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SECTION 1. INTRODUCTION

1.1 CENTRAL FLORIDA RAIL CORRIDOR AND SUNRAIL OVERVIEW

1.1.1 Agency Description

The Florida Department of Transportation (Department) in cooperation with the Federal Transit Administration (FTA), Central Florida Regional Transportation Authority (LYNX), MetroPlan Orlando (MPO), the City of Orlando, Volusia, Seminole, Orange, and Osceola Counties are working in concert for the Central Florida Commuter Rail Transit (CFCRT) Project (also known as SunRail) to implement a commuter rail transit service in the four-county corridor that extends north and south of Orlando, Florida.

The Department, Volusia, Seminole, Orange, and Osceola County Governments, and the City of Orlando have entered into Interlocal Agreements for this project. The purpose of these Interlocal Agreements is to establish the ownership, financing and management structure for the commuter rail service on an interim basis and to set the foundation for a permanent ownership and management structure. The Signatory Member Agencies to these Interlocal Agreements have agreed to plan, develop, and, with assistance from the federal government, and implement a commuter rail transit system that will serve the Central Florida area, including Volusia County, Seminole County, Orange County, Osceola County and the City of Orlando.

The Department purchased the 61-mile CSXT A-Line railway ROW from CSXT on November 3, 2011. The Department is the owner and responsible for maintenance along the entire railroad corridor. The Project Corridor has received the Federal Railroad Administration (FRA) alpha designation Central Florida Rail Corridor (CFRC). The Department, as a railroad operator, is subject to review by the FRA. The Central Florida community selected SunRail as the name for the new passenger rail service that will operate on this corridor.

1.1.2 Description of the System

The CFCRT project uses an existing and active Class IV freight A-Line railway right-of-way (ROW) for rail operations and property adjacent to the ROW for station site parking, park-and-ride and bus circulation. The new SunRail commuter rail service will be implemented in three phases.

Phase 1, known as the Initial Operating Segment (IOS), is the 32 mile long corridor from DeBary Station at Ft. Florida Road in Volusia County to Sand Lake Road Station in Orange County with a total of 12 stations. The IOS has approximately 18 miles of additional 2nd track being added to the existing 11 miles of double track. The Revenue Services Date for first phase is projected to be May 2014.

Phase 2 South is the corridor from Sand Lake Road to Poinciana Station in Osceola County. The second phase will complete the Locally Preferred Alternative (LPA) such that the north terminus is the DeBary Station in Volusia County and the south terminus is Poinciana Station in Osceola County. The southern extension adds a total 17.2 miles of proposed track while adding 13.5 miles of new 2nd track to the existing 5 miles of double track, bringing the total miles of

track for the LPA to approximately 50 miles. Four stations will be added in the second phase bringing the total number of stations for the LPA to 16. The LPA is proposed to be operational in 2016.

The Full Build of the Project includes a third phase. Phase 2 North is a twelve mile extension north of DeBary Station to DeLand Amtrak Station in DeLand. This additional station will complete the SunRail service improvements from a northern terminus at the DeLand Amtrak station in Volusia County to a southern terminus at Poinciana Station in Osceola County, with a total of seventeen (17) stations.

The Phase 1 (IOS) commuter rail station stops will be at DeBary, Sanford, Lake Mary, Longwood, Altamonte Springs, Maitland, Winter Park, Florida Hospital Health Village, LYNX Central Station, Church Street, Orlando Amtrak and Sand Lake Road. Stations at Meadow Woods, Osceola Parkway, Kissimmee Amtrak, and Poinciana will be added in the Phase 2 South. The DeLand Amtrak station will be added in the Phase 2 North extension.

Maximum operating speeds in the corridor will be 79 mph using Federal Railroad Administration (FRA) compliant diesel locomotives and coaches/cabcars to operate weekday service at 30-minute peak period and 120-minute off-peak frequencies. Feeder bus service will be provided through a combination of new and modified existing bus routes operated by the local transit providers; County of Volusia dba Votran in Volusia County and Central Florida Regional Transportation Authority dba LYNX in Orange, Osceola and Seminole Counties.

1.1.3 O&M Firm Responsibilities

The O&M Firm shall comply with all applicable federal, state, local industry and Department requirements, regulations, and guidelines.

1.1.3.1 Vehicle Maintenance / Vehicle Maintenance Program

The O&M Firm will be responsible for all maintenance and servicing of revenue vehicles including: preventive maintenance, corrective maintenance, cleaning and servicing, and major campaigns. Car and locomotive daily service and inspections are the responsibility of the O&M Firm. Performance of Corrective and Preventive Maintenance are split between the O&M Firm and Other Contractors as specified in Section 4.

1.1.3.2 Train Service

The O&M Firm will be directly responsible for providing sufficient, qualified personnel for the performance of train services including, but not limited to, SunRail commuter service and yard service. Each SunRail train crew will consist of an FRA-qualified Locomotive Engineer and an FRA-qualified Conductor. Upon reporting for duty and receiving assignment, each crew will board the train; walk through it to inspect for cleanliness, vandalism, or defects; and correct and report any noted deficiencies. Locomotive Engineers and Conductors also will perform pre-departure inspections and tests.

Following their preparation for revenue service, Locomotive Engineers will move the trains through the yard and onto the mainline according to instructions from the Operations Control

Center (OCC). The O&M Firm Train Dispatcher will be responsible for dispatching trains according to scheduled departure times.

At the end of their revenue service runs, trains will be taken to the Vehicle Storage and Maintenance Facility (VSMF) to be made ready for service the next morning. Locomotive Engineers will move and locate their trains according to instructions from OCC. After shutting down the locomotive, each Locomotive Engineer, Conductor or both will walk through to ensure that no passengers remain aboard and identify and document any defects in the passenger coaches and cab cars.

1.1.3.3 The Operations Control Center

The O&M Firm will be directly responsible for the staffing and functions of the Operations Control Center (OCC) located within the Vehicle Storage and Maintenance Facility (VSMF). The OCC will be staffed 24-hours a day, seven days a week with O&M Firm personnel. The Train Dispatcher will have responsibility for mainline operations from DeLand, MP A749.61 to Poinciana, MP A813.82, with other O&M Firm personnel having responsibility for operations within the yard and yard leads, monitoring of security/fire alarms, and communications with outside agencies (i.e., Police, Fire, and the Department).

The OCC will respond to emergencies as reported by the radio, telephone, alarm monitoring system, or other sources by directing transportation, engineering, safety and field personnel, and as specified in Section 2.8.2. When there is a disruption to the service, O&M Firm personnel will be responsible for implementing emergency procedures depending on the nature of the problem as defined by the applicable policy, procedure or direction from the Department's Chief Operating Officer (COO).

1.1.3.4 Infrastructure Maintenance

The O&M Firm will develop a Maintenance Standard Operating Procedures (SOP) Manual containing detailed instructions for performing all aspects of revenue vehicle maintenance, facilities and systems maintenance for review and acceptance by the Department. Maintenance SOPs will be prepared and updated by technical and training staff. Each different aspect of the Maintenance SOP Manual will apply to a specific topic of maintenance and will be compiled into a complete Maintenance SOP Manual separated into functional categories. Function specific SOPs will be provided to each craft for their individual tasks.

An Annual Mechanical Services Plan to establish a preventive maintenance system, personnel training requirements, and a plan for a capital cost replacement program for equipment nearing life expectancy. The Design Build Maintain Firm (DBM), during construction, and O&M Firm, at mobilization, will be responsible for the development of the maintenance management system, and that system's policies and procedures will be subject to Department oversight and approval. A maintenance management system with appropriate staffing levels for related disciplines and clear definitions for in-house or contracted functions will be developed as part of the overall maintenance strategy.

Basic maintenance will include routine preventive and corrective track, structures and communications maintenance functions and emergency repairs. The O&M Firm shall be responsible for major and specialized maintenance and replacement work performed on an irregular basis, such as rail grinding, major rail replacement, major construction projects, bridge inspection and replacement. Railroad maintenance equipment will be used and provided by the O&M Firm as part of the Scope of Work.

1.2 DEFINITIONS

For purposes of this Document:

“Agreement Year” means the twelve- month period starting on the O&M Firm Commencement Date and each succeeding year beginning on the anniversary of the Commencement date for the duration of the contract.

“Amtrak” means the National Railroad Passenger Corporation.

“Amtrak Operating Agreement” means the Agreement between National Railroad Passenger Corporation and the Florida Department of Transportation dated July 11, 2011.

“Bridge Tender” means the occupant of that position on the O&M Firm who controls railroad drawbridges over waterways to permit passage of vessels.

“Central Florida Operating and Management Agreement (CFOMA)” means the Central Florida Operating and Management Agreement between the State of Florida Department of Transportation and CSX Transportation, Inc. pertaining to the Central Florida Rail Corridor, a line of railroad between DeLand, Florida, MP A749.61 and Poinciana, Florida, MP A813.82 and related properties dated November 30, 2007, and amendments.

“Central Florida Rail Coordination Center (CFRCC)” means the communication center within the OCC that coordinates with the Train Dispatcher and initiates emergency response notifications, records information relevant to incidents and coordinates service recovery. Telephone number: 1-877-235-7245. The CFRCC operates on a 24/7 basis.

“Central Florida Rail Corridor (CFRC)” means the FRA alpha designation for the railroad corridor from MP A 749.61 to MP A813.82, including the railroad right-of-way, track, signals, structures contained herein.

“Chief Operating Officer (COO)” means the occupant of that position at the Department or designated by the Department, responsible for management and oversight of the Department’s railroad operations on the CFRC.

“Commencement Date” means the Revenue Services Date and the date upon which the Central Florida Operations and Maintenance Agreement (CFOMA) becomes effective.

“Computer Equipment” means the hardware, firmware, and all related devices, articles, components, peripherals, cabling, routers, switches, wireless communication devices, and incidentals that function together as a platform for operating the Rail Management Information System (RMIS).

“Computer Services” means the services necessary to develop, operate, manage, and maintain a fully operational RMIS, including without limitation the services and work outlined in Section 2.6 Information Systems Management.

“Data” means all records in any database, data record, or other information contained in the RMIS or used in the performance of Maintenance Services, all files generated by the Software and the Third Party Software, and any digital or hard copy reports or other outputs generated by records from any such database, or the results of queries of any such database, or the Software or Third Party Software.

“DBM Firm” means Design Build Maintain Firm selected by the Department for construction of Phase 1 of the CFCRT Project and providing Maintenance Services during the construction period of Phase 1.

“Department” see “The Department” below.

“Department Fiscal Year” means July 1 to June 30.

“Delay Reports” means the reports related to train delays described in Section 2.8, Incident Management and Notifications.

“Dispatcher”/ “Train Dispatcher” during the O&M Mobilization Period, means the Central Florida Dispatcher Desk as defined in the Transition Agreement between the State of Florida Department of Transportation and CSX Transportation, Inc. After the Commencement Date, means the O&M Firm personnel responsible for all train operations over the CFRC and controlling the movement of all Maintenance of Way equipment, and personnel on the CFRC corridor.

“Emergency” means an event that, in the sole discretion of the Department, involves or exposes the Department, O&M Firm Personnel, Freight Users, or the general public to the risk of service disruption, personal injury, property damage, liability for regulatory noncompliance, or environmental hazard.

“Environmental Services” means, without limitation, the operation, maintenance, and service of all Environmental Systems located throughout the Service Property; the maintenance of all environmental permits, certificates and licenses; the proper disposal of any waste or hazardous material; and all other services related to compliance with all applicable environmental laws and regulations, as further described in the Section 2.3, Maintenance of Way.

“Environmental Services Work Item” means any task included in the Section 16, Environmental Services.

“Environmental System” means any system or equipment on the Service Property that is operated or designed to improve environmental quality, or reduce the environmental impacts of O&M Services, including but not limited to underground and aboveground tank systems, oil/water separator systems, catch basins, onsite subsurface disposal systems, wastewater pretreatment facilities and wastewater reuse facilities.

“Emergency Work” means something that is done in addition to the requirements of this contract in response to an emergency. The O&M Firm will, generally, be entitled to charge for emergency work that consists of labor and materials not contemplated by or subsumed within the original O&M Agreement subject to prior written approval by the Department in an Emergency Work Order.

“Extra Work” means something that is done in addition to the requirements of the contract. The O&M Firm will, generally, be entitled to charge for extra work that consists of labor and materials not contemplated by or subsumed within the original O&M Agreement subject to prior written approval by the Department in a Supplemental Agreement.

“FCEN Operating Agreement” means the Operating Agreement between the State of Florida Department of Transportation, an agency of the State of Florida, and Florida Central Railroad Company, Inc., a Florida Corporation dated July 11, 2011.

“Hot Backup” means a standby train which shall be ready to provide revenue service or act as a rescue train, as needed.

“Information Management Plan” means the plan referred to in Section 2.6, Information Systems Management herein.

“Initial Joint Audit” means the audit of the Service Property and Support Inventory performed jointly by the Department and O&M Firm and required by this O&M Agreement.

“Local Government Partner” means the local jurisdictions that have partnered with the Department through Local Funding Agreements and Joint Use Agreements for the provision of various elements of the SunRail commuter rail service.

“Lump Sum Price” means the amount that Department agrees to pay the O&M Firm for the performance of O&M Services for the term of the Agreement. The Lump Sum Price shall not include compensation for Extra Work or Emergency Work, which shall be reimbursed separately according to other provisions of the O&M Agreement between the Department and the O&M Firm.

“Maintenance of Rolling Stock” means the day to day, light, and heavy maintenance of all vehicles, including locomotives, cabcars and coaches.

“Material Breach” means Substantial Failure in the performance of a contract, significant enough to release the aggrieved party from its obligation and accrues to it the right to sue for damages.

“Material Damage” means damage, other than normal wear and tear to Service Property or Support Inventory, excluding O&M Firm-owned or leased property or equipment which, in the aggregate for any occurrence, costs more than \$10,000 to repair or reconstruct or, if such damage is not repairable, the property that is damaged costs more than \$10,000 to replace or reconstruct.

“Mobilization Period” means the period beginning on the Notice to Proceed Date for Maintenance Mobilization and ending at the Revenue Services Date.

“Mobilization Services” means, without limitation and as more fully described in Section 2.2, Mobilization/Transition, all preparation for the commencement of O&M Services, including taking steps necessary to establish a seamless transition; preparing all operational plans required by the Department; developing or procuring and implementing the RMIS; hiring and training O&M Firm Personnel; developing procedures and internal guidelines; and transitioning equipment and facilities from the DBM Firm and dispatching services from CSXT.

“Non-revenue Vehicles” are those vehicles used by the O&M Firm to conduct the operations and maintenance services, excluding the Revenue Vehicles used for SunRail commuter service. All non-revenue vehicles shall be provided by the O&M Firm.

“Obsolete material” is inventory that is no longer readily, economically, and commonly available to the O&M Firm, is no longer in the catalog, is no longer a standard item supplied by an Original Equipment Manufacturer (OEM), or is made unnecessary by an action of the Department.

“O&M Firm” means the Firm, identified in the Standard Written Agreement as “Vendor”, selected by the Department to operate and maintain the CFRC and the SunRail commuter rail services.

“O&M Agreement” means the agreement between the Department and the O&M Firm.

“O&M Services” means Operating, Maintenance of Way, Rolling Stock, Environmental, Safety Management, Information Management, Administrative, and Financial Services related to and necessary for the performance of operating commuter rail service and maintaining the Department’s right-of-way, including without limitation the tasks described in this Scope of Services, and all other tasks, functions and responsibilities O&M Firm is obligated to perform under the O&M Agreement between the Department and the O&M Firm.

“On-Time Performance” has the meaning set forth in each non-Department railroad’s Operating Agreement with the Department for non-Department railroads operating on Department Service Property and as defined in Section 15 of this document for the SunRail commuter service.

“Operating Agreement” means an agreement between the Department and each non-Department railroad operating on the Service Property.

“Other Contractors” means any contractor hired by the Department other than O&M Firm, or Third Parties.

“Pre-revenue Operations” means a period of systems operations prior to the Revenue Services Date including normal and abnormal operating scenarios to refine operational schedules and procedures, emergency response procedures, and to familiarize train operators and supervisors with the new route and equipment and familiarize other O&M Personnel (dispatchers, maintenance of way, etc.) with the system and operational functions of the system.

“Rail Management Information System” (or “RMIS”) means the integrated network comprising the Computer Network, the Computer Services, the Computer Equipment, the Software, and additional hardware and software, all as described in Section 2.6, Information Systems Management , and including without limitation a reliable Internet based e-mail system, wireless communications devices, end-user computers, network servers, storage devices, backup devices, cabling, routers, switches, and incidentals that function together as a platform for the O&M Firm’s performance of the O&M Services.

“Replacement Services” means a substitute for all or any part of the O&M Services that the O&M Firm is prevented from performing by virtue of a force majeure event or fails or refuses to perform in breach of any provision of the O&M Agreement

“Revenue Vehicles” means all the locomotives, coaches, and cab cars operated in revenue service for the SunRail commuter rail service. All revenue vehicles shall be provided to the O&M Firm by the Department.

“Revenue Services Date” means the date that the Commuter Rail System, after having received all State and Federal approvals for operation, is placed in commuter service for fare paying passengers to ride. (Referred to as Revenue Operations Date in the CFCRT Phase 1 Full Funding Grant Agreement with FTA)

“Right-of-Way Assets” means without limitation railroad rights-of-way, track and structures, surface, subsurface, and aerial property (including utilities), bridges and related structures, and communication and signal systems, which may be added or deleted by the Department during the term of the O&M Agreement, owned or controlled by the Department and used by O&M Firm in providing O&M Services, as more specifically described in Section 2.3, Maintenance of Way.

“Rolling Stock” means all commuter rail vehicles, including locomotives, cab cars and coaches.

“Salvage material” is an item acquired by demolition of existing facilities or equipment and excess construction materials that is placed into inventory.

“Scrap material” is an item of inventory where the actual cost to repair or repair-and-return may exceed the economic cost to replace.

“Safety and Security Administrator” means the occupant of that position at the Department or designated by the Department, responsible for performing the duties of that position for the Department’s railroad operations.

“Safety and Security Manager” means the occupant of that position at the Department or designated by the Department, responsible for performing the duties of that position for the Department’s railroad operations.

“Service Delay” means any delay or combination of delays that result in a train arriving or departing any station platform late and is not considered on-time in accordance with the Operating Agreement with the Railroad operating the delayed train, which shall trigger the notification procedures detailed in Section 2.8 Incident Management and Notifications.

“Service Disruption” means a delay to one or more trains due to the following causes: emergencies, derailments, fires, fatalities, injuries, serious mechanical problems, or other disruptions that cause a significant impact on service.

“Service Equipment” means the locomotives, coaches and cabcars that are owned or controlled by the Department and made available for use by O&M Firm in providing the O&M Services, as more specifically described in Section 4, Maintenance of Vehicles.

“Service Property” means the Right-of-Way Assets (pertaining to the Central Florida Rail Corridor, a line of railroad between DeLand, Florida, MP A749.61 and Poinciana, Florida, MP A813.82), tracks, signals, stations and platforms, yards, bridge, structures, buildings and offices, parking lots, and other land and facilities, including improvements thereto, that are owned, controlled, or used by the Department or O&M Firm in providing the O&M Services, as more specifically described in Section 2.3, Maintenance of Way.

“Service Schedules” means the Department and Amtrak’s schedules for the arrival and departure times of SunRail and Amtrak rail trains, as displayed in the public timetables.

“Shadow Mode” means the period of pre-revenue operations testing of the CFRC Computer Aided Dispatch system (CAD) in parallel with the CSXT Dispatch System with the OCC CAD System displaying all CFRC track circuit occupancies, switch positions, signal status, and the track circuit information north and south of the CFRC on CSXT track. During the shadow mode period, it shall not be possible for Department or the O&M Firm to control any equipment under the control of the CSXT Central Florida Dispatcher Desk.

“Software” means all custom software and all Third Party Software including without limitation source code, data files and System Documentation necessary to operate, manage, maintain and, if necessary, regenerate, the integrated RMIS.

“Standard Operating Procedures” means the established procedure to be followed in carrying out a given operation or in a given situation as pertains to the provision of O&M Services.

“State of Good Repair” means safe, fully functional, not in need of repair, and meeting or exceeding the minimum threshold for Department standards or other applicable regulations or standards, as detailed in this Scope of Services.

“Support Inventory” means spare parts, consumables, removed and rebuilt spare parts, capital spares, manuals, forms, keys and other property and materials that may be used or consumed in the provision of the O&M Services.

“Support Property” means equipment, tools, machines (including the RMIS, computer equipment, and software), non-revenue vehicles (including automobiles, work equipment), and other equipment related to the maintenance of the Service Property or otherwise used in the provision of the O&M Services.

“Surplus material” is inventory for which there is more than a five (5) year supply.

“System Documentation” means user documentation and user manuals related to the RMIS.

“Third Party” means any individual or entity other than the Department, a Department authorized representative, O&M Firm or Other Contractor.

“Third Party Software” means commercial, off-the-shelf software that is part of the integrated RMIS.

“The Department” means Florida Department of Transportation (FDOT) or its designated representatives, as applicable.

“Transition Agreement” means the Agreement between the State of Florida Department of Transportation and CSX Transportation, Inc pertaining to the Central Florida Rail Corridor, a line of railroad between DeLand, Florida, MP A749.61 and Poinciana, Florida, MP A813.82 and related properties dated November 30, 2007 and all amendments.

“Transition Services” means all services necessary to ensure a seamless transition between O&M Firm and a successor O&M Firm.

“VSMF” means Vehicle Storage and Maintenance Facility at Rand Yard in Sanford, Florida.

1.3 ACRONYMS

AAR - Association of American Railroads

ADA - Americans with Disabilities Act of 1990, 42 U.S.C. §12101 et seq

ANSI - American National Standards Institute

APTA - American Public Transportation Association

AREMA- American Railway Engineering and Maintenance of Way Association

ASME - American Society of Mechanical Engineers

ASTM - American Society for Testing and Materials

ATCS - Advanced Train Control System

AWI - Agency for Workforce Innovation

BSP - Basic Service Plan

BTNA - Bombardier Transportation North America

C&S - Communications and Signal

CCTV - Closed-Circuit Television
CEI - Construction Engineering and Inspection
CFCRT - Central Florida Commuter Rail Transit
CFOMA - Central Florida Operations and Maintenance Agreement
CFR - Code of Federal Regulations
CFRC - Central Florida Rail Corridor
CFRCC - Central Florida Rail Coordination Center
CFRTA - Central Florida Regional Transportation Authority
COO - Chief Operating Officer
COOP - Continuity of Operation Plan
COT&S - Cleaned, Oiled, Tested & Stenciled
CP - Control Point
CSA - Customer Service Agent
CSXT - CSX Transportation, Inc.
CTC- Centralized Traffic Control
CTVM - Cashless Ticket Vending Machine
CWR - Continuous Welded Rail
DBE - Disadvantaged Business Enterprise
DBM - Design-Build-Maintain Firm
DHCP - Domain Host Control Protocol
DHS - Department of Homeland Security
DOT - United States Department of Transportation
DSLE – Designated Supervisor of Locomotive Engineers
ECN - Engineering Change Notice
EIC - Employee in Charge
EMS - Emergency Medical Services
EOC - Emergency Operations Center
EPA - United States Environmental Protection Agency
ERG - Emergency Response Guidebook
ERP - Emergency Response Plan
FBA – Full Build Alternative
FCC - Federal Communications Commission
FCEN - Florida Central Railroad
FDEP - Florida Department of Environmental Protection
FDOT - Florida Department of Transportation
FELA - Federal Employers' Liability Act
FEMA- Federal Emergency Management Agency

FIFO - First-in, First-out
FPSC - Florida Public Service Commission
FRA - Federal Railroad Administration
FSTVM - Full-Service Ticket Vending Machine
FTA - Federal Transit Administration
FY - Fiscal Year
G&A - General and Administrative Overhead Costs
GAAP - Generally Accepted Accounting Principles
GPS - Global Positioning System
HAZMAT - Hazardous Material
HMSSHASP - Hazardous Materials Site Specific Health and Safety Plan
HVAC - Heating, Ventilation, and Air Conditioning
ICS - Incident Command System
IOS - Initial Operating Segment
IT - Information Technology
LAN - Local Area Network
LPA - Locally Preferred Alternative
MOW - Maintenance of Way
MOWSP – Maintenance of Way Services Plan
MP - Milepost
MPI - MotivePower, Inc.
MPO - Metropolitan Planning Organization
MSDS - Material Safety Data Sheet
MUTCD - Manual on Uniform Traffic Control Devices
NIMS - National Incident Management System
NEPA - National Environmental Policy Act
NFPA - National Fire Protection Association
NOI - Notice of Intent
NTD – National Transit Database
NTP – Notice to Proceed
NTSB - National Transportation Safety Board
OCC - Operations Control Center
O&M - Operations and Maintenance
OEM - Original Equipment Manufacturer
OHA - Operations and Support Hazard Analysis
OSHA - Occupational Safety and Health Administration
OTM - Other Track Material

OTP - On-time Performance
OWA - Outlook Web Access
PA - Public Address
PDA - Personal Digital Assistant
PNA - Passenger Needing Assistance
POP - Proof-of-Payment
PRESS - Passenger Rail Equipment Safety Standards
PTC - Positive Train Control
PTEPP - Passenger Train Emergency Preparedness Plan
PWD - Passenger with Disability
QAPP - Quality Assurance Project Plan
RAP – Rail Activation Plan
RFMP – Rail Fleet Management Plan
RMIS - Rail Management Information System
RSC – Rail Services Committee
RSP – Rail Services Plan
ROW- Right-of-Way
RWP - Roadway Worker Protection
SAE - Society of Automotive Engineers
SAPR - Supplemental Agreement Proposal Request
SCADA - Supervisory Control and Data Acquisition
SEMS - Standardized Emergency Management System
SEPP - Security Emergency Preparedness Plan
SIP - Project Safety Integration Plan
SIT - System Integration Tests
SITP - Systems Integration Testing Plan
SOGR - State of Good Repair
SOP - Standard Operating Procedure
SPCC - Spill Prevention Control and Countermeasures Plan
SSCC - Safety and Security Certification Committee
SSO - Safety and Security Oversight
SSCP - Safety and Security Certification Plan
SSMP - Safety and Security Management Plan
SSPP - System Safety Program Plan
SSP - System Security Plan
SWPPP - Storm Water Pollution Prevention Plan
TCP/IP - Transmission Control Protocol/Internet Protocol

TMOP – Transportation and Maintenance Operations Plan

TSA - Transportation Security Administration

T&E - Train and Engine Crews

TVM -Ticket Vending Machine

UPS - Uninterruptible Power Supply

USDOT - United States Department of Transportation

VMS - Variable Message Sign

VSMF - Vehicle Storage and Maintenance Facility

SECTION 2. OPERATIONS AND MAINTENANCE SERVICES

2.1 OVERVIEW

The O&M Firm shall be responsible for providing and managing all of the services, functions, facilities, and associated resources required for the operation and maintenance of the CFRC and the SunRail commuter service, unless otherwise provided by the Department, including, without limitation:

- General management
- Train crewing
- Train movement control and dispatching
- Maintenance of passenger coaches, cab cars and locomotives
- Maintenance and improvement of track, structures, and communications
- Maintenance and improvement of station platforms, with the exception of fare collection equipment (Potential Additional Service), including any structure, device or system located on the station platform, CCTV devices and systems, communication systems, system information, water fountains and critical lighting
- Maintenance of ticket vending machines, ticket validators and handheld validators (Potential Additional Service)
- Maintenance of VSMF and other facilities
- Materials management
- Safety program management, including System Safety Program Plan (SSPP), System Security Plan (SPP), Security Emergency Preparedness Plan (SEPP) and Passenger Train Emergency Preparedness Plan (PTEPP) implementation and environmental services
- Providing training, testing and rules qualifications for Department designated staff (assume 10 Department designated staff to be included in scheduled classes for the purposes of the proposal – no special class(es) will be provided for Department personnel)
- Verification of proof of current Safety Training as required by the Department or providing required safety training to Third Parties who are approved by the Department to perform work on the Service Property. The O&M Firm shall be compensated by such Third Parties for required safety training.
- Coordinating access to the CFRC; see the SunRail website for more information about necessary permits and safety credentials needed to access the corridor:
- <http://www.sunrail.com/welcome/page/useofthecorridor>
- Employee training and certification
- Customer Service of the highest quality, including services to Passengers Needing Assistance (PNAs) in accordance with Americans with Disabilities Act (ADA) regulations and established Department policies; service announcements via station and onboard public address and visual messaging; and posting and stocking of public information
- Regulatory compliance, reports and notifications
- Financial accounting, reporting and control

All Support Inventory purchased with Department funds shall become the property of the Department.

The O&M Firm shall not sublet, assign or transfer any work under this Agreement other than the subcontractors specified in the proposal, bid, and/or Agreement without the written consent of the Department. The O&M Firm shall remain solely responsible for any work for which it employs subcontractors, and the Department shall have no obligation to them whatsoever.

2.1.1 Required Plans and Programs

The O&M Firm will be required to create and implement the following plans and programs.

