



UTAH TRANSIT AUTHORITY

GOODS AND SERVICES SUPPLY AGREEMENT
UTA CONTRACT #23-03791AB
Light Rail Vehicles

THIS GOODS AND NON-PROFESSIONAL SERVICES SUPPLY AGREEMENT (“Contract”) is entered into and made effective as of the date of last signature below. (“Effective Date”) by and between UTAH TRANSIT AUTHORITY, a public transit district organized under the laws of the State of Utah (“UTA”), and Stadler US, a US based Company (the “Contractor”).

RECITALS

WHEREAS, on April 30, 2024 UTA received competitive proposals to provide Light Rail Vehicles and (as applicable) all associated hardware, software, tools, installation services, commissioning and testing services, training and documentation (the “Goods and Services”) according to the terms, conditions and specifications prepared by UTA in RFP 23-03791AB (the “RFP”); and

WHEREAS, UTA wishes to procure the Goods and Services according to the terms, conditions and specifications listed in the RFP (as subsequently amended through negotiation by the parties); and

WHEREAS, the RFP response from Stadler US proposal submitted by the Contractor in response to the RFP (“Contractor’s Proposal”) was deemed to be the most advantageous to UTA; and

WHEREAS, Contractor is willing to furnish the Goods and Services according to the terms, conditions and specifications of the Contract.

AGREEMENT

NOW, THEREFORE, in accordance with the foregoing Recitals, which are incorporated herein by reference, and for and in consideration of the mutual covenants and agreements hereafter set forth, the mutual benefits to the parties to be derived here from, and for other valuable consideration, the receipt and sufficiency of which the parties acknowledge, it is hereby agreed as follows:

GOOD AND SERVICES TO BE PROVIDED BY CONTRACTOR

Contractor hereby agrees to furnish and deliver the Goods and/or Services in accordance with the Contract as described in Exhibit A (Statement of Work or Services) (including performing any installation, testing commissioning and other Services described in the Contract).

TERM

This Contract shall commence as of the Effective Date (date of last signature on contract). The Contract shall remain in full force and effect for purchases of base order of 20 vehicles with options to order 60 more, made via Notice to Proceed during a seven (7) year period expiring around October 2031. UTA may, at its sole election and in its sole discretion, accept any of the options within the Contract period not to exceed Seven (7) years. Option vehicles may be ordered in any length originally proposed by contractor and shall be priced in accordance with the schedule of prices and as outlines in SP8.2 of RFP. There shall be no minimum order quantity for any option exercised prior to the baseline scheduled delivery date of the middle car in the base order shall be subject to a minimum order quantity agreed to by the contractor and the agency/assignee. If it turns out that UTA’s requirements are lower than currently expected, it may exercise or assign some or all of the options for additional light rail vehicles at its sole absolute discretion. The Agency/Assignee and the contractor will mutually establish the schedule for the options milestones payments per SP 8.3, milestone payments for optional light rail vehicles.

INCORPORATED DOCUMENTS

a. The following documents hereinafter listed in chronological order, with most recent document taking Revision Date: March 2020

precedence over any conflicting provisions contained in prior documents (where applicable), are hereby incorporated into the Contract by reference and made a part hereof:

1. The terms and conditions of this Goods and Services Supply Agreement (including any exhibits and attachments hereto).
 2. Contractor's Proposal including, without limitation, all federal certifications (as applicable);
 3. UTA's RFP including, without limitation, all attached or incorporated terms, conditions, federal clauses (as applicable), drawings, plans, specifications and standards and other descriptions of the Goods and Services;
- b. The above-referenced documents are made as fully a part of the Contract as if hereto attached or herein repeated. The Contract (including the documents listed above) constitute the complete contract between the parties.

ORDER OF PRECEDENCE

The Order of Precedence for this contract is as follows:

1. UTA Contract including all attachments
2. UTA Terms and Conditions
3. UTA Solicitation Terms
4. Contractor's Bid or Proposal including proposed terms or conditions

Any contractor proposed term or condition which is in conflict with a UTA contract or solicitation term or condition will be deemed null and void.

LAWS AND REGULATIONS

Contractor and any and all Goods and/or Services furnished under the Contract will comply fully with all applicable Federal and State laws and regulations, including those related to safety and environmental protection. Contractor shall also comply with all applicable licensure and certification requirements.

OWNERSHIP OF DESIGNS, DRAWINGS, AND WORK PRODUCT

Any deliverables prepared or developed pursuant to the Contract including without limitation drawings, specifications, manuals, calculations, maps, sketches, designs, tracings, notes, reports, data, computer programs, models and samples, shall become the property of UTA when prepared, and, together with any documents or information furnished to Contractor and its employees or agents by UTA hereunder, shall be delivered to UTA upon request, and, in any event, upon termination or final acceptance of the Goods and Services. UTA shall have rights and privileges to use, share, and reproduce said items as outlined in Section 7.1 of the General Terms and Conditions attached hereto.

INSURANCE REQUIREMENTS (Per SP 5.2 RFP section 4)

SP 5.2 Insurance

SP 5.2.1 Evidence of Coverage

Contractor shall deliver to the Agency, within ten (10) days after receiving Notice of Award of the Contract, an ACORD form (Certificate of Liability Insurance) evidencing the required insurance coverage. A Notice to Proceed will not be issued until all required insurance documentation is in place.

SP 5.2.2 Continuation or Change in Coverage:

The Contractor shall maintain in effect during the term of the Contract, including any warranty period, at its own expense, at least the coverage and limits of insurance set forth below. Prior to the cancellation modification or expiration of any insurance during the Contract performance, the Contractor shall furnish evidence of such to the Agency's designated representative.

SP 5.2.3 Endorsements

The general liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions:

1. The Agency, its subsidiaries, officials, representatives and employees are additional insureds with respects to the Contractor's operations, products and completed operations in connection with the Contract.
2. Stipulation that the Insurance is primary insurance and that no insurance or self-insurance of the Agency will be called upon to contribute to a loss. Any insurance or self-insurance maintained by the Agency shall be excess of the Contractor's insurance and shall not contribute with it.
3. Coverage applicable to Products and Completed Operations as required in this Section shall be maintained for a period of three (3) years after the completion of all Work performed under the Contract.

Required insurance. Statutory Workers Compensation and Employers Liability insurance and/or qualified self-insurance program in the amount of \$1,000,000.00 covering Supplier's employees while on Agency property.

Commercial general liability insurance. Bodily Injury and Property Damage, including Contractual Liability covering the indemnification contained herein, \$10,000,000 combined single limits per occurrence, \$10,000,000 aggregate, where applicable. The Commercial General Liability Insurance policy shall not contain "X, C and U" (explosion, collapse, and underground) exclusions.

Product liability. \$5,000,000 per occurrence, \$10,000,000 annual aggregate for a period of five years after acceptance of the last LRV delivered under the Contract.

Automobile liability insurance. Bodily Injury and Property Damage, \$1,000,000 combined single limits per occurrence.

- B. **ADDITIONAL INSURANCE REQUIREMENTS:** The policies shall include, or be endorsed to include, the following provisions:
1. On insurance policies where the Utah Transit Authority is named as an additional insured, the Utah Transit Authority shall be an additional insured to the full limits of liability purchased by the Consultant. Insurance limits indicated in this agreement are minimum limits. Larger limits may be indicated after the consultant's assessment of the exposure for this contract; for their own protection and the protection of UTA.
 2. The Contractor's insurance coverage shall be primary insurance and non-contributory with respect to all other available sources.

NOTICE OF CANCELLATION: Each insurance policy required by the insurance provisions of this Contract shall provide the required coverage and shall not be suspended, voided or canceled except after thirty (30) days prior written notice has been given to the Utah Transit Authority, except when cancellation is for non-payment of premium, then ten (10) days prior notice may be given. Such notice shall be sent directly to (Utah Transit Authority agency Representative's Name & Address).

ACCEPTABILITY OF INSURERS: Insurance is to be placed with insurers duly licensed or authorized to do business in the State and with an "A.M. Best" rating of not less than A-VII. The Utah Transit Authority in no way warrants that the above-required minimum insurer rating is sufficient to protect the Contractor from potential insurer insolvency.

VERIFICATION OF COVERAGE: Contractor shall furnish the Utah Transit Authority with certificates of insurance (on standard ACORD form) as required by this Contract. The certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf.

All certificates and any required endorsements are to be sent to utahta@ebix.com and received and approved by the Utah Transit Authority before work commences. Each insurance policy required by this Contract must be in effect at or prior to commencement of work under this Contract and remain in effect for the duration of the project. Failure to maintain the insurance policies as required by this Contract or to provide evidence of renewal is a material breach of contract.

All certificates required by this Contract shall be emailed directly to Utah Transit Authority's insurance email address at utahta@ebix.com. The Utah Transit Authority project/contract number and project description shall be noted on the certificate of insurance. The Utah Transit Authority reserves the right to require complete, certified copies of all insurance policies required by this Contract at any time. DO NOT SEND

CERTIFICATES OF INSURANCE TO THE UTAH TRANSIT AUTHORITY'S CLAIMS AND INSURANCE DEPARTMENT.

APPROVAL: Any modification or variation from the insurance requirements in this Contract shall be made by Claims and Insurance Department or the UTA Legal Services, whose decision shall be final. Such action will not require a formal Contract amendment but may be made by administrative action.

OTHER INDEMNITIES

- a. Contractor shall protect, release, defend, indemnify and hold harmless UTA and the other Indemnitees against and from any and all claims of any kind or nature whatsoever on account of infringement relating to Contractor's performance under the Contract. If notified promptly in writing and given authority, information and assistance, Contractor shall defend, or may settle at its expense, any suit or proceeding against UTA so far as based on a claimed infringement and Contractor shall pay all damages and costs awarded therein against UTA due to such breach. In case any Good or Service is in such suit held to constitute such an infringement or an injunction is filed that interferes with UTA's rights under the Contract, Contractor shall, at its expense and through mutual agreement between UTA and Contractor, either procure for UTA any necessary intellectual property rights, or modify Contractor's Goods and Services such that the claimed infringement is eliminated.
- b. Contractor shall: (i) protect, release, defend, indemnify and hold harmless UTA and the other Indemnitees against and from any and all liens or claims made or filed against UTA on account of any Goods or Services furnished by subcontractors of any tier; and (ii) keep UTA property free and clear of all liens or claims arising in conjunction with any Goods or Services furnished under the Contract by Contractor or its subcontractors of any tier. If any lien arising out of the Contract is filed in conjunction with any Goods or Services furnished under the Contract, Contractor, within ten (10) calendar days after receiving from UTA written notice of such lien, shall obtain a release of or otherwise satisfy such lien. If Contractor fails to do so, UTA may take such steps and make such expenditures as in its discretion it deems advisable to obtain a release of or otherwise satisfy any such lien or liens, and Contractor shall upon demand reimburse UTA for all costs incurred and expenditures made by UTA in obtaining such release or satisfaction. If any non-payment claim is made directly against UTA arising out of non-payment to any subcontractor, Contractor shall assume the defense of such claim within ten (10) calendar days after receiving from UTA written notice of such claim. If Contractor fails to do so, Contractor shall upon demand reimburse UTA for all costs incurred and expenditures made by UTA to satisfy such claim.
- c. Contractor will defend, indemnify and hold UTA, its officers, agents and employees harmless from liability of any kind or nature, arising from Contractor's use of any copyrighted or un-copyrighted composition, trade secret, patented or un-patented invention, article or appliance furnished or used in the performance of the Contract.

INDEPENDENT CONTRACTOR

The parties agree that Contractor, in the carrying out of its duties hereunder, is an independent contractor and that neither Contractor nor any of its employees is or are agents, servants or employees of UTA. Neither Contractor nor any of Contractor's employees shall be eligible for any workers compensation insurance, pension, health coverage, or fringe benefits which apply to UTA's employees. Neither federal, state, nor local income tax nor payroll tax of any kind shall be withheld or paid by UTA on behalf of Contractor or the employees of Contractor. Contractor acknowledges that it shall be solely responsible for payment of all payrolls, income and other taxes generally applicable to independent contractors.

STANDARD OF CARE.

Contractor shall perform any Services to be provided under the Contract in a good and workmanlike manner, using at least that standard of care, skill and judgment which can reasonably be expected from similarly situated independent contractors (including, as applicable, professional standards of care).

CONTRACTOR SAFETY COMPLIANCE

Contractor, including its employees, subcontractors, authorized agents, and representatives, shall comply with all UTA and industry safety standards, NATE, OSHA, EPA and all other State and Federal regulations, rules and guidelines pertaining to safety, environmental Management and will be solely responsible for any fines, citations or penalties it may receive or cause UTA to receive pursuant to this Contract. Each employee, contractor and subcontractor working on UTA premises must be trained in UTA EMS and Safety Management principles. Contractor acknowledges that its Goods and Services might affect UTA's Environmental Management Systems obligations. A partial list of activities, products or Services deemed as have a potential EMS effect is available at the UTA website www.rideuta.com. Upon request by UTA, Contractor shall complete and return a *Contractor Activity Checklist*. If UTA determines that the Goods and/or Services under the Contract has the potential to impact the environment, UTA may require Contractor to submit additional environmental documents. Contractor shall provide one set of the appropriate safety data sheet(s) (SDS) and container label(s) upon delivery of a hazardous material to UTA

ENVIRONMENTAL RESPONSIBILITY

Contractor acknowledges that its Goods and/or Services might affect UTA's ability to maintain the obligation of the EMS. A partial list of activities, products or Services deemed as have a potential EMS effect is available at the UTA website www.rideuta.com. Upon request by UTA, Contractor shall complete and return a *Contractor Activity Checklist*. If UTA determines that the Goods and/or Services under the Contract has the potential to impact the environment, UTA may require Contractor to submit additional environmental documents. Contractor shall provide one set of the appropriate safety data sheet(s) (SDS) and container label(s) upon delivery of a hazardous material to UTA.

PUBLIC INFORMATION.

Contractor acknowledges that the Contract and related materials (invoices, orders, etc.) will be public documents under the Utah Government Records Access and Management Act (GRAMA). Contractor's response to the solicitation for the Contract will also be a public document subject to GRAMA, except for legitimate trade secrets, so long as such trade secrets were properly designated in accordance with terms of the solicitation.

PROJECT MANAGER

UTA's Project Manager for the Contract is Sharanjit Saini, or designee. All questions and correspondence relating to the technical aspects of the Contract should be directed to UTA's Project Manager at UTA offices located at 669 West 200 South, Salt Lake City, Utah 84101, office phone (801) 287-1955.

CONTRACT ADMINISTRATOR

UTA's Contract Administrator for the Contract is Amanda Burton, or designee. All questions and correspondence relating to the contractual aspects of the Contract should be directed to UTA's Grants & Contracts Administrator at UTA offices located at 669 West 200 South, Salt Lake City, Utah 84101, office phone (801) 287-3320.

NOTICES OR DEMANDS

a. Any and all notices, demands or other communications required hereunder to be given by one party to the other shall be given in writing and may be electronically delivered , personally delivered, mailed by US Mail, postage prepaid, or sent by overnight courier service and addressed to such party as follows:

If to UTA:

Utah Transit Authority
ATTN: Amanda Burton
669 West 200 South
Salt Lake City, UT 84101
aburton@rideuta.com

If to Contractor:

Stadler US
ATTN: Marc Voser
Marc.Voser@stadlerrail.com
5880 West 150 South
Salt Lake City UT 84104

b. Either party may change the address at which such party desires to receive written notice of such change to any other party. Any such notice shall be deemed to have been given, and shall be effective, on delivery to the notice address then applicable for the party to which the notice is directed; provided, however, that

refusal to accept delivery of a notice or the inability to deliver a notice because of an address change which was not properly communicated shall not defeat or delay the giving of a notice.

COSTS AND ATTORNEY FEES.

If any party to this Agreement brings an action to enforce or defend its rights or obligations hereunder, the prevailing party shall be entitled to recover its costs and expenses, including mediation, arbitration, litigation, court costs and attorneys' fees, if any, incurred in connection with such suit, including on appeal

ENTIRE AGREEMENT

This Contract shall constitute the entire agreement and understanding of the parties with respect to the subject matter hereof, and shall supersede all offers, negotiations and other agreements with respect thereto.

SURVIVAL

Provisions of this Contract intended by their nature and content to survive termination of this Contract shall so survive including, but not limited to, Articles 7, 9, 10, 11, 12, 13, 15, 17, 18, 19, 21, 23, 24, 25, 30, 31, 32, and 40.

IN WITNESS WHEREOF, the parties hereto have caused the Contract to be executed by officers duly authorized to execute the same as of the date of last signature below.

UTAH TRANSIT AUTHORITY:

By _____

By _____

DocuSigned by:
By Mike Bell
70E33A415BA44F6...
UTA Legal Counsel

CONTRACTOR:

DocuSigned by:
By [Signature] 10/11/2024
87F033FC30EE486...
Name Martin Ritter
Title CEO

DocuSigned by:
By Lucy Andre
A9D68AB7A602436...
Chief of Staff
Stadler US, Inc.

Exhibit A Scope of Work

The Work shall include the designing, manufacturing, testing, furnishing, delivery and performance testing of light rail vehicles (LRVs) and sub-systems, as defined in Section IP 1 of the RFP, “Description of Work” and Section 6 “Technical Specifications” found at this link.

<https://rideuta.sharepoint.com/sites/SupplyChain/Shared%20Documents/Forms/AllItems.aspx?as=json&id=%2Fsites%2FSupplyChain%2FShared%20Documents%2FSECTION%2B6%2BTECHNICAL%2BSPECIFICATIONS%2D23%2D03791AB%2D20240326%2Epdf&viewid=9c203d83%2D94e4%2D4507%2D94e1%2Dcad0039927d6&parent=%2Fsites%2FSupplyChain%2FShared%20Documents> .

The Work shall also include delivery of data, manuals, drawings, training and support services, spare parts, special tools, and test equipment, which shall be delivered as specified in the Contract Documents. The Contractor is responsible for the design and integration of all vehicle systems such that all specified requirements are achieved without conflict or error within or between systems. It shall be the Contractor’s responsibility that all managers, engineers, designers, suppliers and subcontractors are informed of all specified requirements and that appropriate engineering management tools are utilized so that coordination and communication occurs between the designers of interrelated systems.

The Contractor is responsible for the selection, application and integration of equipment and materials as necessary to conform to the specified requirements. All equipment provided under the Contract shall be new. Rebuilt or refurbished equipment is prohibited. New equipment damaged during execution of the Contract may be restored to new condition only where approved by the Agency on a case-by-case basis, and all restorations shall be performed by the original equipment manufacturer. The Manufacturer shall produce, assemble, furnish, deliver, inspect, and test the LRVs according to the requirements of the Contract Documents. The Manufacturer shall assume responsibility for the proper integration and interoperability of all components, systems, subsystems, major assemblies, subassemblies, products, parts, apparatuses, articles, and other Materials.

The Manufacturer shall provide and pay for all supervision, labor, Materials, tools, plants, equipment, machinery, testing apparatuses, delivery, training, technical support, licenses of software and other proprietary technology, and any other costs necessary to furnish the LRVs. The Manufacturer shall be solely responsible for planning and implementing the means, methods, techniques, sequences, and procedures necessary to provide the LRVs. The Manufacturer shall perform all Work, other than professional services, in a good and workmanlike manner or in accordance with such higher standards of skill and care, such as industry best practices. All professional services must be performed at a minimum with that degree of skill and care normally exercised by reasonably prudent professionals in that discipline under the same or similar circumstances.

The General Conditions, Technical Specifications, Proposal, and other Contract Documents are essential to the Contract. All are intended to be complementary and to provide for LRVs suitable for their intended uses. A requirement occurring in one Contract Document is as binding as though occurring in all such Contract Documents.

**Exhibit B
Price Sheet**

Tables CER 6 83.5 and 111ft, Show the Contracted Amount available per Stadlers price quote. Base Order Notice to Proceed” shows the actual price UTA will pay for the base contract scope (vehicles and features) of 20vehicles.

BASE ORDER NOTICE TO PROCEED

Base Order				
No.	Quantity	Description	Each	Total
1.	20	Base order 20 ea 83.5 Ft low floor Light Rail Vehicles, associated goods and services as described in RFP and Contract. (92% of total cost for base order)		
2.	1	83.5 ft Spare Parts, special tool, diagnostic equipment as described in RFP/Contract (8% of the total cost of base order)		
5.	1	LRV Operation Training Simulator		
8.	20	Automatic Train Protection (ATP)		
Total Base Contract				\$129,300,194.00

UTAH TRANSIT AUTHORITY

HFP# 23-03791AB

CER 6: Pricing Schedules

Note: The Contractor shall submit a separate Pricing Schedule for each vehicle length proposed.

