRANSIT’s Vehicle Depreciation Table or The Official Bus Blue Book by Bus Solution, whichever is higher, and as described in Section 12 “Insurance” of the Agreement. The Carrier shall also submit, by the seventh (7th) calendar day of each month, a report of any and all incidents, accidents and occurrences resulting in or, likely to result in any personal injury, death, or any property damage during the previous month, regardless of the dollar amount of damage or of actual or potential injury or death claims.

8. RETURN OF EQUIPMENT UPON EXPIRATION OR TERMINATION: RESERVED

9. NORMAL WEAR AND TEAR OF RETURNED EQUIPMENT: RESERVED

10. SALE, TRANSFER, OR CONSOLIDATION OF CARRIER:

If the Carrier is sold, transferred, merged, or consolidated during the term of this Agreement, documentation as to same including all contracts, agreements, and letters of intent shall be filed with NJ TRANSIT at least thirty (30) calendar days prior to the effective date of such sale, merger, etc. NJ TRANSIT shall have the right to immediately terminate, without any advance notice, this Agreement upon such sale,

transfer, merger or consolidation of the Carrier. Failure to file the aforesaid agreement by the Carrier will give NJ TRANSIT the right to immediately terminate this Agreement. In the event of any conflict between this provision and Article 10 of the Agreement for Operating Motor Bus Passenger Service, the terms of Paragraph 10 shall prevail.

11. INSOLVENCY:

This Agreement may be immediately terminated without advance notice at the election of NJ TRANSIT if the Carrier shall have filed a voluntary petition in bankruptcy; shall have made an assignment for the benefit of creditors; shall have been voluntarily or involuntarily adjudicated as bankrupt by any court of competent jurisdiction; or if a receiver shall have been appointed for the Carrier's business; or if the Carrier shall have permitted or suffered any distress, attachment, levy, or execution to be made or levied against any or all of the property of the Carrier. In the event that this Agreement is terminated under this section, the Carrier will not thereby be released of any liability or obligation for its failure to make any payment or act in any manner required hereunder by the Carrier or for the Carrier's failure or inability to perform the terms, covenants, and conditions of this Agreement.

12. NO ABATEMENT OR SET-OFF:

Sums payable by the Carrier to NJ TRANSIT under any provisions of this Agreement will not be subject to any set-off, counterclaim, or recoupment whatsoever.

13. DAVIS-BACON ACT, 41 U.S.C. §§ 3141-3148, AS AMENDED:

As applicable and when required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. §§ 3141-3144, and §§ 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction"). In accordance with the statute, carriers must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, carriers must be required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report

all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the Copeland "Anti-Kickback" Act (40 U.S.C. §3145), as supplemented by Department of Labor regulations (29 CFR Part 3, "Carriers and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"). The Act provides that each carrier or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency. The provisions of 29 C.F.R. §§ 3.1 to 3.11 are incorporated into this contract as if set forth at length herein.

14. RIGHTS TO INVENTIONS MADE UNDER A CONTRACT OR AGREEMENT:

If the Federal award meets the definition of "funding agreement" under 37 CFR § 401.2 (a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that "funding agreement," the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.

15. PROCUREMENT OF RECOVERED MATERIALS:

As applicable, pursuant to 2 C.F.R. § 200.323, the Carrier agrees to provide a preference for those products and services that conserve natural resources, protect the environment and are energy efficient by complying with and facilitating compliance with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, 42 U.S.C. § 6962, and U.S. Environmental Protection Agency's "Comprehensive Procurement Guideline for Products Containing Recovered Materials," 40 C.F.R. Part 247.

16. USE OF RECOVERED MATERIALS (RCRA Requirements):

The Carrier agrees to provide a preference for those products and services that conserve natural resources, protect the environment, and are energy efficient by complying with and facilitating compliance with Section 6002 of the Resource Conservation and Recovery Act, as amended, 42 U.S.C. § 6962, and

U.S. Environmental Protection Agency (U.S. EPA), "Comprehensive Procurement Guideline for Products Containing Recovered Materials," 40 C.F.R. part 247.

17. SEALS:

Carrier shall not use the State or federal seals, logos, crests, or reproductions of flags without written approval of the State or federal government, as applicable.