Program or Plan Name	Due Dates	Event	Update
Rail Activation Plan (Section 2.2.6.3)	30 days	After Notice to Proceed for Maintenance Mobilization	N/A
Rail Services Plan (Section 2.2.6.4)	30 days	After Notice to Proceed for Maintenance Mobilization	N/A
Mobilization Services Plan (Section 2.2.6.1)	15 days	After Notice to Proceed for Maintenance Mobilization	None
Information Management Plan (Section 2.6.1)	60 days	After Notice to Proceed for Maintenance Mobilization Plan	None
Emergency Spill Response/Spill Prevention Control and Countermeasures Plan (SPCC)(Section 16.1, 16.2.2 and 16.5)	90 days	Before Revenue Services Date	Annually
System Safety Program Plan (Section 2.7)	No later than 180 Days	Before Revenue Services Date	Annually plus tri-annual audit
System Security Program (Section 2.7)	No later than 180 Days	Before Revenue Services Date	Annually plus tri-annual audit
Safety and Security Emergency Preparedness Plan (SEPP) (Section 2.7)	No later than 180 Days	Before Revenue Services Date	Annually plus tri-annual audit
Passenger Train Emergency Preparedness Plan (PTEPP) (Section 2.7)	No later than 180 Days	Before Revenue Services Date	Within 7 days of submitting changes to FRA
Operations and Support Hazard (OHA) Analysis (Section 2.7.12)	No later than 90 days	Before Revenue Services Date	Annually
Mechanical Services Plan (Section 4.3)	120 days	After Notice to Proceed	Annually
Maintenance of Way Services Plan	90 days	After Notice to Proceed for Maintenance Mobilization	Annually

Program or Plan Name	Due Dates	Event	Update
Work Stoppage Contingency Plan (Section 9)	120	After Notice to Proceed for Maintenance Mobilization	Annually
Training Program Plan (Section 10)	30 days	After Notice to Proceed for Maintenance Mobilization	Annually
Environmental Compliance Program for Operations (Section 16.1)	No later than 90 days	Before Revenue Services Date	Annually
Hazardous Materials Site Specific Health and Safety Plan (HMSSHASP) (Section 16.6 and SSPP Section 2.7)	No later than 30 days	Before Revenue Services Date	Annually

2.1.2 DBE Requirements

2.1.2.1 Equal Opportunity Reporting System

The O&M Firm is required to report monthly, through the Department's Equal Opportunity Reporting System on the Internet at <http://www.dot.state.fl.us/equalopportunityoffice/>, actual payments, minority status, and the work type of all subcontractors and suppliers. All DBE payments must be reported whether or not the prime initially planned to utilize the company. Each month the O&M Firm must report actual payments to all DBE subcontractors and suppliers. Payments to all non-DBE subcontractors will need to be reported either monthly or annually. Payments to non-DBE suppliers need not be reported at all. In order for the race neutral DBE Program to be successful, cooperation is imperative.

2.1.2.2 DBE Affirmative Action Plan

A DBE Affirmative Action Plan that was approved and on file with the Equal Opportunity Office prior to award of the contract for the O&M Firm shall be updated and resubmitted every three years. No Contract will be awarded until the Department approves the Plan.

2.2 MOBILIZATION SERVICES

During the O&M Firm mobilization period, the O&M Firm will coordinate, as required by the Department, with CSXT, Florida Central Railroad (FCEN) and Amtrak project representatives to ensure that all operations and work are accomplished safely and with minimum disruption to existing train service during the construction period, and to coordinate during SunRail start-up, operations and maintenance activities.

2.2.1 Mobilization Period

The Mobilization Period shall begin on the Notice to Proceed Date for Maintenance Mobilization and end on the Revenue Services Date. The Revenue Services Date may occur as early as nine months after Notice to Proceed for Maintenance Mobilization.

2.2.2 Training

Before system operation, O&M Firm personnel staffing and training will be implemented as part of the transition from construction to operations, and maintenance tooling and spares will be procured to support safe and reliable system operation. The O&M Firm will work with the Department representatives to establish detailed training schedules compatible with system test program schedules. During all phases of system testing the O&M Firm personnel will have opportunities for participation in on-site orientation, witnessing of tests, and hands-on operation of equipment.

2.2.2.1 CSXT Training

The following CSXT training shall be completed during the Mobilization Period:

- Orientation Training – CSXT will provide orientation on operating rules and procedures training to the Department, the O&M Firm management and trainers (“Train the Trainer” course). There will be no cost to the O&M Firm for this course (instruction and materials); however, the O&M firm shall pay for travel, accommodations and wages for their staff while at the training. It is the intent of this training to provide the O&M Firm with the ability to train and qualify the O&M Firm personnel. This training will consist of up to four (4) weeks of classroom instruction and up to two (2) weeks of field/hands-on work (with a maximum class size of 16).
- Dispatching Training with CSXT – CSXT will provide orientation and training using CSXT's (US&S) dispatch simulator to instruct the Department personnel and O&M Firm personnel involved in dispatching of the corridor. The training shall take place at least 30 days prior to the transfer of dispatch services to the O&M Firm and shall not exceed 20 days (with a maximum class size of eight (8)). The trainees will consist of the O&M Firm personnel responsible for dispatching the corridor.

This training will be scheduled at a mutually agreed upon location and dates between CSXT, the Department and the O&M Firm.

2.2.2.2 *Other Training*

Maintenance-of-Way

During the O&M Mobilization period, the O&M Firm will deliver to the Department all operations and maintenance manuals and other related data in accordance with the contract schedules.

The O&M Firm will provide CFRC Standard Operating Procedures (SOP) and manuals for all fixed facilities and systems for the Department's and O&M personnel. The Department will provide the O&M Firm with existing SOP's for their use.

When new equipment is installed, the O&M Firm will ensure that personnel responsible for operating this new equipment complete an orientation by the applicable equipment suppliers or in-house training to familiarize themselves with the new installations. This orientation will include instruction, on-the-job-training, and testing. The O&M Firm shall maintain records of personnel training, certification, and recertification and make the records available to the FRA and the Department upon request.

Railroad Roadway Worker Protection (RWP)

The O&M Firm shall require all personnel maintain their qualifications as detailed within the Department's RWP Safety Plan. Training and qualification records must be maintained by the O&M Firm and made available to the Department upon request.

The O&M Firm shall ensure that all third party contractors or any other persons to whom the plan may apply meet all applicable requirements of the program prior to performing any work within the CFRC.

The O&M Firm shall ensure that the CFRC RWP Safety Plan is accessible, through electronic and print copy, to all employees required to comply with this plan. The O&M Firm will also provide the plan to Third Parties designated by the Department, officers of the CFRC and regulatory agencies as necessary and in accordance with the Department's approval.

Rolling Stock

The O&M Firm shall require that all employees who perform safety-related inspections and tests of passenger equipment are trained, tested and certified in accordance with programs which comply with both 49 CFR 238.109 and current APTA requirements and guidelines during the mobilization period.

The O&M Firm shall accept previous training and certification of mechanical employees who have been issued training certification indicating that they are a "Qualified Maintenance Person" as required by 49 CFR 238.109. The O&M Firm shall develop a CFRC Training Program and shall require that all employees who perform safety-related inspections and tests of passenger equipment are trained, tested and certified in accordance with programs which comply with both 49 CFR 238.109 and current APTA requirements and guidelines.

A formal course of training is being provided by the manufacturers of the vehicles. The O&M Firm shall participate in review of Training Plans that will be submitted by the vehicle manufacturers. The Training Plans will include course syllabus, training materials, and date/times for courses. The O&M Firm will have the opportunity to attend training classes for approximately six mechanics/supervisors for locomotives and approximately six mechanics/supervisors for coaches/cab cars.

The cost of the training program/classes shall be the responsibility of the Locomotive/Car manufacturers. The cost for the O&M Firm employees and backfilling their jobs while attending classes shall be the responsibility of the O&M Firm. If the O&M Firm desires training above and beyond six employees for locomotives and six employees for coaches/cab cars, it can be provided by the vehicle manufacturer's at the O&M Firm's cost outside of the Lump Sum Price.

2.2.3 Operating Rules and Timetable

During the Mobilization Period, the O&M Firm shall use the current version of the CSX Operating Rules and the draft CFRC Operating Rules as source documents.

The O&M Firm shall prepare a CFRC Timetable and Special Instructions during the maintenance mobilization period for the Department's approval and submission to FRA no later than 90 days prior to Revenue Services Date. The O&M Firm shall use the current version of the CSXT Timetable and the draft CFRC Timetable as source documents. The CFRC timetable shall be consistent with, to the extent possible, the CSXT Timetable.

The O&M Firm shall convene jointly with the CFRC Officers a railroad operating practices and rules committee on a scheduled basis that will include designated O&M personnel and others as determined by the Department. The committee will produce an updated Railroad Operating Timetable and Special Instructions, as necessary.

The O&M Firm shall operate SunRail commuter train sets using the approved CFRC Timetable and ensure that the Timetable is accessible, through electronic or print copy, to all employees whose duties are affected by the Timetable. The O&M Firm will also provide the Timetable to CFCRT Project contractors, employees of non-Department railroads, the Department and regulatory agencies as necessary.

2.2.4 Facilities and Equipment

2.2.4.1 Office Space - Temporary and Permanent

The O&M Firm must find and secure temporary office space for use in O&M Firm's performance of O&M Services as well as parking. This temporary office space must be within Volusia, Seminole or Orange County. Permanent office space, located in the Operations Control Center (OCC) at the Vehicle Storage and Maintenance Facility and the Service & Inspection (S&I) Shop at Rand Yard in Sanford, shall be available to the O&M Firm in the first quarter 2013. The O&M Firm shall provide and maintain in a State of Good Repair office equipment, consumables and related supplies for the OCC, VSMF and the S&I Shop as necessary to perform the O&M Services. The O&M Firm shall provide access to office equipment and supplies for up to seven (7) office space locations in the OCC to be used by Department designated staff. The Department

shall provide the building furniture, including but not limited to, desks, chairs, bookcases, and file cabinets.

2.2.4.2 Equipment - Temporary and Permanent

All office equipment excluding computers, including furniture and other items used by the O&M Firm in the performance of O&M Services shall be transferred to the Department upon termination of the O&M Agreement in accordance with Section 273.02 Florida Statute. All such property shall be inventoried. Equipment leased for use in the performance of O&M Services shall be removed from the Service Property upon termination of the O&M Agreement.

2.2.4.3 Phone and Related Communications – Temporary and Permanent

The O&M Firm shall provide all office and mobile phones, including high speed internet access, used in the execution of O&M Services, and shall provide to the Department a complete telephone list for all O&M Firm personnel. The O&M Firm shall make provisions for both temporary (to be used during Mobilization) and permanent communications equipment during the Mobilization period. The O&M Firm shall provide an additional multi-line telephone system (and a back-up phone system) with recording capabilities for the CFRCC and a mapping program with railroad overlay. The O&M Firm shall provide high-speed internet service for each office location in the OCC until termination of the O&M Agreement. The O&M Firm shall provide phone service via land line for the seven (7) office space locations in the OCC to be occupied for Department designated offices. The phones in the conference rooms in the OCC shall provide teleconference capabilities with full duplex sound for up to 20 participants with multiple microphones.

2.2.4.4 Security

The O&M Firm shall provide security for the temporary office space used during mobilization, and shall provide the Department with reasonable access to the facilities 24 hours a day, seven (7) days a week. The O&M Firm shall provide security for the VSMF when the permanent office space is made available to the O&M Firm.

2.2.4.5 System Access

The DBM Firm shall provide the O&M Firm with keys for existing systems locks (switch locks, track, structures padlocks, etc.) and the O&M Firm shall acquire any additional keys and locks as needed. The DBM Firm shall provide the O&M Firm with keys, access codes or access cards for the VSMF Yard, the OCC, the S&I Shop and any other secured facilities. The O&M Firm will change the access codes and access card authority as soon as possible after the Department's final acceptance of the DBM Firm construction work to limit access to the CFRC facilities to the O&M Firm personnel and the Department.

2.2.5 Personnel

2.2.5.1 Reporting

The O&M Firm shall submit a bi-weekly report to the Department during the Mobilization Period documenting the progress made by O&M Firm in assembling a qualified workforce of adequate size to perform the O&M Services including a complete and updated organizational chart.

2.2.6 Mobilization Services

Mobilization Services shall include all preparation for the commencement of O&M Services, including taking all steps necessary to establish a seamless transition from DBM Firm maintenance activities; preparing to establish a safe startup of commuter passenger service; preparing all operational plans required by the Department; transitioning the Rail Management Information System (RMIS) from the DBM Firm to the O&M Firm; hiring and training O&M Firm Personnel; developing procedures and internal guidelines; transitioning equipment and facilities from the DBM Firm; and coordination with the Signal Maintenance Firm.

2.2.6.1 Mobilization Services Plan

Not more than 15 calendar days after the Notice to Proceed Date for Maintenance Mobilization, O&M Firm shall submit to the Department a Mobilization Services Plan for acceptance. The Mobilization Services Plan shall identify all Mobilization Services to be performed by O&M Firm prior to the Revenue Services Date, and shall include a detailed scope of work and schedule identifying the progress and sequence for completing all tasks detailed within the plan. The Mobilization Services Plan shall include a schedule for the submission of all plans that the O&M Agreement requires to be prepared prior to the Revenue Services Date. The plan shall also include an organizational chart to include all proposed O&M positions and shall list the individuals filling the positions.

The Mobilization Services Plan shall identify items that will transition from the DBM Firm versus those items to be provided by the O&M Firm (i.e. consumables such as oil, lubricants, anti-freeze, brake shoes for rolling stock, office supplies, and cleaning supplies). The Mobilization Services Plan shall also identify items that are on the Service Property that may be surplus from the DBM Firm.

2.2.6.2 Dispatching

Prior to the transfer of the train dispatch services from CSXT to the O&M Firm, the OCC will operate in “shadow mode” in accordance with the Dispatching Services Agreement between the Department and CSXT dated July 25, 2011 and such “shadow mode” provisions in that document that apply are incorporated herein. During this period, the OCC will monitor all track conditions but not have control over any functions of the signal system. The O&M Firm shall have qualified staff on site prior to the start of shadow mode operations. It is anticipated that shadow mode will begin no later than April 2013. The O&M Firm shall have dispatch personnel on duty to monitor and identify any items to be addressed by the DBM prior to revenue operations.

O&M Firm shall complete the Operating Rules and Dispatcher training in accordance with the Orientation Services Agreement between the Department and CSXT dated July 11, 2011 and such operating rules and dispatcher provisions in that document that apply are incorporated herein.

A cut-over date will be determined at least one month prior to the transfer of control from CSXT location to the OCC location and the O&M Firm Dispatchers. CSXT will maintain both staffing and all associated equipment at the CSXT JH Dispatcher Desk for seven (7) days thereafter and will maintain the associated equipment for two months thereafter.

2.2.6.3 *Rail Activation Plan*

The Rail Activation Plan (RAP) will detail the transition of the CFRC from construction to revenue operation of the SunRail Commuter System. Participants in rail activation come from the Department, DBM Firm, COO and the O&M Firm.

The O&M Firm is responsible for creating and submitting the RAP 30 days after Notice to Proceed Date for Maintenance Mobilization, implementing the RAP and participating on all committee functions identified in the RAP. The duties of the O&M Firm within the RAP include, but are not limited to:

- Provide staff in support of safety and security certification and system integration testing; and as a participant of the Rail Services Committee (RSC) has safety and security certification review responsibility of certification elements relevant to Commuter Rail Services.
- Provide appropriate personnel to support DBM Firms system integration testing and Pre-Revenue Operations activities.
- Provide safety and security certification review of certification elements related to fixed facilities including Track, Stations, Communications, Ticket Vending Machines, Validators, and Grade Crossings.
- Participate in Safety Certification review of passenger stations.
- Observe testing of locomotives, passenger cars and cab cars in support of the System Integration Testing, System Safety Certification, and Rail Services plans; and provide Safety Certification review of locomotives, passenger cars and cab cars.
- Participate in safety certification review of telephones and communications system.

2.2.6.4 *Rail Services Plan*

The Rail Services Plan (RSP), a subsidiary to the RAP, describes the activities required to prepare the CFRC system to safely and securely operate SunRail commuter service.

As part of the RSP, the O&M Firm shall be responsible for:

- Submitting a Rail Services Plan (RSP) to the Department 30 days after Notice to Proceed Date for Maintenance Mobilization. The O&M Firm must provide all services necessary to complete the RSP, including the provision of staff to monitor and coordinate all activities of the Rail Services Plan,

- Verifying the operational schedule as provided is functional, including how trains will be placed in and out-of-service and special/excursion trains.
- Developing procedures for maintaining facilities and corridor property.
- Modifying the Passenger Train Emergency Preparedness Plan (PTEPP) to include SunRail commuter service.
- Participating in emergency preparedness and coordinating with local fire and emergency services. The O&M Firm must participate in emergency readiness drills as operational training exercises to verify the effectiveness of Emergency Response Plans and to serve as a tool to familiarize fire/life/safety personnel on the CFRC alignment and SunRail commuter vehicles.
- Performing pre-revenue operations, including normal and abnormal operating scenarios to refine operational schedules and procedures, emergency response procedures, and to familiarize train operators and supervisors with the new route and equipment and familiarize other O&M Firm personnel with the system and operational functions of the system.
- Developing a Customer Service Plan, including a Lost and Found, a customer assistance program, including passengers with disabilities, services for bicycle customers, complaint procedures, a customer service improvement team, procedures for station and onboard information and customer service training program for O&M Firm personnel.
- Preparing staffing and training plans. Training will include on-site orientation, witnessing of tests and hands-on operation of equipment during final contract acceptance testing and system integration testing.
- Developing or modifying Standard Operating Procedures.
- Developing and modifying the operating rules, safety rules and procedures, as necessary.
- Developing the System Safety Program Plan (SSPP) and System Security Plan (SSP) and verifying procedures and policies derived from them are effective.
- Participating in the safety certification of safety and security critical items.
- Coordinating with the Department and the Department's Public Information Representatives to educate the public with the route and schedule, enhancing community relations and preparing publications for service schedule.
- Interfacing and coordinating with the car and locomotive contractors as necessary to facilitate any warranty work to be done by MPI or Bombardier.
- Preventive Maintenance and Inspections when the cars and locomotive arrive on the property.

The O&M Firm will be responsible for developing the Rail Services Plan in conformance with all federal and other legal requirements, regulations, and standards, and will submit this document to the Department and applicable regulatory agencies for review and approval. The O&M Firm shall comply with and participate in the applicable activities and tasks identified in the Rail Services Plan. The O&M Firm shall designate one or more persons to serve as a member of the Rail Services Committee.

2.2.6.5 *Maintenance Mobilization*

General

After receiving Notice to Proceed for Maintenance Mobilization and before commencement of Maintenance, O&M Firm shall perform Maintenance Mobilization in preparation for performing Maintenance Services.

Initial Audit

The Department and O&M Firm shall conduct an Initial Joint Audit for a condition assessment of Service Property and Support Inventory. This audit shall occur within 30 calendar days of receipt of the Notice to Proceed for Maintenance Services.

Mobilization Materials

The O&M Firm shall be responsible for placement of No Trespassing signs, provided by the O&M Firm, at the VSMF facility, and at other locations at the direction of the COO.

Electrical

During the Mobilization Period, the O&M Firm shall review the electrical and lighting equipment; and field inspect all of the Service Property to familiarize O&M Firm Personnel with the type and quantity of equipment that requires testing and maintenance.

During the Mobilization Period, the O&M Firm shall develop complete records for all electrical and lighting equipment on the Service Property in the RMIS. These records shall contain, at a minimum, specific information with regard to the types of maintenance and testing required, and the testing frequency. After the Revenue Services Date, the O&M Firm shall update these records with any changes in equipment or procedures.

2.2.6.6 *Information Management Systems*

Hardware and Software Requirements

During the Mobilization Period, the O&M Firm shall inspect and inventory any existing computer hardware provided by the DBM Firm for the performance of O&M Services and determine which components are suitable for reuse as part of the O&M Firm Computer Network. The O&M Firm shall operate and maintain existing hardware to be re-used, as directed by the Department. The O&M Firm shall replace any existing hardware that does not meet the software vendor's recommended configuration with new hardware that meets or exceeds the recommended configuration by the Revenue Services Date. New hardware shall be maintained by the O&M Firm. For the purposes of the O&M Agreement, "software vendor" means any commercial vendor or software either supplied by the Department or provided by the O&M Firm to perform O&M Services, including the operating system vendor.

Software Provided by the Department

O&M Firm shall install, configure, operate and maintain any software provided by the Department for use on the O&M Firm Computer Network at the OCC.

Electronic Mail

O&M Firm shall be responsible for operating and maintaining a reliable, efficient Internet-enabled e-mail system. Connection to an Internet Service Provider is the responsibility of O&M Firm.

Use of Software and Hardware not required by the Department

The O&M Firm may use software and hardware to perform administrative functions not specifically required by the Department for the performance of O&M Services. Hardware and software provided by O&M Firm for the sole purpose of performing these non-specified administrative functions shall remain the property of O&M Firm. Any hardware or software shall not have a negative effect on the operation or security of the CFRC network. Access to offensive materials shall be prohibited and the procedure shall be included in the Information Management Plan. Offensive material includes, but is not limited, to that which is pornographic, racist, sexist, hate related, profane, or foul. Offensive is defined as distasteful, disgusting, or revolting causing a reasonable person embarrassment.

Software

All software requirements are detailed in Section 2.6.2.

Network Requirements

During the Mobilization period, the DBM Firm will provide the existing TCP/IP (Transmission Control Protocol/Internet Protocol) address scheme and other pertinent settings to be used to configure end-user computers, output devices, servers, scanners and other network devices to the O&M Firm.

2.2.7 Testing

Upon completion of construction, the Department is responsible for the commissioning, all inspections and tests necessary to demonstrate compliance with state and federal standards, rules and regulations, and for obtaining all government approvals so that the system can accept paying passengers for transportation. The DBM Firm with oversight from the Department, CEI and O&M Firm will perform the commissioning including all inspections and tests.

2.2.7.1 Contract Acceptance Testing

The O&M Firm shall be responsible for verification of contract acceptance testing of rolling stock (vehicle vendors), Service Property (DBM Firm), and fare collection system (Manufacturer). Contract Acceptance Tests are conducted at the subsystem level to verify the performance of each element and subsystem / assembly is in compliance with specification requirements. Some earlier tests may be repeated as acceptance tests to verify proper operation of the element after installation. These tests are performed on-site and are pre-requisites to the contract acceptance and the system integration tests.

Examples of Acceptance Tests are:

- Train Control Interlocking Tests

- Radio Coverage Tests

As specified in the CFRC Safety and Security Certification Plan (SSCP), during the construction phase, a construction specification conformance process will be used to verify that CFCRT as-built facilities and systems incorporate the safety and security-related requirements identified in the CFCRT specifications and other contract documents, including approved changes since the final design. Construction / installation / testing verification using a construction conformance checklist, as provided in Figure 6 of the CFCRT SSCP, will identify the tests and verification methods necessary to ensure that the as-built configuration contains the safety-related requirements identified in the applicable specifications and other contract documents, and provide documentation that the delivered project meets these requirements. The O&M Firm shall be responsible for reviewing the completed construction / installation / testing conformance checklists provided by the DBM Firm.

2.2.7.2 System Integration Testing

The O&M Firm shall be responsible for verification of integration testing completed by the DBM Firm by observing field testing and review of test reports in the certification process. System Integration Tests (SIT) are conducted to confirm that all elements of the rail system will function properly as an integral system. This will confirm that all CFRC/SunRail systems can be operated as designed and constructed. The tests involve end-point-to-end-point verification of the system's functionality when more than one subsystem is involved.

Examples of System Integration Tests include:

- Verification of train detection and interface with traffic control system
- Station Communication Tests
- Vehicle Clearance Tests

Satisfactory completion of the integration tests and readiness drills provides the basis for certifying that the system is capable of providing a safe and dependable revenue service operation.

2.2.7.3 System Readiness Testing

System Readiness testing is conducted during the System Integration Testing period by the DBM Firm with participation by the O&M Firm. Drills are performed in coordination with involved outside agencies such as fire services, and other specialized emergency response departments (bomb squad, SWAT, emergency medical, etc.) These are designed to verify that the system is capable of developing the appropriate response to an abnormal or emergency operational condition. The drills involve the simulation of an abnormal or emergency situation that generates a response by Operations and/or Emergency personnel. They also provide an opportunity for verifying operational readiness, testing planned emergency response procedures, and providing a training exercise for personnel.

Other objectives of the drills are:

- To evaluate procedures, both before and after the emergency drill.
- To familiarize and train involved organizations, including outside agencies on handling emergencies.

- To ascertain if any improvements may be effected, including facility or equipment modifications and procedures.
- To help determine system readiness for handling emergencies.

Examples of System Readiness Drills are:

- Train collision that will require evacuation of passenger by the Fire Department.
- Train derailment.

2.2.7.4 Pre-Revenue Operations Testing

The O&M Firm shall be responsible for all RSP-related testing. Pre-Revenue Operations Tests are conducted by CFRC Operations at the system level to simulate revenue service operations during normal, abnormal and emergency conditions. Schedules, timetables and consist lengths are determined by CFRC Operations. These tests verify and augment the training of operating personnel and central control personnel, maintenance personnel and security and safety personnel. They require the full operational capability of all systems, equipment and facilities on the Service Property.

Operational readiness by the O&M Firm will include, but is not limited to verification as part of the Safety and Security Certification Program of the following:

- Applicable operations, maintenance, and emergency rules, procedures, and plans have been developed, reviewed and implemented;
- Manuals and Standard Operating Procedures (SOP), showing how to operate and maintain systems equipment and facilities (e.g., the station cameras, the car-borne lifts on each trainset) have been developed, reviewed, approved, and accepted;
- Safety/security-related training for operations and maintenance personnel has been developed, performed and successfully completed by all personnel as required (e.g., bomb-threats, grade-crossing accidents, severe-weather events);
- Emergency training has been developed, performed, and successfully completed by all personnel as required, including public safety personnel (e.g., responsibilities for CFRC officials and O&M Firm during a security incident) ;
- Emergency drills and training have been conducted with outside agencies, including local emergency medical services (EMS), fire services, law enforcement and Department of Homeland Security (DHS); and
- Response procedures have been evaluated and improvements identified before a real emergency occurs.

2.2.7.5 Reliability and Maintenance Testing

O&M Firm shall be responsible for Reliability and Maintenance Testing. Reliability/Maintainability tests are conducted at the subsystem level beginning with the system pre-revenue phase and continuing into the revenue service phase to demonstrate that reliability and maintainability of individual elements meet specified levels.

Examples of Reliability/Maintainability Tests are:

- Highway-Rail Grade Crossing Warning Systems Reliability Test
- Locomotive Reliability Tests

The test category titles above are generic in nature and may be identified under other names. Detailed integration test procedures for tests to be performed will be prepared by the respective contractor or supplier. The test procedures will describe test objectives, test prerequisites, success/failure parameters, equipment and instrumentation to be used, test set-up, methodology, data evaluation procedures, sequence of test steps, and the type of report or data to be submitted.

During performance of each test, the test engineer may be required to revise the approved test procedures to reflect the as-built conditions and incorporate field changes. These modifications shall be brought to the attention of the test manager for review and approval. The test manager determines if the modifications can be included as part of the final test report or if a revision to the procedure needs to be issued.

Upon successful test completion, a copy of the approved test procedures and associated annotated data sheets is documented and a status report distributed to affected program participants according to the SITP schedule. Each report shall include a signed Safety Certification that will be reviewed by the Safety and Security Certification Committee and presented to the CFRC/SunRail Safety and Security Administrator.

2.2.8 Environmental Requirements

The O&M Firm shall manage the transfer, updating and record keeping for all environmental permits, licenses, and certificates.

2.2.9 DSLE Services

The O&M Firm shall provide Designated Operator services that are in compliance with all applicable Federal regulations. The Department has elected to designate the O&M Firm Designated Supervisor of Locomotive Engineers (DSLE) as the Designated Operator for train service on the Central Florida Rail Corridor in accordance with Part 240.105 (C).

These services are required within 30 calendar days after receipt of Notice to Proceed for Maintenance Mobilization and the CFRC Safety and Security Manager shall coordinate with the O&M Firm to qualify the designated personnel as the DSLE.

The O&M Firm will provide Designated Operator services that are in compliance with all applicable Federal regulations. The Department hereby elects to designate the qualified DSLE over the CFRC territory under 240.105 (C).

The O&M Firm will be responsible for performing all necessary services as required by law and industry practice to provide services as a Designated Operator, including, but not limited to, compliance with the following 49 CFR FRA regulations:

- Part 217 Railroad Operating Rules: consistent with CFRC's selection of CSXT to provide train dispatching services, the O&M Firm will operate under CSXT Operating, Safety, Equipment Handling, Air Brake/Train Handling Rules and Special Instructions.
- Part 218 Railroad Operating Practices: consistent with CFRC's selection of CSXT to provide train dispatching services, O&M Firm will operate under CSXT Operating, Safety, Equipment Handling, Air Brake/Train Handling Rules and Special Instructions.
- Part 219 Control of Drug and Alcohol Use.
- Part 220 Railroad Communications: as it related to locomotives and train crew members.
- Part 221 Rear End Marking Devices for Freight Trains
- Part 222 Use of Locomotive Horns at Public Highway-Rail Grade Crossings
- Part 225 Railroad Accident/Incident Reporting
- Part 227 Occupation Noise Exposure
- Part 228 Hours of Service: for train crew employees.
- Part 232 Power Brake Law
- Part 240 Qualification of Locomotive Engineers.

2.3 MAINTENANCE OF WAY

2.3.1 Description

The O&M Firm shall inspect, service, repair, and maintain the Service Property and Support Inventory owned and controlled by the Department and included in this Section in accordance with the procedures and standards set forth in this Scope of Services.

2.3.1.1 Operating Conditions

The O&M Firm must understand the operating environment of the rail service. This operating environment includes:

- All weather conditions,
- Highway and transit interfaces,
- Derailments and accidents,
- Vandalism, trespassing, and other crimes,
- Operations among other railroad traffic, including Amtrak and freight carriers, and
- Regulatory requirements and standards of the Federal Railroad Administration, Federal Transit Administration, APTA, AREMA, DHS, FPSC, the Department, the U.S. Coast Guard, and state and local authorities.