Vehicle Length: 83,5ft

Base Contract Utah Transit Authority 23-03791AB – Light Rail Vehicles All prices are to be in U.S. dollars.				
No.	Quantity	Item	Unit Price	Extended Price
1.	20	A base quantity of 20 Low Floor Light Rail Vehicles and associated goods and services such as training materials and parts and maintenance manuals, as described in the Contract: (92% of the Total Cost for Base Order)		
2.	1	Spare parts, special tools and diagnostic equipment as described in the Contract: (8% of the Total Cost for the Base Order)		
TOTAL BASE CONTRACT				

Options Utah Transit Authority 23-03791AB – Light Rail Vehicles All prices are to be in U.S. dollars.				
No.	Quantity	Item	Unit Price	Extended Price
1.	60	Additional LRVs (92% of the Total Cost for the Options Order)		
2.	1	Spare parts, special tools and diagnostic equipment as described in the Contract: (8% of the Total Cost for the Options Order)		
3.	20	On-Board Energy Storage System (OESS) Ready		
4.	60	On-Board Energy Storage System (OESS) Ready		
5.	1	LRV Operation Training Simulator		
6.	20	Automatic Train Stop (TS)		
7.	60	Automatic Train Stop (TS)		
8.	20	Automatic Train Protection (ATP)		
9.	60	Automatic Train Protection (ATP)		
TOTAL OPTIONS				

Signature 

Date 09/30/2024

Should UTA execute a different vehicle length, than the exercised base order, an additional 15.9Mio USD in NRC's are applicable to the new vehicle length base contract. It has been assumed, that a minimum order quantity of 15 vehicles will be ordered and based on an ongoing production. The option pricing is based on a 30% aggregate overall liability cap.

SECTION 9: CERTIFICATIONS-20240326



Cynthia Vigil

UTAH TRANSIT AUTHORITY

RFPI# 23-03791AB

CER 6: Pricing Schedules

Note: The Contractor shall submit a separate Pricing Schedule for each vehicle length proposed.

Vehicle Length: 111ft

Base Contract Utah Transit Authority 23-03791AB – Light Rail Vehicles All prices are to be in U.S. dollars.				
No.	Quantity	Item	Unit Price	Extended Price
1.	15	A base quantity of 15 Low Floor Light Rail Vehicles and associated goods and services such as training materials and parts and maintenance manuals, as described in the Contract: (92% of the Total Cost for Base Order)		
2.	1	Spare parts, special tools and diagnostic equipment as described in the Contract: (8% of the Total Cost for the Base Order)		
TOTAL BASE CONTRACT				

Options Utah Transit Authority 23-03791AB – Light Rail Vehicles All prices are to be in U.S. dollars.				
No.	Quantity	Item	Unit Price	Extended Price
1.	45	Additional LRVs (92% of the Total Cost for the Options Order)		
2.	1	Spare parts, special tools and diagnostic equipment as described in the Contract: (8% of the Total Cost for the Options Order)		
3.	15	On-Board Energy Storage System (OESS) Ready		
4.	45	On-Board Energy Storage System (OESS) Ready		
5.	1	LRV Operation Training Simulator		
6.	15	Automatic Train Stop (TS)		
7.	45	Automatic Train Stop (TS)		
8.	15	Automatic Train Protection (ATP)		
9.	45	Automatic Train Protection (ATP)		
TOTAL OPTIONS				

Signature 

Date 09/30/2024

Should UTA execute a different vehicle length, than the exercised base order, an additional 15.9Mio USD in NRC's are applicable to the new vehicle length base contract. It has been assumed, that a minimum order quantity of 15 vehicles will be ordered and based on an ongoing production. The option pricing is based on a 30% aggregate overall liability cap.

SECTION 9: CERTIFICATIONS-20240326



Cynthia Vigil

Exhibit C
Terms and Conditions and Special Provisions

GC 1. Definitions, Interpretation Conventions, And Other Miscellaneous Matters

GC 1.1 Definitions

The following are definitions of special terms used in this document:

Addenda/Addendum: Written modifications issued by the Agency to the Request for Proposals that modify the Contract Documents.

Advertisement: The public announcement in the form of the public notice inviting prospective Proposers to obtain an RFP and submit a letter of interest. The Advertisement included a brief description of the work proposed to be the subject of the procurement with an announcement where the RFP may be obtained, and such other matters as UTA deemed advisable to include therein.

Agency: Utah Transit Authority or UTA

Agency Furnished Equipment: Material furnished by the Agency to the Contractor for use under the Contract.

Approved Equal or Equivalent: An item, material or method offered as a substitute for that designated in the Contract Documents, for which approval in writing has been obtained from the Agency. The burden of proof that a substitute is in fact equal shall rest with the Contractor.

Authorized Representative: The person or firm authorized or empowered to act for, or on behalf of, the Agency. The authority of any Authorized Representative may be limited as provided in the Contract or in any notice designating the Authorized Representative. For the Contractor, this party may be referred to as the Contractor's Representative.

Authorized Signer: The person who is executing the Contract on behalf of the Contractor and who is authorized to bind the Contractor.

Award: Notification to the Contractor of acceptance by the Agency of its Proposal.

Best and Final Offer (BAFO): The last Proposal made by a Proposer. If a BAFO is not specifically requested by the Agency, or if the Proposer does not promptly respond to a request for BAFO, then the most recent, current Proposal is the BAFO.

Change: Any alteration in the Contract Documents or the Work modifying the scope of work, price, equipment, materials, facilities, services, site, performance, schedule or other material provision of the Contract.

Change Order: A written document that alters the scope of the Work to be performed by the Contractor, changes the schedule of performance of the Work, increases or decreases the Contract Price, increases or decreases the Contract Time, or makes any other change to the Contract.

Change Request: A document submitted by the Contractor to the Agency requesting that a Change Order be issued.

Claim: A written demand by the Contractor seeking (1) the payment of money in a sum certain; (2) an extension of Contract Time; (3) an adjustment of Contract terms; and/or (4) other relief arising under or relating to the Contract.

Component: Any component of any LRV or any other Equipment to be delivered under the Contract. May also be referred to in the Contract as a unit, part, product, module, subcomponent, system, subsystem, assembly, subassembly, software, firmware, structure or other term indicating a part or portion of the Equipment.

Conditional Acceptance: A written certificate issued by the Agency to a completely assembled LRV, located at the Agency or its vehicle acceptance facility, that has successfully completed tests outlined in accordance with Section 6: Technical Specifications, and is ready to run in revenue service except for minor Defects that require corrective action but that will not materially affect Safety and or revenue service operations. Conditional Acceptance requires that all documentation for the LRV, including the Car History Book, per Section 6: Technical Specifications, has been delivered to and accepted by the Agency.

Contract: Written agreement executed by the Agency and the Contractor that sets forth the rights and obligations of the parties in connection with the Work, and which includes the Contract Documents, all incorporated attachments, exhibits and all provisions required by law to be inserted in the Contract whether actually inserted or not. Whenever separate publications are referenced in the Contract, it is understood to mean the publications, as amended, which are current on the Proposal due date, unless otherwise noted.

Contract Administrator: The Agency's Authorized Representative who is authorized and empowered to execute Contracts, Change Orders, Amendments and other agreements and documents on behalf of the Agency. The Contracting Administrator may delegate authority in writing to one or more Authorized Representatives.

Contract Documents: All documents included in the Contract and made a part hereof, including Attachments and Exhibits incorporated either by attachment or by reference.

Contract Time: The number of days, or portion thereof, allowed for completion of the Work, including all authorized time extensions. The date specified in the Notice to Proceed shall be the date on which the Contract Time begins, and the Scheduled Completion Date shall be the date the Contract Time ends.

Contractor: The successful Proposer to whom a Contract is awarded.

Contractor's Project Manager: The Manufacturer's Project Manager who will oversee and be responsible for all Work, or his or her duly authorized designee.

Contractor's Representative: The person designated by the Contractor to act on its behalf.

Critical path method (CPM) schedule: A schedule that includes the planned sequence of activities that comprise the Project, including a breakdown of all of the elements of the Work into individual tasks, the number of days required to perform each task and their logical relationship. The CPM schedule includes the entire Contract Time from Notice to Proceed to the Scheduled Completion Date.

Cure Notice: Written notice from the Agency to the Contractor to cure a default or Deficiency or to correct Work performed not in conformance with the Contract.

Days: Calendar days unless otherwise indicated.

Delivery: The time when an LRV is turned over to the Agency at its vehicle acceptance facility, having completed all pre-delivery inspections and tests and ready for acceptance testing.

Defect/Defective: The condition of any part of the Work that does not meet the Contract Document requirements; causes a vehicle or a portion of the Work to cease operating or to operate in a degraded mode; or inflicts damage or harm on any other portion of a vehicle or the Work, prior to Final Acceptance of the Equipment or during the period of any Warranty.

Disadvantaged Business Enterprise or “DBE”: A disadvantaged business enterprise, as such term is defined in 49 Code of Federal Regulations (CFR) Part 26.

Disadvantaged Business Enterprise Program or “DBE Program”: the Agency’s Disadvantaged Business Enterprise Statement created pursuant to 49 CFR Part 26.

Dispute: A disagreement between the parties as to the merits, amount or remedy arising out of a Claim or asserted default.

Drawings: All drawings necessary or required for the prosecution of the Work.

Due Date: The time by which any document must be received by the Agency or Contractor, as applicable.

Equipment: Any and all machinery, vehicles, systems, assemblies, subassemblies, products, material fittings, devices, appliances, fixtures, apparatus, supplies and parts used by the Contractor or provided by the Contractor to the Agency pursuant to the Contract.

Execution of the Contract: The signing of the Contract by the Agency’s Authorized Representative and the Authorized Signer or Contractor’s Representative.

Extended Warranty: A warranty that extends beyond the general warranty period for Components listed in Section 7: Warranty.

Federal Railroad Administration or “FRA”: The Federal Railroad Administration, a part of U.S. Department of Transportation concerned with intermodal transportation.

Federal Transit Administration or “FTA”: The Federal Transit Administration, a modal administration of the United States Department of Transportation (US DOT) and the federal agency providing funding for a portion of the Contract.

Final Acceptance of an LRV: A written certification issued by the Agency acknowledging that the LRV has been completed in full accordance with the Technical Specifications, including all testing, approved engineering submittals, and Change Orders; all corrective actions identified at the Conditionally Accepted stage have been completed, and all required documentation for the LRV has been received and approved by the Agency.

Final Completion: The Final Acceptance of all LRVs and the fulfillment and completion of all the Manufacturer’s obligations under the Contract Documents as further defined in Section SP 4.7.

Final Payment: Payment made to the Contractor within 30 days of presentation of the Contractor’s final invoice and issuance of Notice of Final Completion by the Agency.

First Article Inspection (FAI): The comprehensive inspection and testing of the first production model of any component, system, subsystem, major assembly, subassembly, product, part, apparatus, article and other Material before it is assembled into a vehicle as well as the comprehensive inspection and testing of the first completed LRV.

Fleet: A collection of light rail vehicles that are identical in configuration.

Fleet Defect: Cumulative failures of ten (10) percent of the same components in the same or similar applications with a minimum of three (3) failures of the same component where such items are covered by warranty.

Government: Any federal, state or local government and any political subdivision or any governmental, quasi-governmental, judicial, public or statutory instrumentality, administrative agency, authority, body or entity other than the Agency.

Joint: Involving mutually the Contractor and the Agency.

Light Rail Vehicle (LRV): The rail vehicle(s) which the Manufacturer is to provide in accordance with the Contract Documents and further described in **Vehicle** and **Vehicle, Low Floor Light Rail**.

Major Subsystem: Any system on mutually agree upon list of major subsystems.

Manufacturer: The person, persons, partnership, Joint Venture (JV), company, or corporation entering into the Contract to perform the Work.

Notice: Communication in writing, unless otherwise specified, to provide or issue any information, warning, announcement, instruction, consent, approval, certificate or determination by any party to the Contract.

Notice of Intent to Claim: A written notice of a potential claim submitted by the Contractor to the Agency within the time limits and under the circumstances specified in the Contract Documents.

Notice to Proceed (NTP): Written authorization from the Agency to the Contractor that establishes the date that the Contractor is to start work and the Period of Performance begins.

Notice of Termination: A written notice delivered by the Agency to the Contractor terminating the Contract, either for convenience or for cause as further described in GC 9.6

Open Items Report: A description of all defects, shipping damage and missing parts upon LRV arrival delivery at the Agency's property.

Pass-Through Warranty: A warranty provided by the Contractor but administered directly with the component supplier.

Payment Schedule: The schedule of events and deliverables triggering periodic payments under the Contract Documents.

Period of Performance: The total time period as set forth in the schedule for the Contractor to complete all or a designated portion of the Work under the Contract.

Project Manager: The individual designated by the Agency or the Contractor to manage the Contract on a day-to-day basis.

Proposer: The legal entity that responds to the Agency's Request for Proposal.

Proposal: An offer submitted to the Agency in response to the Agency's Request for Proposal (including any Best and Final Offers).

Request for Proposal (RFP): The Document issued by the Agency and soliciting proposals with respect to the Work to be performed under the Contract Documents.

Schedule: The schedule prepared by the Manufacturer, as reviewed and accepted by the Utah Transit Authority's Project Manager (PM), which schedule sets forth the logical sequence of activities required for the Manufacturer's orderly performance and completion of the Work in accordance with the Contract Documents, including the satisfaction of designated milestone dates.

Specifications: All things described, stated or referenced in the Contract Documents entitled Technical Specifications, Statement of Work, Scope of Work, or any other description of the Work.

Subcontractor: Any person, firm, partnership, corporation or other entity, other than employees of the Contractor, that are hired by the Contractor to perform work and/or furnish labor, or labor and materials, directly on the LRV under the Contract.

Subsupplier: Any manufacturer, company, or agency, providing components or parts to a Supplier for inclusion on the LRV.

Submittal: Any document or sample prepared by or for the Contractor that is required by the Contract Documents to be submitted to the Agency by the Contractor and as further described in TS 1.2.2.

Superior Warranty: A warranty still in effect after all contractually required warranties have expired and administered directly between the Supplier and the Agency.

Supplier: Any individual, partnership, firm, corporation, joint venture, or any combination thereof, who provides material or equipment, but not labor or services other than delivery, to the contractor and who is responsible to the contractor by virtue of an agreement with the Contractor.

Total Contract Price: The total amount payable to the Contractor plus the price of any options exercised, and/or Change Orders during the Contract period of performance.

UTA: Utah Transit Authority, a public transit district under the laws of the State of Utah, the Agency

Utah Transit Authority's Project Manager" or UTA's PM: the Agency's Project Manager who will oversee and be responsible for all Work, or his or her duly authorized designee

GC 1.2 Explanations, Omissions, And Mis-Descriptions

The Contractor shall not take advantage of any apparent error or omission in the Contract Documents. Should it appear that the Work or any of the matters relative thereto is not sufficiently detailed or explained in the Contract Documents, the Contractor shall apply to the Agency in writing for such further written explanations as may be necessary and shall conform to the explanation provided. The Contractor shall promptly notify the Agency of all errors, omissions, inconsistencies, or other defects (including inaccuracies) which it may discover in the Contract Documents and shall obtain specific instructions in writing regarding any such error, omission, inconsistency, or defect before proceeding with the Work affected thereby. The fact that the Contract Documents omit or misdescribe any details of any Work which is necessary to carry out the intent of the Contract Documents, or which is customarily performed, will not relieve the Contractor from performing such omitted Work (no matter how

extensive) or misdescribed details of the Work, and it must be performed as if fully and correctly set forth and described in the Contract Documents.

GC 1.3 Federal Requirements

Notwithstanding anything to the contrary contained herein, in the event of any conflict between any federal requirements and the other requirements of the Contract Documents, the federal requirements will prevail, take precedence, and be in force over and against any such conflicting provisions. The Contractor shall comply with the requirements of the FTA, set forth in Section 5 – Federal Clauses.

GC 2. Materials and Workmanship

The Contractor shall be responsible for all materials and workmanship in the construction of the LRV and all accessories used, whether the same are manufactured by the Contractor, Subcontractor or purchased from a Supplier. This provision excludes any equipment leased or supplied by the Agency, except insofar as such equipment is damaged by the failure of a part or component for which the Contractor is responsible, or except insofar as the damage to such equipment is caused by the Contractor during the manufacture of the vehicles. Unless specifically provided for in the Technical Specification, all Materials and parts furnished by the Contractor shall be new and free from Defects. Used, damaged, re-worked, obsolete, or demonstrator models of any equipment will not be acceptable. All equipment, parts, and components used for the same function or purpose must be interchangeable and identical in construction.

The Agency shall have the right to reject any material and workmanship that is not in conformance with the Contract specifications or accepted industry practices. Repeated rejections of material or workmanship by the Agency shall be considered a failure of the Contractor's QA Program which, at the Agency's discretion, may be cause for stopping all work until corrective measures have been implemented to the Agency's satisfaction. Any Agency furnished Materials that are contemplated by the Contract Documents will be delivered to the Contractor as agreed between the parties. All unloading, transportation, handling, storage, protection, or installation from the agreed delivery point must be the responsibility of the Contractor. The Contractor shall inspect Agency furnished Materials and shall immediately notify the Agency's PM, in writing, of any lost, missing, inferior, defective, inappropriate, or damaged Materials. If any Agency furnished Materials are lost or damaged from any cause after receipt by the Contractor, the Contractor shall be liable to the Agency for the cost of replacing or repairing such Agency furnished Materials and the cost thereof may be deducted from monies due, or to become due, to the Contractor. All loss or damage arising from any unforeseen obstruction or difficulties, either natural or artificial, which may be encountered in the prosecution of the work or the furnishing of the work or supplies, materials, or equipment, or from any act or omission not authorized by the Contract on the part of the Contractor or any agent or person employed by it, will be the responsibility of the Contractor.

Any material or equipment found to be damaged or defective at the time of delivery must be repaired, replaced, or corrected by the Contractor hereunder without additional cost to the Agency.

If the Contractor fails to comply promptly with the Contract, the Agency will, upon written notice to the Contractor, deduct the cost of non-conforming work from any compensation due or to become due to the Contractor.

GC 3. Conformance with Specifications and Drawings

Materials furnished and Work performed by the Contractor shall conform to the requirements of the Technical Specifications and other Contract Documents. Notwithstanding the provision of drawings, technical specifications or other data by the Agency, the Contractor shall have the responsibility of supplying all parts and designs required to make the LRV complete and ready for service even though such details may not be specifically mentioned in the drawings and specifications. Items that are installed by the Agency shall not be the responsibility of the Contractor unless they are included in the Contract.

GC 4. Inspection and Testing

GC 4.1 General

GC 4.1.1 The Contractor has the sole responsibility under the Contract Documents for inspecting all Work provided and all Materials furnished. The Agency may perform additional inspections at its discretion to verify the sufficiency of the Contractor's Quality Control (QC) or for any other purpose. Any inspections performed by Agency are solely for Agency's benefit and inspection by Agency does not relieve the Agency of its responsibility to perform the Work in accordance with the Contract Documents. The Agency reserves the right to reject Materials or workmanship on the basis of Agency-instituted inspections. The Agency may inspect all or any part of the Work at any reasonable time. The Contractor shall give Agency's PM, Agency's inspectors, and any other person designated by Agency access to the LRVs at any place or stage of their manufacture, preparation, shipment, or delivery.

GC 4.1.2 The Agency's right to make inspections includes the right to order the Contractor to uncover concealed portions of the Work. This right to order the Contractor to uncover concealed portions of the Work includes the removal of panels, plates, components, or other aspects of finished Work that prevent the inspection of additional portions of the Work. Should the Work exposed or examined as the result of this Section prove to be in accordance the Contract Documents, the inspection will be treated as additional Work requested by the Agency, and the Agency will issue a Change Order compensating the Contractor for its incremental costs (including any duplicative Work) required as the result of the inspection. Should the Work exposed or examined as the result of this Section prove not to be in accordance with the Contract Documents, the Contractor shall bear all costs related to both the inspection and all required corrective work, and no Change Order will be issued.