2.3.1.2 Maintenance Performance

In the performance of the O&M Services, the O&M Firm shall maintain the infrastructure assets of the Department, and shall not defer maintenance of these assets for any reason. These assets include the Service Property and Support Inventory assets; the inventories of material and spares; the intellectual and engineering property; the control of the assets' configuration; and the information required for a safe, quality, and economical rail service. The Department may require extra work activities. Extra Work activities are those that are not included in the Lump Sum Price for the O&M Services.

The O&M Firm shall fully remedy, remove or replace all work which has been rejected by the Department as not being in accordance with the terms of the contract, and no additional compensation will be allowed for such removal, replacement or remedial work. Upon failure to the O&M Firm to comply with any direction from the Department regarding such work, the Department may cause the rejected work to be remedied, removed, or replaced by Other Contractors and the Department may deduct the costs from any monies due or to become due to the O&M Firm.

2.3.1.3 Cooperation

The O&M Firm shall maintain the condition and availability of the Service Property and Support Inventory for the operation of the Department's trackage. This effort will require that the O&M Firm cooperate with Other Contractors; cooperate with the Department's efforts to procure, renew, and dispose of Service Property and Support Inventory; and cooperate with various public agencies and communities.

2.3.1.4 *Scope of Services*

All of the services set forth in this Maintenance of Way Scope of Services are part of the O&M Services and shall be performed by the O&M Firm as part of the Lump Sum Price unless specifically noted otherwise in this Scope of Services.

2.3.2 O&M Firm Obligations

- 1) The O&M Firm shall inspect, service, repair, and maintain the Vehicle Storage and Maintenance Facility (VSMF) at Rand Yard, Support Properties, and Support Inventory in accordance with this Scope of Services. The O&M Firm shall, at all times, keep the Service Property and Support Property in a State of Good Repair.
- 2) The O&M Firm shall (i) comply fully with the terms of every manufacturer's warranty on the Service Property, including the VSMF at Rand Yard, Support Property, and any other property used in the provision of O&M Services; (ii) cooperate with the Department regarding the fulfillment of any warranty obligations; (iii) administer such warranties on behalf of the Department; (iv) provide the Department with any information necessary to the administration of any such warranties at termination of the O&M Agreement.
- 3) The O&M Firm hereby assigns to the Department any and all manufacturers' or other sellers' warranties that come with any products, materials or supplies which are incorporated into or are consumed in the project in any way. To the extent that any such warranties do not extend to subsequent purchasers or owners or such warranties contain a limitation on assignment, the O&M Firm agrees that O&M Firm purchased the products, materials and supplies on behalf of the Department with the intent that the Department be the intended recipient of any warranties. All documents associated with or describing any such warranties shall be delivered to the Department at the termination of the O&M Agreement. The O&M Firm shall not take any action or fail to act in any way which voids any such warranties. All subcontracts shall contain a similar provision which requires subcontractors to assign any such warranties to the Department.
- 4) The O&M Firm shall submit, for Department acceptance, plans for specific service disruptions for maintenance projects. Those plans will allow specific service disruptions under the terms and conditions in the latest versions of the Central Florida Operating and Maintenance Agreement (CFOMA), the Operating Agreement between the Department and the National Railroad Passenger Corporation (Amtrak Operating Agreement) and the Operating Agreement between the Department and the Florida Central Railroad (FCEN Operating Agreement) and the specific provisions within each of those three agreements that apply to service disruptions for maintenance projects are incorporated herein. All maintenance of way activities of the O&M Firm under this Scope of Services shall be conducted in accordance with the requirements of the latest version of the CFOMA and non-Department railroad operating agreements.
- 5) The O&M Firm shall operate and maintain all environmental systems and permits in existence on or in the Service Property or Support Property, as detailed in Section 16, Environmental Services.

2.3.3 General Provisions

2.3.3.1 Administration

- a) The O&M Firm shall perform and oversee the O&M Services from the O&M Firm's office located at the VSMF at Rand Yard.
- b) The O&M Firm designee responsible for implementing the O&M Services along with other staff and technical managers shall have offices located in the VSMF. The O&M Firm designee shall be available for on-site meetings as required. The O&M Firm designee shall be available 24 hours per day, 365 days per year. Any temporary or permanent replacement must be approved, in writing, by the Department.
- c) At the VSMF, the O&M Firm shall establish an office in the Operations Control Center (OCC), material storage area, and equipment maintenance area for performance of O&M Services during the term of the O&M Agreement. The O&M Firm shall not increase, decrease or delete the level of utility of any existing location without approval, in writing, by the Department.
- d) The O&M Firm shall reserve secure office space in the OCC for the Signal Maintenance Firm's Signal Maintenance Manager and shall assign an office area in the OCC for four (4) of the Signal Maintenance Firm's signal maintenance staff. The O&M Firm shall provide two (2) office phone lines for the Signal Maintenance Manager's office and four (4) office phone lines in the signal maintenance staff area, internet access, and security for Signal Maintenance Firms' office facilities.
- e) The O&M Firm shall provide access to certain materials for the COO, including: technical and reference books and materials, industry reference manuals and documents, any other equipment and materials as may be required by the Department to verify compliance with, and oversee, the O&M Services. Updates shall be provided to the COO so that materials are up-to-date at all times.
- f) The O&M Firm shall establish computerized work orders and shall establish the method of responding to them in terms of a prioritized ranking system. Rankings shall be established by the O&M Firm and agreed upon by the Department based on its importance to providing safe transportation services.
- g) The O&M Firm shall provide a staffed CFRCC at the VSMF at Rand Yard. Personnel operating this desk shall be on-call and operate 24 hours per day, 365 days per year. Such personnel shall be (i) duly authorized to make decisions in the absence of senior O&M Firm management personnel, (ii) familiar with the physical characteristics of the Service Property, and (iii) qualified to perform this task. The O&M Firm shall enter all communication regarding trouble calls, equipment failures, alarms, or any unusual occurrence into the RMIS. The O&M Firm shall document all responses to calls for assistance in the appropriate RMIS, and the O&M Firm shall conduct follow-up investigations to determine the root cause for any equipment failures.
- h) The O&M Firm shall provide all office and mobile phones, including high speed internet access used in the performance of the O&M Services, and shall provide to the Department a complete list of telephone numbers for all O&M Firm personnel. At a minimum, the O&M Firm shall provide cell phones to all personnel at a management level and above.

- i) The O&M Firm shall provide a full-time staff to oversee O&M Firm facility maintenance activities, including those described in this O&M Services. The managers shall investigate and be responsible for producing reports on all damage to the VSMF and Support Property contained therein.
- j) The O&M Firm shall maintain a membership in the American Railway Engineering and Maintenance of Way Association (AREMA), the American Public Transportation Association (APTA) and the Florida Railroad Association, in the name of the Department, during the Term of the O&M Agreement.

2.3.3.2 Reporting and Recordkeeping

The O&M Firm shall maintain all records necessary to provide and support the O&M Services in accordance with FRA requirements. The O&M Firm shall keep, store, and maintain, during the term of the O&M Agreement, and for three (3) years after the termination of said agreement, a full and accurate record of all aspects of its performance of the O&M Services and other activities carried out under the O&M Agreement.

The O&M Firm shall maintain and furnish to Department, in writing and in electronic format, the required reports set forth in this Operations and Maintenance Services, including without limitation Section 11.1, Reporting and Recordkeeping Requirements. The O&M Firm shall deliver to the Department for acceptance all Annual Program Plans and other deliverables thirty (30) days prior to the anniversary date of its initial submittal.

During the Mobilization phase, the DBM Firm shall transition the existing RMIS to the O&M Firm. All required tests, inspections and preventive maintenance activities shall be scheduled from the historical last-occurrence date.

2.3.3.3 Maintenance of Way Service Plan

The O&M Firm shall be provided a copy of the Maintenance of Way Services Plan prepared by the DBM Firm. The O&M Firm shall prepare a Maintenance of Way Services Plan and submit the Plan to the Department for review and acceptance 90 days after the Notice to Proceed Date for Maintenance Mobilization. The O&M Firm shall adhere to and implement this Plan, and shall submit an updated Plan 30 days prior to the anniversary date of its initial submittal. The Maintenance of Way Services Plan shall identify the inspection and maintenance activities to be undertaken by the O&M Firm, Maintenance of Way Service Standards, frequencies of tasks, staffing plan, specific schedules for accomplishing such work, and proposed work windows or service diversions.

The Maintenance of Way Services Plan shall be structured to maintain FRA Class IV track, except in locations with permanent speed restrictions. All required tests, inspections and preventative maintenance activities shall be included in the Lump Sum Price; however, capital improvements will not be included in the Lump Sum Price. The cost to develop the Maintenance of Way Services Plan shall be included in the Lump Sum Price. This Plan will include, but not be limited to, the following components:

1. Recommended Capital Improvement Program
2. Rail Maintenance Program (including Rail Grinding and Rail Replacement Programs)
3. Tie Maintenance Program (including Tie Replacement Plan and Track Surfacing)
4. Special Trackwork Maintenance Program
5. Ballast and Roadbed Maintenance Program
6. Right-of-Way Maintenance Program
7. Grade Crossing Improvement Program
8. Drainage Maintenance Program (including Drainage Ditch Reshaping Plan)
9. Fencing Maintenance Program (including Fencing Installation Plan)
10. Building and Facility Maintenance Program
11. Bridge Inspection and Maintenance Program
12. Maintenance of Way Service Standards
13. Material Management Plan

The O&M Firm shall update the Maintenance of Way Services Plan more frequently as required by significant changes to the O&M Services, or as directed by the Department. In the event that the Department requests changes to the Maintenance of Way Services Plan, the O&M Firm shall make and agree to implement such proposed changes within 10 days of the Department's request, or shall suggest, within 30 days of the Department's request, alternatives reasonably designed to meet the Department's needs as stated in its request.

2.3.3.4 Productivity Improvements

Service Property and Equipment

- a) The O&M Firm shall test potential improvements to work methods used on the Service Property.
- b) The O&M Firm shall work cooperatively with the Department to conduct tests on new or prototype materials or equipment. The O&M Firm shall purchase the required materials or equipment as well as provide the necessary labor and non-prototype materials and equipment.
- c) The O&M Firm shall work with the Department to identify areas that can result in cost savings, such as but not limited to, maintenance materials, construction techniques or use of Third Party vendors.

2.3.3.5 Warranty Provisions

The O&M Firm shall not jeopardize any warranty covering any portion of the Department Service Property or Support Inventory. The O&M Firm shall comply with the terms and conditions of any manufacturer's maintenance and service schedules, except as otherwise modified by industry standards or otherwise explicitly directed in writing by the Department.

The O&M Firm shall make all repairs to Service Property using the standards and practices described in the Maintenance of Way Service Standards as minimum standards. In the event that the O&M Firm is found to be in violation by the Department with the procedures and practices described in the Maintenance of Way Service Standards, the O&M Firm shall rectify at the earliest possible time the incorrect work at no additional cost to the Department.

The O&M Firm shall aggressively administer warranties owned by the Department. The O&M Firm shall conduct inspections, troubleshooting, and repair work in a manner to reveal circumstances where the Department's warranties apply. Such work shall be part of Lump Sum Price and shall not be considered Extra Work.

The O&M Firm shall obtain all material and parts for warranty repairs from suppliers without cost to the Department.

The O&M Firm shall prepare and maintain the data necessary to advance claims, and meet locally with vendors or contractors as the Department requests. The O&M Firm shall use the RMIS to prepare and maintain data and claims.

2.3.3.6 Flag Protection and Track Outages

The O&M Firm shall provide flagging for all O&M Firm work at the O&M Firm's expense as part of the Lump Sum Price. The O&M Firm shall provide up to 250 hours annually of flagging services for the Department or Other Contractors designated by the Department to support the engineering and design efforts associated with Phase 2 South and the North Extension as part of the Lump Sum Price.

The O&M Firm shall also provide flagging services for work performed by Other Contractors engaged by the Department at the request of the Department or such Other Contractor. The O&M Firm shall also provide flagging services for work performed by Third Parties. The O&M Firm shall be compensated by Third Parties or Other Contractors for flagging for Third Parties or Other Contractors, based on the hourly rate submitted by the O&M Firm and accepted by the Department.

The O&M Firm shall perform all maintenance work in a manner that does not unnecessarily delay or cause disruption to Rail Service. Track outages shall be requested by the O&M Firm in writing to the Department at least 65 days in advance of the date needed. Track outages for maintenance will only be allowed under the terms of the CFOMA, the Transition Agreement, the Amtrak Operating Agreement and the FCEN Operating Agreement and the provisions within each of those three agreements that apply to Track Outages for maintenance are incorporated herein. and in accordance with any notification requirements in the Operating Agreements with other railroads. The O&M Firm shall explore all available alternatives to the outages and shall provide the reasons, if such alternatives are not viable.

2.3.4 Maintenance of Way Services

2.3.4.1 Performance Standard

All activities undertaken in the performance of the O&M Services shall further the Department's stated goal of FRA Class IV track. The Department reserves the right to establish Maximum Authorized Speeds for specific track segments, based on the maintenance class of track. The O&M Firm shall maintain the performance level of the Service Property to at least allow transportation services to be provided at speeds no less than the Maximum Authorized Speeds in existence on the Revenue Services Date.

2.3.4.2 Maintenance of Way Services Standards

- a) The O&M Firm shall review, edit and create Maintenance of Way Service Standards to provide a complete set of Standards for operating and maintaining all aspects of the Department's Service Property. Revisions to and additional Service Standards shall be submitted to the Department for review and approval. Upon approval, the Maintenance of Way Service Standards will be updated and the O&M Firm shall comply with these standards.
- b) At a minimum, all Service Property and Support Property shall be maintained in a State of Good Repair. Additional requirements include, but are not limited to:
 1. Inspection and test cycles shall be tied to FRA regulations or the Department standards, whichever is more stringent. Inspection and test dates shall be scheduled from the last inspection date. Additional testing may be required, as specified in this Scope of Services or the Maintenance of Way Service Standards, prior to the regulated test date.
 2. The O&M Firm shall provide inspection and maintenance service for all aspects of the Service Property to maintain the Service Property in a condition equal to or greater than minimum maintenance standards for that class of track.
 3. If a temporary speed restriction is imposed for any reason, the O&M Firm shall submit to the Department a schedule to be approved by the Department for performing the work necessary to remove each such temporary speed restriction. The O&M Firm shall perform the work in accordance with the approved schedule. The failure of the O&M Firm to complete the work and remove any such temporary speed restriction by the last day of the approved schedule or within the approved time window on any given day during the approved schedule may result, as determined by the COO, in the O&M Firm being responsible for any penalties, fines, or other costs or expenses assessed to the Department by non-Department railroads. Designation of a speed restriction as permanent requires prior approval by the Department.
 4. Maintenance of all Service Property and Support Property shall be the O&M Firm's responsibility. The entire Service Property shall be kept clean and all Service Property and Support Property shall be maintained in a State of Good Repair. The O&M Firm shall maintain any new or reconstructed assets that are added or modified after the Revenue Services Date to the level at which the O&M Firm received such property.
 5. Levels of maintenance to the Service Property shall be performed per any manufacturer's recommendations and instructions to the extent that they exist or as otherwise directed herein.
 6. All Service Property, Support Property, and associated systems shall be maintained by the O&M Firm in accordance with all applicable local, state, and federal codes, laws, and regulations. Maintenance of the Department's Service Property shall also be sensitive to the historical nature of the Service Property.

2.3.4.3 Standard Control Documents

Listed below in order of priority are the standards to be applied for track, structures and communications maintenance and construction work performed in accordance with the O&M Agreement:

- Maintenance of Way Services Standards;
- American Railway Engineering and Maintenance of Way Association (AREMA) Manual for Railway Engineering and Portfolio of Track Work Plans, current edition;
- Florida Department of Transportation Structures Design Manual, current edition; and
- FRA Track and Railroad Workplace Safety Standards (49 CFR 213 and 214), Bridge Safety Standards (49 CFR 237).

2.3.5 Maintenance of Way Responsibilities

2.3.5.1 General

- a) The O&M Firm shall provide cleaning including without limitation rubbish removal, sand and dirt removal, and vandalism-related repairs within the CFRC right-of-way.
- b) The O&M Firm shall operate and maintain, repair or replace all Service Property exhaust ventilation systems, dampers, air curtains, equipment and components. Graffiti shall be removed expeditiously, and in no event longer than 24 hours after receipt of a report of graffiti at any location on the Service Property. The removal of graffiti shall be prioritized by the Department but in every case graffiti containing ethnic, racial, obscene or otherwise offensive content shall be removed immediately upon notification or discovery. For station or station platforms, the Department has entered into Joint Use Agreements with the Local Funding Partners for housekeeping and graffiti removal. In the event that the removal of such graffiti would potentially cause the Local Funding Partners cleaning forces to foul the track, the O&M Firm will have responsibility for removal and restoration. In stations or highly visible locations, graffiti can be temporarily covered until the entire surface can be cleaned or repainted as weather permits.
- c) The O&M Firm shall maintain all HVAC systems and other utilities at locations on the Service Property, except for the utilities on the station platforms.
- d) All Department supplied machinery, equipment, buildings and facilities used by the O&M Firm shall be kept clean and maintained, or repaired so as to be kept in a State of Good Repair.
- e) The O&M Firm will not eliminate, modify or remove from service any Department-owned track structure, bridge, trestle, culvert or other structure/facility, unless required to protect the safe passage of trains, without the prior written approval of the Department.
- f) Non-revenue vehicles used in the provision of the O&M Services shall be maintained in a State of Good Repair and washed and cleaned inside and outside at least monthly.
- g) All maintenance of way reporting locations, tool houses, and shop facilities, including buildings, equipment, utilities, sanding facilities and train storage areas, driveways, roadways and access ways shall be kept clean and maintained in a State of Good Repair.
- h) Oil, engine coolant and any other waste or hazardous material drainings shall be captured, labeled and disposed of by the O&M Firm in accordance with environmental regulations.
- i) The O&M Firm shall be responsible for the proper operation, repair and maintenance of all communications systems contained within the CFRC right-of-way. These services shall include, but are not limited to the following: supervisory control systems, data transmission systems, supervisory control workstations, local area networks, supervisory control servers,

un-interruptible power supply systems (UPS), fire detection and suppression systems, padlocks (switch, communications and electrical), and test equipment.

2.3.5.2 *Track*

The O&M Firm shall maintain and comply with all aspects of CFRC Track Safety Standards and 49 CFR 213. The O&M Firm shall also be required to maintain and comply with all aspects of the CFRC Continuous Welded Rail Plan.

The O&M Firm's track work shall include, without limitation, the following:

Inspection

- a) At a minimum, the O&M Firm shall perform the following inspections in accordance with the following schedules:
 1. FRA mandated track and right-of-way inspections at the required frequency.
 2. Supervisory track and right-of-way inspections shall be performed at least monthly.
 3. System-wide Service Property inspections by train shall be performed once every week by O&M Firm management.
 4. Department staff, without limitation, may make unannounced inspections with the O&M Firm's track inspector. With 48 hours' prior notice from the Department, the O&M Firm may expect and shall provide up to 12 hi-rail inspection trips per year.
 5. Track geometry car inspection shall be performed once every six months.
 6. Grade crossing inspections shall be performed at least annually.
 7. Special inspection of track and right-of-way shall be performed during and immediately after severe weather conditions.
 8. Walking turnout inspection shall be performed monthly.
 9. Switch inspections shall be performed monthly with representatives of both O&M Firm track staff and the Signal Maintenance Firm, commonly referred to as joint switch inspections.
- b) The results of all inspections shall be recorded on the prescribed form, including digital photographs, as appropriate, and signed by the inspector(s) and a summary report of all inspections shall be submitted monthly to the Department. The RMIS shall be updated to reflect the inspection findings, detail any conditions found during the inspections and propose a plan for repairing or replacing any defects discovered. Any conditions discovered that could affect the safe operation of trains shall be immediately reported and repaired or replaced.

Rail

- a) The O&M Firm shall ultrasonically test running rail for internal defects twice annually on mainline, passing sidings, and any track used in passenger revenue service in accordance with FRA Part 213.
- b) The O&M Firm shall test all replacement rails for internal defects before installation.
- c) Additional tests shall be performed if, in either the opinion of the Department, the O&M Firm or a regulatory agency having competent jurisdiction, conditions warrant additional testing.

- d) All internal defects shall be addressed in accordance with FRA and Maintenance of Way Service Standards, but in no case shall a temporary repair to an internal defect be allowed to remain in track longer than 10 days.
- e) The O&M Firm shall develop an Optimized Rail Head Profile for Curves and Tangents; and recommended commuter rail car wheel profile that compliments the approved or specified rail head profile within the first nine months of the Revenue Services Date. The Profile shall consider anticipated freight and commuter rail traffic. Development shall include an analysis of the existing rail using a geometry car with an optical rail profile device. Profiles shall be designed to reduce the need for premature replacement of the rail or where otherwise required to mitigate hazardous conditions that may jeopardize the safety of train operations. Developing the Optimized Rail Head Profile for Curves and Tangents shall be included in the Lump Sum Price.
- f) The O&M Firm shall develop a Rail Maintenance Program as part of the Maintenance of Way Services Plan which will address rail maintenance activities including but not limited to Corrective Rail Profile Grinding, Preventative Rail Profile Grinding, Rail Transposition, Rail Slotting, Rail Surface Welding Repair, Rail Joint Elimination and Rail Cascading. The Program shall consider anticipated freight and commuter rail traffic and shall indicate the approximate location and schedule of the work. The O&M Firm shall avoid performing rail grinding during times of high fire risk to adjacent vegetation. Rail maintenance activities including but not limited to Rail Transposition, Rail Joint Elimination, and Rail Cascading shall be paid by Supplemental Agreement if submitted as part of the Rail Maintenance Program and approved by the Department. Other rail maintenance activities including but not limited to, Rail Slotting and Rail Surface Welding Repair shall be included in the Lump Sum Price.
- g) The O&M Firm shall be completely familiar with proper installation and maintenance of CWR as outlined in the Maintenance of Way Service Standards and shall ensure strict compliance with 49 CFR 213.119 and the CFRC CWR Plan. The O&M Firm shall provide approved annual training for the installation and maintenance of CWR.
- h) The O&M Firm shall purchase, weld, and position two (2) track miles of CWR in the first six months of each Agreement Year and shall install such CWR each Agreement Year. A Rail Replacement Plan indicating the approximate location of the new rail shall be developed by the O&M Firm and submitted to the Department for approval as part of the annual Maintenance of Way Services Plan. Replacement rails shall be kept neatly stacked in accordance with AREMA recommendations. Replacement rails shall only be stacked at Department approved locations.
- i) The O&M Firm shall install all necessary thermite welds per Agreement Year at locations determined by the O&M Firm and approved by the Department. The O&M Firm shall document all thermite welds in the RMIS. Records shall include, at a minimum, the ambient temperature, the rail temperature, the length/weight of rail installed and removed, the use of a rail heater, the length of pull if any, the name of the welder and any other conditions that may affect the proper de-stressing of rail. The O&M Firm is responsible for qualified testing of thermite welds and rail end welding as required by the FRA and the Maintenance of Way Service Standards. The individual performing testing shall have current certification in non-destructive testing applications in a Department-approved course of study, and the O&M

- Firm shall provide written proof that the individual is currently qualified when requested by the Department.
- j) The O&M Firm shall provide to the Department complete and accurate reports of all rail failures, defects, replacements, thermite welds, and weld failures. The O&M Firm shall document all rail failures, defects, replacements, thermite welds, and weld failures in the RMIS. Rail installation records shall include milepost, rail replaced-left or right, weight, date rolled, manufacturer, heat number and methods taken to ensure proper installation and de-stressing.
 - k) The O&M Firm shall provide inspection and maintenance services for all aspects of the rail in order to maintain the Service Property in a State of Good Repair.

Ties and Timber

- a) All crossties shall be renewed as required for the designated maintenance class. A minimum of 12,000 new crossties shall be installed each Agreement Year. The O&M Firm shall submit a Tie Maintenance Program to the Department for approval as part of the annual Maintenance of Way Services Plan indicating the approximate location of the new ties.
- b) Upon initiation of tie program work, the O&M Firm shall work continuously without interruption until the tie program work is complete.
- c) The O&M Firm shall purchase and install a minimum of an additional 500 ties per Agreement Year for spot replacement due to track conditions.
- d) The O&M Firm shall not use White Oak timber ties.
- e) Tie replacement incidental to other work including but not limited to grade crossing replacement, switch panel replacement, joint ties on side tracks to the property line, and wreck repair shall be included in the Lump Sum Price and are in addition to the Tie Maintenance Program and the spot replacement ties.
- f) The O&M Firm shall perform all tie replacement in conformance with AREMA recommendations and track buckling procedures in the Maintenance of Way Services Standards.
- g) Turnout Ties shall be changed as required to maintain the Service Property in a State of Good Repair. A minimum of 15 mfbm (thousand board feet) of turnout ties shall be replaced each Agreement Year.
- h) Bridge ties and timber shall be changed as required to maintain the Service Property in a State of Good Repair.
- i) Ties shall be replaced with ties made from the same type of material as that removed and meeting current standards unless otherwise approved by the Department.
- j) The O&M Firm shall be responsible to purchase, deliver, and install all ties and timbers.
- k) Within 30 days of removal, the O&M Firm shall sort all removed ties and timbers, separating ties to be reused on the Service Property from ties for disposal.
- l) Within 60 days of removal, the O&M Firm shall stack and neatly stockpile ties to be reused at the VSMF. Within 10 days of sorting, the O&M Firm must dispose of all remaining ties in accordance with environmental laws and regulations. Ties must be disposed of off the Service Property at no additional cost to the Department. Ties fit for reuse off the Service Property may be sold by a properly certified and licensed Hazardous Materials Disposal

- Contractor, pursuant to all applicable laws and regulations. The O&M Firm shall submit a record disposal or sale of ties to the Department, including disposal certification documents.
- m) The O&M Firm shall provide inspection, maintenance, and replacement services for all ties and timbers in order to maintain the Service Property in a State of Good Repair.

Track Structure

- a) Gauge rods are prohibited. Any exception to the requirements in this section shall be submitted to the Department for prior written approval.
- b) Discovery by the O&M Firm of an improperly anchored track shall require the implementation of a temporary speed restriction and immediate notification of the condition to the Department. The O&M Firm shall perform corrective measures to anchor the track in accordance with the Maintenance of Way Service Standards.
- c) Discovery by the O&M Firm of any track not spiked or fastened pursuant to Maintenance of Way Service Standards shall require the O&M Firm to bring the track up to all applicable standards within thirty (30) days.
- d) The O&M Firm shall be responsible for surfacing track as necessary to ensure that tracks are safe for the passage of trains at the maximum authorized speeds as specified in the Maintenance of Way Service Standards and in accordance with FRA regulations for the specified class of track. Qualified personnel shall inspect all surfacing work before the passage of any train.
- e) The Department requires that the surfacing equipment will tamp out the entire CFRC corridor every five (5) years. In addition, spot tamping, without limitation, shall be performed as needed to maintain the railroad in a State of Good Repair and at minimum to the class of track for trains to operate at timetable speeds. The Department must approve in writing track raises or track shifts in excess of 2", and survey stakes will be provided by the O&M Firm if required. Uniform and thorough runoff shall be executed at the end of all track raises.
- f) The temporary speed restrictions in existence on the Revenue Services Date shall be removed as quickly as practical.
- g) Tracks and turnouts shall always be resurfaced and realigned as part of any re-timbering work and included within the submitted work schedule. At a minimum, inspection and maintenance of the tracks, turnouts, crossovers and sidings shall be performed to maintain the Service Property in a State of Good Repair and comply with the Maintenance of Way Service Standards. The O&M Firm may be required to renew existing turnouts or crossovers.
- h) Under no circumstances are any changes to track geometry to be made and existing platform elevations must not be changed without prior written approval of the Department. The O&M Firm shall be responsible for all costs involving unloading ballast, including any work train equipment, fuel, and crews. Under no circumstances will trains be allowed to operate on tracks with insufficient ballast, except work trains while unloading ballast, or in an emergency, and only then with an appropriate slow order.
- i) Frogs, switch points and stock rails shall be kept ground in accordance with Rail Industry Standards as part of the required inspection and maintenance services.
- j) All at-grade crossings shall be inspected and maintained to maintain the Service Property in a State of Good Repair. Crossings shall be maintained in a manner that is safe, convenient and

- compliant with all applicable uses, rules and regulations including FRA, USDOT, MUTCD, and FPSC.
- k) The O&M Firm shall ensure that all components of the warning system are in place and functioning. The O&M Firm shall notify Third Parties as necessary to remedy noted deficiencies.
 - l) The Department may direct the O&M Firm to participate in the upgrade of grade crossings under the Department grade crossing replacement program. The O&M Firm shall submit estimated costs for participation in program for approval. Costs associated with participation shall be paid under Extra Work.
 - m) Rail lubricators shall be maintained, repaired or replaced as necessary to lubricate curves of four (4) degrees or greater. Lubricating materials shall be replenished on an as-needed basis.
 - n) All switch components and other track materials removed from track and deemed as reusable by mutual agreement of the Department and the O&M Firm shall be repaired for reuse by the O&M Firm and placed in the Support Inventory.

Crossing Repair and Rehabilitation

- a) Minor repairs to at-grade vehicle or pedestrian crossings shall be completed within two business days of notification from the Department. Minor repairs include asphalt grinding or patching, sliding concrete panels, and end restraint replacement. Any condition considered hazardous to the public, as determined by the COO, shall be reported and repaired as soon as discovered.
- b) At the direction of the Department, the O&M Firm shall undertake rehabilitation of those crossings which have deteriorated to an extent such that minor repairs cannot keep the crossing in service. The Department shall identify the number and locations of the crossings to undergo such rehabilitation, if any, in advance of each Agreement Year.

Rights Of Way

- a) The O&M Firm shall not permit and shall monitor and report to the Department any encroachment, construction, or modification of any facility which reduces existing clearance dimensions at any location along the right-of-way.
- b) The O&M Firm shall take immediate actions to comply with all applicable laws and regulations concerning any storage, handling, or in the event of a release of a hazardous material or contaminant on or within the Service Property or released from any vehicle.
- c) The Department does not allow dumping or stockpiling of debris and spoils on its property. The O&M Firm shall secure and use legal disposal locations to ensure the Service Property is kept clean. The O&M Firm shall remove all trash, debris and animal carcasses immediately, and in no event longer than 24 hours after discovering same or receiving notice from the Department of the existence of same. In the event that the O&M Firm fails to remove such trash or debris following written notice by the Department of the continued existence of the condition, the Department shall have the right to take corrective measures at the O&M Firm's expense.
- d) Railroad materials and equipment removed from service shall be removed from the right-of-way within 10 days. Final disposition of materials and equipment removed from service shall

- occur within 30 days except where otherwise specified. Materials awaiting installation shall not be permitted to lie along the right-of-way for more than 30 days, unless otherwise permitted or agreed to by the Department, with the exception of any material that is considered a safety hazard by the Department which shall be immediately removed or repositioned upon discovery by the O&M Firm or notification by the Department. Continuous welded rail strings longer than 200 feet awaiting installation are exempted with prior written approval from the Department.
- e) Scrap rail and relay rail shall be removed from the rights of way within 30 days of removal from the track.
 - f) The O&M Firm shall report to local law enforcement, and shall attempt to control, illegal dumping activities, trespassing, and unauthorized use of the Service Property. In addition, the O&M Firm shall also participate with the Department in programs to educate the public to the dangers of trespassing on the railroad rights of way.
 - g) The O&M Firm shall comply with Department requirements regarding signal lines, utility company standards, and "Sunshine One-Call" procedures in regard to any excavations on the Service Property. When excavating in proximity to underground fiber optics or communications lines, the work must be coordinated with the utility.
 - h) The O&M Firm shall be responsible for any brush and weed cutting and removal which interferes with train movement, signal observation or signal system operation and for removal of dry weeds and grass which may constitute a fire hazard. Removal of vegetation shall be made to maintain visibility of signals, clearance of track, to keep vegetation clear of signal and communication lines and to remove any hazards associated with trees or brush. Special attention will also be given to removing groups of vegetation being used as encampments for the homeless. Vegetation shall be kept back to the existing width of the right-of-way, and the O&M Firm shall promptly chip and remove all vegetation from the right-of-way. Within three (3) days of notification, any vegetation identified by the Department as a nuisance or safety hazard shall be removed with due diligence and as expeditiously as possible. All work shall include removal of cut vegetation from the Service Property. The O&M Firm shall dispose of all refuse materials in accordance with applicable laws and shall conduct cleanup activities in accordance with applicable rules regarding Roadway Worker Protection.
 - i) Using hi-rail spray equipment, the O&M Firm shall not less than semi-annually apply herbicides to prevent vegetation growth from all track beds and other designated areas within the Service Property, to the extent that regulations allow. All work shall be performed in accordance with applicable local, state and federal regulations as well as applicable the Department's environmental and health and safety policies. Repetitive applications may be required. Mechanical removal of vegetation will be as directed by the Department. Upon notification by the Department, additional mechanical cutting of overhanging brush and trees which originate on or off the Service Property will be performed by the O&M Firm without limitation, using on-rail extendable boom equipment.
 - j) The O&M Firm shall not cut vegetation beyond the Service Property without the knowledge and permission of the affected property owner and prior written approval of the Department.
 - k) The O&M Firm shall maintain and install right-of-way signage pursuant to the Department's and the CFRC's standards and the Maintenance of Way Service Standards, and shall promptly repair or replace damaged or missing signs.

- l) Rights-of-way fences and fence gates shall be kept well maintained. Holes discovered in right-of-way fences shall be repaired immediately upon discovery or upon notification by the Department.
- m) The O&M Firm is responsible for maintenance of the station fences, intertrack fences and right-of-way fences. The O&M Firm shall install right-of-way fencing each Agreement Year, at locations and quantities determined by the Department. The O&M Firm may expect and shall provide up to 1000 feet of new fence to be installed in each Agreement year. The O&M Firm shall inspect right-of-way fence at least twice per Agreement Year, with at least 150 days between inspections. Repairs are to be completed within 30 days of completion of inspection and if the fence in need of repair is near a school, park or publicly accessible location, repairs shall be undertaken immediately.

Other Track Maintenance and Repair

Other responsibilities of the O&M Firm shall include, without limitation, the following:

- a) Joint maintenance, documentation and replacement, including incidental installation of new joint bars and bolt replacement/tightening.
- b) Ultrasonic rail inspection and ultrasonic hand testing of turnouts.
- c) Repair or replacement of hand-throw and power-operated switch components.
- d) Rail de-stressing and neutral temperature verification and adjustments.
- e) Repair of damages to Rail Line caused by derailments or other accidents where such repairs are within the limits of the Service Property or otherwise described above or elsewhere in the Agreement. The O&M Firm shall develop and enter into an agreement for an "on-call" derailment and emergency response contractor with the term, scope and price structure of the agreement subject to Department approval.
- f) Maintaining curve lubricators as specified in the SPTMC. Curve lubricators must be kept in operating condition at all times. The O&M Firm shall be responsible for repairing all broken or damaged components, whether caused by use, derailment, or vandalism, and proper adjustment of wiping bars and lubrication flow. The O&M Firm shall provide lubricant. The Department may choose to install new, upgrade, or relocate existing lubricators without limitation. The O&M Firm shall provide the labor, parts, and equipment necessary to relocate or upgrade any or all of the existing lubricators. The O&M Firm shall have two (2) weeks to relocate or install wayside lubricators upon written notification.

2.3.5.3 Maintenance of Bridges, Culverts and Drainage Systems

General

- a) The O&M Firm shall inspect and maintain in a State of Good Repair all facilities, drainage systems, culverts, and those overhead and undergrade rail bridges that are part of the Service Property for which the Department has the maintenance responsibility.
- b) All inspections shall be documented by the O&M Firm and recorded in an electronic format that is compatible with the RMIS. Bridge inspections shall include digital photographs. An annual report summarizing each structural inspection and findings regarding structural condition shall be provided to the Department.

- c) The O&M Firm shall perform preventive, routine and corrective maintenance measures on all structures owned or used by the Department.
- d) Undergrade track bridges, bridge seats, trestles and culverts shall be kept free of debris, vegetation, trash, etc. so that waterways are clear and there are no combustibles that could cause a fire. Vegetation, trash, debris, etc. and all combustibles shall be removed.
- e) The O&M Firm shall inspect, repair and maintain in working order at all times the pump stations on the Service Property. The Department shall receive immediate notification from the O&M Firm if the pumping station is out of order or not functioning at 100% capacity. The O&M Firm will maintain a written record at the pumping station of the pump house inspections and all scheduled maintenance and servicing.

Maintenance of Drainage Systems

- a) Track drainage systems shall be fully and consistently maintained to their design capacity.
- b) Flooding on the right-of-way must be controlled by the use of drainage systems. The use of pumping to remove water from the right-of-way and track shall be performed as necessary.
- c) Culverts used to pass water under tracks shall be maintained by the O&M Firm for their entire length.
- d) Drainage ditches shall be kept open and at proper design profiles (depth, grade and alignment). The O&M Firm shall rehabilitate at least 800 lineal feet of drainage ditches per Agreement Year in accordance with the design profiles. The O&M Firm shall establish and provide an annual Drainage Ditch Rehabilitation Program to the Department for approval as part of the annual Maintenance of Way Services Plan.
- e) Any structure or system used intentionally or otherwise to direct the flow of water shall be considered a drainage system.
- f) The O&M Firm shall maintain all drainage manholes, catch basins, clean-outs and other drainage structures and systems in a State of Good Repair.
- g) All parking lot drainage and drainage systems, for which the Department has maintenance responsibility, shall be maintained by the O&M Firm in a State of Good Repair.
- h) The O&M Firm shall keep all closed drainage systems clean and free of obstructions.
- i) When the O&M Firm replaces any drainage systems or portion thereof, they shall be designed and constructed based on an evaluation of the current drainage conditions and applicable regulatory requirements.
- j) The O&M Firm shall maintain, repair or replace stormwater systems within the CFRC.

Structural Inspections and Preventive Maintenance for Railroad Bridges, Pedestrian Structures and Culverts

The O&M Firm shall develop a Bridge Inspection and Maintenance Program in accordance with 49 CFR Part 237 Bridge Safety Management Plan for the CFRC as part of the Maintenance of Way Services Plan which will address inspection and maintenance activities for all facilities, drainage systems, culverts, overhead bridges, undergrade bridges that are part of the Service Property. The Bridge Inspection and Maintenance Program will include a five year bridge maintenance program, describing routine maintenance, minor repairs and major repairs and assigned priorities. The O&M Firm shall prepare estimates to complete the major repairs.

- a) A brief synopsis of the Bridge Inspection and Maintenance Program is provided below and the O&M Firm's program shall include, at a minimum, these requirements:
 - 1) Developing and maintaining an accurate inventory of Department railroad bridges. The inventory shall identify the bridge location, configuration, construction type, number of spans, span lengths and all other information necessary to provide for the safe management of the bridges.
 - 2) A record of the estimated safe load rated capacity of each bridge which carries track. The load rating methodology of structures will be in accordance with Department guidelines.
 - 3) If available, preserve the original design documents of each bridge and without exception documentation of all repairs, modifications and bridge inspections.
 - 4) Scheduling bridge visual inspections at least once each year (with not more than 540 days between any successive inspections) and measured inspections at a least every five (5) years. The Department will make joint periodic inspections of bridge facilities with the O&M Firm.
 - 5) The bascule span at MP A763.1 St. John's River will be visually inspected quarterly, focusing on the movable span operation (e.g. mechanical, shafts, trunnions, bearings, couplings, electrical, interlocking, limit switches, etc.)
 - 6) The quarterly inspections will also assess the potential for scour problems by observing changes in the channel or flow by probing or using soundings. If an inspection detects scouring, an underwater inspection will be scheduled. Underwater inspections will be scheduled at a minimum of two (2) years.
 - 7) Maintaining records of inspections. An initial report of each bridge inspection shall be placed in the location designated by the Bridge Inspection and Maintenance Program within 30 calendar days of completing the field portion of the inspection. Bridge inspection records will become permanent and retained in a central location.
 - 9) Qualifying and designating persons who perform safety critical functions that affect the integrity and safety of railroad bridges.
 - 10) Conducting special bridge inspections when the bridge is involved in an event which might have compromised the integrity of the bridge, including but not limited to flood, fire, derailment, vehicular or vessel impact and hurricane.
 - 11) Conducting more detailed inspection(s) to further characterize deterioration where inspection reports show any bridge conditions that might lead to a reduction in capacity or the need for repair work.
 - 12) Authority for exceptions under the Control of Loads.
 - 13) Repairs, component replacement or modifications which materially modify the capacity of a bridge.
- b) The O&M Firm shall perform structural inspections and repairs on all aspects of all structures that are part of the Service Property.
- c) At a minimum, the O&M Firm structural inspectors shall be responsible for the following activities for structures:
 1. Bi-Annual inspection reports on safety and integrity, including recommendations for any necessary repairs (minor and major) as well as a summary of all maintenance activities that have occurred during the previous year.

2. Emergency inspections immediately after a railroad bridge has been struck or after noticeable defects are reported.
 3. Special bridge inspections shall be conducted quarterly when warranted by bridge condition, on fracture-critical bridges, or at the direction of the Department.
 4. Performance of underwater inspections of all railroad bridges and culverts crossing over water shall be performed not more than five (5) years from the previous inspection date by a certified professional underwater inspector. Quarterly inspections of the moveable bridges, performed jointly with O&M Firm communications, structures, track and electrical personnel.
- d) Protective screening under railroad bridges and structures for pest and bird control and protective fencing along railroad bridges shall be installed or replaced, and maintained by the O&M Firm.

Overhead and Undergrade Railroad Bridge Maintenance

- a) The O&M Firm shall perform maintenance activities and Minor Repairs on all bridges on the Service Property. Bridge maintenance will include but is not limited to the following:
1. Track alignment, profile, ballast and ties
 2. Repair or replacement of walkway posts, handrails, mounting brackets, walkway surfaces, hardware and fasteners
 3. Replacement of loose rivets with the appropriate high strength bolts on steel bridges.
 4. Repair of deteriorated concrete, spalling, scaling, cracking and exposed reinforcing
 5. Tightening loose or replacing missing anchor bolts
 6. Repair or replacement of bridge bearings
 7. Repair or replacement of timber caps, stringers, bracing, curb timbers and piles
 8. Removing debris from streams
 9. Repair or replacement of steel beams, girder webs, flanges, floor beams, stringers, bracing, truss members, connection plates or worn components
 10. Repair or replacement of mechanical, hydraulic or electrical lift bridge components
 11. Repair or replacement of members damaged by flood, fire, derailment, vehicular or vessel impact and hurricane
- b) Minor Repairs are defined as repairs performed on structures or components of such structures in which the structural functionality and capacity will remain unchanged after the repair work is performed. A Minor Repair includes but is not limited to: painting of structural steel members, railings, concrete surfaces; repairing spalls and minor cracks of concrete members; welding; installing temporary support measures; repairing or replacing protective fencing; cleaning bridge bearings and deck joints; and cleaning, resealing and replacement of expansion joints. Clearing of vegetation and maintaining railroad clearance, are Minor Repairs. The Department shall make the final determination as to whether the repair work shall be considered a Minor Repair or a Major Repair.
- c) Major structural repairs to any CFRC structures are not included in the Lump Sum Price, with the exception of damage caused in whole or in part by the actions of the O&M Firm. Major Repairs are defined as repairs performed on structures or components of such structures in which the structural functionality and capacity will change after the repair work is performed. Examples of Major Repairs include but are not limited to: strengthening of structural

- supporting members including beams, girders and truss members; replacing and repairing bridge bearings that require jacking of superstructure and repairing holes in floor beam webs. The Department shall make the final determination as to whether the repair work shall be considered a Minor Repair or a Major Repair.
- d) The O&M Firm shall repair and maintain in a State of Good Repair all crash walls, retaining walls, back walls, wing walls, abutments, bracing, and other structures.
 - e) The O&M Firm shall repair and maintain in a State of Good Repair all controls, contacts, mechanical components, and other appurtenances and systems associated with the St. John's River Bridge.
 - f) The O&M Firm shall record all drawbridge openings and failures in the RMIS, and shall submit a monthly report to the Department.
 - g) The O&M Firm shall install or replace, and maintain, bridge mile markers and clearance designations on all bridges.
 - h) The O&M Firm shall keep all bridge seats, bearings and abutments clean and free of debris at all times.
 - i) The O&M Firm shall maintain all stairs, walkways, sidewalks, catwalks, railings and other bridge attachments and devices.
 - j) The O&M Firm shall be responsible for painting services pertaining to bridge maintenance requirements.
 - k) The O&M Firm shall safely attach and/or remove banners, posters and signage to/from bridges within the Service Property as requested by the Department.
 - l) The O&M Firm shall remove all unauthorized attachments immediately after such are reported or found during inspection.

Maintenance of Culverts

- a) The O&M Firm shall develop a Culvert Replacement Plan and submit such plan to the Department for acceptance.
- b) The O&M Firm shall be responsible for all culverts located on the Service Property. A culvert is any undergrade structure less than ten (10) feet in span. All undergrade structures greater than or equal to ten (10) feet in span will be inspected and maintained in accordance with structure requirements.
- c) The O&M Firm shall inspect, clean and perform maintenance and repairs as needed on all culverts. Inspections shall include digital photographs of the culvert condition.
- d) The O&M Firm shall keep all culvert approaches free and clear of all debris and vegetation.
- e) Culvert replacement is not included in the Lump Sum Price, with the exception of damage caused in whole or in part by the actions of the O&M Firm.

Operation of St. John's River Moveable Bridge

The O&M Firm shall provide Bridge Tenders and shall be responsible for operating the moveable bridge at the St. John's River, located at Milepost A763.10, including but not limited to communication with the Dispatcher, operating the bridge controls, notification of bridge deficiencies, and other tasks to efficiently operate the St. John's River Bridge. Bridge Tenders shall be stationed at the St. John's River Bridge at all times, 24 hours per day and 365 days per

year. Bridge Tenders shall be qualified in the required FRA and CFRC operating rules for movable bridges.

2.3.5.4 *Signals and Communications*

General

A separate Signal Maintenance Firm shall be retained by the Department and shall be responsible for the complete field wayside signal and highway-rail grade crossing warning systems including but not limited to, maintenance, testing, improvements to the service property and the support of construction and third-party projects on the Service Property as may be directed by the Department. The O&M Firm shall be responsible for signal equipment from the modem or communications interface device at field locations, but not for the signal equipment up to the modem or communications interface located within the signal enclosure.

Coordination is required between the O&M Firm and the Department's Signal Maintenance Firm to properly maintain and provide a complete dispatch, signal and communications system.

- a) The O&M Firm will be responsible for the complete wayside communication and CAD dispatch system, including, but not limited to, maintenance and improvements of the Service Property and support of construction and third-party projects on the Service Property.
- b) The O&M Firm shall be required to maintain all communications, including, but not limited to, voice communications, radios, microwave, supervisory control system (dispatch system), visual messaging, public address and communication equipment. At wayside signal and crossing locations, the O&M Firm will be responsible for all communications equipment from outside the signal enclosure up to and including the modem or communications interface device.
- c) The O&M Firm shall provide inspection and maintenance services for all aspects of the CAD and communications systems in order to maintain these systems in a condition equal to or greater than minimum maintenance standards as defined in the Maintenance of Way Service Standards, in compliance with 49 CFR regulations and in a State of Good Repair.
- d) Levels of maintenance to the CAD and communications system shall be performed per each manufacturer's recommendations and instructions to the extent that they exist or as otherwise directed herein.
- e) CAD or communications systems shall not be installed, modified, or permanently removed from service without prior written approval from the Department. When such an approval is requested by the O&M Firm, they shall fully detail the request through drawings and/or text. After receiving Department approval, the O&M Firm is responsible for obtaining any federal approvals required under the 49 CFR prior to installing, modifying, or permanently removing from service any systems.
- f) Emergency modifications may be performed in the interest of safety. The O&M Firm shall promptly notify the Department, of such modifications within one (1) hour after the event becomes known to the O&M Firm. The O&M Firm shall provide a written request for final modifications within 24 hours of such initiation, and shall include a detailed explanation of the required modifications and the reason emergency modification was initiated.

- g) Any permanent modifications made to the CAD or communication system shall be recorded in CADD format (latest version compatible with the Department) and submitted to the Department no later than 30 days after the modification is placed in service. Additionally, the O&M Firm shall obtain all applicable warranty agreements in the name of the Department and provide any and all associated documentation to the Department; however, the O&M Firm shall administer those warranties.
- h) The O&M Firm shall be responsible for coordination with neighboring railroads on boundary or division of territory circuits. The signaling and communication systems being a complete "end to end" system shall be recognized by the O&M Firm. All testing, maintenance, and trouble resolution that may affect multiple railroads shall be done only after a complete understanding has occurred between the O&M Firm and the neighboring railroad.
- i) Communication cases and apparatus shall be kept sealed, locked, clean and free of all foreign material, including but not limited to brush, rodents, insects, rust, and graffiti.
- j) Only Original Equipment Manufacturers (OEM) replacement parts and procedures shall be used to repair communication equipment.
- k) Temporary repairs shall be permanently repaired commencing on the next business day after the installation of the temporary repair.
- l) Material that can be much more economically repaired, or has proprietary rights or patents established, or is covered by warranty, may be repaired by an outside vendor.
- m) The O&M Firm shall follow applicable FRA regulations regarding investigation and reporting of false proceeds and activation failures.

Tests and Inspections

- a) All CAD and communication systems in use on the Service Property shall be tested and inspected.
- b) Inspection and test cycles shall be tied to Department standards or manufacturer's recommendations, whichever is more stringent. Inspection and test dates shall be scheduled from the last inspection date.
- c) Test, inspections and results documentation for all tests shall be maintained in the RMIS.
- d) The O&M Firm shall maintain a "Trouble Log" of each trouble incident that will include time of initial notification, exact location, type of problem reported, type of problem found, corrective action taken, time trouble cleared and any other information deemed appropriate by the Department. This log shall be kept in the RMIS, in such a format as to permit sorting of data on any of these fields. The Trouble Log will be reviewed monthly by the Department and O&M Firm management. At the request of the Department, further investigation of communications problems may be required by the O&M Firm. The O&M Firm shall submit a report when requested providing details of findings and any action taken.
- e) The O&M Firm shall furnish all tools, test equipment and meters as necessary to maintain the CAD and communications system. All meters and test instruments shall be calibrated at a certified test facility on an annual basis, or whenever dropped, jarred or otherwise damaged.
- f) Test and inspection dates and results, including digital photographs where appropriate, shall be recorded in the RMIS.

Supervisory Control Systems

- a) The wayside signal system within the CFRC corridor is controlled by a CAD system at the OCC via a radio transmission based system. The O&M Firm shall maintain and support the office CAD system and the radio based Centralized Traffic Control (CTC) system.
- b) The existing system will be expanded by the Department to include control and indications from reconfigured or new interlockings. This reconfiguration will be ongoing during the term of the O&M Services.
- c) The O&M Firm will manage software for train control systems in accordance with the CFRC Software Management Control Plan.

Communications

- a) The O&M Firm shall supply all radios for the performance of O&M Services. The DBM Firm will provide programming information to enable radios to operate on the existing communication system. The O&M Firm shall maintain, test, and certify that all system radios operate on the CFRC assigned frequencies and are in compliance with applicable FCC regulations.
- b) The O&M Firm will be responsible to maintain wayside communication systems including but not limited to the radio transceiver locations and antenna, Control Point radio equipment and antenna, Control Point cellular backup, grade crossing communication devices, etc.
- c) The O&M Firm will be responsible for maintaining station communications devices, including but not limited to the VMS signs, PA System, CCTV video surveillance system, and all associated control devices.
- d) The O&M Firm will be responsible for maintenance of field and office fiber optic communications equipment including the fiber optic cable installed within the right-of-way.
- e) The O&M Firm will be responsible for responding to communications failures, troubleshooting and repairing malfunctioning systems and shall document equipment maintenance, testing and failure information in the RMIS.

2.3.5.5 Electrical

General

- a) The O&M Firm shall provide complete electrical service and maintenance, and provide a reliable and adequate power source, for all of the Service Property, including but not limited to buildings, stations, layover facilities, roadways, grade crossings, area lighting and draw bridges.
- b) The O&M Firm shall include in the Building and Facility Maintenance Program rules and procedures for testing and maintenance requirements regarding lighting and electrical systems, standby power systems, fire alarms, detection and protection systems and security systems.

Testing and Maintenance Responsibilities

- a) The O&M Firm shall test and maintain all electrical and lighting equipment on the Service Property in accordance with the Building and Facility Maintenance Program, the Maintenance of Way Service Standards and the following standards:
 1. The O&M Firm shall adhere to the current version of the International Electrical Testing Association Maintenance Testing Specifications, using the matrix multiplier of 1.0.
 2. Where requirements are not specifically detailed in the NETA reference standard, the O&M Firm shall test and maintain equipment per the Factory Mutual Publication 5-20.
 3. Where requirements are not specifically detailed in the NETA reference standards, the O&M Firm shall test and maintain equipment per the manufacturer's recommendations at a minimum, or in the absence of those, per good engineering practice.
- b) The O&M Firm shall be responsible for the implementation of all electrical and lighting testing and maintenance activities, including but not limited to scheduling, utility coordination, outage duration, and notification. The O&M Firm shall keep the Department apprised of activities in this area on a monthly basis, through the reporting and meeting requirements described in the Building and Facility Maintenance Program. The O&M Firm shall notify the Department at least 35 days prior to planned outages that affect the operation of trains, and shall notify the Department immediately in the case of unplanned outages.
- c) The O&M Firm shall inspect and maintain all lighting on the Service Property, including without limitation, yards, roads, and parking lots in accordance with the Maintenance of Way Services Standards. All lighting shall be inspected and maintained so that no less than 90% of the lighting at every location is illuminated. Unlit areas, not to exceed ten percent (10%) of lighting at any one location, must be dispersed throughout the location. A lighting deficiency shall be corrected immediately if the unlit area is concentrated so as to create a dark spot. Every effort should be made to achieve 100% lighting at all locations.
- d) The O&M Firm shall repair or replace all ballast, lenses and vandal shields if they are found to be defective. The O&M Firm shall clean all lenses when replacing bulbs, and on an annual basis, when needed or as directed by the Department. Lighting and electrical fixtures installed or replaced during the Term of the Contract shall be tamper-resistant and in accordance with the Maintenance of Way Services Standards.
- e) The O&M Firm shall test and maintain fire alarm and detection systems on the Service Property as per NFPA 72. The frequency shall be as indicated in NFPA 72 Section 7-3.
- f) The O&M Firm shall test and maintain fire protection systems on the Service Property as per NFPA 25. The frequency shall be as indicated in NFPA 25 Table 2-1.
- g) The O&M Firm shall provide all resources and maintain inventory and parts required for the maintenance of electrical systems and lighting on the Service Property in a timely fashion. The O&M Firm shall record and monitor inventory in the RMIS.

Energy Conservation and Utilization

- a) The O&M Firm shall provide energy conservation and utilization audits for all of the Service Property maintained as part of the O&M Services.
- b) The O&M Firm shall be responsible for reviewing on a monthly basis all energy bills for correctness and consistency with invoicing and consumption over the previous 12 months.

- The O&M Firm shall investigate and reconcile any unusual energy consumption and invoicing.
- c) The O&M Firm shall develop and maintain in the RMIS all electric services that contain monthly kW and kWh consumption and related billing data, along with class of service, location information, service number and other data pertinent to the Department. The location information shall be listed in sufficient detail for a “non-railroad” person to interpret without confusion.
 - d) The O&M Firm shall review, in conjunction with the appropriate utility companies, on an annual basis each electric service to determine if it is billed under the most cost beneficial electric tariff available. The O&M Firm shall re-negotiate the service tariffs for any services that are not on the best tariff to receive electric service under the most cost-effective tariff, subject to the Department’s approval.
 - e) The O&M Firm shall scan the energy market environment on a monthly basis to uncover the least expensive commodity prices available and secure such commodity if it proves to be both reliable and adequate.
 - f) The O&M Firm shall work with utilities and energy service companies to audit energy end-uses to implement cost effective load management strategies and electric service consolidations.
 - g) The O&M Firm shall work with utilities and energy service companies to audit each energy use at each building, facility and station for the purpose of investigating and implementing energy efficiency measures and equipment that are cost effective. These measures will include, but not be limited to lighting system improvements. The O&M Firm shall work with utilities and energy service companies to investigate and implement the most cost effective energy conservation measures that are outlined in energy audits.

2.3.5.6 Maintenance of Facilities

Starting on the Revenue Services Date, the Local Government Partner is responsible for the operation and maintenance of the vehicular, bicycle, bus and pedestrian access to and from the Station Platform and Station Property, including all traffic control devices not located on Department right-of-way or that do not control traffic on the state highway system. The Local Government Partner is also responsible for maintenance of utilities, housekeeping, trash removal, janitorial work and the general appearance of the station platform, as well as maintenance of any and all parking associated with the station.

The O&M Firm has maintenance responsibility for the station platform, including any structure or device or system located on the station platform, including ticket vending machines, ticket validators (see Sections 2.9 and 17), CCTV devices and systems, communication systems, system information, water fountains and platform and sidewalk lighting. Maintenance includes the upkeep and repair of station platforms to include any structure or device or system located on the station platform.

General Building, Facility and Station Platform Maintenance

- a) The O&M Firm shall maintain all Department-owned roadways, sidewalks, buildings, facilities, stations, and parking facilities, exclusive of parking areas maintained and operated

- by the Local Government Partners through the Joint Use Agreements and Amtrak, contained within the Service Property in a State of Good Repair.
- b) The O&M Firm shall maintain all building systems, equipment, components, and utilities (except utilities at station platforms) on the Service Property.
 - c) The O&M Firm shall keep guard rails, inter-track fences and signage, railings and cross walks maintained in a State of Good Repair at all times.
 - d) The O&M Firm shall maintain the telephone, intercom systems, public information systems, LED systems, security systems, automated building control systems, and other communication equipment in a State of Good Repair, consistent with manufacturer's warranties and recommendations.
 - e) The O&M Firm shall inspect fire protection systems and fire call boxes and test such systems as required by law or insurance policy. The O&M Firm shall keep those systems fully operational at all times in a State of Good Repair consistent with manufacturer's warranties and recommendations. The O&M Firm shall keep all such systems up to code as codes and regulations change from time to time.
 - f) Windows, roofs, foundations, containment berms, walls (inside and out), doors, floors, floor coverings, stairs or any related building components shall be maintained in a State of Good Repair by the O&M Firm.
 - g) The O&M Firm shall implement a Building and Facility Maintenance Program as part of the Maintenance of Way Services Plan to include but not be limited to painting, roof and gutter repairs and replacement, stairs, drop ceiling, paneling and lighting upgrades. The Building and Facility Maintenance Program shall include a general work plan outlining the station, building, and facility maintenance activities for the coming year. Such plan shall include a spring cleaning and touchup for all stations, buildings and facilities. The O&M Firm shall obtain the approval by the Department prior to the use of any paint colors that may be different from those as of the Revenue Services Date.
 - h) Station platforms, canopies, railings, and handicapped ramps, and facades shall be maintained in a State of Good Repair.
 - i) The O&M Firm shall maintain building air conditioning, heating, ventilating and circulating units and other building systems and system components contained within the Service Property so that they are all in a State of Good Repair.
 - j) Walkways and service aisles in shop facilities shall be delineated by non-slip yellow striping and shall be maintained free of obstructions, parts, grease, and debris. Concrete floors in shop facilities shall be inspected annually and re-coated with non-skid industrial coating as necessary.
 - k) The O&M Firm shall perform inspections to ensure the safety of the customers and shall maintain, repair and/or replace platform surfaces, edges, structures, stripes and markings, safety devices, warning stripes, tactile edges or others items required to provide for safe use of the Service Property. Tactile warning strip shall be maintained in accordance with ADA regulations, shall be kept free of dirt and grime, and shall be repaired or replaced immediately upon notification by the COO. The O&M Firm shall maintain platform safety stripes and tactile edges in a bright yellow and highly visible condition.
 - l) The O&M Firm shall submit to the Department for approval a program for the landscape maintenance. The maintenance plan shall include, but not be limited to, turf management,

- litter removal, mowing, edging, herbicide application, cleaning inlet throats and drainage structures, tree trimming, tree removal, landscaped area maintenance, and maintaining delineators and object markers.
- m) The O&M Firm shall remove rubbish weekly, or more frequently as necessary, at all buildings, and facility locations on the Service Property.
 - r) The O&M Firm shall procure, produce, install, add and replace signs and sign posts as necessary and/or as directed by the Department.
 - s) Sidewalks and crosswalks shall be kept in a State of Good Repair. Asphalt or concrete surface failure will be corrected as soon as identified. Uneven walking surfaces with more than 1/2" elevation variation shall be repaired by the O&M Firm.
 - t) All intertrack and platform fencing shall be maintained and checked weekly by the O&M Firm. The O&M Firm shall repair the intertrack fencing no more than 24 hours after discovery of, or receiving notice from, the Department of the existence of same. All other fencing shall be repaired as soon as possible, but shall always be repaired within 30 calendar days.