GC 4.1.3 The Agency's Representative shall at all times have access to the Work, the Contractor and, through the Contractor, its Suppliers. The Contractor and its Suppliers shall furnish every reasonable facility for ascertaining that the materials and the workmanship are in accordance with the requirements of the Contract Documents. All Work done shall be subject to the Agency Representative's inspection and approval in accordance with the approved Work products developed as a result of the Contract Documents.

The Contractor shall, at no additional expense to the Agency, provide the Agency with private offices for the use of Agency's PM, the Agency's inspectors, and other field staff designated by Agency from time to time. The Contractor shall provide offices at the following locations:

1. The Contractor's engineering and design facility;
2. The Contractor's manufacturing facility; and
3. The Contractor's assembly facility.

The office space must include the use of a desk, telephone, and personal computer. The office space must also include access to an internet connection, color printers, file cabinets, copying machines, and other facilities necessary for the conduct of business.

GC 4.1.4 The Contractor shall inspect all materials, supplies and equipment that are to be used, or incorporated in the Work. In addition, Contractor shall conduct a continuous program satisfactory to the Agency's Representative of quality control for all Work performed under the Contract. The Contractor shall have the primary responsibility for inspecting the Work. The Agency Representative's inspection is conducted to verify that the Contractor has performed its inspections properly. Any observation, verification, inspection, or approval of the Work by the Agency shall not relieve the Contractor of any of its obligations to perform the Contract as prescribed. If, in the opinion of the Agency's Representative, the Contractor fails to execute its responsibility for quality control and inspection on any part of the Work, then the Agency may, at its option, conduct quality control and inspection activities in lieu of the Contractor at the Contractor's expense. Such inspection shall not relieve the Contractor of its liability for defective or unsuitable Work, as described in GC 4.2, Non-Conforming Work. Work not meeting the requirements of the Contract shall be made acceptable, and unsuitable Work may be rejected, notwithstanding that payment for such Work may have been previously authorized and included in a progress payment. A deduction may

be made from subsequent progress payments and withheld until such time as the correction of such unsuitable Work. The amount of the deduction will be set by the Agency Representative and the amount should be in proportion to the value of the non-conforming work.

GC 4.1.5 All components, systems, subsystems, major assemblies, subassemblies, products, parts, apparatuses, articles, and other Materials to be incorporated into the Work will be subject to the testing requirements set forth in the Technical Specifications and other Contract Documents, and none of the foregoing will be incorporated into the LRVs unless the same has successfully passed the applicable test(s). The Contractor shall prepare a test plan for the LRVs as specified in Section 6. The test plan must include, without limitation, the following information:

1. Each and every test point and its location in the manufacturing cycle; and
2. The test procedures and the forms to be used at each test point.

GC 4.1.6 The test plan must include not only the testing to be performed by the Contractor, but also all testing to be performed by Subcontractors and Suppliers. The test plan must be furnished to the Agency's PM for review and acceptance. The test plan, as reviewed and accepted by the Agency, will become part of the Contract Documents and the Contractor shall be required to perform in accordance with the test plan. The test plan may be revised and updated by the parties throughout the continuation of the Work. The Agency's PM must be apprised of all such tests in advance to be able to witness any testing at his discretion. The Contractor shall be responsible for any necessary corrective action and retesting until the applicable certified test results have been approved by Agency's PM. All testing must be performed by and at the expense of the Contractor and the Contractor shall furnish the necessary testing instruments and apparatuses.

GC 4.2 Non-Conforming Work

Materials furnished and Work performed by the Contractor must conform to the requirements of the Technical Specifications and other Contract Documents. Materials furnished or Work performed which does not comply with such requirements will be considered non-conforming. Non-conformance includes, but is not limited to, the following:

1. Work performed or Materials furnished contrary to the Utah Transit Authority's instructions;
2. Work added, deleted, or changed to or from the requirements of the Contract Documents without the written authorization of the Agency;
3. Work which includes the incorporation of unapproved substitutions or unapproved Materials; or
4. Work performed or Materials furnished without the required testing, inspection, or other conformance documentation or without required warranties.

If the Agency determines that materials, equipment or workmanship proposed for or incorporated in the Work is non-conforming, then the Agency shall have the right to reject such Work by giving the Contractor written notice that such Work is non-conforming. The Agency, at its option, shall require the Contractor, within a designated time period as set forth by the Agency, to either (1) promptly repair, replace or correct all Work not performed in accordance with the Contract at no cost to the Agency; or (2) provide a suitable corrective action plan at no cost to the Agency. Once accepted by the Agency, the Contractor shall implement the corrective action plan at no cost to the Agency. If the corrective action plan as accepted by the Agency does not remedy the defective or non-conforming Work, then the Contractor shall remain responsible for remedying the non-conforming Work to the Agency's satisfaction and at no additional cost to the Agency. The Contractor shall also be responsible for repairing all property and work damaged by the Contractor at no cost to the Agency. Under no circumstances shall the Contractor be entitled to additional time or money for the correction of defective or non-conforming work, or for the repair of damaged property.

The Agency's inspection of the Work or right to reject non-conforming Work shall not relieve the Contractor of its full responsibility for performing the Work in full conformance with the Contract Documents. No failure or

forbearance of the Agency in notifying the Contractor of non-conforming Work shall relieve the Contractor of its Contract responsibility to ensure that the Work is performed in accordance with the Contract Documents.

GC 4.3 Risk of Loss

From the receipt of the NTP until Conditional Acceptance, the Contractor shall assume the risk of loss or damage to the LRVs to the fullest extent permitted by law. The Contractor shall bear the risk of loss irrespective of whether such loss or damage arises from the acts or omissions of the Contractor, the Agency, third parties, or from any other cause whatsoever (excepting loss or damage arising from the negligent acts or omissions of the Agency, to the extent that such loss or damage was caused by the negligent acts or omissions of the Agency, which will be borne by the Agency). The risk of loss or damage to the LRVs will transfer to the Agency at Conditional Acceptance, at which time the Agency shall assume responsibility for the care, protection, and ordinary upkeep for the LRVs. Nothing provided in this Section GC 4.3 will relieve the Contractor from the performance of open items work or warranty work after Conditional Acceptance. From and after Conditional Acceptance, the Contractor shall also continue to bear the risk of any losses caused by the Contractor's negligent or willful acts.

GC 5. Title and Warranty of Title

Title to each vehicle shall vest in the Agency upon Conditional Acceptance. The title received by the Agency shall be considered full legal title with rights to unconditional possession and ownership. The Contractor, shall, within five (5) days after receipt of the notice of Conditional Acceptance with respect to any vehicle, deliver to the Agency a bill of sale or other instrument and shall be evidence that the Agency has acquired full title to such vehicle free and clear of all liens, claims, security interests or encumbrances of any kind.

GC 6. Intellectual Property

GC 6.1 Intellectual Property Indemnification

The Contractor shall indemnify, defend and hold harmless the Agency (and its officers, directors, agents or employees) to the maximum extent permitted by law from and against any and all claims, liabilities, losses, damages or expenses (including attorneys' fees and related costs, whether or not litigation has commenced), whether direct or indirect, arising out of, relating to or in connection with any claim or allegation that the ownership, possession or use of any software, materials, equipment, devices, processes or other materials provided by the Contractor under this Agreement infringe or violate the patent, copyright, trade-secret or other intellectual-property or proprietary rights of any third party. In case any such software, materials, equipment, devices, processes or other materials are held to constitute an infringement and their use enjoined, then the Contractor, at the Contractor's sole cost and expense, shall do one of the following:

- Secure for the Agency the right to continue using the software, materials, equipment, devices or processes by suspension of the injunction or by procuring a royalty-free license, or licenses.
- Replace such software, materials, equipment, devices or processes with non-infringing software, materials, equipment, devices or processes.
- Modify them so that they become non-infringing.
- Remove the enjoined software materials, equipment, devices or processes and refund the sums paid for them without prejudice to any other rights of the Agency.

If the amount of time necessary to proceed with one of these options is deemed excessive by the Agency, then the Agency may direct the Contractor to select another option or risk default.

The Agency shall advise the Contractor of any pending patent suit related to the Contract against the Agency and provide all information available. The Contractor's obligations under this section are discharged and the Agency shall hold the Contractor harmless with respect to the equipment or part if it was specified by the Agency and all requests for substitutes were rejected, and the Contractor advised the Agency under IP 6, Questions, Clarifications and Omissions, of a potential infringement, in which case the Contractor shall be held harmless.

GC 6.2 Intellectual Property Warranty

The Contractor represents and warrants that any use of the Work, or any part thereof, by the Agency (or its officers, directors, agents, employees or transit users) will not infringe or violate the patent, copyright, trade-secret or other intellectual-property or proprietary rights of any third party.

The Contractor further represents and warrants that it has or will have all appropriate licenses, agreements or ownership rights pertaining to all patent, copyright, trade-secret or other intellectual-property or proprietary rights needed for the performance of its obligations under the Contract — including without limitation that it will have all necessary rights to use patentable or copyrightable materials, equipment, devices or processes not furnished by the Agency used on or incorporated in the Work under the Contract. The Contractor assumes all risks arising from the use of any such patented or copyrighted materials, equipment, devices or processes.

The Contractor shall grant to the Agency, on the Contractor's behalf, and on behalf of all Subcontractors and Suppliers, an irrevocable, perpetual, royalty-free, nonexclusive license to use all software and other patented, copyrighted, or otherwise protected technology and processes that the Contractor incorporates into the LRVs. The Contractor shall bear all licensing fees and other costs arising from the use of software and other patented, copyrighted, or otherwise protected technology and processes. The Contractor warrants that the LRVs will be delivered free and clear of any rightful claim of infringement

by any party. The Contractor shall, to the full extent permitted by law, assume, protect, defend, indemnify, and hold the Agency and its officers, employees, and agents, harmless from and with respect to any and all liabilities, damages, claims, demands, liens, encumbrances, judgments, awards, losses, costs, or expenses (including, reasonable expenses, costs, and attorneys' fees incurred by the indemnified parties in the defense, settlement, or satisfaction of any suits, actions, or proceedings) relating to injuries, death, loss, or damage to persons or property of any kind whatsoever, arising out of or resulting from the Contractor's breach of the intellectual property warranty set forth in this Section GC 6.2. The Agency and the Contractor will promptly notify each other in writing of the notice or assertion of any infringement claim or other claim related to the Contractor's alleged breach of the intellectual property warranty provided in this Section GC 6.2. Upon receipt of notice and if given authority, the Contractor shall settle at its expense or undertake at its own expense the defense of any such suit, action, or proceeding, including appeals, against the Agency and its officers, employees, and agents relating to the Contractor's alleged breach of the warranty provided in this Section GC 6.2. If it is established that the LRVs contain technology or processes that constitute an infringement, or if an injunction is obtained ordering the Agency to discontinue use of infringing technology or processes, the Contractor shall, at its own expense, take the following actions:

1. Secure for the Agency the right to continue using said Materials or processes by lifting the injunction or by procuring a license or licenses;
2. Replace the infringing Materials or processes with non-infringing Materials or processes; or
3. Modify the Materials or processes so that they become non-infringing.

GC 6.3 Tooling Rights

The Contractor, its Subcontractors, Suppliers and Manufacturers shall not sell, destroy or otherwise dispose of their rights to the use of, the unique castings, patterns and forming or extrusion dies after their use in the production of the vehicles without first offering them to Agency, with reasonable costs associated with the transfer to be borne by the Agency, or, in the case of a proposed sale to another, without first offering them for sale to Agency at a fair market price. The Contractor shall be liable to the Agency to the extent that the failure of the Contractor, its Subcontractor, Supplier or Manufacturer to comply with SP 12.1, Parts Availability Guarantee, causes the Agency to incur costs to have the tooling replicated.

For purposes of SP 12.1 the terms "sell" and "sale" shall not include transfer of these assets to a successor corporation or other entity that assumes the business and obligations of any Contractor, Subcontractor, Supplier or Manufacturer herein, including obligations arising under the Contract.

Upon Contractor's offer of any of the materials described above and the Agency's refusal, the Contractor's obligation under SP 12.1, Parts Availability Guarantee, as it relates to the specific materials offered and refused, shall cease.

GC 7. Data Rights

GC 7.1 Proprietary Rights/Rights in Data

The Contractor hereby grants to the Agency on the Contractor's behalf, and on behalf of its Subcontractors, Suppliers and Manufacturers (as to whom the Contractor represents and warrants that it has the power and authority to grant such sublicense), an irrevocable, perpetual, royalty-free, nonexclusive license and sublicense ("Technology License") to use, itself or through its agents, provided the subcontractor or sublicensee has a written obligation to protect the information, for the approved purposes described in GC 7.1.1, Uses, without recourse to the original Contractor, Subcontractor, Supplier or Manufacturer all patented, copyrighted and unpatented technology, know-how, trade secrets and other proprietary rights, and documentation thereof (except manufacturing detailed drawings and software, which is separately defined at and licensed pursuant to Paragraph 2 below), which is included in the Material and/or Equipment, including but not limited to all systems, subsystems, assemblies, subassemblies, components and interface systems and controls which are necessary for the operation, maintenance and repair, overhaul of the Material and/or Equipment, and for the manufacture of parts which are unavailable for purchase, as defined below, all of which shall be designated the "Licensed Technology."

GC 7.1.1 Uses

The Agency's rights under this Technology License shall be limited to its use for the following:

1. Evaluation and qualification for the purposes of future Material and/or Equipment procurements of systems, subsystems and components of subsystems on the Material and/or Equipment to be delivered under the Contract;
2. Preparation of specifications for future LRV RFPs employing some or all of the Licensed Technology;
3. Modifying or upgrading the Light Rail Vehicles;
4. Maintenance and repair of the Material and/or Equipment;
5. Overhaul of the Material and/or Equipment;
6. Manufacture of parts for the Material and/or Equipment that become unavailable for purchase. The term "unavailable for purchase" means that a part is no longer being manufactured; or an inventory of the part in sufficient quantities to meet the Agency's needs is not available for purchase; or no Supplier will sell a part to the Agency or cannot supply the part according to a delivery schedule that meets the Agency's operational needs; or that no Supplier will offer the part at a commercially reasonable price.

GC 7.1.2 Limits

The Agency shall not have the right under this Technology License either to use the Licensed Technology to manufacture itself, or to have manufactured for it by a third party as a sub-licensee of the Agency, either the Material and/or Equipment, systems, subsystems or components thereof, except as specified in Paragraph 5 above. The purposes described in the foregoing subparagraphs 1 through 5 as limited by the immediately preceding sentence are referred to in this Article as the "Approved Purposes."

GC 7.2 Software Escrow Account

This Section details Agency's rights to access software code or other confidential data of the Contractor, Subcontractor and/or Suppliers under situations such as bankruptcy of the Contractor or material breach of the Contract.

Prior to Conditional Acceptance of the first LRV, the Contractor shall provide the Agency a list of all software comprising proprietary works ("Proprietary Software"). Source code for the Proprietary Software and all related documentation required for the use and modification thereof, and any revisions or derivative works based on the Proprietary Software developed pursuant to the Contractor's performance of the Contract (collectively, "Escrow

Materials”) shall be deposited in an escrow account with a third party, as set forth in Section 10, Appendix H III: Example of a Software Escrow Agreement. The Contractor shall pay all initial and future costs related to the escrow account for a period of five years following the completion of warranty of the last vehicle, as long as Contractor has full ability to choose the escrow agent; otherwise the escrow cost shall be borne by the Agency. Nevertheless, the Agency shall have the right to review and approve both the escrow agent and the escrow agreement. If the Agency wishes to continue the escrow beyond the five year period, it may do so at its own cost. The escrow materials shall immediately be obtainable and usable by the Agency in the event that Contractor fails to support the continued use of the Proprietary Software by the Agency, or in case the item becomes obsolete, or upon termination or expiration of the term of the escrow. Escrow Materials shall be released in accordance with the explicit terms for release set forth in an Escrow Agreement negotiated and entered into by the Parties no later than six months prior to Final Acceptance of the first vehicle.

GC 8. Changes

Any Change Orders issued on a cost reimbursement basis must, at a minimum, comply with the federal cost principles set forth in 48 CFR Part 31. In addition to the general rights to audit and inspect records as set forth in the Contract Documents, the Agency will have the specific right to audit all expenditures, payrolls, audited overhead, and other records related to a Change Order issued on a cost reimbursement basis. The Manufacturer shall use its best efforts to facilitate any such audit of cost records.

Nothing in this provision shall be deemed to require a Change Order when the Manufacturer performs additional Work as the result of its own estimating, contracting, or engineering error.

In no event shall the Manufacturer be entitled to compensation for loss of anticipated profits resulting from deletions to the Work.

GC 8.1 Contractor Changes

The Contractor may submit to the Agency 's PM written Change Requests proposing changes to the Contract Documents. If the Contractor chooses to propose changed Work, then the Contractor must submit a notice of proposed change to the Agency for its prior written approval. The notice should describe the proposed change, identifying the Work that it proposes to change and stating the reasons for the change, including relevant circumstances, impacts on the schedule and estimated cost impacts.

Upon receipt of the Proposed Change Notice, the Agency may choose to either reject the notice or to request Contractor to submit a detailed Proposal within a specified time period. The denial by Agency of a Change Request to the Contract Documents as set forth in this provision will not be the basis for any Contractor Claims.

If the Agency accepts the Proposed Change Notice, it may issue an Interim Change Notice specifying the Proposed Change and action that the Contractor should undertake. The Interim Change Notice may include a not-to-exceed amount for the Change based upon the Contractor's estimate. If the Agency requests a Proposal, then the Contractor's Proposal shall set forth any changes to the Total Contract Price, Contract Delivery Schedule or any technical requirements of the Contract.

Any Interim Change Notice issued by the Agency must be formalized in a written Change Order approved by the Agency. Oral Change Orders are not permitted.

The Contractor shall be liable for all costs resulting from, and/or for satisfactorily correcting, any specification change not properly ordered by written modification to the Contract and signed by the Agency's Authorized Representative.

Changes to the Contract Documents may only be made pursuant to a duly issued written instruction executed by the Agency 's PM. Except as specifically provided in this Section GC 8, Changes directed in any other manner will not form the basis for any additional compensation or Schedule relief. The Contractor shall promptly notify Agency, by a written Change Request, when the Contractor receives any direction, instruction, comment, interpretation, or determination from any source which the Contractor believes to constitute a change to the Contract Documents. A Change Request provided under this Section GC 8.1 must state the following information:

1. The date, circumstances, and source of the direction, instruction, comment, interpretation, or determination; and

2. That the Contractor regards the direction, instruction, comment, interpretation, or determination as a change to the Contract Documents. Such notice must be given to the Agency before the Contractor acts on said direction, instruction, comment, interpretation, or determination, and within ten calendar days after the Contractor becomes aware of the asserted change. The Contractor may request additional time, additional compensation, or both, through a Change Request issued under this Section GC 8.1. For any Change Request which the Agency agrees to have merit, the Agency will make an equitable adjustment and modify the Contract Documents by written Change Order. The execution of a Change Order by both parties will be deemed as an accord and satisfaction of all potential Claims of any nature arising from or relating to the asserted change. In the event that the Contractor and the Agency are unable to agree on an adjustment to the Total Contract Price or Schedule, the Agency may order the Contractor to proceed with the performance of the Work as directed. The Contractor, when so ordered, shall proceed with the Work and submit a Claim as set forth in Section GC 9.10 of the General Conditions. The submission of a timely Change Request complying with the requirements of this Section GC 8.1 is a condition precedent to the Contractor's right to submit a Claim based on the direction, instruction, comment, interpretation, or determination alleged to change the Contract Documents. The failure to timely submit a Change Request as described in this Section GC 8.1 will affirmatively bar and estop the Contractor from pursuing a Claim based on the constructive change alleged by the Contractor.

GC 8.2 Agency Changes

The Agency may, at any time and without notice to sureties, order additions, deletions, or revisions to the Work. Prior to ordering an addition, deletion, or revision, Agency's PM may request that the Contractor submit a proposal for the change. The Contractor shall submit a proposal for the change within 30 calendar days after receipt of Agency's PM's request or such shorter reasonable time as Agency's PM may set forth in his request. The Contractor's proposal for change must provide Agency with an itemized breakdown of any effects to the Total Contract Price including, without limitation effects to the following aspects of the Total Contract Price:

1. Engineering Cost;
2. Labor Cost;
3. Equipment Cost;
4. Overhead and profit; and
5. Material quantities and unit prices.