Buildings and Facilities

- a) The O&M Firm shall be responsible for the inspection, management and maintenance of all buildings and facilities. Buildings and facilities are provided strictly for the performance of O&M Services.
- b) All equipment and appurtenances shall be kept in a State of Good Repair in accordance with industry standards and the operating and maintenance manuals.
- c) The O&M Firm shall determine the warranty status of station, building, and facility equipment and appurtenances, and administer any warranties in effect during the Term of the O&M Agreement. The O&M Firm shall administer and pursue warranty claims on behalf of the Department. The O&M Firm should anticipate the need to perform reimbursable warranty work. If the O&M Firm fails to adequately protect the Department's warranty interests, as solely determined by the Department, all costs arising from such failure shall be the responsibility of the O&M Firm.

Building and Facility Inspections and Removal of Deficiencies

- a) Within 60 days of Notice to Proceed for Maintenance Mobilization, the O&M Firm shall submit to the Department for review and approval a preliminary Building and Facilities Maintenance Program describing the O&M Firm's proposed plan for operating and maintaining the Department's facilities, equipment and appurtenances. The plan shall address, at a minimum, proposed staffing, operation, maintenance, safety, regulatory, and evacuation plans for each of the major facilities. The Building and Facilities Maintenance Plan shall include annual maintenance projects, additions, modifications, and upgrades to existing facilities and a long-range facility plan which shall include an inventory of improvements to accommodate maintenance and repair of the revenue fleet. The annual Building and Facilities Maintenance Program shall also include budgeted and prioritized preventive maintenance projects for structures and installed equipment such as cranes, and other similar equipment.

- b) The O&M Firm shall implement the Building and Facilities Maintenance Program.
- c) The O&M Firm shall inspect each facility on the Service Property at least once per calendar quarter using the Department approved facility inspection form. The results of each inspection shall be entered into the RMIS.
- d) The O&M Firm shall restore, repair or replace all noted deficiencies within one week after the inspection. Exceptions shall require the prior written approval of the Department. Deficiencies which present a safety risk to employees, guests or the general public, as determined by the COO, shall be corrected immediately.
- e) The O&M Firm shall not leave Service Property disconnected, defective, locked out, or deliberately left otherwise inoperative.

Building and Facility Operation

The O&M Firm shall have general responsibility for the daily operation and maintenance of Department buildings and facilities, including, but not limited to, opening and closing the buildings and facilities as needed, lights, locks, heat, air conditioning, cleaning, and other duties in accordance with the Building and Facilities Maintenance Program. Except as otherwise explicitly directed by the Department, the O&M Firm shall comply fully with the terms and conditions of any manufacturer's maintenance and service schedules, and shall not jeopardize any manufacturer's warranty covering any portion of Support Property. The O&M Firm shall not be responsible for either the daily operation or maintenance of any Amtrak-owned facilities.

Utility Services

The O&M Firm shall be responsible for the payment of all utility services in the Service Property. This shall include all power, water, sewer, internet, and other utilities required to operate and maintain the Service Property, except for the station platforms.

Opening and Closing the Buildings and Facilities

The O&M Firm shall open the buildings and facilities for operations each day. Opening and closing the buildings and facilities includes unlocking and locking doors, unlocking and locking security gates, turning on and off lights, HVAC, and other necessary systems, and otherwise preparing the buildings and facilities to perform the O&M Services.

Lights

The O&M Firm shall ensure that there is adequate lighting for the buildings and facilities during operating hours and lights are turned off when not needed. This includes turning lights on and off, replacing light bulbs and ballast, and performing routine maintenance to lighting systems, as necessary.

HVAC

The O&M Firm shall ensure that there is adequate heating, ventilation, and air conditioning to provide a safe and comfortable work environment for O&M Firm and Department personnel.

This includes turning on and off the HVAC systems and performing routine maintenance (including window maintenance) to keep the HVAC operational.

Cleaning

The O&M Firm shall keep the buildings and facilities (including floors, work areas, and windows) clean and in a State of Good Repair, free from trash, debris, and graffiti. The O&M Firm shall promptly remove all trash, debris, and graffiti no more than 24 hours after discovery of, or receiving notice from, the Department of the existence of same.

The O&M Firm is responsible for cleaning all office space at the VSMF.

The O&M Firm shall provide all consumables for the bathroom facilities at the OCC and the S&I Shop.

Parking

The Local Government Partners shall be responsible for the maintenance of parking lots at all station areas. The O&M Firm shall be responsible for maintenance at all other parking areas on the Service Property.

All parking areas on the Service Property are unsecured and each person using the parking area does so at his or her own risk. The Department shall not be responsible to O&M Firm for any damage or loss of any kind related to any person's use of any parking area. State and other laws regulating special needs parking will be strictly enforced.

No vehicles other than Service Equipment and Support Property are permitted inside VSMF buildings. Canteen trucks and O&M Firm personnel vehicles are not permitted inside VSMF buildings or at any location other than the designated parking area. On-site parking is not guaranteed and may be changed, restricted or eliminated by the Department.

2.3.5.7 Materials and Supplies

The O&M Firm shall provide all materials, parts and services, unless otherwise provided by the Department, and maintain inventory levels to ensure adequate inventory for the successful operation and maintenance of SunRail commuter rail service. The O&M Firm shall store, secure, issue, account for, and control Department-provided materials and other assets.

The O&M Firm shall procure, manage, and disburse material and parts through the RMIS. The O&M Firm shall maintain an inventory of repair-and-return, unit exchange, and other spares required to support the O&M services. When requested by the Department, the O&M Firm shall keep separate inventory records in the Materials MIS for those items that have been purchased using capital funds. The Department reserves the right to transfer management or procurement responsibility for some or all of the O&M Firm-managed materials, parts and services to the Department; approve the method, software, part numbers, forms, etc. used in maintaining inventory; or implement its own inventory management system during the term of the O&M Agreement.

The O&M Firm shall not use the materials for purposes not directly related to the CFRC or SunRail commuter service without the written approval of Department.

O&M Furnished Materials

Only materials conforming to the requirements of the Service Standards shall be incorporated in the work. The materials furnished and incorporated in the work shall be new.

Materials to be used in the work will be subject to inspection and tests by the COO and the O&M Firm shall furnish without charge any samples of such materials as may be required. The COO may inspect, sample or test any materials at the source of supply or other locations. The O&M Firm and supplier of the material shall fully cooperate during the inspection, sampling and testing of such material. The O&M Firm shall provide the COO with reasonable access to the material to be inspected, sampled or tested.

It is understood that the inspections and tests if made at any point other than the point of incorporation in the work in no way shall be considered as a guaranty of acceptance of the material. Moreover, such inspections and tests shall not lead to the continued acceptance of material presumed to be similar to that upon which inspections and tests have been made. Furthermore, it is expressly understood and agreed that COO's inspections and tests shall not relieve the O&M Firm or the O&M Firm's suppliers of responsibility for quality control. The COO assumes no obligation to inspect materials at the source of supply.

Any manufacturers' warranties, guaranties, instruction sheets and parts lists that are furnished with certain articles or materials incorporated in the work shall be delivered to the COO before acceptance of the work covered by the Supplemental Agreement.

Department Furnished Materials

In the event that certain materials are to be furnished by the Department, a reasonable amount of such materials will be available to the O&M Firm at no charge. The O&M Firm shall reasonably use such materials and shall use its best efforts to avoid any undue waste of the materials. The O&M Firm shall not use the Department-furnished materials for any purpose other than as specified by the Department.

Once the materials are delivered by the Department for the O&M Firm's use, the O&M Firm shall be solely responsible for the security of the materials, and shall pay all demurrage and storage charges. Any Department-furnished materials lost or damaged by failure of the O&M Firm to comply with the requirements of this Agreement shall be replaced by the O&M Firm at the O&M Firm's expense, and those costs may be deducted at the COO's sole discretion from any monies due or to become due the O&M Firm.

Property Rights in Materials

The O&M Firm shall have no right of property in the materials used after they have been attached or affixed to the Service Property or after payment has been made by the Department. All such material shall become the property of the Department. All Department-furnished material that is

not used for the purpose stated by the Department or is stored under either the control of the O&M Firm or Department shall remain the property of the Department.

Certificates of Compliance

A Certificate of Compliance shall be furnished prior to the use of any materials that requires a certificate be furnished. The Department may permit the use of certain materials or assemblies prior to sampling and testing if accompanied by a Certificate of Compliance. The manufacturer of the material or the manufacturer of assembled materials shall sign the certificate and shall state that the materials involved comply in all respects with the requirements. A Certificate of Compliance shall be furnished with each lot of material delivered to the work and the lot so certified shall be clearly identified in the certificate.

All materials used on the basis of a Certificate of Compliance may be sampled and tested at any time. The fact that material is used on the basis of a Certificate of Compliance shall not relieve the O&M Firm of its responsibility for incorporating material in the work which conforms to the requirements and any material not conforming will be subject to rejection whether in place or not.

The Department reserves the right to refuse to permit the use of material on the basis of the O&M Firm's failure to submit a proper Certificate of Compliance.

Inventory Management Obligation

- 1) The O&M Firm shall procure, store, secure, issue, account for, control, and manage the disposal of inventory necessary for the provision of O&M Services.
- 2) The O&M Firm shall procure and manage the purchasing of all inventory required to perform the O&M Services, as described herein. All inventory acquired by O&M Firm to perform the O&M Services shall be used solely for the purpose of providing the O&M Services. The O&M Firm shall not sell, loan, give away, or use for purposes other than O&M Services, inventory purchased or obtained for the O&M Services, without the express written consent of the Department. Title and ownership of such inventory shall pass to the Department upon purchase by the O&M Firm except as otherwise provided in the O&M Agreement. The inventory shall be available for inspection by the Department at all times.
- 3) The O&M Firm shall develop and institute, subject to the approval of the Department, a materials management process that will optimize efficiency and reduce inventory cost through forecasting of replenishment requirements and control the materials handling function to assure that adequate levels of critical inventory (particularly long lead-time items) are maintained throughout the term of the O&M Agreement. The O&M Firm shall use the RMIS to monitor levels of materials and inventory.

Storage Location

The parts storage at the S&I Shop shall be staffed by the O&M Firm as necessary to support the mechanical operation.

All other inventory must remain at a location accepted by the Department.

Material Storage

All material must be stored in an orderly manner, tagged or identified, such that it can be easily found, inventoried and placed and is not damaged, warped, twisted or otherwise distorted during storage. The Department may reject as non-compliant any Support Inventory not stored in conformance with this policy. Loss of value due to improper handling or storage of support property or support material shall be the responsibility of the O&M Firm.

Inventory

The Department will provide the O&M Firm the existing inventory of materials and parts as defined in the Cab Car and Locomotive Design Criteria.

All material must be verified as to count and condition prior to recording in the Material Management system. All material issued or received must be recorded and documented as to whom it was issued or withdrawn by or whom it was received from and received by, whichever the case may be.

The O&M Firm shall conduct and report to the Department or its designee the results of annual inventories of all materials in stores or warehouse locations, materials stored in “stockpile” locations, and all Department-provided property or other assets with a purchase price value of \$500 or more. The annual inventory shall start on or after June 15th and be completed no later than June 30th each year. The Department may, at their discretion, have a third-party conduct an audit and report the inventory. The O&M Firm shall facilitate such inventory. The same inventory schedule, due date, and report requirements specified in the O&M Agreement shall be adhered to when the third-party O&M Firm performs the inventory.

The O&M Firm must provide consistent and accurate inventory data for the Department’s monthly and year-end accounting reporting. This includes accurate exception reporting of price and quantity adjustments. The O&M Firm shall reconcile any inconsistencies in reported data, including payments to the Department for unaccounted shortages. The O&M Firm shall provide staff support for this function, as required.

Upon reasonable notice, Department shall have the right to inspect all O&M Firm-maintained inventories, personal property and other assets. The Department, at its own expense, may conduct inventories of any Department-furnished materials or property.

Physical Inventory and Audit

The O&M Firm shall conduct an initial physical inventory and thereafter shall conduct an annual physical inventory throughout the term of the O&M Agreement.

Prior to the Revenue Services Date, the Department and the O&M Firm shall complete an initial physical inventory to determine the levels of Service Property, Support Property and Support Inventory. Such initial inventory and audit shall serve, among other things, as the basis for determining the O&M Firm’s compliance and the Department’s compliance. Upon completion of

such initial physical inventory and initial audit, a listing of such inventory shall be attached to the Maintenance of Way Services Plan.

Obsolete, Surplus, Scrap and Salvage Inventory

As part of the annual physical inventory and annual audit, and routinely in the course of performing the O&M Services, the O&M Firm shall identify any inventory that is to be considered obsolete, surplus, scrap or salvage provided that the final determination of such status shall be made by the Department.

- 1) If an item of inventory is deemed obsolete by the Department, it may continue to be utilized until depletion, unless the item has been determined to be inappropriate due to safety or other failure considerations. On an annual basis the COO may conduct a joint audit with the O&M Firm aimed at identifying obsolete material. In accordance with Department policies and procedures, the O&M Firm shall dispose of any obsolete material identified through this process, but may do so only with written approval from the Department.
- 2) Surplus inventory may be disposed of with the prior written approval of the Department.
- 3) Scrap material is an item of inventory where the actual cost to repair or repair-and-return may exceed the economic cost to replace. In such cases, the O&M Firm may scrap the item of inventory if the O&M Firm replaces it with a new or completely remanufactured item. The O&M Firm may also scrap-and-replace such units of inventory where and when it realizes operating economies from standardized configurations with the prior written approval of the Department. For such standardization, the O&M Firm shall use only new or completely remanufactured items.
- 4) The O&M Firm shall, at least annually, dispose of any inventory identified as obsolete, surplus, or scrap. Disposal of non-capitalized units of property shall be accomplished through sale by competitive bidding. Capitalized units of property must be disposed of in accordance with instructions from the Department. Disposal of any obsolete, surplus, or scrap inventory shall be on a first-in, first-out (FIFO) basis. All inventory retained shall be the most recently acquired.
- 5) All materials requiring special handling such as but not limited to; waste oil, anti-freeze and battery acid shall be disposed of by a licensed contractor of hazardous wastes.

Material Management Plan

The O&M Firm shall submit a Material Management Plan as part of the Maintenance of Way Services Plan that explains fully how the O&M Firm will manage the VSMF, S&I Shop, and manage and coordinate with Amtrak at the AutoTrain Facility and other storage locations in conformity with the requirements of the Department, including an inventory reordering plan, inventory control as a whole, staffing and all details of the O&M Firm's operational plan for Material Management. The plan shall also address quality control aspects, including inbound inspection of material, management of suppliers, material specification management and disposition of material.

The O&M Firm shall prepare and maintain on an annual inventory basis, a list of Capital Spares, supplies and consumables that were in place at the time of Notice to Proceed for Maintenance

Services, and provide annual inventory those items. For all serialized capital spares, the O&M Firm will provide annual accounting. Any items scrapped and not replaced in kind, should be identified with explanation as to why they could not be reconditioned and put back into the inventory as spares.

Minimum and Maximum Levels

The O&M Firm shall determine, subject to Department acceptance, the minimum and maximum levels of each item of inventory to be maintained.

The inventory maintained in the Materials MIS acquired for use in the O&M Services shall be subject to audit and verification by the Department. During the term of the O&M Agreement shall the inventory fall below the minimum level; the O&M Firm will return the inventory to the Department-approved minimum level.

Stocking Levels

The O&M Firm shall at all times maintain actual levels of inventory that exceeds Department approved minimum inventory levels. In the event that the Department determines that actual inventory levels fall below the approved minimum levels, the Department may deduct from the O&M Firm's next monthly payment the cost of acquiring the amount of inventory necessary to bring the actual inventory level up to the Department-approved minimum inventory level. The O&M Firm shall not deplete existing stocks to generate working capital for the O&M Firm's benefit. Consumption of existing stocks that results in replacement with consignment material is not permitted without prior written approval from the Department.

Replacement of Inventory

- 1) The O&M Firm shall replace all items in inventory or necessary to purchase maintenance of way materials. If an item that costs more than one thousand dollars (\$1,000) for any reason becomes unavailable for use in the provision of O&M Services, such item shall be promptly replaced by the O&M Firm. The COO may authorize the O&M Firm to purchase material with a value in excess of \$1,000.00. The O&M Firm shall comply with all Best Practices Procurement Procedures and any other procurement requirements mandated by the Department. The cost of any such authorized purchase shall be reimbursed to the O&M Firm on a monthly basis. All material shall become the property of the Department.
- 2) The O&M Firm shall replace all items in inventory or necessary to purchase maintenance of way materials. If an item that costs less than \$1,000 for any reason becomes unavailable for use in the provision of O&M Services, such item shall be promptly replaced by the O&M Firm. The cost of any such replacement shall be included in the Lump Sum Price.
- 3) In the event that inventory becomes unavailable, as described in paragraphs (1) or (2) above, the O&M Firm shall submit reports to the Department within 24 hours of the occurrence of such unavailability.

Quality of Materials

Inventory material and services shall be selected to achieve or exceed performance requirements of the O&M Agreement. Materials and services include repairing and overhauling components. All inventory materials to be used in the provision of O&M Services shall be first quality products and shall conform to OEM specifications. If OEM specifications are not available, then other appropriate specifications or standards (such as AAR, ANSI, Aluminum Association, ASTM, AWI, NEC, NFPA, SAE, ASME, or others) should be utilized, unless otherwise specified by the Department. The O&M Firm shall not acquire or use materials that would result in a reduction in durability, reliability, safety, regulatory compliance, or operating economy relative to the original design or as modified through upgrades or improvements.

- 1) The O&M Firm shall acquire inventory that is identical to and interchangeable with parts, material, circuits, logic, ergonomics, and dimensions that will be used at the VSMF at Rand Yard. Unless otherwise specified in this O&M Agreement, the requirement for interchangeability shall apply to material used for repairs, maintenance, and replacements. Interchangeability shall be defined by form, fit, and function. The cost, durability, delivery time, and appearance are an integral part of function.
- 2) The O&M Firm may recommend substitutions in or changes to configurations of material and spares; however such substitutions or changes shall not lessen the reliability, appearance, availability, operating economy, compliance, or safety of the Service Property. Should the Department provide approval for such substitution or change, the O&M Firm shall acquire sufficient spare materials for such substitution or change.
- 3) The O&M Firm shall not remove re-buildable components and replace them with earlier, superseded, obsolete, or discontinued models taken from other sources of inventory.
- 4) All inventories purchased for the O&M Services shall comply with all local, state, and federal regulations.

Failure to Maintain Adequate Levels

In the event that the O&M Firm is unable to perform the necessary maintenance at the VSMF at Rand Yard within the allocated maintenance schedule due to the O&M Firm's failure to maintain an adequate level of inventory, the O&M Firm shall be held liable for the maintenance delay condition, including all applicable damages.

2.3.5.8 Environmental Services

The O&M Firm shall be responsible for ensuring the operations, maintenance and servicing of all environmental systems located throughout the Service Property as described in Section 16.0, Environmental Services. The O&M Firm may subcontract out these responsibilities, and shall ensure that their subcontractor maintains all environmental permits, certificates and licenses necessary to perform Maintenance Services and maintain the Service Property. Permits, certificates, and licenses shall be obtained in the name of the O&M Firm as an agent for the Department. The O&M Firm shall ensure that the O&M Firm subcontractor properly disposes of any waste or hazardous material in accordance with all applicable federal, state and local regulations. The O&M Firm or their subcontractor shall furnish all labor, materials, tools, and equipment to operate, test, service, maintain, and repair the Department's environmental systems.

Hazardous Material Disposal

Any regulated waste or hazardous materials located on the service property produced or generated while delivering the O&M Services shall be disposed of in accordance with all applicable environmental regulations. Copies of all waste management documentation, including manifests, bills-of-lading, weight slips, and receiving facility receipts shall be provided to the Department.

The O&M Firm shall develop the CFRC Hazardous Materials Instructions for the Department's approval and submission to FRA no later than 90 days prior to the Revenue Services Date. The O&M Firm shall use the current version of the CSX US Hazardous Materials document and the Final Draft US Hazardous Materials Instructions for Rail (dated 02-01-09) as source documents. The CFRC Hazardous Materials Instructions for Rail shall be consistent with, to the extent possible, the CSXT US Hazardous Materials Instructions. The O&M Firm shall ensure that the CFRC Hazardous Materials Instructions are accessible, through electronic and print copy, to all employees whose duties require adherence to these Rules. The O&M Firm will also provide the CFRC Hazardous Materials Instructions to third party contractors, employees of non-Department railroads, officers of the CFRC and regulatory agencies as necessary.

The O&M Firm will provide appropriate training to their personnel who may impact hazardous material transportation safety. Employees who inspect or transport hazardous material by rail must have a copy of and comply with the United States Hazardous Materials Instructions for Rail, as well as a copy of the current Emergency Response Guidebook (ERG) readily accessible while on duty.

2.3.5.9 Third-Party Projects

Inspection and Compliance of Others' Work

The O&M Firm shall ensure the safety compliance of all work done on the service property by third-party contractors.

Inspection, Minor Repairs and Testing of O&M Firm's Work

The O&M Firm shall inspect, make minor repairs and correct deficiencies, and test other contractors' work performed as a part of the Department's construction and third-party projects. The purpose of inspection, repair and testing shall be to ensure that the work of such contractors satisfies all of the requirements for the safe operation of trains, including, but not limited to, all applicable FRA and Department requirements and standards.

All O&M Firm employees performing testing, repair and inspection services shall complete daily reports, in a format approved by the Department. Each daily report shall be submitted at the end of each workday to the appropriate Department discipline manager.

Inspection and Testing of O&M Firm's Equipment

The O&M Firm shall inspect, test and certify other contractors' equipment used as a part of the Department's construction and third-party projects. The purpose shall be to determine whether the

equipment is in a satisfactory condition to operate safely on the Service Property, including, but not limited to, compliance with all FRA requirements. The O&M Firm shall notify the Department and the other contractors/subcontractors, if applicable, of non-compliant or unsuitable equipment determined by such inspection. All equipment inspections shall be documented and submitted in a format approved by the Department.

Supporting Communications and Signal Construction

The O&M Firm shall support any communications and signal construction work performed by other contractors as a part of the Department's construction and third-party projects. The O&M Firm's support shall include, but not be limited to, providing access to all Communication and Signal facilities and identifying, assisting with, and performing the testing of such facilities. Attention is directed to the O&M Firm's inspection and testing responsibilities.

Locating and Marking Underground Facilities

The O&M Firm shall locate all underground railroad facilities that exist at or near the area of other contractors' work performed as a part of the Department's construction and third-party projects. The O&M Firm shall perform such services in advance of other contractors' work, and the O&M Firm shall clearly identify the location of all facilities by markings on the ground. The O&M Firm will help support the Department in developing "As-Builts" for underground facilities at various locations. The O&M Firm also shall be required to provide minor protection of underground signal facilities and perform minor relocations, as necessary.

Training and Qualification of Department Employees and Department and Third-Party O&M Firm Personnel

The O&M Firm and the Department shall jointly develop training, testing and employee qualification programs for Department staff, Department contractors and third-party construction contractor personnel. Such training shall include, but not be limited to, all applicable FRA, RWP, and Maintenance of Way Service Standards.

2.3.5.10 Other Maintenance of Way Services

- a) For any new installation, modification or maintenance work performed on or within the Service Property, the O&M Firm shall provide the Department with a complete set of updated plans and/or documents in electronic and hard copy formats within 30 days following completion of the work. The O&M Firm shall provide plans as necessary for control of encroachments.
- b) The O&M Firm shall provide inspection and testing of track before placing or restoring these systems to service following an outage. The O&M Firm shall further ensure the safety compliance of all work done on the Service Property resulting from other Third Party work ordered by the Department.
- c) The O&M Firm shall comply with all of the Department's standard plans, material specifications, design criteria, work practices and methods, and use only the Department approved materials in performing the O&M Services and in designing modifications, improvements or additions to the Service Property.

- d) The O&M Firm shall make available to the Department sufficient personnel that are qualified and authorized by the O&M Firm to support the Department, the O&M Firm and third party contractors for Extra Work.
- e) Existing "as-built" plans shall be maintained in accordance with FRA regulations at all times. Once plans are created in or converted to electronic CADD format, they shall be maintained without "mark ups" in a 100% correct and accurate state.
- f) All CADD work shall utilize the latest version of CADD software compatible with the Department's software.
- g) Electronic copies of any new or updated CADD files shall be forwarded to the Department so as to keep the Department's set of plans current at all times.
- h) The O&M Firm shall have staff operate and maintain electronic files. Specific duties include, without limitation, neat and orderly storage of plans, protecting plans from damage, controlling access to Third Parties, plan copying, safe and appropriate handling of plans, Third Party billing, and cataloging of new and updated plans.
- i) The O&M Firm shall provide surveys, design, development of plans, layouts, sketches, pictures, staging and phasing plans, and other engineering functions that are normally required for the Maintenance Services.
- j) The O&M Firm shall investigate, respond to, and attempt to resolve complaints and problems on and along the Service Property that result from the performance of the Maintenance Services.

2.4 TRANSPORTATION

During the term of the O&M Agreement, the O&M Firm shall operate, manage, maintain and provide staff for the Department's SunRail commuter rail services on the rail lines contained within the Service Property. The O&M Firm shall provide timely, efficient, clean, and courteous service to the public on a continuing basis in accordance with this Section. The O&M Firm shall provide transportation services consistent with the commuter rail service schedules established by the Department.

2.4.1 Basic Service Plan

The Basic Service Plan (BSP) shall be that level and type of train service initially in operation as of the Revenue Service Date for Phase 1, projected to be no later than May 1, 2014, and unless otherwise modified by agreement between the parties, shall consist of the trains shown in CFRC Transportation and Maintenance Operations Plan (TMOP) and its provisions for train service are incorporated herein.

The O&M Firm shall anticipate the following critical milestones:

- OCC Occupancy – no later than February, 2013
- Shadow Mode Operations – no later than April, 2013 - July, 2013
- Demonstration Services – no later than September, 2013
- Target Revenue Services Date – no later than April, 2014

SunRail commuter service is projected to begin no later than May 1, 2014 with the Initial Operating Segment (IOS) which will extend approximately 32 miles from the DeBary Station to Sand Lake Road Station. Twelve (12) stations are in Phase 1 and will be located at DeBary, Sanford, Lake Mary, Longwood, Altamonte Springs, Maitland, Winter Park/Amtrak, Florida Hospital Health Village, LYNX Central, Church Street (downtown Orlando), Orlando Amtrak, and Sand Lake Road.

The IOS preliminary service plan features 32 train trips operated each weekday. Trains will run every 30 minutes in the peak period and every 120 to 150 minutes during the midday and evening hours (32 daily trips). For the 2014 IOS service plan, no service will be operated on Saturdays, Sundays or holidays. Trains will layover about 18 minutes at each terminal. Proposed train schedules are included in the TMOP.

It is anticipated that one stand-by train will be provided during peak periods, subject to availability. The stand-by train will be used to replace scheduled trains that must be removed from service for corrective maintenance or scheduled trains that have been delayed beyond 30 minutes. Each stand-by train should consist of one (1) locomotive, two (2) cab cars, and a train crew.

2.4.2 Additions and Changes to the Basic Service Plan

The Department reserves the right, at any time during the term of the O&M Contract, to make changes to the service schedule and will provide advance notice to the O&M Firm of at least 60 calendar days, less notification may be made if both parties mutually agree. In making schedule

changes, the Department shall consult with O&M Firm and shall consider the following: (i) schedule shall promote On-Time Performance with a high degree of reliability; (ii) schedule shall contain sufficient time to accommodate scheduled operations of all trains; and (iii) schedule shall include recovery time for contingencies. The O&M Firm is expected to propose changes to the service schedule, provided that final approval of all schedules shall be within the sole discretion of the Department.

The O&M Firm shall provide additional trains over and above the train services required for the Basic Service Plan (BSP) in accordance with the cost plus fee arrangement of Extra Work. Changes to the BSP may be made at the discretion of the Department. Changes to the BSP services will be considered Extra Work.

2.4.3 Schedule Changes

2.4.3.1 Routine Schedule Changes

The Department anticipates two system-wide changes of schedule per year. The O&M Firm shall provide to the Department, four (4) months prior to a schedule change, any recommendations for running time revisions or other scheduling matters, which improve operating performance. There shall be no additional costs to the Department for these twice-annual changes in schedules or train sizes. System schedule changes that exceed 32 trains per day will be considered Extra Work and additional vehicles shall be provided by the Department. In support of routine schedule changes, the O&M Firm shall provide one comprehensive system-wide ridership count including on-off passenger counts by station and by train for seven (7) consecutive days, at a time to be determined by the Department, and monthly topical counts. A topical count will cover, over the course of one day, terminal activity, one or more specific trains, and one or more specific stations. The results of topical counts shall be provided to the Department within one business day of the count.

2.4.3.2 Construction Schedules

The O&M Firm shall cooperate with the Department by developing alternate schedules peak and off-peak services, including making onboard and station public address and visual messaging board announcements, and posting applicable notices at affected stations and on trains, without any limit per year. Special schedules may result in service reductions or rearrangements, and the O&M Firm must have flexibility in rescheduling the operating/station workforces.

2.4.4 Train Operation, Crews and Performance

2.4.4.1 Engineer Qualifications

The O&M Firm shall provide qualified and certified engineers as specified in Section 10.3. The safe operation of the train is of the utmost importance to the Department. O&M Firm train engineers shall be qualified, certified and trained in accordance with 49 CFR 240 and shall have a valid driver's license issued by a state within the United States. The O&M Firm shall develop for the Department approval and submittal to the FRA a Part 240 plan a minimum of 90 days prior to the Revenue Services Date.

All engineers must be able to qualify on Department equipment, which includes train handling, operating rules, and physical characteristics through written and oral testing and demonstrated and observed train handling. In addition to the safe operation of the train, engineers must possess specific knowledge to be able to trouble shoot routine mechanical issues en route. The O&M Firm's training program must include provisions for such trouble shooting purposes.

2.4.4.2 Onboard Personnel Qualifications

All duties shall be performed as described in the Train and Engine Crew SOPs that will be developed by the O&M Firm for Department approval, the CFRC PTEPP as required by 49 CFR 239, and the Department SSPP, as well as all other applicable documents and regulations. The O&M Firm shall provide adequate staff to maintain the safe operation of the train, the safety of its passengers and customers on the platforms, provide a high degree of on-time performance and customer service and protect revenue through thorough fare enforcement. Collection and protection of revenue from customers is critical to the financial success of the Department. The Department reserves the right to assign Department personnel or other Third Parties to observe conductor's actions or to supplement their duties in non-railroad related areas, including but not limited to verifying tickets and validations, writing citations, and performing passenger counts.

Conductors

The O&M Firm shall provide qualified and certified conductors, subject to Federal licensing requirements and as specified in Section 10.3. O&M Firm train conductors shall be qualified, certified, and trained in accordance with 49 CFR 242 and shall have a valid driver's license issued by a state within the United States. Conductors shall be qualified on Operating Rules, Air Brake Instruction, Safety Rules, PTEPP and Emergency Evacuation procedures, Security Awareness, Cardiopulmonary Resuscitation (CPR), Automated External Defibrillator (AED) and First Aid Training, Timetable Special Instructions, basic mechanical troubleshooting, and ADA and customer service requirements. Conductors shall be trained according to the O&M Firm's approved training plan and operate the train according to the approved Train and Engine Crew SOPs. The O&M Firm shall develop for the Department approval and submittal to the FRA a Part 242 plan a minimum of 90 days prior to the Revenue Services Date.

Fare Inspection

The O&M Firm shall be responsible for onboard (or other locale) verification of proper fare instruments required of customers. This verification shall be performed by conductors or other O&M Firm personnel as may be mutually agreed upon by the O&M Firm and the Department. The O&M Firm shall have, as a management objective, an onboard fare instrument inspection rate goal of 25%, subject to announced or unannounced audit by the Department.

O&M Firm fare inspection staff shall perform duties in accordance with all applicable CFRC fare policies as outlined in Department Codified Tariff. The O&M Firm personnel responsible for fare inspection and enforcement shall attend and satisfactorily complete a course of instruction administered by the O&M Firm. Such personnel must be eligible for appointment by the Department as a public officer and shall enforce Proof-of-Payment (POP) fare policies consistent with SunRail Fare Enforcement Policies and Procedures Training Manual, including writing

citations as the situation may warrant and verifying tickets or passes using a card reader provided by the Department. The O&M Firm shall submit a Procedures Training Manual and a Fare Enforcement Plan, inspection, validation and reporting procedures, for Department approval including 90 days prior to the Revenue Services Date.

All handheld card readers shall be furnished by the Department, including spares and replacements. O&M Firm personnel must be trained in the use of the readers. The O&M Firm shall be responsible for "First Line Maintenance" of the card readers, which involves (1) keeping the equipment clean and safe from damage, (2) contacting vendor or the Department to report device swap outs and request replacement units, (3) replacement of devices with a Department furnished spare, and (4) being responsible for securing/storing all on-site inventories.

2.4.4.3 Train Crew Staffing

O&M Firm shall, at all times during the Term of the O&M Agreement, provide competent and qualified employees, in sufficient numbers to perform the O&M Services. Each O&M Firm train crew will consist of one (1) FRA-qualified Locomotive Engineer and one (1) FRA-qualified Conductor.

- 1) By 0700 each day the O&M Firm must file a complete Daily Train and Engine Staffing Report with the Department detailing all assignments of train and engine crews for that day's trains. The report must highlight trains where the staffing levels will not be met that were established in the approved Basic Service Plan. The cover sheet of the report must list understaffed trains and tally the required liquidated damages, as discussed in Section 15. During the course of the service day, the O&M Firm must notify the Department by fax or e-mail of any deficiencies in staffing levels that emerge during the course of that day with an updated deficiencies tally. Failure of the O&M Firm to prepare and submit the required daily reports in accordance with Section 11 will result in liquidated damages.
- 2) Discovery by the Department or its agents of an unreported vacancy in a conductor's position will result in liquidated damages for each unreported conductor trip not staffed. Liquidated damages shall be assessed in accordance with Section 15.
- 3) The O&M Firm shall post personnel at the OCC and various stations to observe and manage terminal and road operations during the hours of commuter rail operation each service day.
- 4) Train and engine crews shall monitor all customer service systems while conducting their daily duties to ensure proper operation of the systems. Train crewmembers shall immediately notify train dispatchers when systems are not operating as intended. The systems to be monitored include, but are not limited to, signage, LED signs, HVAC systems, and public address systems.
- 5) Train and engine crews shall record and report any mechanical and safety-related defects discovered en route or while conducting their daily duties. Safety-related defects must be reported immediately. The O&M Firm shall ensure that such records are entered into the RMIS not more than 24 hours after each occurrence.
- 6) All crew members shall comply with all CFRC Standard Operating Procedures and:
 - Will be strictly prohibited from usage of cell phones and personal electronic devices, including sending of text messages, except for emergencies per FRA Regulations (49 CFR 229).

- Shall not be permitted to take up any revenue seats with their belongings.
- 7) Conductor's main responsibilities include but are not limited to:
- Ensure the safety of SunRail customers and train operations;
 - Treat customers with respect, dignity, and courtesy at all times;
 - Provide accurate daily ridership counts for each train operated. The O&M Firm shall record the results of such counts in accordance with Section 11.1, Reporting and Recordkeeping Requirements;
 - Provide accurate delay reports, including arrival and departure time at each station and causes of delay;
 - Assist the Department staff with surveys or ridership audits as necessary;
 - Greet customers in a friendly manner when boarding/detraining (i.e., good morning/good afternoon);
 - Make eye contact with customers when addressing question or concerns;
 - Open all platform doors and ensure that non-platformed doors remain closed;
 - Close all doors prior to train's departure from a station;
 - Wear a clean and tidy uniform, including hat and all safety equipment (safety glasses, and other equipment as necessary). Body piercings and/or tattoos must be tasteful. Small stud earrings are permitted for both sexes. Other piercings/tattoos should be discreet or appropriately covered. Overall appearance must be professional, hair must be neatly trimmed or if long, pulled back neatly, facial hair must be neatly trimmed, fingernails must be clean and trimmed;
 - Walk through all cars and maintain a continuous presence on board the train. Prolonged socializing with customers, riding in the cab of the cab car, riding in the vestibule, sitting at any time, reading, or other non-work related functions will not be permitted;
 - Hand out Department-provided or Department approved materials
 - Report any and all unusual occurrences. Immediate report must be made to the OCC. Follow-up report must be provided in writing within one hour of train's arrival at end of shift. Incidents may include, but are not limited to: vandalism to train; use of fire suppression equipment; anytime Emergency Medical Services (EMS) or police have been requested; or in the case of verbal or physical altercations between passengers or between conductor and customer;
 - Ensuring announcements regarding train destinations are made;
 - Operate communications, public information, or other on-board equipment which the Department may install, consistent with other duties;
 - Inform on-board customers of anticipated delays, in accordance with Section 2.8, Incident Management and Notifications;
 - Help customers with disabilities find a seat when all seats are fully occupied;
 - Enforce common courtesy issues, including but not limited to: saving seats, queuing, blocking seats, feet on seats, loud music through head phones, loud cell phone conversations, and abusive or offensive language/behavior towards fellow customers; and
 - Notify passengers if the train will be boarding/detraining passengers from a track that is not the normal track. Conductors must give exact location on train where customers will be able to detrain, including the car number and location of the car.

- Each SunRail train consist will be equipped with at least one accessible car. Conductors must keep appropriate areas in those cars clear for PNA/PWD use and must be aware of and apply all fare policies with regard to PNA/PWDs. Conductors must ask customers not needing assistance to vacate the priority seating areas of the train, as necessary.
- Conductors must interview and provide assistance to customers waiting in Boarding Assistance areas or on the mini high accessible ramps on platforms. Conductors must deploy the mini-high ramps and assist PNA/PWDs when boarding and alighting. Conductors must advise the OCC and other crew members of the destination and type of assistance required by PNAs, once on board. Conductors must be trained in the safe operation and troubleshooting of all onboard mechanical and manual platform lifts and must provide reasonable assistance to PNAs in the boarding and alighting process and use good judgment in doing so.
- Be available for court appearances in relation to the issuance of a summons or any other time that is deemed necessary;
- Conductors must report all delays associated with the accommodation of PNAs to the OCC. Any boarding denials or other problems related to PWDs must be reported to a transportation manager as soon as possible.

2.4.4.4 *On-time Standards*

- 1) The O&M Firm shall strive to operate the Department services on time according to the Service Schedule. Pursuant to this Scope of Services, the On-Time Performance standard is that trains shall always arrive on or ahead of schedule, provided, however, that no revenue train is allowed to leave an intermediate station before its scheduled departure time unless specifically authorized by the Department.
- 2) O&M Firm shall determine, record, calculate, and report to the Department the On-Time Performance of revenue trains for each route on which O&M Firm is providing Commuter Rail Services. On-Time Performance shall be reported in terms of an On-Time Performance percentage. The denominator for each calculation shall be the number of revenue trains scheduled during the reporting period for the appropriate route or group of routes. The numerator for the calculation shall be the number of scheduled trains LESS the sum of (a) number of trains cancelled and (b) the number of trains arriving at their final terminal greater than five minutes later than scheduled.
- 3) O&M Firm shall maintain On-Time Performance records for each trip for which O&M Firm is providing Commuter Rail Services for the Department. O&M Firm shall also maintain records of the number of Late Trains and Cancelled Trains. O&M Firm shall produce daily, monthly, and annual reports in both electronic and hard copy form. On-Time Performance shall be summarized for each route, division, and system wide by morning peak, evening peak, and off-peak periods.
- 4) O&M Firm shall provide immediate notice to the Department of any situation that could affect the On-Time Performance of the O&M Services. The means of notice shall be in accordance with Section 2.8, Incident Management and Notifications.
- 5) Liquidated damages assessed to the O&M Firm as a result of missed trips will be calculated in accordance with Section 15.

2.4.4.5 Standards and Protocol

Upon reporting for duty and receiving assignment, each O&M Firm SunRail crew will board the train; walk through it to inspect for cleanliness, vandalism, or defects; and correct and report any noted deficiencies. O&M Firm Locomotive Engineers and Conductors also will perform pre-departure inspections and tests in accordance with FRA regulations and Department policies. Mechanical Department personnel shall also make inspections, test breaks, and make repairs as necessary.

Following their preparation for revenue service, Locomotive Engineers will move the trains through the yard and onto the mainline according to instructions from the Operations Control Center (OCC). The O&M Firm OCC Train Dispatcher will be responsible for dispatching trains according to scheduled departure times.

At the end of their revenue service runs, trains will be taken to the VSMF to be made ready for service the next morning. O&M Firm Train Engineers will move and locate their trains according to instructions from OCC. After shutting down the locomotive, each Train Engineer, Conductor or both will walk through to ensure that no passengers remain aboard and identify and document any defects in the passenger coaches.

2.4.5 Train Movement Control and Dispatching

2.4.5.1 Control Center

The O&M Firm will be directly responsible for providing sufficient, qualified personnel for the performance of dispatcher services and all other communication duties of the Operations Control Center (OCC), which also houses the Central Florida Rail Coordination Center (CFRCC), as specified in Section 2.8. The O&M Firm will staff, operate and maintain the OCC with a minimum of two qualified train dispatchers' 24-hours a day, seven days a week. Train dispatchers will have responsibility for mainline operations with other O&M personnel having responsibility for operations within the yard and yard leads and coordination with Transportation, Engineering and Mechanical Department personnel. CFRCC personnel will be responsible for maintaining communications with the Department and outside agencies, including, but not limited to local emergency operation centers (EOCs), Department of Homeland Security (DHS) and the Central Florida Intelligence Exchange (CFIX) fusion center. O&M Firm Supervisors along the mainline and in the yard will support the OCC during all shifts.

The O&M Firm's OCC personnel will respond to emergencies as reported by the radio, telephone, station and yard alarm monitoring systems, or other sources by directing transportation, engineering, mechanical, safety and field personnel. When there is a disruption to the service, O&M Firm personnel will be responsible for implementing emergency procedures depending on the nature of the problem as defined by the applicable policy or procedure as specified in Section 2.8, Incident Management and Notifications.

The Department may, at any time, enter the Department's Dispatching Offices for the purpose of observing train operations or monitoring proper adherence to agreed upon standards. O&M Firm also shall provide the Department, upon request, with copies of any records relating to dispatch

functions. The existing telecommunications system in use at the OCC shall be made available to O&M Firm at no cost for licenses or equipment.

2.4.5.2 Dispatching Priorities

The Dispatcher shall prioritize trains as described below in accordance with the terms of the "Central Florida Operations and Maintenance Agreement" (CFOMA):

- The O&M Firm Dispatcher shall give the SunRail commuter rail trains priority over regularly scheduled Amtrak intercity trains if such intercity trains are operating five (5) or more minutes late during Peak Periods or ten (10) or more minutes late during Off-Peak Periods. The Dispatcher shall give the SunRail commuter rail trains priority at all times over non-regularly scheduled Amtrak intercity trains, such as extra trains operated by Amtrak during holiday periods. The Dispatcher shall give both the SunRail's commuter rail trains and Amtrak intercity trains' priority over freight trains at all times. Trains operating on the corridor include SunRail, Amtrak, CSX, and FCEN.
- Department commuter rail trains shall have priority over Amtrak intercity trains whenever the normal schedule of operation of trains is disrupted due to problems caused by Amtrak's intercity service, including but not limited to problems relating to disabled Amtrak trains or Amtrak trains that make unscheduled stops for minor repairs.
- When normal train operations are disrupted in the event of an Emergency, the Dispatcher shall use best judgment to move all passenger trains in the most expeditious manner possible.
- The Department may impose temporary special orders relating to dispatching which shall be implemented by O&M Firm at the earliest practicable time. The O&M Firm shall not be assessed any On-Time Performance liquidated damages for O&M Services directly impacted by such orders.

2.4.5.3 Qualifications and Training

O&M Firm Dispatcher qualifications and training shall be consistent with industry standards and the requirements set forth in Section 10, and are subject to the approval of the Department. Training shall include, but not be limited to: Safety; Operating Rules; Physical Characteristics; Emergency Management, including Incident Command System (ICS); general troubleshooting and equipment familiarization. The O&M Firm shall also provide on the job training (posting) of sufficient duration as approved by the Department. Dispatchers shall participate in familiarization training, as approved by the Department, regarding how to communicate and work effectively with the CFRCC.

2.4.5.4 Standards and Protocol

O&M Firm Dispatchers shall maintain all FRA-required logs and records including but not limited to: logs of train movements, Form EC-1 movement permits, and notes of extraordinary and unusual events. For each train operated on each day, the O&M Firm shall complete a full computer record during that day in the Department approved system, including: departure time from initial terminal; arrival time at final terminal; arrival and departure times at two (2) intermediate stops on each run; nature, duration, and location of any delays or unusual

circumstances occurring en route; identification of all crew; identification of all equipment used; and the number of customers carried.

2.4.6 Operating Rules

The O&M Firm shall develop and maintain the CFRC Operating Rules as required by 49 CFR 217.7 for the COO approval and submission to FRA no later than 90 days prior to the Revenue Services Date.

The Operating Rules shall be consistent with, to the extent possible, CSX Operating Rules. The O&M Firm shall ensure that the Operating Rules are accessible, through electronic and print copy, to all employees whose duties require adherence to these Rules. The O&M Firm will also provide the CFRC Operating Rules to Other Contractors and Third Parties as directed by the Department, employees of non-Department railroads, officers of the Department and regulatory agencies as necessary.

The O&M Firm shall not permit its employees or subcontractors to perform any duty without proper training in safety and operating rules.

2.4.7 Operating Rules Committee

The O&M Firm shall convene jointly with the COO and others as determined by the Department a railroad operating practices and rules committee on an as needed basis. The committee will revise, as required, the CFRC Railroad Operating Rule Book.

2.4.8 Daily Call

The O&M Firm shall conduct a daily call with all operating departments to coordinate daily activities at a time mutually agreed to by the Department and the O&M Firm.

2.5 CUSTOMER SERVICE

The O&M Firm shall provide and deliver courteous, efficient customer service during performance of the O&M Services. All O&M Firm personnel shall assist the Department in providing premier public transportation and customer service excellence.

The O&M Firm shall prepare and submit a Customer Service Plan as a component of the Rail Service Plan. The O&M Firm will update the plan on a quarterly basis and will address anticipated surges in ridership due to special events, such as athletic events and concerts.

After approval from the COO, the O&M Firm shall be responsible for the posting and stocking of SunRail informational materials including but is not limited to train schedules, schedule changes and replacement service schedules.

2.5.1 Internal Service Quality Monitoring

The O&M Firm shall develop, for Department approval, and implement a management riding program in which all O&M Firm managers ride trains, at a frequency specified in the Customer Service Plan, to evaluate customer service. The O&M Firm's transportation managers shall ride as a routine part of their duties. O&M Firm managers shall use a Department-approved standardized evaluation form (to be developed by the O&M Firm and approved by the COO). The supervisory personnel shall evaluate all aspects of customer service related to the onboard experience including but not limited to: fare inspection, PNA/PWD policies and services, station and onboard announcements, train exterior and interior cleanliness, restroom conditions, station cleanliness, onboard and station personnel compliance with approved policies and procedures, and customer service delivery. The goal shall be to evaluate the performance of frontline personnel, the condition of equipment and stations, and the level of customer service being delivered.

2.5.2 Customer Service Desk

As a component of the Customer Service Plan, the O&M Firm shall provide the operations and maintenance of a customer service desk. The customer service desk will provide a dedicated customer support telephone number (1-855-RAIL-411 / 1-855-724-5411) to support customers with general inquiries, registering for accounts, updating balance, reporting complaints and requesting solutions associated with the fare collection system and equipment. The customer service desk shall be capable of accepting both SunRail related calls, CFRC related calls and initiating transfers to LYNX and Votran's customer service departments or financial institutions depending on the nature of the call.

The O&M Firm shall provide assistance to customers as well as authorized agents and vendors with, at a minimum, the following issues:

- Provide answers to questions regarding SunRail services including but not limited to train schedules, hours of operation, station locations, access facilities, fare policy, and fare collection system and equipment service;
- Register and respond to public and passenger complaints;

- Register complaints
- Forward complaints to appropriate O&M Firm or Department staff for investigation and response
- Track disposition of complaints
- All complaints should be investigated and responded to within 72 hours
- Report complaints and disposition to COO in daily reports

2.5.3 Lost and Found

The O&M Firm shall develop for Department approval, 30 days prior to the Revenue Services Date, a lost and found policy consistent with all applicable State and local agency statutes and requirements pertaining to public agency lost and found policies. The policy shall be implemented coincident with the Revenue Services Date.

The O&M Firm shall provide Lost & Found services at a location to be determined by the Department. Lost and Found services shall include, but not be limited to, collecting lost items on trains and at stations and keeping a log of these items to assist patrons in retrieving their possessions.

2.5.4 Services to Bicycle Customers

The O&M Firm shall permit passengers to bring bicycles on all trains that are equipped with cars designed to handle bicycles in accordance with established Department policies and the Operating Rules developed by the O&M Firm and approved by the COO. The parties recognize that there may be issues of customer service and on-time performance associated with carriage of high numbers of bicycles and will work collaboratively on the development and implementation of actions to ensure a high-quality service.

2.5.5 Complaint Investigation, Follow-up and Resolution

The O&M Firm shall establish a procedure, subject to Department acceptance, to investigate all comments and complaints arising from the operation of O&M Services and O&M Firm staff as required by the Department. The O&M Firm shall be responsible for investigations that are conducted regarding customer complaints arising from the operation of services by the O&M Firm. Any such investigation is only considered “closed” upon the Department’s adoption of the investigation report as its own. The O&M Firm shall collect comments and complaints in writing, in electronic form, and by telephone.

The O&M Firm shall prepare a formal written response stating the circumstances for complaints and any corrective action taken. Responses shall be submitted to the Department within 72 hours after receipt of the complaint from the Department. If a comment or complaint requires additional investigation after the initial response, the O&M Firm shall provide the Department with written updates on the status of the investigation every three (3) business days, or at intervals agreed to by the Department. The O&M Firm shall make every reasonable effort to resolve all complaints as soon as possible. The O&M Firm shall maintain a record of all complaints received about individual employees. All records shall be made available at the request of the Department in either hard copy or electronic format.

2.5.6 Customer Service Improvement Team

The O&M Firm shall hold monthly meetings to discuss customer concerns, trends, problem areas, ADA issues and the continuous improvement of the internal complaint handling process. The O&M Firm shall inform the applicable Department staff of these meetings and arrange for them to attend.

2.5.7 Station/Onboard Information Posting and Announcements

2.5.7.1 Station Announcements and Electronic Messages

The O&M Firm shall immediately inform customers of all train arrivals, departures, platform assignments, destinations, and intermediate stops through Public Address systems at the stations. The O&M Firm shall immediately inform customers of train arrivals, departures, platform assignments, destinations and intermediate stops or other applicable customer service information using computer monitors, electronic message boards and other systems provided by the Department. The O&M Firm shall provide, through these systems, timely and accurate service delay information, in accordance with the procedures outlined in this Section. The O&M Firm shall inform the public of delays, their causes and anticipated duration whenever anticipated delays are in excess of 5 minutes; updates shall be provided every 5 minutes until the situation has been resolved, as noted in Section 2.8, Incident Management and Notifications. The O&M Firm shall be responsible for immediately informing customers about emergencies and security issues. The O&M Firm shall make announcements concerning fare policy, system rules (such as the smoking policy), special events and other messages as required by the Department. The O&M Firm shall be responsible for the input of customer service information for all automated messages.

2.5.7.2 On-board Announcements

O&M Firm train Conductors shall ensure announcements are made on board all trains in revenue service. Conductors shall announce from station platforms the train destinations to customers at intermediate and terminal stations as trains arrive and depart. Conductors shall operate communications, public information, or other on-board equipment which the Department may install, consistent with other duties. Conductors shall provide timely and accurate service delay information on-board, in accordance with the procedures outlined Section 2.8, Incident Management and Notifications, and the PTEPP. Conductors shall inform on-board customers of anticipated delays, their causes and anticipated duration whenever delays are in excess of five (5) minutes; updates shall be provided every five (5) minutes until the situation has been resolved. The O&M Firm shall immediately inform customers about emergencies and security issues. Conductors and crewmembers must be knowledgeable of all SunRail services and shall perform their duties in a courteous, efficient, and competent manner.

2.5.8 Passengers Needing Assistance and Passengers with Disabilities

The O&M Firm is required to comply with all Federal, State and Department rules applicable to assisting PNA/PWDs. All crew members are responsible for complying with the rules, including boarding and alighting passengers, use of manual and mechanical lifts, coordination with the

OCC and the treatment of service animals. Train crews must be alert to any radio communication from the Engineer or other employees regarding assistance requirements or requests.

2.6 INFORMATION SYSTEMS MANAGEMENT

This Section details specifications and O&M Firm responsibilities regarding Information Management. Specifications and responsibilities are provided in three major areas: Computer Network; required Management Information Systems and Control Systems; and operational requirements, including information input, storage, retrieval, report preparation, and real-time data access.

The Department will provide their latest version of the Rail Management Information System (RMIS) that has been developed during SunRail's commuter system construction to the O&M Firm. The RMIS refers to a network including software, hardware, network servers and storage devices. While the O&M Firm will not be required to procure a new RMIS, the O&M Firm will need to develop modules consistent with the requirements defined in Section 2.6.6 for a fully integrated RMIS. If the O&M Firm chooses to procure a new RMIS, expenses incurred to procure the RMIS will not be reimbursed.

The O&M Firm shall operate, manage and maintain the RMIS for the performance of O&M Services. The O&M Firm shall be required to implement the existing RMIS, as directed by the Department, and develop those modules not already included in the RMIS provided by the Department. The RMIS shall be operated, managed, and maintained in accordance with the terms of the O&M Agreement. At the end of the contract term, the O&M Firm shall be responsible for transitioning the RMIS to the Department.

All Software and Third Party Software must be operated on Computer Equipment that is (a) acquired for the purposes of the O&M services described herein and (b) located in the State of Florida.

2.6.1 Information Management Plan

During the 60 Calendar days after the Notice to Proceed Date for Maintenance Mobilization, the O&M Firm shall submit a detailed and comprehensive Information Management Plan to the Department for acceptance. The Information Management Plan shall document all policies and procedures and provide, at a minimum, (i) an itemized list of Computer Equipment that the O&M Firm intends to purchase and a proposed schedule for purchase; (ii) an itemized list of all Software the O&M Firm intends to develop, procure, install, and/or use in order to operate, manage, and maintain the RMIS and perform the O&M Services; (iii) details of O&M Firm's intellectual property security procedures; (iv) procedures to monitor internet usage; (v) policies for hardware and software maintenance; and (vi) network security. Within 30 Calendar days of its receipt, the Department shall review and accept the Information Management Plan or provide the O&M Firm with an itemized list of items or issues that the O&M Firm must revise. The O&M Firm shall provide the Department with a revised Information Management Plan within 30 Calendar days of its receipt of the Department's comments.

2.6.2 Computer Network

2.6.2.1 Buildings and Facilities

- The O&M Firm will house and operate the O&M Firm Computer Network in the OCC. The O&M Firm shall provide suitable environmental controls specifically for computer operational requirements within the OCC. This includes, but is not limited to, heat, air conditioning, air circulation, humidity controls, dust controls and vibration control as required by the computer hardware manufacturers' recommended specifications.
- The O&M Firm shall be responsible for providing adequate Uninterruptible Power Supply (UPS) units capable of providing surge protection and configured to perform automatic clean shutdown of hardware in the event of a power failure lasting longer than five (5) minutes. The O&M Firm shall maintain UPS units in working order in accordance with the manufacturers' recommendations.
- The O&M Firm shall be responsible for wiring within the physical spaces occupied by the O&M Firm to achieve interconnection between computers in the O&M Firm Computer Network.

2.6.2.2 Hardware Requirements

- During the term of the Agreement, the O&M Firm shall provide and replace end-user computers used for the performance of O&M Services in accordance with the Department's policy to replace end-user computers every three (3) years. The O&M Firm shall also replace any end-user computer that does not meet the software vendor's recommended configuration with new hardware as necessary.
- The O&M Firm should anticipate upgrading the entire Computer Network once during the term of the O&M Agreement. During such event, the O&M Firm shall upgrade all hardware and software it has provided as part of the O&M Agreement to maintain software operations. The O&M Firm shall also upgrade any hardware and software provided by the Department over which the O&M Firm has assumed operational and maintenance control, to maintain software operations. During this upgrade process, the O&M Firm shall maintain the O&M Firm Computer Network integration and software operation in accordance with the terms of the O&M Agreement.
- The O&M Firm shall dispose of hardware properly in accordance with all applicable laws. The O&M Firm shall bear the cost of such hardware disposal.

2.6.2.3 Computer Network Configuration

Network Protocol

The O&M Firm shall be responsible for the configuration of all hardware in the O&M Firm Computer Network in accordance with current industry network standards. The DBM Firm will provide the existing DHCP (Domain Host Control Protocol) services to the O&M Firm to allocate IP addresses to hardware in the O&M Firm Computer Network. The O&M Firm will expand on these settings as necessary or develop their own.

User Management

The O&M Firm shall be responsible for providing a server or servers, located in the State of Florida, to perform user authentication for O&M Firm personnel. The O&M Firm shall be responsible for server administration for managing users and network-connected hardware and software on the O&M Firm Computer Network. The O&M Firm shall also be responsible for managing the specific user accounts on the RMIS.