The Contractor's proposal for the change must also identify any changes to the Schedule that result from the proposed modification. If the Agency orders the Contractor to proceed with the modification, the Agency will issue a Change Order modifying the Total Contract Price, the Schedule, and/or other aspects of the Contract Documents. Disagreements that cannot be resolved within negotiations shall be resolved in accordance with GC 9.11, Disputes. Regardless of any disputes, the Contractor shall proceed with the Work ordered. Oral Change Orders are not permitted.

GC 9. Legal Clauses

GC 9.1 Indemnification

Contractor shall indemnify, hold harmless and defend the agency, its officers, trustees, agents, and employees (hereinafter collectively referred to as "Indemnitees") from and against all liabilities, claims, actions, damages, losses, and expenses including without limitation reasonable attorneys' fees and costs (hereinafter referred to collectively as "claims") related to bodily injury, including death, or loss or damage to tangible or intangible property caused, or alleged to be caused, in whole or in part, by the acts or omissions of Contractor or any of its owners, officers, directors, agents, employees or subcontractors. This indemnity includes any claim or amount arising out of the failure of such Contractor to conform to federal, state, and local laws and regulations. If an employee of Contractor, a subcontractor, anyone employed directly or indirectly by any of them or anyone for whose acts any of them may be liable brings a claim against UTA or another Indemnitee, Contractor's indemnity

obligation set forth above will not be limited by any limitation on the amount of damages, compensation or benefits payable under any employee benefit acts, including workers' compensation or disability acts. The indemnity obligations of Contractor shall not apply to the extent that claims arise out of the sole negligence of UTA or the Indemnitees.

GC 9.1.1 Limitation of Liability

Notwithstanding anything to the contrary contained in the Contract, the aggregate liability for all direct damages including liquidated damages for late delivery and excess weight, arising in connection with the Work and/or termination of the Work, in whole or in part, for any reason, shall not exceed the Total Contract Price.

GC 9.2 Indemnitee Negligence

The obligations of the Contractor under the above paragraph shall not extend to circumstances in which the injury, death or damages are caused solely by the negligent acts, errors or omissions of the Indemnitees, including, without limitation, negligence in: (1) the preparation of the Contract Documents, or (2) the giving of directions or instructions with respect to the requirements of the Contract by written order. The obligations of the Contractor shall not extend to circumstances where the injury, death or damages are caused, in whole or in part, by the negligence of any third-party operator, not including an assignee or Subcontractor of the Contractor, subject to the right of contribution as provided in GC 9.2.1, Joint or Concurrent Negligence.

GC 9.2.1 Joint or Concurrent Negligence

In case of joint or concurrent negligence of the parties giving rise to a claim or loss against either one or both, each shall have full rights of contribution from the other.

GC 9.3 Suspension of Work

The Agency may at any time and for any reason within its sole discretion issue a written order to the Contractor suspending, delaying or interrupting all or any part of the Work for a specified period of time.

The Contractor shall comply immediately with any such written order and take all reasonable steps to minimize costs allocable to the Work covered by the suspension during the period of Work stoppage. Contractor shall continue the Work that is not included in the suspension and shall continue such ancillary activities as are not suspended. The Contractor shall resume performance of the suspended Work upon expiration of the notice of suspension, or upon written direction from the Agency's Authorized Representative.

The Contractor shall be allowed an equitable adjustment in the Contract price (excluding profit) and/or an extension of the Contract time, to the extent that cost or delays are shown by the Contractor to be directly attributable to any suspension. However, no adjustment shall be made under this section for any suspension, delay or interruption due to the fault or negligence of the Contractor. As soon as reasonably possible after receipt of the written Suspension of Work notice, the Contractor shall submit to the Agency's Authorized Representative a detailed price and schedule Proposal for the suspension, delay or interruption.

GC 9.4 Notice of Labor Dispute

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

In addition, the Contractor agrees to insert the substance of this clause in any subcontract in which a labor dispute may delay the timely performance of the Contract.

GC 9.5 Force Majeure

If the Contractor is delayed at any time during the progress of the Work by the neglect or failure of the Agency or by a cause as described below, then the time for completion and/or affected delivery date(s) shall be extended by the Agency subject to the following cumulative conditions:

1. The cause of the delay arises after the Notice of Award and neither was nor could have been anticipated by the Contractor by reasonable investigation before such award. Such cause may also include force majeure events such as any event or circumstance beyond the reasonable control of the Contractor, including but not limited to acts of God; earthquake, flood and any other natural disaster; civil disturbance, strikes and labor disputes; fires and explosions; war and other hostilities; embargo; or failure of third parties, including Suppliers or Subcontractors, to perform their obligations to the Contractor due to a force Majeure event described above;
2. The Contractor demonstrates that the completion of the Work and/or any affected deliveries will be actually and necessarily delayed;
3. The Contractor has taken measures to avoid and/or mitigate the delay by the exercise of all reasonable precautions, efforts and measures, whether before or after the occurrence of the cause of delay; and
4. The Contractor makes written request and provides other information to the Agency as described below.

None of the above shall relieve the Contractor of any liability for the payment of any liquidated damages owing from a failure to complete the Work by the time for completion that the Contractor is required to pay pursuant to SP 3.3.1, Liquidated Damages for Late Delivery, for delays occurring prior to, or subsequent to the occurrence of an excusable delay.

The Agency reserves the right to rescind or shorten any extension previously granted, if subsequently the Agency determines that any information provided by Contractor in support of a request for an extension of time was erroneous; provided, however, that such information or facts, if known, would have resulted in a denial of the request for an excusable delay. Notwithstanding the above, the Agency will not rescind or shorten any extension previously granted if the Contractor acted in reliance upon the granting of such extension and such extension was based on information which, although later found to have been erroneous, was submitted in good faith by the Contractor.

No extension or adjustment of time shall be granted unless: (1) written notice of the delay is filed with the Agency within 14 calendar days after the commencement of the delay, and (2) a written application therefore, stating in reasonable detail the causes, the effect to date and the probable future effect on the performance of the Contractor under the Contract, and the portion or portions of the Work affected, is filed by the Contractor with the Agency within thirty (30) calendar days after the commencement of the delay. No such extension or adjustment shall be deemed a waiver of the rights of either party under the Contract. The Agency shall make its determination within thirty (30) calendar days after receipt of the application.

GC 9.6 Termination

GC 9.6.1 Termination for Convenience

The performance of Work under the Contract may be terminated by the Agency in accordance with this clause in whole, or in part, whenever the Agency shall determine that such termination is in the best interest of the Agency. Any such termination shall be affected by delivery to the Contractor of a notice of termination specifying the extent to which performance of Work under the Contract is terminated, and the date upon which such termination becomes effective.

After receipt of a notice of termination, and except as otherwise directed by the Agency, the Contractor shall do the following:

- Stop Work under the Contract on the date and to the extent specified in the notice of termination.
- Place no further orders or subcontracts for materials, services or facilities, except as may be necessary for completion of such portion of the Work under the Contract as is not terminated.
- Terminate all orders and subcontracts to the extent that they relate to the performance of Work terminated by the notice of termination; assign to the Agency in the manner, at the times, and to the extent directed by the Agency, all

of the right, title and interest of the Contractor under the orders and subcontracts so terminated, in which case the Agency shall have the right, in its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts.

- Settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with the approval or ratification of the Agency, to the extent it may require, which approval or ratification shall be final for all the purposes of this clause.
- Transfer title to the Agency and deliver in the manner, at the times and to the extent, if any, directed by the Agency the fabricated or unfabricated parts, Work in process, completed Work, supplies and other material produced as part of, or acquired in connection with the performance of, the Work terminated.
- Use its best efforts to sell, in the manner, at the times, to the extent, and at the price(s) directed or authorized by the Agency, any property of the types referred to above, provided, however, that the Contractor shall not be required to extend credit to any purchaser, and may acquire any such property under the conditions prescribed by and at a price(s) approved by the Agency, and provided further that the proceeds of any such transfer or disposition shall be applied in reduction of any payments to be made by the Agency to the Contractor under the Contract or shall otherwise be credited to the price or cost of the Work covered by the Contract or paid in such other manner as the Agency's Authorized Representative may direct.
- Complete performance of the part of the Work not terminated by the notice of termination.
- Take such action as may be necessary, or as the Agency may direct, for the protection or preservation of the property related to the Contract that is in the possession of the Contractor and in which the Agency has or may acquire an interest.

The Contractor shall be paid its costs, including Contract closeout costs, and profit on Work performed and/or in progress up to the time of termination, along with any unbilled non-recurring costs. The Contractor shall promptly submit its termination claim to Agency to be paid the Contractor (including profits). Settlement of claims by the Contractor under this termination for convenience clause shall be in accordance with the provisions set forth in Part 49 of the Federal Acquisition Regulations (48 CFR 49) except that wherever the word "Government" appears, it shall be deleted and the word "Agency" shall be substituted in lieu thereof.

GC 9.6.2 Termination for Default

If Contractor (a) becomes insolvent; (b) files a petition under any chapter of the bankruptcy laws or is the subject of an involuntary petition; (c) makes a general assignment for the benefit of its creditors; (d) has a receiver appointed; (e) should fail to make prompt payment of any undisputed amounts to any subcontractors or suppliers; or (f) fails to comply with any of its material obligations under the Contract, UTA may, in its discretion, after first giving Contractor thirty (30) days written notice to cure such default:

1. Terminate the Contract (in whole or in part) for default;
 2. Pursue other remedies available under the Contract (regardless of whether the termination remedy is invoked);
- and/or

Except to the extent limited by the Contract, pursue other remedies available at law. However, notwithstanding the foregoing, no termination due to delay in delivery shall be effective unless the liquidated damages cap is reached.

a. **CONTRACTOR'S POST TERMINATION OBLIGATIONS** : Upon receipt of a termination notice as provided above, Contractor shall (i) immediately discontinue all work affected (unless the notice directs otherwise. Contractor shall also remit a final invoice for all services performed and expenses incurred in full accordance with the terms and conditions of the Contract up to the effective date of termination. UTA shall calculate termination damages payable under the Contract, shall offset such damages against Contractor's final invoice, and shall invoice Contractor for any additional amounts payable by Contractor (to the extent termination damages exceed the invoice). All rights and remedies provided in this Article are cumulative and not exclusive. If UTA terminates the Contract for any reason, Contractor shall remain available, for a period not exceeding 90 days, to UTA to respond to

any questions or concerns that UTA may have regarding the Goods and Services furnished by Contractor prior to termination.

If, after notice of termination of the Contract under the provisions of this clause, it is determined for any reason that the Contractor was not in default under the provisions of this clause, or that the default was excusable under the provisions of this clause, the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to termination for convenience of the Agency. Any amounts charged or not paid to the Contractor shall be subject to a reasonable interest rate.

The rights and remedies of the Agency under this Section GC 9.6 are not exclusive and are in addition to any other rights and remedies provided by law and/or under the Contract Documents.

GC 9.7 Compliance with Laws and Regulations

The Contractor shall at all times comply with all applicable laws, regulations and, if federally funded, FTA regulations, policies, procedures and directives, including those listed directly or by reference in the agreement between the Agency and FTA that funds any part of the Contract, as they may be amended or promulgated from time to time during the term of the Contract. The Contractor's failure to so comply shall constitute a material breach of the Contract.

Prior to commencing any Work requiring a permit or similar authorization, the Contractor shall secure and pay for all necessary licenses, fees, inspections, permits and similar authorizations from governmental authorities required to fulfill the Contract requirements and the Contractor's obligations. All such fees and charges shall be paid for by the Contractor.

GC 9.8 Changes of Law

Changes of law that become effective after the Proposal Due Date may result in changes that affect price. If a price adjustment is indicated, either upward or downward, then it shall be negotiated between the Agency and the Contractor, and the final Contract price will be adjusted upward or downward to reflect such changes in law. Such price adjustment may be audited, where required.

GC 9.9 Governing Law and Choice of Forum

The Contract shall be governed by the laws of the State of Utah without regard to conflict of law rules. The Contractor consents to the jurisdiction of the identified State, County of Salt Lake.

GC 9.10 Claims

GC 9.10.1 Notice of Intent to Claim

The Contractor shall give to the Agency a written Notice of Intent to Claim within fifteen (15) calendar days after the parties have been unable to negotiate a pending change related to any act or event for which it intends to seek adjustment in the Contract Price, Contract Time, terms or schedule. The notice shall set forth the basis of the Claim and an estimate of any costs and time impacts involved.

The written Notice of Intent to Claim shall set forth the following:

1. The reasons the Contractor believes additional compensation and/or allowance of additional time may be due;
2. The nature of the costs involved or time needed;
3. The Contractor's plan for mitigating such cost and delay; and
4. The Contractor's best estimate of the amount of potential claim and time extension, and basic facts supporting the amount and time claimed.

GC 9.10.2 Claim Submittal

The Contractor shall submit its Claim within 30 calendar days after submitting the Notice of Intent to Claim. The following must be provided with the Claim:

1. Detailed factual statement of the Claim, with all necessary facts, events, locations and affected Work.
2. Date of the event giving rise to the Claim; if there are continuing or multiple events, provide all dates necessary to support the Claim.
3. Names of all persons who made any statements with respect to, or are knowledgeable of the facts and events giving rise to the Claim.
4. Specific provisions of the Contract supporting the Claim, with a statement of supporting rationale.
5. Identification of all documents including meeting minutes, transcriptions of oral communications, photographs, videos, tapes and other evidence supporting the Claim.
6. Detailed analysis of a request for an extension of item.
7. Detailed breakdown of request for additional compensation.

Failure to submit sufficient detail to permit the Agency to conduct a review of the Claim may result in rejection of the Claim.

Each Claim the Contractor submits for an adjustment that is related to a delay for any cause shall include the following:

1. A time impact analysis and a revised schedule demonstrating how the delay is incorporated into the schedule; and
2. Alternative proposal(s) and a revised schedule that demonstrate how the delay will be eliminated or mitigated.

The Contractor shall maintain cost records of all Work, which is the basis of any Claim, in the same manner as is required for Changed Work in GC 8, Changes.

GC 9.10.3 Claims Process

- a. "Claim" means any disputes between UTA and the Contractor arising out of or relating to the Contract Documents including any disputed claims for Contract adjustments that cannot be resolved in accordance with the Change Order negotiation process set forth in Article 20. Claims must be made by written notice. The responsibility to substantiate claims rests with the party making the claim.
- b. Unless otherwise directed by UTA in writing, Contractor shall proceed diligently with performance of the Work pending final resolution of a Claim, including litigation. UTA shall continue to pay any undisputed payments related to such Claim.
- c. The parties shall attempt to informally resolve all claims, counterclaims and other disputes through the escalation process described below. No party may bring a legal action to enforce any term of this Contract without first having exhausted such process.

d. The time schedule for escalation of disputes, including disputed requests for change order, shall be as follows:

Level of Authority	Time Limit
The Agency's PM and the Contractor's PM	Five calendar days
The Agency's Capital Vehicle Manager and the Contractor's Equivalent	Five calendar days
The Agency's Chief Officer and the Contractors; Equivalent	Five calendar days

Unless otherwise directed by UTA's Project Manager, Contractor shall diligently continue performance under this Contract while matters in dispute are being resolved.

If the dispute cannot be resolved informally in accordance with the escalation procedures set forth above, than either party may commence formal mediation under the Juris Arbitration and Mediation (JAMS) process using a mutually

agreed upon JAMS mediator. If resolution does not occur through Mediation, then legal action may be commenced in accordance the venue and governing law provisions of this contract.

GC 9.10.4 No Claims After Final Payment

In no event shall any claims be made after Final Payment. Failure by the Contractor to submit claims in a timely manner shall result in a waiver by the Contractor as to such claims.

GC 9.11 Disputes

Except as otherwise provided in the Contract, any dispute concerning a question of fact arising under or related to the Contract that is not disposed of by agreement shall be decided in accordance with the following steps. However, by mutual agreement the matter may be taken immediately to any higher step in the dispute resolution process, or mutually agreed-to alternative dispute resolution process (which may include structured negotiations, mediation or arbitration) or litigation. Pending final resolution of a dispute hereunder, the Contractor shall proceed diligently with the performance of the Contract and in accordance with the Agency’s Authorized Representative or Executive Officer’s decision, as the case may be.

1. **Notice of dispute.** All disputes shall be initiated through a written dispute notice submitted by either party to the other party within fourteen (14) calendar days of the determination of the dispute.
2. **Negotiation between authorized representatives.** The parties shall attempt in good faith to resolve any dispute arising out of or relating to the Contract promptly by negotiation and using the principles of project partnering by engaging in the following order:

- Level One - The Agency’s PM and the Contractor's PM;
- Level Two - The Agency’s Capital Vehicle Manager and the Contractor’s Equivalent
- Level Three- The Agency’s Chief Officer and the Contractors; Equivalent.

Any party may give the other party written notice of any dispute not resolved in the normal course of business as provided in Paragraph 1 above. Within fourteen (14) calendar days after delivery of the dispute notice, the receiving party shall submit to the other party a written response. The dispute notice and written response shall include: (1) a statement of the party’s position and a summary of the arguments supporting that position; (2) any evidence supporting the party’s position; and (3) the name of the individual who will represent that party and of any others who will accompany the executive in negotiations. Within twenty-eight (28) calendar days after delivery of the dispute notice, the Authorized Representatives of both parties shall meet at a mutually acceptable time and place, and thereafter as they reasonably deem necessary, to attempt to resolve the dispute. All reasonable requests for information by one party to the other shall be honored.

GC 9.12 Maintenance of Records; Access by Agency; Right to Audit Records

The Contractor shall permit the Agency, FTA, the Comptroller General of the United States, the Secretary of the U.S. Department of Transportation, the State of Utah or any of their duly authorized representatives access to any books, documents, papers and records payroll and other data that are directly pertinent to or relate to the Contract, Contract modifications or Change Orders for the Contract for the purpose of making audits, examinations, excerpts and transcriptions and conducting audits and inspections.

Contractor shall retain all books, papers, documents, accounting records and other evidence to support any cost-based billings allowable under Price Proposal (or any other provision of the Contract). Such records shall include, without limitation, time sheets and other cost documentation related to the performance of labor services, as well as subcontracts, purchase orders, other contract documents, invoices, receipts or other documentation supporting non-labor costs. Contractor shall also retain other books and records related to the performance, quality or management of the Contract and/or Contractor’s compliance with the Contract. Records shall be retained by Contractor for a period of at least six (6) years, or until any audit initiated within that six-year period has been completed (whichever is later). During this six-year period, such records shall be made available at all reasonable times for audit and

inspection by UTA and other authorized auditing parties including, but not limited to, the Federal Transit Administration. Copies of requested records shall be furnished to UTA or designated audit parties upon request. Contractor agrees that it shall flow-down (as a matter of written contract) these records requirements to all subcontractors utilized in the performance of the Contract at any tier.

The requirements of this section are in addition to other audit, inspection and record-keeping provisions specified elsewhere in the Contract Documents.

GC 9.13 Confidential Information

Access to government records is governed by the State of Utah. Except as otherwise required by the State of Utah, the Agency will exempt from disclosure proprietary information, trade secrets and confidential commercial and financial information submitted or disclosed during the Contract period. Any such proprietary information, trade secrets or confidential commercial and financial information that a Contractor believes should be exempted from disclosure shall be specifically identified and marked as such. Blanket-type identification by designating whole pages or sections as containing proprietary information, trade secrets or confidential commercial and financial information will not ensure confidentiality. The specific proprietary information, trade secrets or confidential commercial and financial information must be clearly identified as such. Upon a request for records from a third party regarding the Contract, the Agency will notify the Contractor in writing. The Contractor must respond within twenty (20) days with the identification of any and all “proprietary, trade secret or confidential commercial or financial” information, and the Contractor shall indemnify the Agency’s defense costs associated with its refusal to produce such identified information; otherwise, the requested information may be released.

The Agency shall employ sound business practices no less diligent than those used for the Agency’s own confidential information to protect the confidence of all licensed technology, software, documentation, drawings, schematics, manuals, data and other information and material provided by the Contractor pursuant to the Contract that contain confidential commercial or financial information, trade secrets or proprietary information as defined in or pursuant to the State of Utah against disclosure of such information and material to third parties except as permitted by the Contract. The Contractor shall be responsible for ensuring that confidential commercial or financial information, trade secrets or proprietary information, with such determinations to be made by the Agency at its sole discretion, bears appropriate notices relating to its confidential character.