Network Security

- No O&M Firm staff or computers on the O&M Firm Computer Network shall be allowed access to any resources on the Department's Computer Network, except as specified in the Data Access section. No access will be required for the Department's staff to computers on the O&M Firm Computer Network being used by the O&M Firm solely for non-specified administrative functions.
- The O&M Firm shall be responsible for providing, configuring and administering routers, firewalls, switches, cabling, patch panels, and interconnection between the "Neutral Zone" and the O&M Firm Computer Network. "Neutral Zone" is defined as a network segment that is configured to allow specific Department staff access to the database servers; and to allow specific O&M Firm staff and computers on the O&M Firm Computer Network access to those same database servers.
- The O&M Firm shall be responsible for providing and following best-practice security methods for any connection from the O&M Firm Computer Network to an external network, including connection to a third-party Internet Service Provider or wide-area-network connection to another non-Department location. A "best-practice method" is defined as one that follows the recommendations of the server hardware manufacturer and network operating system vendor, in areas including but not limited to routers, firewalls, user permissions, virus scanning, e-mail content filtering and protection of key network passwords. The O&M Firm shall be responsible for maintaining the security methods in a current state at all times throughout the term of the O&M Agreement. This shall include, but is not limited to, applying virus and worm patches at a frequency recommended by the Software Vendor; applying operating system and application software patches at a frequency recommended by the Software Vendor; and modifying policies and procedures as necessary to prevent unwanted human access to the RMIS or to prevent human-initiated events from causing harm to, or preventing the normal operation of the RMIS.

Availability of Service

The O&M Firm shall configure hardware and software and perform procedures as required to maintain the O&M Firm Computer Network availability during the hours of commuter rail operation. Maintenance of network and database servers shall be scheduled at times that do not interfere with SunRail commuter rail operations. The Department reserves the right to restrict the times when the O&M Firm may perform maintenance of network and database servers.

2.6.2.4 *Wireless Communication Hardware*

The O&M Firm shall provide mobile telephones and/or other hand held electronic devices to those staff members that perform O&M Services. The O&M Firm shall subscribe to a service for and maintain these wireless devices throughout the term of the O&M Agreement. Purchases are subject to approval by the Department.

2.6.2.5 *Ownership of Hardware, Software and Data*

- The O&M Firm shall provide access to the RMIS for up to three (3) CFRC staff member offices at the OCC.
- The right to possess and use three (3) licenses for software will be made available for use by the Department upon purchase by the O&M Firm. All other licenses required for the performance of O&M Services shall remain for use by the O&M Firm. All costs related to implementation of the Information Management Plan shall be part of the Lump Sum Price.
- The O&M Firm shall retain title and ownership of the Computer Equipment.
- All Third Party Software provided or used by the O&M Firm as part of this contract shall be licensed to the Department through the Third Party software license agreements. The O&M Firm is responsible for all costs to obtain the initial license and the maintenance of the software until the termination of this contract. The O&M Firm shall be responsible to provide alternate software that meets or exceeds the operating parameters of the Third Party software if the Third Party no longer supports such software. The O&M Firm shall be responsible to migrate the data from the Third Party Software to the alternate software.
- All software developed by the O&M Firm or on behalf of the O&M Firm as part of this contract shall be considered “Work Made for Hire” and shall be sole possession of the Department. The source code and all related documentation for this software shall be delivered to the Department within 30 days of installation
- Software previously developed by the O&M Firm used in this project shall be delivered and licensed to the Department for use. The Department shall not have the right to sell, market or distribute the software. The O&M Firm shall place the source code for this software in escrow in accordance with the Software Code and Design Escrow Agreement provided by the Department. All modifications to previously developed software as part of this contract shall be considered “Work Made for Hire” and shall be sole possession of the Department. The source code for software modifications shall be delivered to the Department within 30 days of installation.
- All data shall be considered the property of the Department, and the RMIS shall be transferred to the Department at termination of this contract or the O&M Firm shall grant the Department licenses to use the RMIS while a replacement is implemented. Data may only be used by the O&M Firm for the performance of O&M Services. Hardware removed by the O&M Firm at the termination of services under this agreement shall be scrubbed clean of all Department-owned data.

2.6.3 Operational Requirements

2.6.3.1 Information Input, Storage and Retrieval

The O&M Firm shall use the O&M Firm Computer Network and RMIS on a day-to-day basis for the input, storage and retrieval of information related to the O&M Services.

2.6.3.2 Preparation of Required Reports

The O&M Firm shall use the O&M Firm Computer Network and RMIS to produce the daily, weekly, monthly and annual reports required as part of the O&M Services. Refer to Section 11.1, Reporting and Recordkeeping Requirements for further information about reporting and a summary of required reports.

2.6.3.3 Data Access

- The O&M Firm shall allow real-time remote access to data related to the O&M Services from specifically identified Department staff. “Real-Time Access” shall mean that approved Department staff members shall be able to run an ad-hoc database queries to the database server on the O&M Firm Computer Network that returns results from the current records in the RMIS. The validity of the data at the moment of the query will depend on the operational timeframes that are identified in the Information Management Plan. The Department shall identify which Department staff members shall have real-time access to data in the RMIS.
- The O&M Firm shall be responsible for providing the necessary software and documentation for the Department to install such on specifically identified end-user computers on the Department’s Computer Network. The O&M Firm shall provide support for the software use and maintenance.

2.6.4 Information Management Policies and Procedures

O&M Firm Personnel or any other entity performing any O&M Services related to the operation, management or maintenance of the RMIS shall comply with the Department Data Security Policy, as amended. The Department shall assign a designee to interpret information policies and procedures, including determining what software are acceptable to be installed on the RMIS.

2.6.4.1 Operational Requirements

- The O&M Firm shall use the RMIS:
 - On a day-to-day basis for the input, storage, and retrieval of information related to the O&M Services;
 - To produce reports required as part of the O&M Services as described in Section 11.1 Reporting and Recordkeeping Requirements;
 - To allow and provide real-time access to data related to the O&M Services by the Department staff and computers specifically identified by the COO; and
 - For all other tasks and services related to the provision of the O&M Services as the O&M Firm sees fit or as contemplated or required in this Scope of Services.

For purposes of this Contract, “real-time access” means that the O&M Firm must input into the RMIS, and the RMIS must make available to the Department, information regarding each day’s

activities or occurrences as soon as is practicable, but no later than 24 hours after the activity or occurrence takes place.

- The Department shall use the RMIS:
 - To review, inspect and audit data;
 - To have real-time access to data; and
 - For all other purposes necessary to fulfill or maintain the Department's rights and obligations with regard to the CFRC and SunRail commuter service.

2.6.4.2 IT Equipment Utilization Policy

The O&M Firm shall operate and maintain all IT Equipment (hardware and software) in accordance with the approved Information Management Plan. The Department shall prohibit removing updates and upgrades and removal of equipment without prior written approval.

Additionally, O&M Firm policies shall prohibit the use of computer equipment used during the provision of O&M Services for activities that are illegal, for personal profit, or for purposes other than in direct support of the Department business requirements.

2.6.5 Data Security and Ownership

2.6.5.1 O&M Firm's Warranty of Fitness for a Particular Purpose

- **System Warranties.** The O&M Firm hereby provides Warranty of Fitness for a Particular Purpose for the RMIS, as a whole, for the Term of this Contract (the "RMIS Warranty Period"), as follows:
 - The RMIS shall comply in all material respects and shall be free from defects in materials and workmanship, and shall be fit for the purpose in which they were intended as described in this Section.
- **Software Warranties.** The O&M Firm hereby provides Warranty of Fitness for a Particular Purpose for the Software and Third Party Software for the RMIS Warranty Period as follows:
 - The Software and the Third Party Software are free of any defects in workmanship, and shall remain in a State of Good Repair.
 - The Software and Third Party Software shall comply in all material respects with and shall be fit for their particular purposes as described in this Section.
 - The Software shall operate in accordance with the System Documentation.
- **Warranty Implementation for System and Software.** This warranty shall apply to each component of the system and the system as a whole. In the event a defect, malfunction, or other failure not caused by misuse or third party acts not contemplated occurs during the warranty period, including, but not limited to failure to function adequately and fully for the purposes for which the warranted item was intended, the O&M Firm shall repair the warranted item if repair can be made on site within a reasonable time from receipt of notice of occurrence. If repair can not be made within a reasonable time from receipt of notice of the occurrence, the O&M Firm shall replace the warranted item on site within a reasonable time frame from receipt of notice of the occurrence. In determining a reasonable time for repair or replacement, matters unique to the O&M Firm, such as office location or the availability of personnel, shall not be considered. In the event that the Department

determines that public health, safety, or welfare requires temporary measures to continue safe functioning of the facility of which the warranted item is a part, the O&M Firm shall provide temporary items or take other temporary measures as the Department deems necessary. All repairs, replacements, and temporary measures shall be at the sole cost and expense of the O&M Firm, without any charge to the Department. If the O&M Firm fails to comply with the O&M Firm's obligations under this warranty, O&M Firm shall be liable to the Department for all damages associated with the O&M Firm's breach hereof and damages associated with the initial occurrence from the date of the occurrence. Damages shall include, but shall not necessarily be limited to, costs incurred in repairing or replacing warranted items, as well as incidental and consequential damages suffered by the Department.

- Exclusions. The warranties provided for in this Section do not apply if the RMIS is subject to damage or misuse due to fault or negligence of the Department or Third Parties; and such services cause damage to the RMIS or cause the O&M Firm to be unable to perform the services hereunder or to be able to perform the services only at additional costs to the O&M Firm, which are not reimbursed by the Department.

2.6.5.2 System Documentation

The O&M Firm shall provide the Department with copies of user documentation and user manuals with respect to the RMIS, including all Computer Equipment, Software and Third Party Software (collectively "System Documentation") which are sufficient for the Department to use, operate, and maintain the RMIS. The Department, at its own expense, may make additional copies of the System Documentation for its use in operating and maintaining the RMIS.

2.6.5.3 Restrictions on Use of Data

All data used in the performance of the O&M Services shall be property of the Department. The O&M Firm shall not copy, distribute, alter, sell, or re-use any data used to meet the requirements of this Scope of Services unless it is for the sole purpose of performing the O&M Services. Any action taken with such data outside of normal day-to-day operation shall be done only at the direction of the Department.

2.6.5.4 Department Proprietary Information

The Department retains all right, title, and interest in and to all proprietary data, documentation, and copies thereof furnished by it to the O&M Firm hereunder, including all copyright and other proprietary rights therein ("Department Proprietary Information"). The O&M Firm and its employees shall hold all such information confidential and shall not, without the prior written consent of the Department, use, disclose or offer, sell or license, or otherwise transfer to others any Department Proprietary Information or disclose any Department Proprietary Information. Notwithstanding the foregoing, the O&M Firm may provide Department Proprietary Information in response to any proper governmental or court demand.

2.6.5.5 RMIS Proprietary Rights

The O&M Firm's previously developed software, and Third Party software, and any portion thereof shall not infringe upon or violate any patent, copyright, trade secret, or other proprietary

rights of any other parties. The RMIS as a whole shall not infringe upon or violate any patent, copyright, trade secret, or proprietary right of any other party.

2.6.5.6 O&M Firm Cures for Infringement.

If the RMIS or any item of Computer Equipment, Software, or Third Party Software or any portion thereof is held to constitute an infringement and its use is or may be enjoined, the O&M Firm shall, at the option of the Department: (i) modify (or require that the applicable subcontractor, consultant, agent or supplier modify) the alleged infringing portion of the RMIS, Computer Equipment, Software or Third Party Software, at the O&M Firm's sole expense, without materially impairing the functionality or performance of the RMIS, at the option of the Department; or (ii) procure for the Department, without any cost to the Department, a license to use the infringing portion of the RMIS item of Computer Equipment, Software or Third Party Software.

2.6.5.7 O&M Firm Notice of Infringement

The O&M Firm shall immediately inform the Department in writing if any subcontractor, consultant, agent, or supplier providing goods or services to the Department on the O&M Firm's behalf is a party to any actual or threatened litigation involving patent or copyright infringement, trademark violation, antitrust, or other trade regulation or proprietary rights claim, or is or may become subject to any injunction which may prohibit it from providing Computer Equipment, Software, or Third Party Software. The Department may reject any Computer Equipment, Software, or Third Party Software that is the subject to any such litigation or injunction if, in the Department's judgment, use thereof would delay the implementation of the RMIS or be unlawful.

2.6.6 Information Systems Software

2.6.6.1 General

Software Provided by the Department

The O&M Firm shall install, configure, operate and maintain software for use on the RMIS.

Electronic Mail

The O&M Firm shall be responsible for operating and maintaining a reliable, efficient Internet-enabled e-mail system that performs without substantial delay. Connection to an Internet Service Provider is the responsibility of the O&M Firm.

Use of Software and Hardware not required by the Department

The O&M Firm may use software and hardware to perform administrative functions not specifically required by the Department for the performance of O&M Services. Hardware and software provided by the O&M Firm for the sole purpose of performing these non-specified administrative functions shall remain the property of the O&M Firm. The O&M Firm shall be entirely responsible for providing all equipment, installation, configuration, wiring infrastructure and maintenance for hardware and software the O&M Firm uses solely to perform non-specified administrative functions.

2.6.6.2 Required Management Information Systems

The Department will provide the existing RMIS to the O&M Firm. The O&M Firm shall operate, maintain, and install, as necessary, the RMIS to include provisions for each of a number of functional areas of the O&M Services. The following subsections describe each of the required functional areas, along with the O&M Firm responsibilities with respect to each required MIS. These systems and responsibilities are summarized in Table 2.8-1. The Department will provide a server with three functioning licenses of the existing RMIS for O&M Firm use.

The RMIS shall be fully operational and up-to-date within 30 calendar days before the Revenue Services Date. The O&M Firm also shall ensure that existing data is loaded into the RMIS prior to the Revenue Services Date.

In the event that the Department provides or approves the use of another RMIS to replace any current RMIS, the O&M Firm shall operate and maintain such new system.

2.6.6.3 Existing RMIS

The existing RMIS includes provisions for the following functional areas:

Maintenance Facility Activity Monitoring System

The Maintenance Facility Activity Monitoring System will be used to monitor O&M Firm activities at maintenance facilities on the Service Property. Using this system, the O&M Firm shall perform activities including, but not limited to: (i) maintaining an inventory of each facility on the Service Property (including buildings, stations and layover facilities) with a unique identifying number; (ii) recording required tests and inspections; (iii) recording preventive, predictive and corrective maintenance activities; (iv) scheduling and control of predictive, preventive, and corrective maintenance programs and associated labor and materials; (v) issuing work orders and purchase orders; (vi) issuing facility status and repair reports; (vii) retaining up to three (3) years of information on predictive, preventative and corrective maintenance for each facility or component to produce and analyze trends; and (viii) interfacing with the Engineering Maintenance MIS. The O&M Firm shall procure and incorporate a Maintenance Facility Activity System into the comprehensive RMIS and, upon approval by the Department, shall operate and maintain such system.

Maintenance of Way MIS

The Maintenance of Way MIS is the primary MIS that will be used to monitor O&M Firm inspection and maintenance of all Service Property other than facilities. Using the Maintenance of Way MIS, the O&M Firm shall perform activities including, but not limited to: (i) maintaining an inventory of each component of railroad infrastructure on the Service Property (including track, Right-of-Way and associated components; communication systems; and electrical systems) with a unique identifying number; (ii) recording required tests and inspections; (iii) recording preventive, predictive and corrective maintenance activities; (iv) scheduling and control of predictive, preventive, and corrective maintenance programs and associated labor and materials; (v) issuing work orders and purchase orders; (vi) issuing status and repair reports for railroad infrastructure components; (vii) retaining up to three (3) years of information on predictive,

preventative and corrective maintenance for each railroad infrastructure component to produce and analyze trends; (viii) interfacing with the Maintenance Activity Monitoring System; and (ix) recording information necessary for warranty administration. The Signal Maintenance Firm shall maintain the MIS for the grade crossing warning and signal systems.

Materials MIS

The Materials MIS is the primary MIS used to monitor O&M Firm materials control and handling. Using the Materials MIS, the O&M Firm shall perform activities including, but not limited to: (i) maintaining an inventory of all existing materials and parts; (ii) optimizing stocking of materials and parts; (iii) calculating the costs of materials and parts used for work orders; (iv) controlling the ordering of materials and parts; and (v) tracking specific materials, budgets and project costs. The Materials MIS shall also: (a) automatically calculate the appropriate order level and order quantity for an inventory item, based upon inventory turnover, order frequency and expected delivery time; and (b) have the capability for the automatic calculation to be overridden by manual input for each inventory item.

The Materials MIS shall record the following types of information:

- 1) Inventory identification and description
- 2) Location identification and description
- 3) Manufacturer
- 4) Number of units on hand
- 5) Unit cost
- 6) Main supplier and alternative supplier
- 7) DBE status of suppliers
- 8) Number of units ordered and total cost per the Department's Fiscal Year
- 9) Total dollar value paid to each supplier during each the Department's Fiscal Year
- 10) Delivery time from when order is placed
- 11) Level at which an order shall be placed
- 12) For spare parts, list the equipment items(s) for which they are spares
- 13) Maintenance performed by piece of equipment coded by type (predictive, preventative, or ordered) and the staff-hours, parts and materials for providing such maintenance.

The O&M Firm shall separately identify and track materials used for Extra Work Projects in the Materials MIS.

Financial MIS

The Financial MIS is the primary MIS used to monitor O&M Firm financial activity related to the performance of the O&M Services. Using the Financial MIS, the O&M Firm shall perform activities including, but not limited to: (i) recording Costs and producing invoices associated with Extra Work; (ii) recording Costs and producing invoices associated with Service Changes until such time as a fixed price for the Service Change is established; (iii) reporting on DBE compliance; and (iv) tracking receipts from sale of scrap materials, and purchases of supplies and materials from same.

Permits and Licenses MIS

The Permits and Licenses MIS is the primary Management Information System used to manage permits, licenses and certifications necessary for the performance of O&M Services. Using the Permits and Licenses MIS, the O&M Firm shall record information including, but not limited to: the name of the permit, license, or certification; the applicable law or regulation; the governing agency or regulatory body; the name under which the permit, license, or certification is filed; and status information, including date of last application or renewal and expiration dates as applicable.

2.6.6.4 Updates to the Existing RMIS

The O&M Firm will need to procure and incorporate the following systems into the comprehensive RMIS. Upon approval from the Department, the O&M Firm shall operate and maintain such systems.

Fleet Management System

The Fleet Management System will be used for fleet management and monitoring the O&M Firm maintenance of the Service Equipment. Using this system, the O&M Firm shall perform activities including, but not limited to: (i) recording vehicle histories, including dates and serial numbers of components, to be used for fleet performance analysis; (ii) recording the maintenance work on systems and components for reliability and warranty analysis; (iii) tracking the warranty of individual components and complete vehicles; (iv) maintaining the availability of the Service Equipment, including coordination regarding seat requirements and vehicle assignments; (v) providing hardcopy reports of vehicle histories to improve field troubleshooting; (vi) providing a vehicle-specific work order system for vehicle maintenance including the reporting of open work orders; (vii) recording and tracking defects by date, train, location, symptom, failure, and action; (viii) tracking in-service failures by date, time, train, location, symptom, failure, and action; (ix) recording and tracking mileage of each vehicle; (x) providing labor and material detail for warranty claims; (xi) providing status of modification and retrofit programs; and (xii) demonstrating compliance with FRA 49 CFR 238.105 and other regulatory requirements.

As part of the O&M Firm's fleet management activities, written forms must be kept documenting the maintenance performed on each vehicle. These forms must include the signature of the employee and supervisor conducting the maintenance, and detail the maintenance and corrective action procedures occurring at each inspection. These forms must be approved by the COO. In addition, repairs, adjustments, cleaning, inspections and renewals shall be promptly recorded so as to minimize the delay between the O&M Firm activities and recording of these activities. The O&M Firm shall update records within 24 hours of the completion of each maintenance and inspection activity.

A Maintenance Management System shall be included as part of the Fleet Management System. The MMS shall provide the following:

- The MMS shall become the property of the Department.

- At a minimum, the system shall be capable of tracking resources applied to maintenance (labor, materials, shop space, etc.).
- The Department shall have full access to the MMS through a direct network connection to the MMS server.
- O&M Firm shall provide to Amtrak a work station, software, license, training to input data for heavy maintenance and Preventive Maintenance at the Amtrak Sanford Yard AutoTrain
- The MMS shall be a relational database capable of creating flat file records for tracking work orders, material consumption and other resources associated with work performed on each vehicle.
- The MMS shall also be capable of tracking vehicle reliability and other measures of vehicle performance. The system shall account for vehicle availability by tracking vehicle status on a real-time basis.
- The MMS shall be capable of generating reports that utilize the data stored in the above records.
- The MMS shall retain all inspection reports required by the Code of Federal Regulations.
- The MMS shall be capable of tracking inspection dates and generating a schedule of required inspections for the fleet.

MMS Work Orders shall, at a minimum, capture the following information:

- Vehicle Number;
- Date Out-of-Service;
- Date and Time Work Started;
- Employee(s) Assigned to Perform Work;
- Work Location;
- Symptom or Trouble Code for Reason Vehicle is Shopped;
- Work Code for Work Task(s) performed (if multiple tasks are performed, they must be listed individually for tracking purposes);
- Labor Hours (by person) for the Work Task(s) Performed (if multiple tasks are performed, the hours must be listed individually for tracking purposes);
- Material Removed from the Vehicle (code for type and serial number);
- Material Applied to the Vehicle (code for type and serial number);
- Warranty Information;
- Supervisor Sign-off;
- Date and Time Returned to Available Revenue Service Fleet; and
- Material re-order requests.

Human Resources MIS

The Human Resources MIS is the primary MIS that will be used to monitor O&M Firm management of its personnel involved in performing O&M Services. Using the Human Resources MIS, the O&M Firm shall record information that includes, but is not limited to: employee certifications and qualifications; training received; disciplinary actions; drug and alcohol program status; and employee roster and assignments. The Human Resources MIS must include an interface to the Train Operations Monitoring System.

2.6.6.5 Other Systems

Train Operations Monitoring System

A Train Operations Monitoring System will be used to monitor the O&M Firm's operation of the Department's SunRail commuter rail services. Using this system, the O&M Firm shall record information that includes, but is not limited to, information about train movements including train number, date, equipment, crew members, detailed delay information and causes, and number of passengers carried. Refer to Section 2.4, Transportation, for further information about the O&M Firm's responsibilities in this area. The O&M Firm shall procure and install a Train Operations Monitoring System, and thereafter shall operate and maintain the system. The Train Operations Monitoring System is not required to be included as part of the comprehensive RMIS.

Dispatching System

A Dispatching System and additional systems required by the AAR will be used to provide train dispatching services for all lines in the Service Property that are under the dispatch control of the Department. The O&M Firm shall direct, supervise and control the movement of all trains on such lines, including but not limited to the Department's commuter rail trains, freight railroad trains, and other inter-city passenger trains. The O&M Firm shall be responsible for operating and maintaining the Dispatching System, including all software and hardware components. Refer to Section 2.4, Transportation, for further information about O&M Firm responsibilities in this area. The Dispatching System is not required to be included as part of the comprehensive RMIS.

Table 2.8-1 – Required Management Information Systems

Management Information System	Purpose of MIS
Train Operations Monitoring System (not required to be included as part of the comprehensive RMIS)	Monitor O&M Firm operation of the Department's commuter rail services
Dispatching System (not required to be included as part of the comprehensive RMIS)	Provide train dispatching services for all lines in the Service Property under the dispatch control of the Department
Maintenance Activity Monitoring System	Monitor O&M Firm activities at maintenance facilities on the Service Property
Maintenance of Way MIS	Monitor O&M Firm inspection and maintenance of all Service Property other facilities
Fleet Management System	Manage the commuter rail fleet and monitor O&M Firm maintenance of Service Equipment
Materials MIS	Monitor O&M Firm materials control and handling
Human Resources MIS	Monitor O&M Firm management of its personnel involved in performing O&M Services

Management Information System	Purpose of MIS
Financial MIS	Monitor O&M Firm financial activity related to the performance of O&M Services
Permits and Licenses MIS	Manage permits, licenses and certifications necessary for the performance of O&M Services

2.6.7 Asset Accounting, Inventory and Disposition

All current Department-owned assets, including computer hardware and software, paid for by the Department and future procurements shall be clearly marked with asset labels identifying the Department as the equipment owner and identifying each asset with a unique ID number.

A Department master list of all supplied equipment shall be signed by the O&M Firm upon delivery. A copy of the signed inventory list shall be kept by both parties. Periodic inventories, not less than one per year, shall be performed by the O&M Firm, who will certify that all equipment is accounted for and in working condition, or has been declared surplus and is available for Department-directed disposition.

All IT equipment provided or owned by the Department shall be returned to the Department upon termination of the O&M Agreement in useable condition, normal wear and tear excepted. All equipment purchased using Department funds shall become the property of the Department, and all surplus equipment shall be returned to the Department for disposition.

2.6.8 Business Continuity and Disaster Recovery

The O&M Firm shall develop, provide, implement, and periodically test a disaster recovery and backup procedure for the RMIS. The O&M Firm shall restore data and network operations in the event of a failure or other occurrence related to the RMIS that delays or prevents the availability of accurate data on a real-time basis at all times during the Term of the Contract in accordance with the standards established in this Scope of Services. The O&M Firm shall provide an off-site location for storage and periodic backup of data. The O&M Firm shall, when necessary, restore or regenerate all software and data in order to seamlessly operate and maintain the RMIS.

The O&M Firm shall continue to meet reporting and deliverable requirements as described in Section 11.1 Reporting and Recordkeeping Requirements, without regard to the operational status of the RMIS or any component thereof.

2.6.9 Public Train Schedule and Location Data

SunRail schedule and station information shall be incorporated into both transit only and multi-modal trip planning applications. These electronic tools, accessible by both fixed computer consoles and mobile devices shall be developed by the Department. The O&M Firm shall provide SunRail generated data format in accordance with the following:

- Provide and maintain static schedule, rail line segment IDs, stations, etc. transit data in the open General Transit Feed Specification (GTFS) format (<https://developers.google.com/transit/gtfs/reference>).
- Provide and maintain real-time transit data (e.g., train position information, schedule deviations, service alerts) in an open format such as General Transit Feed Specification (GTFS)-realtime (<https://developers.google.com/transit/gtfs-realtime/>).
- Unique identifiers of data in the static transit data should always match the same logical data in the real-time transit data feed. For example, a rail station with stop_id = 5 in the GTFS data should represent the same logical station as a rail station with stop_id 5 in the GTFS-realtime data.

2.7 SYSTEM SAFETY AND SECURITY

The safety and security of passengers, employees, and the surrounding communities shall be the primary concern of the O&M Firm in the performance of O&M Services. The O&M Firm will manage safety and security for the CFRC and SunRail commuter rail system with strict adherence to the procedures and standards set forth in this O&M Agreement, all applicable safety and operating rules, all safety provisions of the Scope of Services, and Federal, State, and local regulations.

Safety and security plans, training and activities for the CFRC and SunRail commuter rail system will be coordinated as appropriate with the Department, Department contractors, freight and passenger railroads, and outside agencies including the Federal Transit Administration (FTA), Federal Railroad Administration (FRA), Florida Safety and Security Oversight (SSO), Department of Homeland Security (DHS), Transportation Security Administration (TSA), the Department's Central Office (deemed external for purposes of state safety oversight of the Fixed Guideway Transit System per Florida Statutes), counties and local municipalities having jurisdiction.

2.7.1 Mobilization of O&M Firm

The O&M Firm will assist the Department to develop policies and procedures to ensure coordination and compliance with existing safety and security standards and practices. The O&M Firm will assist the Department to provide the FRA with access to 49 CFR test procedures and results and any other documentation, information, and procedures necessary to satisfy FRA requirements for approval of start of revenue operations.

The Safety and Security Management Plan (SSMP) identifies O&M Firm participation in CFRC and SunRail commuter rail system committees that have a safety and security component. These specific assignments are described in Table 3, Safety and Security Responsibility and Authority of the SSMP. At a minimum, the O&M Firm will provide appropriate management representation on the following committees: Safety and Security, Safety and Security Certification, and Fire/Life Safety.

During the rail activation process to transition from construction to revenue service, the O&M Firm will be responsible to develop, execute and/or revise, as required, safety and security plans. These documents are described in more detail in the sections below. To meet FRA/APTA, FTA and SSO safety oversight requirements for new commuter rail operations, these plans and subordinate activities must be completed as specified in Section 2.1 and include, at a minimum:

- System Safety Program Plan (SSPP)
- System Security Plan (SSP) and subordinate Safety and Security Emergency Preparedness Plan (SEPP)
- Passenger Train Emergency Preparedness Plan (PTEPP)
- Operations and Support Hazard Analysis (OHA)

The Department will provide the O&M Firm with Draft versions of the above items. In addition, the O&M Firm will comply with and support the Department's review and revision of the other Project safety and security plans, including the Safety and Security Management Plans and the Safety and Security Certification Plans.

2.7.2 O&M Firm Safety Management

The O&M Firm has the responsibility to provide a Safety Manager with previous rail safety experience to ensure compliance with all requirements of this section. In addition, the O&M Firm will provide a supervisor qualified as a certified locomotive engineer and able to perform the duties of the Designated Supervisor of Locomotive Engineers (DSLE) under FRA Regulation Part 240. The DSLE may be the Safety Manager. The DSLE will be responsible to test and evaluate skills and abilities of O&M Firm Locomotive Engineers and Student Engineers.