During the performance of the Work under the Contract, it may be necessary for either party (the “Discloser”) to make confidential information available to the other party (the “Recipient”). The Recipient agrees to use all such information solely for the performance of the Work under the Contract and to hold all such information in confidence and not to disclose same to any third party without the prior written consent of the Discloser. Likewise, the Recipient agrees that all information developed in connection with the Work under the Contract shall be used solely for the performance of the Work under the Contract, and shall be held in confidence and not disclosed to any third party without the prior written consent of the Discloser.

This Confidentiality section shall survive the termination or expiration of the Contract.

GC 9.14 Conflicts of Interest; Gratuities

The Contractor is prohibited from engaging in any practice that may be considered as a conflict of interest under existing Agency policies and/or state law, and to refrain from participating in any gifts, favors or other forms of compensation that may be viewed as a gratuity in accordance with existing policies and laws.

The Contractor shall take all reasonable measures to preclude the existence or development of an organizational conflict of interest in connection with Work performed under the Contract. An organizational conflict of interest occurs when, due to other activities, relationships or contracts, a firm or person is unable, or potentially unable, to render impartial assistance or advice to the Agency; a firm or person’s objectivity in performing the Contract Work is or might be impaired; or a firm or person has an unfair competitive advantage in proposing for award of a Contract as a result of information gained in performance of the Contract.

GC 9.15 General Nondiscrimination Clause

In connection with the performance of Work provided for under the Contract, the Contractor agrees that it will not, on the grounds of race, religious creed, color, national origin, ancestry, physical disability, medical condition, marital status, sex, sexual orientation or age, discriminate or permit discrimination against any person or group of people in any manner prohibited by federal, state or local laws.

GC 9.16 Amendment and Waiver

GC 9.16.1 Amendment

Any modification or amendment of any provisions of any of the Contract Documents shall be effective only if in writing, signed by Authorized Representatives of both the Agency and Contractor, and specifically referencing the Contract.

GC 9.16.2 Waiver

In the event that either party elects to waive its remedies for any breach by the other party of any covenant, term or condition of the Contract, such waiver shall not limit the waiving party's remedies for any succeeding breach of that or of any other term, covenant or condition of the Contract.

GC 9.17 Remedies Not Exclusive

The rights and remedies of the Agency provided herein shall not be exclusive and are in addition to any other rights and remedies provided by law or under the Contract.

GC 9.18 Counterparts

The Contract may be executed in any number of counterparts. All such counterparts shall be deemed to constitute one and the same instrument, and each of said counterparts shall be deemed an original thereof.

GC 9.19 Severability

Whenever possible, each provision of the Contract shall be interpreted in a manner as to be effective and valid under applicable law. However, if any provision, or part of any provision, should be prohibited or invalid under applicable law, such provision, or part of such provision, shall be ineffective to the extent of such prohibition or invalidity without invalidating the remainder of such provision or the remaining provisions of the Contract.

GC 9.20 Third-Party Beneficiaries

No provisions of the Contract shall in any way inure to the benefit of any third party, including the public at large, so as to constitute such person a third-party beneficiary of the Contract or of any one or more of the terms and conditions of the Contract or otherwise give rise to any cause of action in any person not a party to the Contract, except as expressly provided elsewhere in the Contract.

GC 9.21 Assignment of Contract

Neither party will assign nor subcontract its rights or obligations under the Contract without prior written permission of the other party, which permission shall not be unreasonably withheld, and no such assignment or subcontract will be effective until approved in writing by the other party.

GC 9.22 Independent Parties

The Contractor is an independent contractor with respect to the performance of all Work hereunder, retaining control over the detail of its own operations, and the Contractor shall not be considered the agent, employee, partner, fiduciary or trustee of the Agency.

GC 9.23 Survival

The following sections shall survive the nominal expiration or discharge of other Contract obligations, and the Agency may obtain any remedy under law, Contract or equity to enforce the obligations of the Contractor that survive the manufacturing, warranty and final payment periods:

- GC 6.2, Intellectual Property Warranty
- GC 7, Data Rights
- GC 9.1, Indemnification
- GC 9.9, Governing Law and Choice of Forum
- GC 9.11, Disputes
- GC 9.12, Maintenance of Records; Access by Agency; Right to Audit Records
- GC 9.13, Confidential Information
- SP 10.1, Contractor Safety Training
- SP 12.1, Parts Availability Guarantee

GC 10. Understanding of Operating Conditions and Environment

The Manufacturer shall carefully examine and become familiar with all Contract Documents, the local operating conditions applicable to the LRVs, the operating characteristics and specifications of any existing fleet, the Agency's current practices in the Operation and Maintenance (O&M) of its rail vehicle fleet, and other characteristics, conditions, and environments applicable to the Work. The Manufacturer acknowledges that it has taken all steps reasonably necessary to ascertain the nature of the Work, and that it has investigated and satisfied itself that it can comply with the Technical Specifications and all other requirements set forth in the Contract Documents. The Utah Transit Authority assumes no responsibility for any conclusions or interpretations made by the Manufacturer. Nor does the Agency assume responsibility for any understanding reached, unless that understanding, or representation is expressly stated in the Contract Documents or in a written clarification issued by the Agency.

GC 11. Examination of Proposal and Contract Documents

The submission of a Proposal constitutes an acknowledgment upon which the Agency may rely that the Proposer has thoroughly examined and is familiar with the RFP, including any work site identified in the RFP, and has reviewed and inspected all applicable statutes, regulations, ordinances, and resolutions addressing or relating to the goods and services to be provided hereunder and any third party contracts relating to this Project. The failure or neglect of a Proposer to receive or examine such documents, work sites, statutes, regulations, ordinances, or resolutions will in no way relieve the Proposer from any obligations with respect to the Proposer's Proposal or to any Contract awarded pursuant to this RFP. No reduction or modification in the Contractor's obligations will be allowed based upon a lack of knowledge or misunderstanding of this RFP, work sites, statutes, regulations, ordinances, or resolutions.

SP 1. General

SP 1.1 Interpretation

In the Contract Documents, where appropriate, the singular includes the plural, and vice versa.

References to statutes or regulations include all statutory or regulatory provisions consolidating, amending, or replacing the statute or regulation referred to.

The words "including," "includes," and "include" are to be deemed to be followed by the words "without limitation." Words such as "herein," "hereof," and "hereunder" refer to the entire document in which they are contained and not to any particular provision or section. Words not otherwise defined which have well-known technical or industry meanings are used in accordance with such recognized meanings. Words of any gender used herein include each other gender where appropriate.

References to persons include their respective permitted successors and assigns and, in the case of governmental persons, persons succeeding to their respective functions and capacities. Unless otherwise specified, lists contained in the Contract Documents defining the Project or the Work are not to be deemed all-inclusive.

SP 1.2 Use of English

All documents delivered by the Contractor shall be in English.

SP 1.3 Computations of Periods

References to “days” contained in the Contract Documents means calendar days unless otherwise specified, provided that if the date to perform any act or give any notice specified in the Contract Documents (including the last date for performance or provision of notice “within” a specified time period) falls on a non-working day, such act or notice may be timely performed on the next succeeding day which is a working day. Notwithstanding the foregoing, requirements contained in the Contract Documents relating to actions to be taken in the event of an emergency and other requirements for which it is clear that performance is intended to occur on a non-working day will be required to be performed as specified, even though the date in question may fall on a non-working day.

SP 2. Sustainability

The Agency recognizes that being sustainable (environmentally, economically and socially responsible) involves everyone, both internal and external to the Agency. The Agency expects its contractors to have their own sustainability policies and programs in place and to provide services in line with the principles established therein. Implementation of sustainable practices may include maximizing the use of environmentally and socially responsible materials and services, utilizing energy-efficient and non-polluting vehicles, equipment and processes, and ensuring employee awareness of sustainability initiatives.

SP 3. Schedule

SP 3.1 Period of Performance and Delivery Schedule

SP 3.1.1 Period of Performance

The period of performance, excluding warranty, is from the date of Notice to Proceed through Notice of Completion (as defined in SP 4.7, Final Completion). Time is of the essence in the Contract.

Light Rail Vehicle Procurement: Schedule and Mandatory Milestones Milestone

Light Rail Vehicle Procurement: Schedule and Mandatory Milestones Milestone	Dates
Conditional acceptance of first car	No later than 09/17/2027
Conditional acceptance of cars one (1) to four (4)	At a nominal rate of two cars per month, no later than 11/15/2027
Conditional acceptance of the last (20th) (40th) car	No later than 06/26/2028 03/16/2029
Contractual delivery of one-half of all spare parts	No later than 12/18/2026
Contractual delivery of remaining Spare Parts	No later than Conditional acceptance of first car
Completion of contractual training	No later than 28 months from NTP
Delivery of final draft of all manuals	No later than 05/14/2027
Contractual delivery of completed manuals	No later than 11/29/2027
Contractual delivery of special tools and test equipment	No later than Conditional acceptance of first car
Contractual delivery of all as-built drawings	No later than 12/04/2026

SP 3.2 Progress Schedule and Progress Reports

Within 90 days after Notice to Proceed (NTP), the Contractor shall furnish to the Agency for the Agency’s approval a detailed written progress schedule. During the entire term of Contract performance, the Contractor shall report to the Agency in writing at least monthly on the progress of performance. If any of the Contractor’s monthly reports indicates any potential delay in any of the critically dependent events identified on the schedule, the Contractor shall submit a detailed statement of action it intends to take to avoid the delay.

SP 3.2.1 Progress Schedule

The progress schedule shall include a narrative introduction describing the approach to the project and schedule, fabrication, manufacturing and assembly plants and methods, shipping method, coding structure, other schedule systems used by the project and their relations to the critical path method (CPM) schedule. Activities shall be discrete items of Work that must be accomplished under the Contract and that when complete, produce definable, recognizable entities or stages within the project. The project schedule shall have all critical paths indicated, showing all major Work tasks, including but not limited to the following:

- Payment milestones
- Contractor and Subcontractor/Supplier submittals including review cycles
- Design review meetings
- Drawing packages requiring approval
- Major on-site and off-site inspections and acceptance tests
- Major steps of carbody fabrication
- Major subsystem deliveries
- Assembly milestones
- All progress payments
- Deliveries of the LRVs
- Conditional Acceptance and Final Acceptance of LRVs

The schedule shall show the project milestones in calendar days, with the NTP as the starting date and project activities with duration shown in working days. The project milestones and activities shall be logically connected with NTP as a start date and Final Completion as an end date. The CPM schedule report shall be time scaled, have a clearly marked critical path and include the following: activity identification number, activity description, original duration, remaining duration, percent complete, early and late start, total float, and activity area with bars.

The Contractor shall provide supplementary written information sufficient to describe the methods to be used and the resource constraints applied.

The Contractor shall revise and resubmit the precedence network diagram and Master Schedule when any of the following conditions occur:

- a. A change or delay significantly affects any specified intermediate milestone date or completion date or the sequence of activities by more than one month.
- b. The Contractor elects to change any sequence of activities affecting the critical path or to significantly change the previously approved work plan.
- c. It is the Agency's opinion that the status of the Work is such that the detailed network diagram and supporting analysis are no longer representative for planning and evaluation of the work.

SP 3.2.2 Monthly Progress Report

The Contractor shall prepare a progress report each month for the Agency, starting with the first full month after NTP. The schedule update shall be due on the 10th of the following month. At the kickoff meeting, the Contractor shall present for the Agency approval a monthly progress report format. The Monthly Progress Report shall be based upon actual progress of the Work and shall include at a minimum:

- A summary of Work accomplished during the month, including actual completion dates and start dates;
- Description of any late schedule activities and workarounds needed to recoup schedule losses;
- Major Work activities planned for the following month, including estimated remaining durations for activities in progress and estimated start dates;
- Date and location for the forthcoming inspection and testing activities for the next three months, with the updates, if there are any, easily identifiable;
- An updated engineering change status report and description of any delays due to changes;
- Status of all Contractor and Subcontractor drawings;

- An updated project schedule;
- Status of correspondence; and
- Updated status on required Contract deliverables.

SP 3.3 Liquidated Damages (LDs)

The Agency will sustain significant damages as a result of the Contractor's failure to complete the Contract Milestones listed within the time period stated in SP 3.1, Period of Performance and Delivery Schedule. These damages may include, but are not necessarily limited to, the following:

- Delays in completion and operation of the Agency's transit system.
- Increased costs of Contract Administration.
- Cost resulting from delays to interfacing Contractors
- Loss of revenue
- Loss of reputation and goodwill

The total amount for liquidated damages in this Section shall not exceed ten (10) percent of the Total Contract Price. The Agency may deduct the sum of liquidated damages from retention, progress payments due or to become due under the Contract.

The parties agree that liquidated damages shall be the sole and exclusive remedy for the issue they address.

SP 3.3.1 Liquidated Damages for Late Delivery

Because the actual amount of these damages is and will be difficult to accurately determine, the parties agree to the liquidated damages specified below.

Milestones Amount Per Day

LD1: Conditional acceptance of cars one (1) to four (4) no later than 11/15/2027, or as amended by approved schedule: \$4,000 per day per LRV.

LD2: Contractual Delivery of each production cars five (5) to twenty (20) forty (40) no later than 06/26/2028, or as amended by approved schedule: \$2,000 per day per LRV.

The Agency reserves the right to waive the liquidated damages for late completion where circumstances causing the late completion are clearly beyond the control of the Contractor or where it is in the interest of the Agency to do so. In addition, the Agency reserves the right to waive Liquidated Damages due to delays caused by damages in transit which are of a significant enough nature to preclude a car from either Conditional Acceptance or Final Acceptance. If the damage sustained is through no fault of the Contractor, then the Agency may waive the LDs for a reasonable period of time to enable the Contractor to undertake the repairs.

SP 3.3.2 Liquidated Damages: Warranty

The same payment for damages shall apply in the event that vehicles previously accepted by the Agency are out of service due to contractor-caused delays as described in WR 1.1.5, Extension of Warranty.

SP 3.3.3 Excusable Delay

The Contractor will not be assessed liquidated damages for late delivery and/or completion if the delay arises out of:

1. Failure to timely meet any of the requirements in SP 9.2 (Use of Agency Facilities)

Suggested revised language, continued:

2. Failure to conditionally accept vehicle within a reasonable time when the Contractor has met the requirements for Conditional Acceptance listed in SP 6.7.1
3. Failure to release any vehicle for shipment within 7 calendar days of Contractor's shipment authorization
4. Failure to conduct a post-shipment inspection for shipping damages within 7 calendar days of arrival of vehicle at the designated delivery place

5. Delays caused by damages in transit that are of a significant enough nature to preclude a car from either Conditional Acceptance or Final Acceptance. If the damage sustained is through no fault of the Contractor, then the Agency shall waive the LDs for a reasonable period of time to enable the Contractor to undertake the repairs.
6. Causes that were beyond the control and without the fault or negligence of the Contractor, and that could not have been avoided by exercise of due diligence and care by the Contractor. Such causes may include but are not restricted to Force Majeure events as outlined in General Conditions Section 9.5.

In the event of a delay by the Agency or its Authorized Representative of more than 30 days, the Contractor is entitled to request an equitable adjustment of the Contract Price.

SP 4. Payment

SP 4.1 Payment Terms/Procedures

SP 4.1.1 General

The Agency shall pay and the Contractor shall accept the amounts set forth in the price schedule as full compensation for all costs and expenses of completing the Work in accordance with the Contract, including but not limited to all labor, equipment and material required, supplies, training, technical support, Special tools, spare parts, overhead, duties, expenses, storage and shipping, risks and obligations, taxes (as applicable), fees and profit, and any unforeseen costs.

The Contractor shall submit invoices to the Agency according to the milestone payment schedule set forth in SP 4.2, Milestone Payment Schedule. The Contractor shall not submit more than one invoice in any 30-calendar day period and each invoice may include any number and combination of milestone payments that are payable that period. Invoices need not be based on sequential milestones.

Invoice Format

In order to process the submitted invoices in timely manner, each invoice shall be in a format approved by the Agency, and shall include the following information:

1. Contractor Name
2. Contract number
3. Invoice Number
4. Invoice Date
5. Milestone(s) invoiced
6. Total invoice amount
7. The Contractor shall certify on each invoice that the total costs invoiced do not exceed the total milestone payment allowed.

Invoicing and Payment Procedures

The Agency will make payments to the Contractor for Work satisfactorily completed as set forth in the Contract Documents. To be considered for payment, an invoice must be in a form approved by the Agency's PM. Each invoice must set forth a specific description of the Work performed, deliverable(s) provided or other event(s) triggering entitlement to payment pursuant to the Payments Schedule. Each invoice must provide supporting documentation demonstrating the Contractor's entitlement to payment As described above.

All invoices must be approved by the Agency's PM.

Invoices meeting the requirements set forth in this Section SP 4.1.1 shall then be submitted to Accounts Payable at ap@rideuta.com for processing and payment.

The determination of whether the invoice is accurate and correct will be made solely by the Agency. The Agency shall have the right to disapprove specific elements of each invoice provided that the Agency will not withhold its approval unreasonably. The Agency shall also have the right to offset (against payments) amounts reasonably reflecting the value of any claim which the Agency has against Contractor under the Contract. The Agency will provide the Contractor’s Project Manager with notice of the reasons for which payment for any portions of the invoice was withheld. No payment will constitute an acceptance of any Work that fails to comply with the Contract Documents.

SP 4.1.2 Advance Payment

The advance payments are not allowed by the Agency.

SP 4.2 Milestone Payment Schedule

Title to material included in any milestone payment request shall pass to the Agency upon payment by the Agency. Said title shall be free of all encumbrances. However, such transfer of title shall not relieve the Contractor of its responsibility for the furnishing, installation, fabrication or inclusion of said materials as a deliverable element of LRVs procured in accordance with the requirements of the Contract.

Contract Milestone Payments: Management, Engineering, Tooling, Testing and Mock-ups1

Milestone	Payment	Milestone Description
1	5%	Prove of Insurance and Bond
2	5%	Approval of Project schedule
3	10%	QPMP / PMP / Safety
4	3%	Approval of CDR
5	10%	Purchase of Raw Material
6	10%	Purchase of Subcontractors (14 mayor systems)
7	3%	Approval PDR
8	3%	Approval FDR
9	3%	Approval of FAI car-shell
10	10%	Authorization to ship welded car-shell (Prorated)
11	10%	Start commissioning (Prorated)
11	5%	Completion of vehicle qualification test
12	2%	Approval of Manuals & Training (1% each)
13	3%	One half of spare parts
14	3%	Contractual delivery of remaining spare parts
15	3%	Successful System Compatibility testing
16	5%	Conditional acceptance (Prorated)
17	5%	Final acceptance (Prorated)
18	2%	Successful Completion of Reliability Demonstration (RD) from 2 months after the acceptance of the first production LRV to the end of the warranty period for the final accepted LRC of the vehicle base order

1.Payment is expressed in percentage of individual LRV unit price. “Successful completion” means specific written approval for that Milestone by the Agency.

SP 4.3 Prompt Payments

SP 4.3.1 Agency Prompt Payment

The Agency will pay all undisputed amounts of each correct invoice within thirty (30) calendar days after receipt by the Accounts Payable (AP).

SP 4.3.2 Subcontractor Prompt Payment

The Contractor shall pay any Subcontractor approved by the Agency for Work that has been satisfactorily performed no later than ten (30) days from the date of the Contractor's receipt of milestone payments by the Agency.

The Contractor or Subcontractor shall return all monies withheld in retention from all Subcontractors within twenty (20) days after receiving payment for Work satisfactorily completed and accepted including incremental acceptances of portions of the Contract Work by the Agency. Any delay or postponement of payment may take place only for good cause and with the Agency's prior written approval. This clause applies to both DBE and non-DBE Subcontractors.

In the event the Contractor does not make progress payments or release retentions to the Subcontractors in accordance with the time periods in this section, the Contractor may be subject to other penalties as outlined in the Contract.

SP 4.4 Units of Currency/Currency Adjustment

All Contractor invoices for payment shall be accounted in U.S. dollars, and all Agency payments to the Contractor shall be in U.S. dollars.

There shall be no adjustments to Contract price for currency fluctuations through the term of the Contract, except for option car orders as described in SP 8.2, Prices of Optional Light Rail Vehicles (Including Escalation).

SP 4.5 Economic Price Adjustment (Reserved)

SP 4.6 Payment of Taxes

Price Proposals are to be quoted exclusive of federal excise taxes and Utah sales, use and transaction taxes. The Agency will furnish a federal excise tax exemption certificate, if applicable, and pay applicable Utah sales, use and transaction taxes.

All non-taxable charges, including all labor and shipping costs, shall be clearly separated from other charges on all invoices presented by the Contractor for payment.

SP 4.7 Final Completion

The Contractor shall complete and shall deliver to the Agency all designated portions of the Work and all parts and requirements within the number of days set forth in the Contract milestones as defined in SP 3.1.1, Period of Performance. When all the Work has been performed and delivered in the quantities designated, the Work will be inspected by the Agency's designated representative.

If the Agency's representative finds that the Work has been completed in all aspects, in accordance with the Contract milestones as defined in SP 3.1.1, and the Contract Documents including but not limited to the following, then the Agency will issue a Notice of Completion and make payment in accordance with the payment provisions.

1. Correction of all fleet defects;
2. Completion of previously identified warranty work;
3. Delivered written release of liens from all Subcontractors and Suppliers; and
4. Provided all training, technical support, spare parts, Special Tools, car history books, manuals, and other items required under the Contract Documents.

SP 4.8 Final Payment and Claims

Before applying for final payment, the Contractor shall complete all Work, and shall correct any deficiencies in the Work and any Work rejected by the Agency as described in Section SP 4.7. The invoice for final payment must be subject to the review and concurrence of the Agency's PM.

Within thirty (30) days after the date of Notice of Completion issued by the Agency, the Contractor shall prepare and present to the Agency's Representative a Proposed Final Invoice in writing. The Proposed Final Invoice shall show the proposed total amount of compensation under the Contract, including therein an itemization of said amount segregated as to Contract item quantities, and other bases for payment. It shall also show all deductions made or to

be made for prior payments and amounts to be kept or retained under the Acceptance of the final payment by the Contractor will constitute a full and complete release of all obligations of the Agency under the Contract Documents, excepting only Claims by the Contractor that have been previously made in writing and identified in the final invoice (and accepted by the Agency's PM and noted in the final payment correspondence) as unsettled at the time of Final Completion.

SP 5. Performance Security/Insurance

SP 5.1 Performance Security Requirements

The Contractor shall furnish, at its own expense, a performance guarantee in the form of one of the following:

1. A letter of credit in the amount of 30 percent of the total Contract amount in a form approved by the Agency. The security should be an irrevocable letter of credit issued by a bank with an underlying rating of AA- or better by Standard & Poor's or Aa3 or better by Moody's Investor Service.
2. A performance bond from a surety duly licensed to do business in the State of Utah having a financial rating from A.M. Best Company of "A VIII" or better, which shall increase and decrease as each of the following milestones are met:
 - a. 1% of the Total Contract Price at Notice to Proceed
 - b. Increase to 25% of the Total Contract Price at Preliminary Design Review
 - c. Increase to 30% of the Total Contract Price at Final Design Review
 - d. Decrease by 2% of Total Contract Price as each LRV reaches Conditional Acceptance for LRVs 1-12
 - e. Decrease by 1% of Total Contract Price as each LRV reaches Conditional Acceptance for LRV 13
 - f. Decrease to 0% of Total Contract Price after completion of warranty phase for all LRVs

When options in the Contract are exercised the Agency will require a Performance Security which follows the above schedule in half the values listed (increasing to a total of 25 percent of the total option Contract price). The Performance Security shall be reduced pro rata according to the schedule above.

In the case that a security guarantor becomes insolvent, its license is revoked or suspended, or its rating is downgraded, the Contractor shall notify the Agency promptly and shall substitute other and sufficient performance security. If the Contractor fails to do so, such failure may be an event of default at the sole discretion of the Agency. The Contractor shall deliver the performance bond or Letter of Credit to the Agency within ten (10) days after it has been notified by the Agency of award. The corresponding increase or decrease in bond shall also be accomplished within 10 days of approval of each milestone listed.

SP 5.2 Insurance

SP 5.2.1 Evidence of Coverage

Contractor shall deliver to the Agency, within ten (10) days after receiving Notice of Award of the Contract, an ACORD form (Certificate of Liability Insurance) evidencing the required insurance coverage. A Notice to Proceed will not be issued until all required insurance documentation is in place.

SP 5.2.2 Continuation or Change in Coverage:

The Contractor shall maintain in effect during the term of the Contract, including any warranty period, at its own expense, at least the coverage and limits of insurance set forth below. Prior to the cancellation modification or expiration of any insurance during the Contract performance, the Contractor shall furnish evidence of such to the Agency's designated representative.

SP 5.2.3 Endorsements

The general liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions:

1. The Agency, its subsidiaries, officials, representatives and employees are additional insureds with respects to the Contractor's operations, products and completed operations in connection with the Contract. The provisions of the Contract, together with any and all potential claims that have not yet been resolved or a statement that no claims will be filed. All prior invoices and payments shall be subject to correction in the Proposed Final Invoice. No claim for which a Notice of Potential Claim is required will be considered unless the Contractor has strictly complied with the notice provisions in GC 9.10.1, Notice of Intent to Claim.

Stipulation that the Insurance is primary insurance and that no insurance or self-insurance of the Agency will be called upon to contribute to a loss. Any insurance or self-insurance maintained by the Agency shall be excess of the Contractor's insurance and shall not contribute with it.

3. Coverage applicable to Products and Completed Operations as required in this Section shall be maintained for a period of three (3) years after the completion of all Work performed under the Contract.

Required insurance. Statutory Workers Compensation and Employers Liability insurance and/or qualified self-insurance program in the amount of \$1,000,000.00 covering Supplier's employees while on Agency property.

Commercial general liability insurance. Bodily Injury and Property Damage, including Contractual Liability covering the indemnification contained herein, \$10,000,000 combined single limits per occurrence, \$10,000,000 aggregate, where applicable. The Commercial General Liability Insurance policy shall not contain "X, C and U" (explosion, collapse, and underground) exclusions.

Product liability. \$5,000,000 per occurrence, \$10,000,000 annual aggregate for a period of five years after acceptance of the last LRV delivered under the Contract.

Automobile liability insurance. Bodily Injury and Property Damage, \$1,000,000 combined single limits per occurrence.

SP 6. Shipping, Delivery and Acceptance

SP 6.1 Shipment Authorization

Each car shipped from the Contractor's plant to the Agency shall be complete and in compliance with all provisions of the Contract, except as may be noted below. Prior to shipment of each car, the Contractor shall obtain a shipping release (see Section 10, Appendix F) signed by the Agency's Representative or designee. The shipping release shall certify that the car is complete, has passed all pre-shipment tests described in the Technical Specification and complies with approved Contractor's drawings, samples, is accompanied by an up-to-date Car History Book, and other agreed-upon conditions for shipping. To accommodate any and all tests that may be necessary, the Contractor shall provide a minimum of ten (10) days' notice to the Agency's Representative prior to each shipment. The Parties may mutually agree to permit shipment of a car with minor Defects or open items approved by the Agency's Representative that will not affect testing and can easily be corrected after shipment. All known Defects and open items shall be submitted by the Contractor with the request for shipping release. The shipping release shall not be construed nor inferred to constitute car acceptance by the Agency.

SP 6.2 Shipment

All shipments shall be packaged and packed in a manner to ensure the integrity of product during transportation, handling and temporary storage. Due regard shall be given to protection from loss and pilferage, physical damage, and the effect of the elements and environmental conditions. The Agency reserves the right to review and approve a shipping plan.

If shipped by sea, every effort will be made to provide below-deck shipping and storage for all cars or car components to provide enclosed protection against damage from handling and from exposure to the marine environment and adjacent shipments.

During shipment, each car shall be equipped with an impact recorder provided by the Contractor and approved by the Agency. The recorder shall record all handling impacts. All records shall become the property of the Agency and shall be appended to the Car History Book. The Contractor shall require shippers to log and record any incidents of damage or potential damage to the LRVs and LRV components, and of interruption of shipments. The Contractor shall report such shipment incidents to the Agency promptly upon the Contractor's receipt of such information, describing the nature of the shipment damage, potential damage or interruption, and the actions taken and to be taken to complete the shipment and repair any damage.

The Contractor shall assume full responsibility for determining the haul routes to be utilized and confirming that the jurisdiction through which its haul routes will pass will permit the hauling operations with respect to laden weights, type of vehicle, frequency and dimension of loads, required traffic control, and hours of operation. All necessary permits, licenses or bonds shall be obtained and paid for by the Contractor.

SP 6.3 Evidence of Delivery and Shipping Destination (FOB point)

Delivery of the LRVs shall be freight on board (FOB) destination. Contractor is responsible for all delivery costs, including risk of loss, to the Agency's final destination on board the carrier's conveyance to the Agency's location specified below.

A receipt signed by the Agency's Representative upon delivery of the car does not constitute the Agency's acceptance of either the condition of the car or its conformance with the terms of the Contract. Risk of Loss and Title to material shall not pass to the Agency until delivery, inspection, and written acceptance have occurred. Delivery of all other Contract deliverables shall be FOB destination. Contractor is responsible for all delivery costs, including risk of loss, to the Agency's final destination on board the carrier's conveyance to the location specified below.

Delivery shall be evidenced by signed receipt by the Agency's designated Representative, at the following point of delivery:

Jordan Rail Service Center
2264 South 900 West
Salt Lake City, UT 84119
Midvale Rail Service Center
613 West 6960 South
Midvale, UT 84047

SP 6.4 Unloading

The Contractor shall be responsible for the unloading of cars, test equipment and spare parts at the designated delivery point as instructed by the Agency.

After arrival at the Agency's facility, each car shall be examined jointly by Representatives of the Agency and the Contractor for shipping damage. The Agency then will issue a receiving notice to the Contractor, which will acknowledge receipt of the car and describe any missing parts or visible damage that may have occurred during shipment.

SP 6.5 Acceptance Testing

The Agency will conduct acceptance tests on each delivered LRV. These tests shall be completed within fifteen (15) days after delivery and shall be conducted in accordance with approved written Test Plans consistent with the

Technical Specifications. The purpose of these tests is to identify Defects that have become apparent between the time of LRV release and delivery to the Agency. The acceptance tests shall include visual inspection and car operations. No acceptance test shall apply criteria that are different from the criteria consistent with the Technical Specifications.

The Agency shall record details of all Defects on the appropriate test forms and shall notify the Contractor of acceptance or non-acceptance of each car after completion of the tests. The Defects detected during these tests shall be repaired according to procedures defined in SP 6.7.3, Non-Acceptance and Repairs after Non-Acceptance.

SP 6.6 Delivery of Special Tools, Diagnostic Equipment, Spare Parts and Manuals

Spare parts shall be of production configuration and successfully tested. Delivery shall be completed in accordance with the Milestone Schedule.

Acceptance of spare parts will be deemed to have occurred after delivery, successful completion of Agency receiving inspection, relevant functional testing, and written notification of Acceptance by the Agency Representative.

Delivery of special tools and diagnostic equipment shall be completed in accordance with the Milestone Schedule. Delivery of manuals shall be made in two stages with interim deliverables likely to be required to ensure that manuals remain up to date with vehicle production and delivery. The initial delivery of draft manuals is shown in the milestone schedule and shall consist of full sets of all manuals in the quantities indicated. The final delivery shall consist of the complete updated manuals and the electronic media in the quantities indicated. Acceptance of the manuals will be deemed to have occurred after delivery of the final manuals in the quantities indicated and upon written notification of acceptance by the Agency Representative.

The Agency reserves the right to refuse delivery of cars if spare parts, special tools, test equipment or manuals are not delivered in accordance with the Milestone Schedule.

SP 6.7 Conditional Acceptance, Final Acceptance and Non-Acceptance

SP 6.7.1 Conditional Acceptance

Conditional Acceptance of a vehicle is defined as a completely assembled car on the Agency property subject to the provisions outlined below. The vehicle shall have all requirements successfully verified consistent with TS 21, Requirements Management, Design Validation and Verification, and be ready to run in revenue service except for minor Defects that require corrective action but will not materially affect revenue service operations. Conditional Acceptance requires that all documentation for the vehicle, including the Car History Book, per TS 23.3.3, has been delivered to and accepted by the Agency.

The Contractor shall submit a corrective action program and schedule for each Conditionally Accepted vehicle for the Agency's approval. If the Contractor fails to complete the program in accordance with the approved schedule, then repairs to the cars may be made in accordance with the procedures outlined in WR 2, Repair Procedures. The Agency will issue a Vehicle Conditional Acceptance and Inspection form to the Contractor for each vehicle when the vehicle meets the conditions specified in this section. (See Section 10, Appendix F, Form 4 for a sample.)

SP 6.7.2 Final Acceptance

The Agency will issue a Vehicle Final Acceptance and Certificate of Title to the Contractor for each vehicle when the following have been achieved (see Section 10, Appendix F, Form 5 for a sample):

1. The car has been completed in full accordance to the Technical Specifications, including all testing, approved engineering submittals and Change Orders.
2. The car has had all items of corrective action identified at the Conditionally Accepted stage completed.
3. All required documentation for the car has been received and approved by the Agency.

SP 6.7.3 Non-Acceptance and Repairs after Non-Acceptance

If a car fails any inspection or test, the Agency shall provide the Contractor with Notice of Non-Acceptance. Such notice shall be effective until Contractor corrects the Deficiencies, and the Agency accepts the car after retest and inspection. The Agency, at its option, may require the Contractor to return the LRV to the Contractor's production or assembly plant for corrective work necessary for the LRV to conform to the Contract Documents.

1. **Responsibility:** The Contractor, or its Authorized Representative, shall at all times be responsible for correction of the Deficiencies.
2. **Work by the Agency:** The Contractor may request the Agency to perform limited Work related to correction of Deficiencies. Such Work shall be subject to full reimbursement of the Agency's costs by the Contractor. Even if the

Agency agrees to perform such limited Work, it shall remain the sole obligation of the Contractor to ensure proper correction of the Deficiencies. The Agency's responsibility will be strictly limited to competently performing the limited Work designated by the Contractor in accordance with the Contractor's instructions.

3. **Time for correction:** If a car is delivered but not Accepted because of a Deficiency, then the Agency shall issue a Notice of Non-Acceptance, and the Contractor shall have two days to correct the Deficiency or to request, in writing, a request for an extension of time including a definition of the problem, solution and a time line to correct the Deficiency.

SP 7. Project Management

SP 7.1 Contractor's Personnel

SP 7.1.1 Contractor's Project Manager

During performance of the Contract, the Contractor shall assign a competent Project Manager who shall have full authority to act on behalf of the Contractor and all of the Contractor's Subcontractors at all tiers in all matters within the scope of the Contract. The Contractor shall furnish the Agency with a written confirmation of its Project Manager's authority to act for the Contractor. The Contractor's Project Manager shall have experience acceptable to the Agency. The Project Manager must be thoroughly familiar with all procedures involved in LRV production. With Notice to Proceed, the candidate submitted with the Proposer's Offer shall become the Contractor's Project Manager. If for any reason, and at any time, the candidate submitted by the Contractor is not acceptable to the Agency, or becomes unacceptable, the issue will be referred to the Contractor's senior management. If the Contractor wishes to replace its Project Manager at any time during the performance of the Contract, it first shall submit the résumé of its new candidate to the Agency for Agency approval and shall not make the substitution without Agency approval.

SP 7.1.2 Other Key Personnel

The Agency may also identify during performance of the Contract other key personnel, who will be subject to the same requirements and restrictions as set forth above for the Project Manager.

SP 7.2 Subcontractors and Suppliers

The Contractor shall be fully responsible and liable for the products and actions of all Subcontractors and Suppliers at any tier.

No subcontract will relieve the Contractor of any of the Contractor's obligations or liabilities under the Contract Documents. The Contractor shall be fully responsible and liable for the acts or omissions of all Subcontractors and Suppliers. The Contractor shall have sole responsibility for managing and coordinating the operations of its Subcontractors and Suppliers, including the settlement of disputes with or among them.

The Contractor shall submit to the Agency a list of all proposed Subcontractors and Suppliers with whom the Contractor has entered or will enter a subcontract for a Major Subsystem (including those identified in the Proposal forms, and hereafter referred to as "Major Subsystem Suppliers"). The list must identify the name of each Major Subcontractor or Supplier and the portion of the Work to be performed by each Major Subcontractor or Supplier. All Work performed for the Contractor by any Major Subsystem Supplier must be executed pursuant to an appropriate agreement between the Contractor and the Subcontractor or Supplier (or between Subcontractors and Suppliers and lower tier Subcontractors and Suppliers). Each such subcontract must contain the following language:

1. Provisions that preserve, protect, and guarantee the rights of the Agency under the Contract Documents with respect to the Work to be performed by the Subcontractor or Supplier;
2. Provisions that require that such portions of the Work be performed in accordance with the requirements of the Contract Documents;

3. Provisions that require that all requests for extensions of time, additional compensation for changed work, or otherwise be submitted to the Contractor in a manner consistent with the Contractor's corresponding obligations to the Agency;
4. A payment clause that obligates the Subcontractor or Supplier to pay any lower tier Subcontractor or Supplier for satisfactory performance under its subcontract within 30 calendar days of the Subcontractor or Supplier's receipt of payments attributable to a lower tier Subcontractor's work; and
5. Provisions that ensure that the required federal clauses (as set forth in Section 5 Federal Clauses) are included.

Any new, additional or substituted major subsystem Suppliers proposed to be used by the Contractor after the award shall be subject to Agency's prior written approval. Any proposed change involving a DBE Subcontractor or Supplier must conform to the requirements of the Agency's DBE Program. No increase in the Contract Price(s) shall be allowed for any such substitution.

The Contractor shall not make any substitution for any major subsystem Supplier or for any person or for any organization that has been previously accepted by the Agency as part of the Contract unless and until requested to do so by the Agency and/or unless such substitution is expressly approved by the Agency in writing. A major subsystem Supplier is defined as an individual or organization that supplies the

SP 7.3 Agency's Personnel

SP 7.3.1 Agency Project Manager

The Agency will designate a Project Manager to be the Agency's representative for the Work from the Notice to Proceed (NTP) until the expiration of all warranties. The Agency's Project Manager (the Agency's PM) shall be the formal contact between the Agency and the Contractor. The Agency's PM shall be responsible for, on behalf of the Agency, all matters relating to the Contract, except changes to the Contract that involve price or time. The Contractor shall not rely on representations or orders of any other Agency representative, unless so authorized by the Project Manager.

The Agency's PM will act on behalf of the Agency to the extent provided in the Contract Documents. The Agency's PM will, when required by the progress of the Work, render such interpretations as are necessary for the proper execution of the Work. The Agency's PM will review, comment upon, accept, and/or reject all Contractor Submittals as set forth in the Contract Documents. Any review, acceptance, or approval by the Agency's PM must be construed merely to mean that the Agency's PM was unaware of any reason, at the time of review, to object to the Contractor Submittal. No acceptance by the Agency's PM of any deliverable will relieve the Contractor of the Contractor's responsibilities under the Contract Documents or impose any duty or liability on the Agency's PM or the Agency.

The Agency's Project Manager is hereby designated to be Sharanjit Saini (ssaini@rideuta.com).

SP 7.3.2 Agency's Inspectors

In addition to the Agency's PM, the Agency will designate and utilize one or more inspectors who will be representatives of the Agency and who will have access to the Work at all times. The Agency's inspectors must be granted ongoing access to the Contractor's engineering and design facility, the Contractor's manufacturing facility, and the Contractor's assembly facility as necessary to monitor the performance of the Work. At the Contractor's facility, the Agency's inspectors shall be provided with a desk, phone, filing cabinet and a connection to the internet, together with access to a copy and fax machine. The Agency shall provide its inspectors with a personal computer, printer and internet service, at the Agency's cost. Contractor will provide the Agency and its inspectors copies of any and all documentation, plans, "as-built" drawings and control documentation, and other information related to the Work. The Agency's inspectors will be utilized solely for the Agency's benefit and are not intended as a source of advice for the Contractor. The Agency's inspectors have the authority to reject Work that is not in conformance

with the Contract Documents. The Agency's inspectors do not have authority to authorize any Change Orders, to waive provisions of the Contract, or to order extra Work.

SP 7.4 Project Meetings

The Agency's Project Manager will schedule and preside over pre-production, periodic and special meetings throughout the progress of the Work. Agendas for the meetings may include, but are not necessarily limited to, discussions of in-plant observations, problems, conflicts, production schedules, delivery schedules, Supplier fabrication, quality standards, design review, Contract modifications, and any other topics that the Agency's Project Manager determines to be relevant to the project. The location for project meetings will be mutually agreed upon by the Agency and Contractor. o Subcontractor or Supplier will be recognized as having contractual privity with the Agency. A dispute between the Contractor and any Subcontractor or Supplier relating to the amount or entitlement of a Subcontractor or Supplier to a payment does not constitute a dispute to which the Agency is a party. The Agency will not be included as a party in any administrative or judicial proceeding involving such a dispute.

SP 7.5 Pre-Award and Post-Delivery Buy America Certification

The Agency is required by 49 CFR 663 to certify to FTA that a pre-award and post-delivery audit has been performed and that compliance with Buy America requirements has been verified. The post-delivery review must be completed before a rail vehicle title is transferred to the Agency, or before a rail vehicle is placed into revenue service, whichever is first. The review period begins when the Agency signs a formal Contract with the Contractor and ends before title transfer or use in service.

The Contractor shall provide cost information of sufficient detail to allow an auditor to determine that federal Buy America requirements are met. The cost information shall be submitted by the Contractor and by the Contractor's subcontractors directly to a representative designated by the Agency. The cost information, subject to state law, will be kept confidential to the greatest extent possible.

SP 7.6 Ownership and Use of Agency Documents

All drawings, specifications, and copies thereof furnished by the Agency shall remain the property of the Agency. They are to be used only with respect to the Contract. With the exception of one Contract set for each party to the Contract, those documents are to be returned (or suitably accounted for) to the Agency upon request at the completion of the Work.

SP 7.7 Review of Drawings, Data and Designs

The Contractor shall submit for review and acceptance by the Agency's PM, all Contractor Submittals required by the Contract Documents and such other Contractor Submittals as may be requested by the Agency's PM from time to time. The Contractor Submittals must be sufficiently detailed to enable Agency's PM to determine with a high degree of confidence that the Contractor will be able to furnish the LRVs in the following manner:

1. In compliance with the Contract Documents and all applicable legal requirements and industry standards;
2. Suitably for the Agency's operations, maintenance, and safety practices; and
3. Suitably for the Agency's operating environment.

The review of Contractor Submittals by the Agency does not relieve the Contractor of responsibility for the quality and conformance of the Work with the requirements of the Contract Documents.

Contractor Submittals delivered by the Contractor for review which contain variations, exceptions, or other changes to the requirements of the Contract Documents must be accompanied by an explanation detailing the justification for the variation, exception, or other change and further accompanied by a Change Request. Contractor Submittals by themselves will not be recognized by the Agency's PM as valid instruments for request and acceptance of changes to the Contract Documents.

The Agency's PM will return submitted Contractor Submittals to the Contractor within the time periods and with the notations contemplated in the Technical Specifications.

Engineering conferences may be conducted for the purpose of reviewing designs, establishing baseline configurations, and answering questions raised by the Contractor, Subcontractors, or Suppliers. Engineering conferences will be conducted at facilities suitable for the purpose (including Subcontractor and Supplier plants) as recommended by the Contractor and agreed by the Agency's PM. All reviews of drawings, data and designs outlined in Section 6 Technical Specifications shall be completed by the Contractor and the Agency within thirty (30) days, as described in the Contract.

SP 7.8 Partnering

SP 7.8.1 Agency Partnering Policy

The Agency doesn't currently have a Partnering Policy but Contractor is encouraged to work with Agency as a partner,

- To avoid confrontation and litigation among parties;
- To reach a mutual understanding on how the Work is to be conducted; and
- To establish an atmosphere of trust and communication.

SP 7.8.2 Partnering Goals (Reserved)

SP 7.8.3 Contract Rights (Reserved)

SP 7.8.4 Allowance (Reserved)

SP 7.8.5 Subsupplier Participation in Partnering (Reserved)

SP 7.9 Value Engineering

The Contractor is encouraged to develop, prepare and submit value engineering change proposals (VECPs) voluntarily. Provided the VECP is accepted by UTA as being innovative, independent, and useful, the Contractor shall share equally in any instant net Contract savings realized from accepted VECPs. Accepted VECPs will be incorporated into the Contract as Change Orders.

SP 8. Options

SP 8.1 Options for Additional Light Rail Vehicles

The Contractor hereby grants the Agency and any permissible assignee options ("Options") to purchase up to 60 additional vehicles ("Option Vehicles"). The Options shall be valid for a period of seven years from the effective date of the Contract. Option vehicles may be ordered in any length originally proposed by Contractor, and shall be priced in accordance with the Schedule of Prices and as outlined in SP 8.2 below. There shall be no minimum order quantity for any option exercised prior to the baseline scheduled delivery date of the middle car in the base order. Any option exercised after the baseline scheduled delivery date of the middle car in the base order shall be subject to a minimum order quantity agreed to by the Contractor and the Agency/Assignee. The Agency may exercise or assign some or all of the options for additional light rail vehicles at its sole and absolute discretion. The Agency/Assignee and the Contractor will mutually establish the schedule for the options milestone payments per SP 8.3, Milestone Payments for Optional Light Rail Vehicles. Absent a mutual agreement of such schedule within 30 days, the Agency will establish the schedule within sixty (60) days.

SP 8.2 Prices of Optional Light Rail Vehicles (Including Escalation)

The price for the option items listed in the Schedule of Prices shall be subject to a one-time adjustment (either up or down) at the time the option is awarded due to two price factors: Manufacturing Escalation (70 percent) and

Currency Exchange Rate (30 percent). No adjustment will be made if the option is exercised within one year of Contract award. The base index period shall be the date of Contract award. For all adjustments, the percentage change shall be rounded to the nearest hundredth of a percentage point and the line item prices shall be rounded to the nearest dollar.

SP 8.2.1 Manufacturing Escalation

Seventy (70) percent of the price for the option item shall be adjusted due to percentage adjustment in the applicable Producer Price Index (PPI) as described below.

1. Manufacturing escalation adjustment index data source: United States Department of Labor, Bureau of Labor Statistics Producer Price Index Industry, Data Series ID: PCU 336510 Industry: Railroad Rolling Stock Manufacturing, Product: Railroad Rolling Stock Manufacturing.

Should PCU 336510, Railroad Rolling Stock Manufacturing, be discontinued, then the following index shall be used: United States Department of Labor, Bureau of Labor Statistics Producer Price Index Industry, Data Series ID: PCUOMFG-OMFG, Industry: Total Manufacturing Industries, Product: Total Manufacturing Industries. The BLS PPI may be found at <http://www.bls.gov/ppi/>. Under PPI Databases, click on the “One Screen Data Search” for Industry Data, and a new browser window will open (make sure your browser’s pop-up blocker is disabled). Find the appropriate higher-level code number in Block 1. Click on the appropriate code and the code, and lower hierarchal codes should be listed in Block 2. Click on the correct code in Block 2, then on “Add to Your Selection” in Block 3. Then click on “GET DATA” in Block 3, and a new window should open with the index table. (“OMFG” is the second from the bottom of the list).

The final index data shall be used for the final price adjustment; however, preliminary index data (P) may be used for interim partial progress payment purposes. All indexes shall not be seasonally adjusted if applicable. The calculations of price adjustments shall always use the latest version of the applicable index.

The percentage change is calculated as follows: The final index value of the PPI for the option month period minus the PPI index value for the award period, divided by the PPI index value for the award period, times 100 (for more information see “Frequently Asked Questions” and “How is an index interpreted?” on the BLS/PPI website). The following is for illustrative purposes only:

For example, if the award date = December 2004, index = 144.2

If the option date = December 2006, index = 163.0

163.0 - 144.2 = 18.8

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18.8/144.2 = 0.1303744

0.1303744 × 100 = 13.04 percent

SP 8.2.2 Currency Exchange Rate

Thirty (30) percent of the option price shall be adjusted due to the change in the currency exchange rate of the U.S. dollar to the currency of the LRV Contractor. The daily closing prices shall be used.

1. The currency exchange rate data source shall be The Wall Street Journal.

The percentage change is calculated as follows: The average of the exchange rate for the month preceding the option month minus the average exchange rate for the award month, divided by the average exchange rate for the award month, times 100. The following is for illustrative purposes only:

For example if the award date = December 2004, average dollar exchange = 1.1234

If the option date = December 2006, average dollar exchange = 1.2345

1.2345 - 1.1234 = 0.1111

0.1111/1.1234 = 0.0988962
 0.0988962 × 100 = 9.89 percent

SP 8.3 Milestone Payments for Optional Light Rail Vehicles

Milestone payments for the option rail vehicles and associated deliverables will be made upon satisfactory completion and acceptance of each milestone in accordance with the milestone allocation percentages listed below:

Option for 60 additional cars

Payment	Milestone Description
30.00%	Placement of Subcontracts 14 vehicle systems
30.00%	Raw Materials Purchase
15.00% (Prorated)	Release for shipment from manufactures facility
20.00% (Prorated)	Conditional acceptance of each LRV
5% (Prorated)	Final Acceptance of Each Vehicle

1. Payment is expressed in percentage of individual LRV unit price. “Successful completion “means specific written approval for that Milestone by the Agency.

SP 8.4 Options for Additional Spare Parts, Tools and Materials

At the option of the Agency, the Contractor shall provide additional spare parts, special tools, diagnostic test equipment and manuals, drawings, training and training materials, illustrated parts catalog and publications to be used for the base LRV order. The pricing for the additional spare parts, special tools, diagnostic test equipment and manuals, drawings, training and training materials, illustrated parts catalog and publications shall be as set forth in the Schedule of Prices. Additional spare parts, special tools and diagnostic test equipment may be identified during the design of the LRV. The Contractor shall provide a listing of the additional recommended spare parts, special tools and diagnostic test equipment when the design of the first LRV is completed.

The Agency shall order additional quantities of these items by written notice to the Contractor. An option to order additional items to be delivered with the base LRV order may be exercised at any time by the Agency up to the date of delivery of the last car purchased under the Contract. The notice shall specify the quantity of additional materials being ordered. The Agency may place one or more such orders for additional materials, or none.

Additional items ordered under this provision shall be delivered not more than eighteen (18) months after exercising of any option order.

Delivery schedule for the additional spare parts, special tools and diagnostic test equipment being ordered as a part of the base LRV Contract or as a part of an option order for LRVs shall be as mutually agreed upon by the Contractor and the Agency. An Assignee shall have the same rights as specified above for the items described.

SP 8.5 Prices for Additional Spare Parts, Tools and Materials

Prices of any option additional spare parts, special tools, diagnostic test equipment and manuals, drawings, training and training materials, illustrated parts catalog and publications shall be at the prices set forth in the Schedule of Prices and such prices will be in subject to provisions set forth in Section 8.2, Prices of Optional Light Rail Vehicles.

SP 8.6 Milestone Payments for Additional Spare Parts, Tools and Materials

Payments for optional additional spare parts, special tools, diagnostic test equipment and manuals, drawings, training and training materials, illustrated parts catalog and publications shall be made in accordance with the milestone payment terms in the base order.

SP 8.7 Assignability of Options

If the Agency does not exercise all the option(s) as listed in SP 8.1, Options for Additional Light Rail Vehicles, then the Agency reserves the right to assign the option(s) to other public transportation agencies.

SP 9. Testing

SP 9.1 General

The Contractor shall prepare an Inspection and Test Plan (“Test Plan”) consistent with Section 6: Technical Specifications for review by the Project Manager. The Test Plan shall be forwarded to the Project Manager as soon as practicable. Such review of the Test Plan by the Project Manager does not in any way relieve the Contractor of responsibility for the adequacy of the inspection and testing of the Work in accordance with the Contract Documents.

SP 9.2 Use of Agency Facilities

With the exception of the items listed below, the Contractor is responsible for providing all necessary personnel, supplies, and tools for the commissioning of LRVs at the Agency's facilities. Additionally, the Contractor must supply all equipment and fulfill other pre-delivery requirements for the cars that are not provided by the Agency. However, any fixtures, including cranes, pits, etc. at the Agency's facilities will be available for Contractor's use

The Agency shall make car operating personnel and access to yard and mainline tracks of the Agency's light rail system available for the Contractor's post-shipment car testing as specified in the Test Plan and the Technical Specifications. In addition, the Agency will provide the following:

- Office space for 3 people,
- 500 square feet of tool storage,
- 1000 square feet of material storage,
- Parking for a minimum of three vehicles,
- High speed Wi-Fi, and
- 40 hours per week test track access for type testing

Failure to meet, or delay in meeting, the site and track requirements of Contractor set forth above and in the Test Plan and Technical Specifications will result in an excusable delay of any testing-related or testing-dependent Milestones, and no liquidated damages shall attach. In addition, in the event of a delay by the Agency or its Authorized Representative of more than 30 days, the Contractor is entitled to request an equitable adjustment of the Contract Price. The Contractor shall provide the Agency's Project Manager with a minimum of three (3) days' notice of the scheduled date and time of each car post-shipment test, so that the Agency's Project Manager or designee may witness each such test.

The Contractor shall cooperate with the Agency in scheduling and coordinating the Contractor's Work on the Agency's property with the Work and operations of the Agency.

SP 9.2.1 Care of Premises

At all times the Contractor shall maintain its premises on the Agency property in a neat and orderly condition. Upon completion of the entire project, the Contractor shall remove all temporary buildings, structures, fences, scaffolding, surplus materials and rubbish of every kind from the site of the Contractor's Work on the Agency's property.

SP 10. Safety and Security Requirements

SP 10.1 Contractor Safety Training

All Contractor and Subcontractor personnel and/or their technical representatives or assistants performing onsite Work, inspection or testing shall have successfully completed all required safety training courses administered by the Agency.

SP 10.2 Safety Compliance

The Contractor shall be responsible for ensuring compliance with the most stringent provisions of the applicable statutes and regulations of the Utah Occupational Safety and Health (UOSH), Utah Department of Environmental Quality (UDEQ), and the UDOT SSO Program Standard as well as the Agency's Transit Agency Safety Plan (TASP). The Contractor shall flow down all these requirements to any Sub supplier performing Work under the Contract. Should charges of violation of any of the above be issued to the Contractor in the course of the Work, a copy of each charge shall be immediately forwarded to the Agency Representative along with a plan to correct the violation.

The Contractor shall follow the Agency's Construction Safety and Security Program Manual, and the Roadway Worker Protection Program Manual.

Upon the failure of the Contractor to comply with any of these requirements, the Agency's Representative shall have the authority to stop any and all operations of the Contractor affected by such failure until such failure is remedied. No part of the time lost due to any such stop orders shall be made subject to a claim or extension of time or increase in compensation.

SP 10.3 Pre-Employment Background Requirements

The Contractor is responsible for following the Agency's policies and procedures including but not limited to background check requirements for accessing the Agency's facilities.

SP 11. Disadvantaged Business Enterprises

Utah Transit Authority (Authority) shall not discriminate in the administration of its Disadvantaged Business Enterprise Program, or the requirements of 49 CFR Part 26. The Authority will take all necessary and reasonable steps under 49 CFR Part 26 to ensure nondiscrimination in the award and administration of Department of Transportation (DOT) assisted contracts. The Authority's DBE program, as required by 49 CFR Part 26 and as approved by DOT, is incorporated by reference in this agreement.

It is the responsibility of each Bidder / Proposer to read, understand and comply with the Authority's DBE program and 49 CFR Part 26. The Authority's DBE Liaison Officer is available to help answer questions concerning the Authority's DBE program.

Implementation of the DBE program is a legal obligation and failure to carry out its terms will be treated as a violation of this agreement. Failure by the Authority to carry out the Authority's approved program may result in DOT-imposed sanctions as provided for under Part 26 and may, in appropriate cases, result in enforcement actions under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 et seq.) Bidders/ Proposers agree to indemnify the Authority for any such sanctions received as a result of the actions and omissions of Contractor or its subcontractors. INSTRUCTIONS TO BIDDERS/ PROPOSERS

Bidders/ Proposers are required to complete and return Attachments A, A-1, A-2, A-3, and A-4 which obligates the Bidders/ Proposers to assert a good faith effort to attain the specified goal for DBE participation. A Bidder may satisfy the requirements of this section by having DBE status, by subcontracting portions of the work to DBEs, by entering into a joint venture with DBEs, or by submitting adequate documentation that a good faith effort to meet the goal was explored.

The attachments are defined as follows.

**Attachment A – Equal Employment Opportunity and Disadvantaged Business Enterprise Statement a.
Attachment A-1 – Disadvantaged Business Enterprise Participation Form**

b. Attachment A-2 – Sample Letter of Intent to Subcontract with a DBE Firm

c. Attachment A-3 – Good Faith Efforts Documentation form - Note: Good Faith Efforts Documentation Form is not required when a bidder / proposer certifies that there exists no opportunity for subcontracting, when a DBE is the prime contractor, or the procurement is race neutral

d. Attachment A-4 – Employment Practices / Equal Employment Opportunity Plan

e. DBE CONTRACT GOAL – Not Applicable

REQUIREMENTS, TERMS, AND CONDITIONS

A Disadvantaged Business Enterprise is a firm that has been certified by the Utah Uniform Certification Program (UUCP) to meet the criteria in 49 CFR Part 26. Only firms certified by the UUCP can receive DBE credit on federally assisted projects in the State of Utah. Firms must be certified as a DBE prior to the contract award for UTA to receive credit for a DBE firm's participation on a contract.

Bidders/ Proposers who fail or refuse to complete and return the applicable certifications to this RFP shall be deemed non-responsive and will not be awarded a contract.

Where bidders/proposers intend to attain their goal for DBE participation by subcontracting or use of a joint venture, they must **complete and submit** the following certifications as applicable. **Attachments A, A-1, A-2, A-3, and A-4** with your bid.

All Bidders/ Proposers are required to submit written assurance of meeting contract goals in their bids/proposals and will submit: (1) names of DBE subcontractors; (2) a description of the work they are to perform; and (3) the dollar value of each proposed DBE subcontract. In order to be a responsive Bidder / Proposer, a Bidder/ Proposer must meet the specified DBE contract goal or demonstrate sufficient good faith efforts to do so. Meeting the contract goal or making sufficient good faith efforts to do so is no less than meeting technical specifications or complying with bid or proposal procedures, is a necessary condition of responsiveness.

The Contractors goal stated in the **ATTACHMENT A-1 – DISADVANTAGED BUSINESS ENTERPRISE PARTICIPATION FORM**, shall express the commitment on part of Contractor to the percentage of DBE utilization during the term of the contract.

The commitment of the Contractor to a specific goal is to meet DBE objectives and is not intended to be used and shall not be used, to discriminate against any qualified company or group of companies.

The Bidders/ Proposers must actively and aggressively seek to meet the specific contract goal for the project or the overall goal if an individual contract goal has not been set. In determining whether a Bidder/ Proposer has made good faith efforts to ensure DBE participation if awarded the contract, the Authority may consider, and the Bidder/ Proposer must be able to provide, evidence regarding the good faith efforts. This information is provided on **ATTACHMENT A-3, GOOD FAITH EFFORTS DOCUMENTATION FORM**. Good Faith Efforts Documentation Form A-3 is not required when a bidder / proposer certifies that there exists no opportunity for subcontracting, when a DBE is the prime contractor, or the procurement is race neutral.

The Authority will award a contract only to a Bidder / Proposer who makes good faith efforts to meet the established goal. A Bidder / Proposer has made good faith efforts if the Bidder / Proposer does either of the following:

Documents that it has obtained enough DBE participation to meet the goal; or

Documents that it has made adequate good faith efforts to meet the goal, including assurances that the Bidder/ Proposer has done the following: i. Attended any pre-solicitation or pre-bid meetings that were scheduled by the Authority to inform DBEs of contracting and subcontracting opportunities.

ii. Advertised information concerning the subcontracting opportunities in general circulation, trade association, and minority-focused media.

iii. Provided written notice to a reasonable number of specific DBEs that their interest in the contract was being solicited, in sufficient time to allow the DBEs to participate effectively.

iv. Followed up initial solicitations of interest by contacting DBEs to determine with certainty whether the DBEs were interested.

v. Selected portions of the work to be performed by DBEs in order to increase the likelihood of meeting the DBE goals (including, where appropriate, breaking down contracts into economically feasible units to facilitate DBE participation).

vi. Provided interested DBEs with adequate information about the plans, specifications, and requirements of the contract.

vii. Negotiated in good faith with interested DBEs, not rejecting DBEs as unqualified without sound reasons based on a thorough investigation of their capabilities.

viii. Assisted interested DBEs in obtaining bonding, lines of credit, or insurance required by the Authority or the Bidders/ Proposers, and.

ix. Used the services of available minority community organizations; minority contractor's groups; local, state, and Federal minority business assistance offices and other organizations that provide assistance in the recruitment and placement of DBEs.

For further guidance and additional steps to take concerning good faith efforts, see 49 CFR Part 26. A copy is included in the Authority's DBE Plan. The Authority's DBE Plan is available from the Authority upon request.

If the Authority determines that the apparent successful Bidder/ Proposer has failed to meet the foregoing requirements, before awarding the contract the Authority will provide the Bidder/ Proposer an opportunity for administrative reconsideration. As part of this reconsideration, the Bidder/ Proposer will have the opportunity to provide written documentation or argument concerning the issue of whether it met the goal or made adequate good faith efforts to do so. The Authority's decision on reconsideration will be made by a DBE Administrative Hearing Officer. The Bidders/ Proposers will be given the opportunity to meet in person with the Authority's reconsideration official to discuss the issue of whether it met the goal or made adequate good faith efforts to do so. The Authority will send the Bidders/ Proposers a written decision on reconsideration, explaining the basis for finding that the Bidders/ Proposers did or did not meet the goal or make adequate good faith efforts to do so. The result of this reconsideration process is not administratively appealable to DOT.

SP 12. Service and Parts

SP 12.1 Parts Availability Guarantee

Contractor will support UTA by providing engineering, supply chain sourcing, and obsolescence parts support through the life of the vehicle at a fair and reasonable price. If Stadler is unable to provide timely part support, they will provide UTA with any detail to have the parts manufactured, including but not limited to drawings, manufacturer/supplier information, design, material information, and proprietary documentation to maintain the

fleet. An offer for complete assembly, system, or sub-system replacement may be offered in addition to but will not be accepted in lieu of the previously described parts support.

SP 12.2 Interchangeability

Unless otherwise agreed, all units and components procured under the Contract, whether provided by Suppliers or manufactured by the Contractor, shall be duplicates in design, manufacture and installation to ensure interchangeability among vehicles in this procurement.

In the event that the Contractor is unable to comply with the interchangeability requirement, the Contractor must notify the Agency and obtain the Agency's prior written approval, including any change in pricing.

The Agency shall review proposed product changes on a case-by-case basis and shall have the right to require extended warranties to ensure that product changes perform at least as well as the originally supplied products.

SP 12.3 Agency-Furnished Equipment

In the event that equipment or other goods or materials are specified in the Technical Specifications to be furnished by the Agency to the Contractor for incorporation in the Work, the following provisions shall apply:

As more fully described in TS 23, Agency-Furnished Equipment, the Agency shall furnish the equipment, goods or materials in a timely manner so as not to delay Contract delivery or performance dates. If Agency-furnished property is received in a condition not suitable for the intended use, then the Contractor shall promptly notify the Agency, detailing the facts, and at the Agency's expense repair, modify, return or take such other action as directed by the Agency. The parties may conduct a joint inspection of the property before the Contractor takes possession to document its condition.

The Agency retains title to all Agency-furnished equipment. Upon receipt of the Agency-furnished equipment, the Contractor assumes the charge and care of the Agency and bears the risk of loss or damage due to action of the elements or from any other cause. The Contractor shall provide appropriate protection for all such equipment during the progress of the Work. Should any Agency-furnished equipment or materials be damaged, such equipment shall be repaired or replaced at the Contractor's expense to the satisfaction of the Agency. No extension of time will be allowed for repair or replacement of such damaged items. Should the Contractor not repair or replace such damaged items, the Agency shall have the right to take corrective measures itself and deduct the cost from any sums owed to the Contractor.

In the event that the Agency's equipment or actions cause subsequent damage to the LRV or the Contractor, the Contractor shall not be responsible for the delay or damages caused by the Agency's provision of the equipment. The Agency's provision of any equipment pursuant to this section shall not limit the Contractor's obligation to provide vehicles in compliance with all Contract specifications. Nor shall Agency's provision of any equipment indicate acceptance of any vehicle in whole or in part.

Warranty administration and enforcement for Agency-furnished equipment are the responsibility of the Agency, unless the parties agree to transfer warranty responsibility to the Contractor.

SP 13. Agency-Specific Provisions (Reserved)

Exhibit D Warranty

WR 1. Basic Warranty Provisions

WR 1.1 Warranty Requirements

WR 1.1.1 Contractor Warranty

The Contractor guarantees and warranties that all labor performed, and Materials furnished shall meet the following requirements:

1. Conform to the Technical Specifications and other requirements of the Contract Documents;
2. Fulfill their design function and be fit for both their ordinary and intended purposes;
3. Be free of all patents;
4. Be free from all latent defects;
5. Perform satisfactorily; and
6. Be of the quality specified in the Contract Documents, or if no quality is specified in the Contract Documents, be of the best grade and in conformance with the Contractor Submittals reviewed and accepted by the Agency.

If the Agency detects a defect with respect to any LRV within the applicable warranty period, the Agency will notify the Contractor within a reasonable time after detection. Within seven calendar days of notification, the Contractor's Project Manager and the Agency's PM will meet to determine the most appropriate course for the corrective Work and the exact scope of the corrective Work to be performed under the warranty. The Contractor shall redesign, repair, or replace the defect or malfunction in a manner satisfactory to the Agency's PM as soon as reasonably possible. The Contractor shall also perform such tests as the Agency may require to verify that such redesign, repair, or replacement complies with the requirements of the Contract Documents. In addition to other warranties that may be in effect, the Contractor warrants the redesigned, repaired, or replaced Work for a period of one year after the acceptance of the completed corrective Work by the Agency. All costs incidental to such corrective Work will be borne by the Contractor.

To the extent practicable, the Agency will allow the Contractor or its designated representative to perform the repair work. All repair work must be performed at a vehicle maintenance facility designated by the Agency. At its discretion, the Agency may perform warranty Work if the Agency determines the need to do so based on transit needs or other requirements. Any work so performed by the Agency must be reimbursed by the Contractor, including the cost of any force account labor supplied by the Agency. If the Agency performs the warranty-covered repairs, it may correct or repair the defect and any related defects utilizing parts supplied by the Contractor. At its discretion, the Agency may also use parts available from the Agency's stock-on-hand if deemed in the Agency's best interest. Reports of all repairs performed by the Agency and covered by the warranty must be submitted to the Contractor for reimbursement and replacement of parts on a periodic basis determined by the Agency.

The Contractor shall obtain all Subcontractors', Suppliers', or other sub-contractors' warranties in the name of the Agency and shall deliver the same to the Agency; provided, however, that the delivery of such Subcontractors', Suppliers', or other sub-manufacturer' warranties will in no respect relieve the Contractor of its obligations under the warranty provisions listed in Section 7. Unless expressly waived in writing by the Agency's PM, no Subcontractors', Suppliers', or other sub-manufacturers' warranty will expire prior to the date of expiration of the warranty provided by the Contractor for such item under the Contract Documents. Nor will any Subcontractors', Suppliers', or other sub-manufacturers' warranty contain terms substantially different than as required under this Section 7. The Agency, by accepting the Subcontractors', Suppliers', or other sub-manufacturers' warranties provided by the Contractor, in no respect waives any rights against the Contractor and, should there be a failure of the applicable Subcontractor, Supplier, or sub-manufacturer to honor the guarantee or warranty, the Agency may, in its discretion, enforce any such rights against the Contractor.

The Agency will not be required to perform unusual or extraordinary maintenance or overhauls to keep the warranties in effect. The Agency will not be required to purchase spare parts or other replacement Materials from a sole source if such Materials are otherwise available from equal or superior sources.

Nothing in the preceding provisions intends or implies that the Contractor shall be required to warranty items that do not perform satisfactorily because of abuse or lack of routine maintenance by the Agency or from vandalism or accidents. However, failures resulting from want of routine maintenance which, in turn, result from a want of training, technical support, parts delivery, manuals, catalogues and schemata, Special Tools, and other product support required and requested from the Contractor, will be the responsibility of the Contractor and must be eligible for repair under the provisions of the warranty.

Warranties in this document are in addition to any statutory remedies or warranties imposed on the Contractor. Consistent with this requirement, the Contractor warrants and guarantees to the original procuring Agency each complete LRV and specific subsystems and components as follows.

WR 1.1.2 General Warranty

The complete LRV shall be warranted to be free from Defects and Related Defects for two years unless the longer warranty period is specified elsewhere in this document. The warranty period with respect to each LRV shall begin with Conditional Acceptance except for the components, systems, subsystems, major assemblies, subassemblies, products, parts, apparatus, articles, other materials with the open items on the vehicle, and open items identified during the Conditional Acceptance inspection that require corrective action, or for which the Fleet Defects have been identified, the warranty period on such items will not commence until the Final Acceptance or at the remedy of the defect, whichever comes later. The Contractor's warranties and guarantees will apply regardless of any lesser period of warranty provided by the Contractor of Materials.

Any Conditional Acceptance for revenue service does not relieve the Contractor of the liability to correct Defects as required by the Contract. The warranty is based on regular operation of the LRV under the operating conditions prevailing in the procuring Agency's locale.

WR 1.1.3 Carbody Structure

The carbody structure as defined in TS 3, Carbody, is warranted to be free from Defects and Related Defects for five years.

WR 1.1.4 Major Subsystems

The following major subsystems shall be warranted to be free from Defects and Related Defects for the period shown below and all others are covered by the General Warranty provision:

- Truck structural parts (frame and bolster): five years
- Axles: five years
- Drive train (including traction motors, gear box and high- and low-speed couplings): five years

WR 1.1.5 Extension of Warranty

If, during the warranty period, repairs or modifications on any LRV are made necessary by defective design, materials or workmanship, written notice must be given to the Contractor. If repairs are not completed within 10 days of the notice, the warranty period will be suspended until such time that the repairs are fully completed and the warranty will be extended for that component on a day-for-day basis. If the repairs are not completed within 60 days, resulting in the LRV being unavailable for revenue

service, liquidated damages will commence in accordance with SP 3.3.2, Liquidated Damages: Warranty, and will accrue on a day-for-day basis starting at Day 61 that the LRV is unavailable.

WR 1.2 Voiding of Warranty

The warranty shall not apply to the failure of any part or component of the LRV that directly results from misuse, negligence, accident or repairs not conducted in accordance with the Contractor-provided maintenance manuals and with workmanship performed by adequately trained personnel in accordance with recognized standards of the industry. The warranty also shall be void if the Agency fails to conduct normal inspections and scheduled preventive maintenance procedures as recommended in the Contractor's maintenance manuals and if that omission caused the part or component failure. The Agency shall maintain documentation, auditable by the Contractor, verifying service activities in conformance with the Contractor's maintenance manuals.

WR 1.3 Exceptions and Additions to Warranty

The warranty shall not apply to the following items:

- Scheduled maintenance items;
- Items furnished by the Agency; and
- Interior and exterior finishes, hoses, fittings and fabric due to normal wear and tear.

WR 1.3.1 Pass-Through Warranty (Reserved)

WR 1.3.2 Superior Warranty

The Contractor shall pass on to the Agency any warranty offered by a Supplier that is superior to that required herein. The Contractor shall provide a list to the Agency noting the conditions and limitations of the superior warranty not later than the start of production. The Contractor shall not be required to administer the superior warranty except through mutual agreement between the parties.

WR 1.3.3 Extended Warranty

The Agency requires the following subsystems to be warranted to be free from Defects and Related Defects for the number of years specified below:

- As listed in WR 1.1.3 Carbody Structure
- As listed in WR 1.1.4 Major Subsystems

WR 1.4 Fleet Defects

WR 1.4.1 Occurrence and Remedy

A Fleet Defect is defined as cumulative failures of ten (10) percent or more, of the same component, system, subsystem, major assembly, subassembly, product, part, apparatus, article, or other Material in the same or similar applications where such items are covered by warranty. The 100% of such item identified under Fleet Defects, including those with expired warranty, will be deemed to require an approved redesign, replacement, or adjustment under this warranty. A Fleet Defect shall apply only to the warranty period in WR 1.1.2, General Warranty, WR 1.1.3, Carbody Structure, WR 1.1.4, Major Subsystems, and WR 1.1.5, Extension of Warranty. When a Fleet Defect is declared, the remaining warranty on that component stops. The warranty period does not restart until the Fleet Defect is corrected.

For the purpose of Fleet Defects, each option order shall be treated as a separate LRV fleet. In addition, should there be a change in a major component within either the base order or an option order, the LRVs containing the new major component shall become a separate LRV fleet for the purposes of Fleet Defects.

The Contractor shall correct a Fleet Defect under the warranty provisions defined in WR 2, Repair Procedures. After correcting the Defect, the Agency and the Contractor shall mutually agree to and the Contractor shall promptly undertake and complete a Work program reasonably designed to prevent the occurrence of the same Defect in all other LRVs including those with expired warranty, and spare parts purchased under the Contract. Where the specific Defect can be solely attributed to particular identifiable part(s), the Work program shall include redesign and/or replacement of only the defectively designed and/or manufactured part(s). In all other cases, the Work program shall include inspection and/or correction of all of the LRVs in the fleet via a mutually agreed-to arrangement. Defects classified as Fleet Defects shall be cured only by a Field Modification Instruction (FMI) approved by the Agency's PM. The FMI program must be organized to maximize configuration control, quality, safety, and speed of completion. The FMI program must also ensure that sufficient industrial engineering and Materials planning is available for each and every FMI to minimize downtime of the LRVs. The components, systems, subsystems, major assemblies, subassemblies, products, parts, apparatuses, articles, or other Materials affected by the FMI must have their warranty extended by one year from the date of completion of the FMI Work, or until the expiration of the previously effective warranty period, whichever is longer. Spare parts and Materials must be included in any FMI. A Fleet Defect may be declared by the Agency in the event of a safety-critical defect on as few as one LRV.

WR 1.5 Warranty of Spare Parts

For any spare parts delivered to the Agency in accordance with the Contract, the Contractor warrants the spare parts to be free of defects in material and workmanship for 12 months from acceptance of the spare part. In the event of defect or failure of the spare part, the Contractor shall make and implement any modifications, repairs, adjustments and/or replacements determined to be necessary by the Contractor to correct the defective part. In the event of such modifications, repairs, adjustments and/or replacements of a part by the Contractor only, the remaining warranty period shall apply.

WR 2. Repair Procedures

WR 2.1 Repair Performance

The Contractor is responsible for all warranty-covered repair Work. Under normal circumstances, the Agency will allow the Contractor or its designated representative to perform such Work. Contractor may waive its right to make repairs and allow the Agency to complete the repairs. Such Work shall be reimbursed by the Contractor.

WR 2.2 Repairs by the Contractor

If the Agency detects a Defect within the warranty periods, it shall, within five (5) days, notify the Contractor's designated representative. The Contractor or its designated representative shall, if requested, begin Work on warranty-covered repairs within five days after receiving notification of a Defect from the Agency. The Agency shall make the LRV available to the Contractor to complete repairs. If the Contractor fails or refuses to initiate the repairs within five (5) working days of the Agency's notice of rejection, The Agency may elect to perform the repairs during the warranty period. Any repairs conducted by the Agency or designees without Contractor's express approval or prior to expiration of the deadlines for commencement or completion of repairs shall be considered unauthorized work and may operate to void the warranty on any affected parts, cars, or trainsets. Any Contractor requirements regarding repairs in this section made by the Agency or its designee are subject to this understanding. Contractor will only reimburse the Agency for labor on repairs that are the obligation of Contractor to perform. The Contractor shall provide at its own expense all spare parts and tools required to complete warranty repairs.

WR 2.3 Repairs by the Agency

WR 2.3.1 Parts Used

If the Agency performs the warranty-covered repairs, it shall correct or repair the Defect and any Related Defects utilizing parts supplied by the Contractor specifically for this repair. At its discretion, the Agency may use Contractor-specified parts available from its own stock if deemed in its best interests.

WR 2.3.2 Contractor-Supplied Parts

The Agency may require that the Contractor supply parts for warranty-covered repairs being performed by the Agency. Those parts may be remanufactured but shall have the same form, fit, function and warranty. The parts shall be shipped prepaid to the Agency from any source selected by the Contractor within ten (10) days of receipt of the request for said parts and shall not be subject to an Agency handling charge.

WR 2.3.3 Defective Component Return

The Contractor may request that parts covered by the warranty be returned to the manufacturing plant. The freight costs for this action shall be paid by the Contractor. Materials should be returned in accordance with the procedures outlined in WR 2.4.1, Warranty Processing Procedures.

WR 2.3.4 Failure Analysis

The Contractor shall provide a failure analysis of Fleet Defect- or safety-related parts, or major components, removed from LRVs under the terms of the warranty, that could affect fleet operation. Such reports shall be delivered within thirty (30) days of the receipt of failed parts.

WR 2.3.5 Reimbursement for Labor and Other Related Costs

The Agency shall be reimbursed by the Contractor for labor. The amount shall be determined by the Agency for a qualified mechanic at a wage rate of \$104.84 per hour, which includes fringe benefits and overhead adjusted for the Agency's most recently published rate in effect at the time the Work is performed, plus the cost of retrieving the LRV if such action was necessary. These wage and fringe benefit rates shall not exceed the rates in effect in the Agency's maintenance facility at the time the Defect correction is made.

WR 2.3.6 Reimbursement for Part

The Agency shall be reimbursed by the Contractor for defective parts and for parts that must be replaced to correct the Defect. The reimbursement shall be at the current price at the time of repair and shall include taxes where applicable, plus fifteen (15) percent handling costs. Handling costs shall not be paid if part is supplied by Contractor and shipped to Agency.

WR 2.3.7 Reimbursement Requirements

The Contractor shall respond to the Agency's request for warranty reimbursement with an accept/reject decision including necessary failure analysis no later than thirty (30) days after the Agency submits the request and defective part(s), when requested. Reimbursement for all accepted requests shall occur no later than sixty (60) days from the date of acceptance of a valid request. The Agency may dispute rejected requests or requests for which the Contractor did not reimburse the full amount. The parties agree to review disputed warranty requests during the following ninety (90) day period to reach an equitable decision to permit the disputed request to be resolved and closed. The parties also agree to review all requests at least once every ninety (90) days throughout the entire warranty period to ensure that open requests are being tracked and properly dispositioned.

WR 2.4 Warranty After Replacement/Repairs

If any component, unit or subsystem is repaired, rebuilt or replaced by the Contractor, or by the Agency with the concurrence of the Contractor, then the component, unit or subsystem shall have the longer of a one-time one year additional warranty from the replacement or repair of the component, unit or subsystem, or the remainder of the unexpired warranty period of the original item. Repairs shall not be warranted if the Contractor-provided or

authorized parts are not used for the repair, unless the Contractor has failed to respond within five (5) days, in accordance with WR 2.2, Repairs by the Contractor.

If an item is declared to be a Fleet Defect, then the warranty stops with the declaration of the Fleet Defect. Once the Fleet Defect is corrected, the item(s) shall have the longer of one year or the remaining time of the original warranty. This remaining warranty period shall begin on the repair/replacement date for corrected items on each LRV if the repairs are completed by the Contractor or on the date the Contractor provides all parts to the Agency.

WR 2.4.1 Warranty Processing Procedures

The following list represents requirements by the Contractor to the Agency for processing requests for warranty reimbursement. One failure per LRV per request is allowed.

- LRV vehicle number;
- Section of car (A, B or C section);
- Vehicle mileage at time of repair;
- Date of failure/repair;
- Acceptance/in-service date;
- Repair order number;
- Contractor part number and description;
- Component serial number ;
- Description of failure; and
- All costs associated with each failure/repair (invoices may be required for third-party costs):
- LRV retrieval;
- Road calls;
- Labor;
- Materials;
- Rented equipment;
- Parts;
- Handling; and
- Troubleshooting time.

WR 2.5 Forms

The Agency's forms will be accepted by the Contractor if all of the above information is included. Electronic submittal may be used if available between the Contractor and Agency.

WR 2.6 Return of Parts

When returning defective parts to the Contractor, the Agency shall tag each part with the following:

- LRV vehicle number;
- Section of car (A, B or C section);
- Date of failure/repair;
- Repair order number;
- Return material authorization number (RMA);
- Part number; and
- Part serial number (if available).

WR 2.7 Timeframe

Each warranty reimbursement request must be submitted no more than thirty (30) days from the date of failure and/or repair, whichever is later. All defective parts must be returned to the Contractor, when requested, not more than 45 days from date of repair.

WR 2.8 Warranty Reimbursement

Reimbursements are to be transmitted to the following address:

FLHQ

669 West 200 South,

Salt Lake City, UT 84101