The O&M Firm's safety management duties will include, but are not limited to, auditing of rail operations and maintenance activities for compliance with Department, Federal, and State requirements including operating rules testing; 24 hours per day, seven (7) days a week to respond to all accidents or safety-related incidents; accident and incident investigation; assisting the Reporting Officer for Federal and State reporting requirements; use the RMIS for the purpose of entering safety-related information such as identified hazards, corrective actions, training records, accident/incident information, and audit reports (both internal and external), available to the Department and FRA upon request; completion of an annual internal audit to determine compliance with the SSPP and SSP; establishment and staffing of emergency operations; participation in the tri-annual SSPP and SSP third-party audit; coordination of required Emergency Response Drills with local agencies and in compliance with the PTEPP; coordination and participation of all safety and security committees and meeting requirements for these committees; participation in the Rules and Operating Practices Committee; oversight of O&M Firm training requirements as identified in the SSPP and SSP; handling of all environmental and employee health issues; and other duties as required by the O&M Agreement or as assigned by the Department.

The O&M Firm may use CFRC safety documents generated by the DBM Firm as source documents. All safety deliverables described in the SSPP must be submitted for Department approval at least 60 days prior to Revenue Service Date, will be updated annually to be consistent with the most current version of the SSPP and will be submitted to the COO for review and approval no later than December 31 each year. The System Safety Programs shall be created and published for CFRC as CFRC-specific documents. Investigation reports, forms and files shall be identified as CFRC. The O&M Firm's standard "corporate" safety program and forms shall not be used.

The O&M Firm shall comply with all aspects of SOP S190.01 - Sensitive Security Information (SSI). All O&M Firm personnel who interface with the CFRC Operations and that originate or have access to or receive SSI related to the CFRC shall provide maximum distribution of this SOP throughout their organizations and among all of their contractors, grantees, consultants, licensees, and regulated entities that originate or have access to or receive SSI related to this Project. Such employees, individuals, persons, entities, and organizations are subject to the safeguarding and non-disclosure restrictions of 49 CFR 15 and 49 CFR 1520 and this SOP. The O&M Firm shall bear the cost and be responsible for training requirements as outlined in the SOP.

2.7.3 Safety Rulebook

The O&M Firm shall develop for the Department's approval a safety rule book for the CFRC. The O&M Firm shall use the current version of the CSX Safeway and any project-specific Safety Rules developed by the DBM Firm as source documents. The document shall be complete for the Department's review and approval no later than 90 days prior to the Revenue Services Date. At a minimum, all employees shall complete safety training in accordance with these rules before commencing work on the Service Property and will be required to have appropriate identification while on duty to indicate they have received safety training. The O&M Firm shall conduct regular safety meetings and other safety programs for all employees. All supervisors shall be responsible for continuously monitoring the work operations of subordinates, correcting hazardous job practices and educating subordinates in safe job procedures.

The O&M Firm shall ensure that the Safety Rule Book is accessible, through electronic or print copy, to all employees whose duties are affected by these rules. The O&M Firm will also provide these rules to Project contractors, the Department's representatives, third party contractors, and regulatory agencies as necessary.

2.7.4 System Safety Program Plan (SSPP)

The O&M Firm's Safety and Security Administrator shall oversee development of the System Safety Program Plan in conformance with all federal and other legal requirements, regulations, and standards, addressing the 23 elements recognized as good management practices for attaining effective controls on safety and security described in the current APTA Manual for the Development of System Safety Program Plans for Commuter Railroads. The Department recognizes that the FRA has also issued an Advanced Notice of Proposed Rulemaking System Safety Rule that, if adopted, may include additional requirements not found in the APTA Manual. The O&M Firm will develop the SSPP based on current regulatory requirement at the time of award of contract. The O&M Firm will submit this document to the COO for review and approval. The O&M Firm may use both the SSPP generated during the construction period and the current Project SSMP as source documents for the development of this plan. The SSPP must be completed no later than 180 days prior to Revenue Services Date. The O&M Firm is responsible for developing and implementing the plans and programs identified within the SSPP in addition to those safety and security plans specified in this Section, and for taking all precautions, which are reasonable and necessary to safeguard against risks in the performance of O&M Services. The O&M Firm shall utilize an "All-Hazards" approach whereby the risks and mitigations identified hazards analyses, threat and vulnerability analyses, and capabilities assessments are considered simultaneously to facilitate the effective application of resources to reduce all risks. The O&M Firm shall update the plan annually, 30 days prior to the anniversary date of the initial plan submittal and shall detail the O&M Firm's safety policies, procedures and programs. O&M Firm's recommended revisions to the SSPP shall be submitted to the Department for approval prior to implementation. The O&M Firm and the Department shall be signatories to the SSPP to indicate agreement and compliance.

2.7.5 System Security Plan (SSP)

The O&M Firm shall develop the SSP in conformance with all federal and other legal requirements, regulations, and standards and FRA, DHS and FTA guidance manuals. The O&M Firm may use both the SSP generated during the construction period and the current draft of the SEPP as source documents for the development of this plan. The SSP must be provided to the Department for review and approval no later than 180 days prior to the Revenue Services Date. The O&M Firm shall update the plan annually, 30 days prior to the anniversary date of the initial plan submittal and shall detail the O&M Firm's security policies, procedures and programs. The O&M Firm is responsible for the interpretation, application and administration of security policies derived from the SSP.

The O&M Firm will coordinate with the Department to facilitate collaboration with DHS, local public safety and emergency planning agencies and other outside organizations during the development and revisions of this SSP. Within this Plan, the Safety and Security Administrator will have the primary role as the Rail Security Coordinator for liaising with the Transportation Security Administration. The O&M Firm will designate alternates with appropriate qualifications to ensure coverage at all times and days of the week.

The SSP may contain Security Sensitive Information (SSI), as described in the (SSI) 190.01 SOP. The O&M Firm is subject to the safeguarding and non-disclosure restrictions of 49 CFR 15, 49 CFR 1520 and SOP S190.01 - Sensitive Security Information in the handling of this document.

The O&M Firm shall register with e-RAILSAFE SHORTLINE® and provide for e-RAILSAFE SHORTLINE® employee security clearance for O&M Firm personnel and facilitate the registration of third-party contractors as part of the Corridor Management process for the CFRC, including SunRail commuter service.

2.7.6 Security and Emergency Preparedness Plan (SEPP)

During the O&M mobilization period, the O&M Firm will develop a Security and Emergency Preparedness Plan (SEPP) that contains safety and security emergency preparedness policies, procedures, goals and objectives. Whereas the PTEPP under 49 CFR 239 describes the procedures and policies for SunRail commuter trains, the SEPP will describe emergency preparedness for the entire corridor, including facilities such as the VSMF and the station sites. This Plan will also effectively address preparation, cessation of operations and recovery from conditions resulting from major storms, such as hurricanes and tornadoes, and other natural occurrences that could disrupt railroad services.

The O&M Firm will ensure that the OCC and CFRCC can fulfill the function of an Emergency Operations Center (EOC) that is capable of sustaining and controlling CFRC/SunRail operations and communications for a minimum of 72 hours during a prolonged emergency. In addition to guidance provided by APTA and FTA, the O&M Firm will be provided with the current CFRC draft of the SEPP as a source document.

All O&M Firm personnel are required to adhere to the policies, procedures, and requirements stated in the SEPP and to properly and diligently perform the security and emergency response-

related functions of their jobs as a condition of employment. This document must be available for review by the regulatory agencies no later than 180 days prior to revenue operations.

The SEPP should also describe the process for identifying the critical risks to organizational readiness, the strategies that best mitigate the risks, planning for service recovery and a Continuity of Operations Plan (COOP) to ensure the survival and recovery of SunRail commuter service critical operations, including, but not limited to communication capability, RMIS, staffing, payroll, and infrastructure. In the event that the OCC facilities cannot be used as an Emergency Operations Center (EOC), the O&M Firm shall staff an alternate EOC provided by the Department at a location other than the OCC that is capable of independent operations for a minimum of 72 hours during a prolonged emergency.

National Incident Management System (NIMS) training from Federal Emergency Management Agency (FEMA) will be required for O&M Firm managers along with training on standardized emergency management system from Florida's Division of Emergency Management/Regional Emergency Operation Centers. In addition, the O&M Firm shall plan for and staff the alternate EOC for one field drill/exercise and one table top/EOC drill annually, coordinated with the Department and regional EOC activities as appropriate. The O&M Firm shall include outside agencies, as necessary and as approved by the Department. The O&M Firm's Safety and Security Administrator shall collaborate with the Department of Safety and Health Manager during the planning stage of all emergency preparedness exercises and must submit an Incident Command System (ICS) compliant exercise plan to the Department for approval no less than 60 days prior to any intended exercise.

The SEPP will contain Security Sensitive Information (SSI), as described in the (SSI) 190.01 SOP. The O&M Firm is subject to the safeguarding and non-disclosure restrictions of 49 CFR Part 15 and 49 CFR Part 1520 and SOP S190.01 - Sensitive Security Information in the handling of this document.

2.7.7 Safety Integration Plan (SIP)

The CFRC SIP provides for effective communications and coordination between the railroads operating on the Corridor (CSXT, FCEN and Amtrak), the Department and the O&M Firm and details the notification sequence for accidents and incidents reported to the Dispatcher and the CFRCC. Initiated during the Final Design phase of the Project, the SIP will continue to be updated during all phases through start-up of revenue operations. The O&M Firm shall be a party to this SIP, adhere to the principles and procedures of the plan and provide recommendations and comments when necessary to improve the plan. The O&M Firm will take responsibility to implement the plan for themselves and the other applicable parties and be accountable for the standards set forth in the plan.

During the mobilization period, the O&M Firm will take part in the Safety Observation Program described in the SIP. Representatives of the O&M Firm will conduct safety observations independently or jointly with other Project representatives, including those railroads operating over the Project corridor. The O&M Firm will assume the responsibility to manage the Safety

Observation Program at revenue service. These duties will include maintenance of the observation database, and preparing reports to be presented at Safety and Security meetings.

2.7.8 Safety and Security Certification

The Safety and Security Certification (SSC) process culminates in the Project's self-certification of the SunRail service, as evidenced by a Project System Safety and Security Certificate and a Final Verification Report.

The O&M Firm will participate in system integration testing and pre-revenue acceptance activities with the DBM Firm, CEI Consultant, Rolling Stock Manufacturer representatives and the Department during the Pre-Revenue Operations phase of the Phase 1 (IOS) Project. All testing subject to the provisions of 49 CFR will be performed according to those standards and test procedures and will comply with the requirements.

Safety and security operational readiness by the O&M Firm will be verified during the SSC process. This may include, but is not limited to the following:

- Applicable operations, maintenance, and emergency procedures, and plans have been developed, reviewed and implemented;
- Manuals and Standard Operating Procedures (SOP), showing how to operate and maintain systems equipment and facilities have been developed, reviewed, approved, and accepted;
- Safety/security-related training for operations and maintenance personnel has been developed, performed and successfully completed by all personnel as required;
- Emergency drills and training has been developed, performed, and successfully completed by all O&M personnel as required, including local emergency medical services (EMS), fire services, law enforcement and Department of Homeland Security (DHS);
- Emergency and training have been conducted with outside agencies, evaluate response procedures and identify improvements to response procedures before a real emergency occurs.

The Safety and Security Certification Committee (SSCC) will review safety and security certification documentation provided by the contractors. As necessary, the SSCC will elevate open issues to the Safety and Security Administrator and the Executive Safety and Security Committee for review. The O&M Firm will appoint a representative and alternates to participate as a member of the SSCC, to begin during the O&M mobilization period and continuing into revenue service.

Once revenue service is initiated, the O&M Firm will not make modifications to the system that impact safety and security without prior written approval by the COO, unless immediate repair is necessary to ensure the safety and security of employees and users of the system. Where system modifications are necessary, the O&M Firm will conduct hazard analysis and ensure that the results are reviewed by the Safety and Security Committee to determine safety/security certification, in accordance with the SSPP. All work shall be subject to any applicable rules or regulations of the FRA and subject to Department review.

2.7.9 Roadway Worker Protection

At mobilization, the O&M Firm will be provided with the CFRC Railroad Worker Protection Safety Plan and will be required to comply with all aspects of it. During the mobilization period the O&M Firm will participate in the development of revisions to the CFRC RWP Safety Plan, in preparation for submission to the FRA no later than 90 days before Revenue Services Date.

The O&M Firm shall ensure that all third party contractors or any other persons to whom the plan may apply meet all applicable requirements of the program prior to performing any work on the CFRC. The O&M Firm shall ensure that all affected persons comply with the program through an audit and inspection program.

The O&M Firm shall ensure that the CFRC RWP Safety Plan is accessible, through electronic or print copy, to all those required to comply with this plan.

2.7.10 Passenger Train Emergency Preparedness Plan (PTEPP)

The O&M Firm's Safety and Security Administrator will oversee completion of the Joint CFRC Passenger Train Emergency Preparedness Plan (PTEPP) for SunRail and Amtrak passenger rail services as required by 49 CFR 239, in preparation for submission to the FRA no later than 180 days before revenue service. The O&M Firm will be provided with the current CFRC PTEPP as a source document and the Amtrak Operating Agreement as a reference.

2.7.11 Facility and Station Inspections

The O&M Firm shall conduct safety inspections of system facilities, including scheduling, assignments of responsibility and method of documentation as defined in the SSPP and in accordance with the O&M Services. Copies of inspection reports shall be forwarded to the Department and findings of said inspections shall be recorded by the O&M Firm in the RMIS.

2.7.12 Hazards Involving Projects

The SSPP defines the hazard management role of the O&M Firm, including organizational structure and responsibility to halt hazardous practices for the all contractors performing work on CFRC property.

The O&M Firm shall complete all pre-revenue service emergency preparedness training and simulation activities of the plan. The O&M Firm shall perform Operations and Support Hazard Analysis (OHA) during Phase 1 Initial Operating Segment (IOS) mobilization period to identify and analyze hazards associated with personnel and procedures during installation, testing, training, operations, maintenance, and emergencies. The OHA is conducted on all tasks and human actions, including acts of omission and commission, by persons interacting with the system, subsystems, and assemblies, at any level. Particular emphasis will be on dispatcher, train and engine crews, CFRCC and Customer Service operations

The OHA will provide for corrective or preventive measures to be taken to minimize the possibility that any human error or procedure will result in injury or system damage. This includes recommendations for changes or improvements in design or procedures to improve efficiency and safety, development of warning and caution notes to be included in manuals and

procedures, and special training of O&M Firm personnel. The OHA will be reviewed on an annual basis to provide an updated list of recommendations.

2.7.13 Injury Statistics

The O&M Firm shall furnish to the Department a monthly report, including the number of FRA reportable employee injuries, in a format approved by the Department.

2.7.14 Accident and Incident Investigation and Reporting

The O&M Firm will be required to comply with all aspects of the CFRC Internal Control Plan which will be provided to the O&M Firm upon mobilization. The COO, as the designated Regulatory Reporting Officer, has the responsibility to review and submit FRA required documents and reports on a monthly basis.

The O&M Firm shall immediately investigate all accidents, incidents, injuries to employees or passengers, or damage to Service Property or Service Equipment. The COO shall immediately be notified of any such incidents as specified in CFRC Internal Control Plan. Investigations must be documented on appropriate forms as prescribed in the CFRC's Internal Control Plan for Accident and Incident Reporting. Completed investigative reports must include a brief narrative description of the accident/incident, a description of the immediate remedial actions taken by the O&M Firm, corrective actions outlining steps the O&M Firm will take to prevent the occurrence of the accident/incident in the future, and any applicable supporting documents. The O&M Firm will submit all investigation reports and required forms to the Department.

The O&M Firm shall also enter all incident and injury information into the RMIS within 48 hours of the incident. The O&M Firm shall designate a reporting officer as the primary contact for all reporting requirements, and the O&M Firm's reporting officer, as the O&M representative on the Safety and Security Committee, will report to the Committee the previous month's incidents and on-going issues involving reporting compliance.

The O&M Firm is responsible for ensuring that investigation and reporting requirements are included in any contracts or subcontracts entered into by the O&M Firm; said contracts will be approved by the Safety and Security Administrator. The O&M Firm is responsible for ensuring that O&M personnel receive National Incident Management System (NIMS) training appropriate to their job classification and responsibilities.

During any accident or incident the O&M Firm shall take whatever action is necessary to protect the safety, health, and welfare of the SunRail, its passengers and employees, and the general public.

During any emergency the O&M Firm shall take whatever action is necessary to protect the safety, health, and welfare of the SunRail commuter service, its passengers and employees, and the general public. After the conclusion of an emergency, the O&M Firm shall prepare a written report for the COO that will be provided to the Central Florida Commuter Rail Commission and Technical Advisory Committee (TAC) for their advice, within their respective roles, on any improved activities, methods, or equipment that could prevent or mitigate future emergencies.

Nothing in this section shall relieve the O&M Firm from notification requirements found elsewhere in this Scope of Services that require notification of accidents, incidents, or hazards to the Department officers. Final closeout reports of accidents or incidents provided to the COO shall contain summaries of discipline assessed, if any, and any recommended changes in operations, rules, standards or training resulting from the accident or incident investigation.

2.7.15 Revision of Safety Practices

The O&M Firm shall, with prior COO written approval, revise its SOPs, emergency response practices, training techniques, or reporting practices if it is revealed to the O&M Firm through industry communiqué, employee communications, or the Department communication that such revisions will assist in the reduction or prevention of injury or loss of life to its employees, SunRail passengers, Department employees, the surrounding community, or Service Equipment or Property.

2.8 INCIDENT MANAGEMENT AND SERVICE NOTIFICATIONS

In the event of Service Delays, Service Disruptions or other incidents that impact commuter rail services, and pursuant to this Section and any other applicable provisions of this Incident Management and Notifications services, the O&M Firm shall establish the Central Florida Rail Coordination Center (CFRCC) desk within the OCC facility. The CFRCC is responsible to communicate information to emergency responders, government agencies and designated CFRC officials, providing instructions and information on the nature and extent of the emergency and any/all other applicable information that may be necessary or required in order to affect the proper degree of emergency response. The CFRCC operator shall make notifications in accordance with the current CFRCC Policies and Procedures Manual, CFRC SIP and PTEPP, investigate such delays and disruptions, and prepare reports. The CFRCC will have work stations available to facilitate two operators, if required during an emergency and onsite management oversight of CFRCC operations 24 hours per day/7 days per week. The CFRCC will include hardware and software components as specified in Section 2.2.

In addition, the O&M Firm shall maintain the CFRCC emergency telephone number (1-877-CFL-RAIL/1-877-235-7245) that the O&M Firm will staff 24 hours a day, seven (7) days a week, to provide a means for the general public to report safety, security and environmental issues that occur on the Corridor. O&M Firm CFRCC personnel have the responsibility to forward to the O&M Firm Train Dispatcher and emergency responders any information that will impact train movement or compromise CFRC safety and security. If emergency response personnel need to communicate with a passenger train operating on CFRC tracks they must contact the CFRCC.

Notwithstanding any definition or provision in the O&M Agreement to the contrary, the O&M Firm's failure to follow these procedures and to provide the required notification information shall be considered a material breach of the terms of the O&M Agreement. The COO reserves the right to change the notification procedures identified herein at any time during the term of the O&M Agreement.

2.8.1 Notification of Delays

2.8.1.1 Notification Sequence

O&M Firm shall provide immediate notice to the COO of Service Delays in the following sequence:

- 1) Telephone call from the Operations Control Center (OCC) Train Dispatcher to the COO.
- 2) General electronic message to the Department at the instructions of the COO.
- 3) Notification to Customer Service Desk of information to be broadcast on public notification systems.

2.8.1.2 Management During Service Delays

The O&M Firm shall provide phone updates to the Customer Service Desk and electronic updates to the Department in a timely manner, approximately every 15 minutes, for service delays that do not require emergency responders, and approximately every hour or immediately after receiving

relevant information from the CFRCC Desk when there is an incident that affects health, safety and security and emergency response activities are in progress, until the delay has been resolved.

2.8.1.3 Reporting

The O&M Firm shall produce Delay Reports containing detailed information describing the impact of all delays to customers on all affected trains. The O&M Firm shall generate Delay Reports utilizing the RMIS. For the purposes of reporting, each delay shall be classified as either a Customer Delay or a Service Delay. Delay Reports shall include all delays, regardless of duration. Delay Reports shall be produced in conformance with the requirements identified in Section 11.1, Reporting and Recordkeeping Requirements.

2.8.2 Emergencies and Service Disruptions

2.8.2.1 Procedures

Upon the occurrence of an Emergency as defined by 49 CFR 239.107(d) as “*an unexpected event related to the operation of passenger train service that results in serious injury or death to one or more persons and property damage...to railroad on-track equipment, signals, tracks, track structures, or roadbeds, including labor costs and the costs for acquiring new equipment and material,*” the O&M Firm shall immediately notify the COO following the procedures detailed in this Section. The CFRCC will relay this information in accordance with established Department procedure in the current CFRCC Procedures Manual.

When applicable, the CFRCC must also notify (as soon as practical) any adjacent rail lines and non-Department railroads with information on the nature and degree of the emergency situation and what actions may be required on their part to ensure that their properties do not become involved. In the event the CFRCC becomes aware of an incident or emergency on the CFRC involving Amtrak intercity or SunRail commuter service trains by means other than communication from the Dispatcher, the CFRCC shall immediately notify the Train Dispatcher and emergency responders of the situation.

The O&M Firm shall assure the readiness of and maintain standby power and back-up telephone systems for emergency use at the OCC. The O&M Firm shall ensure that staffing and on-site equipment is capable of independently sustaining and controlling CFRC/SunRail commuter service operations for a minimum of 72 hours during a prolonged emergency as an Emergency Operations Center (EOC).

Emergency Service Plan

The O&M Firm shall develop an Emergency Service Plan at least 90 days before the Revenue Services Date. The development and implementation of the Emergency Service Plan will require the close coordination with the COO, partner transit agencies (LYNX and Votran), emergency responders, and potentially private bus companies. Responses to emergencies and service disruptions shall follow the policies and procedures described in the CFRC SIP, PTEPP, SEPP, and Emergency Response Standard Operating Procedures (SOP).

The O&M Firm shall conduct at least one bus bridge replacement training exercise prior to the start of revenue operations to test notification procedures, response times and the effectiveness of the bus bridge implementation. The Department shall be responsible for the cost of such bus transportation if the service disruption is a result of circumstances not under the O&M Firm's control and/or influence.

At least 30 days prior to Revenue Service Date the O&M Firm shall provide to the Department the cost of providing a Bus Bridge for three levels of emergency service events (low, average, high). The Department shall be responsible for the cost of such bus transportation if the service disruption is a result of circumstances not under the O&M Firm's control and/or influence.

Field Management and Personnel

In the event of a Service Disruption in which there are events or occurrences on or off the Service Property including, without limitation, collisions, derailments, fires, fatalities or injuries, or other emergencies whose potential impact on service requires close coordination of multiple activities, the O&M Firm shall follow the policies and procedures described in the CFRCC SIP and PTEPP and as developed in the SEPP for the service property by the O&M Firm, as described in Section 2.7.6.

The O&M Firm shall respond to emergencies and incidents within 30 minutes of initial notification. In all cases the O&M Firm shall initiate actions to restore service within 30 minutes. Where the O&M Firm does not provide 24-hour on-duty coverage in any functional area, the O&M Firm shall provide key O&M Firm personnel with the appropriate vehicles, equipment, tools and materials in order to respond directly to a service problem or interruption at all times, from locations including their primary residence. The O&M Firm shall provide a list of key employees, assigned vehicles, and the reason for their inclusion on this list.

The O&M Firm management employees authorized to conduct all phases of the operation shall be available to the Department without interruption during storm events and emergencies. At a minimum these O&M Firm management employees shall include senior managers with oversight of track, communications, materials, and bridges.

The O&M Firm shall respond to Emergencies and Service Disruptions with sufficient resources without regard for time, day or otherwise, to resolve all such situations. Overtime, night, weekend and holiday work is expected and shall not be restricted for monetary reasons.

The O&M Firm shall provide appropriately trained personnel with spill-containment kits ready for immediate deployment at all times, equipped for cleanup and containment of small fuel, oil and hazardous materials spills. This is intended to be initial response equipment under the O&M Firm's control. The provision and deployment of this equipment does not relieve O&M Firm of responsibilities included in Section 16, Environmental Services of this Scope of Services.

Notification Sequence

Incidents and accidents that require local emergency response reported to the CFRCC from the Train Dispatcher or from other sources will be cause to initiate the notification sequence

described in the CFRC SIP and PTEPP and in accordance with the current CFRCC Procedures Manual.

2.8.2.2 Reporting

Following a Service Disruption, the O&M Firm shall adhere to the sequence of reporting procedures as described in the CFRC SIP and current CFRC Emergency Response SOPs.

2.8.3 Notification of Delays to the Public

The O&M Firm shall promptly notify customers of delays, both at stations and on-board trains, whenever delays are in excess of five (5) minutes. The O&M Firm shall also notify customers of potential delays immediately upon becoming aware of such potential delays. Notification shall be provided regardless of whether the event is considered a Service Delay or a Service Disruption, and shall be delivered according to the Section 2.4, Transportation. Following a significant delay, series of regular delays, or at the direction of the COO, the O&M Firm shall provide information to customers through the use of information fliers approved by the Department.

2.8.3.1 Delay Notification at Stations

At all SunRail commuter rail stations, the O&M Firm shall provide announcements of delays, their causes and anticipated duration, and the O&M Firm's planned response or corrective action, through public address systems, computer monitors, electronic message boards, and other systems including but not limited to those provided by the Department. The O&M Firm shall update the notification message every five (5) minutes until the situation is resolved. In the event that the O&M Firm has no new information to change or add to the notification message, the O&M Firm shall, for all systems other than the public address systems, update the time stamp on the notification message.

2.8.3.2 Delay Notification On-Board Trains

O&M Firm Conductors on-board trains shall obtain relevant information and ensure that Customers are notified of delays, their causes and anticipated duration, and the O&M Firm's planned response or corrective action, through both public address systems and direct communication with Customers. The O&M Firm shall also be responsible for ensuring that the entire train crew has up-to-date information to provide to Customers. Updates shall be provided every five (5) minutes until the situation is resolved.

2.8.4 Wreck Clearing

2.8.4.1 General

The O&M Firm shall clear all wrecks on the Service Property, including the VSMF at Rand Yard, and Supporting Property, and restore to operation all affected O&M Services. Any incidents which involve signals, the O&M Firm shall contact the Signal Maintenance Firm within 30 minutes. The O&M Firm shall respond to all wrecks and begin restoration efforts within 30 minutes of notification.

2.8.4.2 Specific Other Wreck

Other railroads or their contractors may assist with wreck clearing involving wrecks of that railroad equipment. The respective rights and obligations of the non-Department railroad and the Department shall be governed by the terms and conditions of agreements, if any, between the Department and that railroad and by AAR protocol.

2.8.4.3 Reimbursement

The O&M Firm is authorized to pursue recovery against any and all parties responsible for the wreck for the Costs incurred by the O&M Firm in clearing wrecks to the extent permitted by law. Such costs are not included in the Lump Sum Price and shall be separately reimbursed. The Department shall not reimburse the O&M Firm for any costs incurred in clearing wrecks caused in whole or in part by the O&M Firm. Where a wreck involves a non-Department railroad operating on Department property, the Department will assist the O&M Firm as necessary and will confirm the O&M Firm's authorization to pursue recovery. The O&M Firm will be responsible for all attorneys' fees and litigation costs incurred in its recovery activities..

The O&M Firm shall provide wreck clearing equipment. The recovery of costs for damages to the Service Property are covered in Section 2.8.5 below.

2.8.5 Recovery of Costs, Reimbursement and Coverage for Other Emergencies

When an incident/event causes damage to the Service Property, which is subject to the terms of this Agreement, the Department authorizes the O&M Firm to pursue recovery against any responsible party for reimbursement of costs incurred by the O&M Firm in accordance with this agreement (hereinafter Costs). Certain Property (assets) of the Department is insured by the Insurance Company under the State of Florida, Department of Transportation's Bridge, Property and Business Interruption Insurance Program (Insurance Program). The following procedures and terms shall apply to the recovery of Costs incurred by the O&M Firm, Reimbursement by the Department and Coverage by the Insurance Company as defined herein.

Upon learning that damage has been caused to the Service Property covered by this agreement the O&M Firm will immediately notify the Department and the Department Claims Attorney (Office of the General Counsel) who will confirm whether the Service Property is an insured asset. The Department shall notify the Insurance Company.

- (a) The damaged asset is not insured by the Department under the Insurance Program (or the Department does not make a claim on the insurance coverage) and Costs are equal to or less than \$1,000,000.00.

1. The O&M Firm is authorized to pursue recovery against any and all parties responsible for Costs caused by damage to the Service Property to the extent permitted by law. The Department will assist the O&M Firm as necessary and will confirm the O&M Firm's authorization to pursue recovery. The O&M Firm will be responsible for all attorneys' fees and litigation costs incurred in its recovery activities.

- (b) The damaged asset is not insured by the Department under the Insurance Program (or the Department does not make a claim on the insurance coverage) and Costs are in excess of \$1,000,000.00.
1. In this situation the Department may be responsible to reimburse the O&M Firm for any Costs incurred in excess of \$1,000,000.00. Under these circumstances the Department retains its rights to pursue recovery against any and all parties for the amount of any reimbursement made to the O&M Firm in excess of \$1,000,000.00 (hereinafter Reimbursement). The Department and O&M Firm agree to coordinate their pursuit of recovery of their respective Costs and Reimbursement from the responsible parties, and not to execute any documents or take any actions which would impair or limit the other's right to recovery. The Department and O&M Firm may enter into an agreement for sharing attorney's fees and litigation costs. The Department and O&M Firm agree to share any recovery on a pro-rata basis based upon their respective Costs and Reimbursement, in accordance with Florida law, unless otherwise agreed to in a separate writing.
- (c) The damaged asset is insured by the Department under the Insurance Program (and the Department makes a claim for insurance coverage) and Costs are equal to or less than \$1,000,000.00.
1. In this situation the Insurance Company retains a subrogated interest in the recovery against any and all responsible parties to the extent of its payment for coverage under the appropriate policy (Coverage). The Coverage may include damages other than the Costs incurred by the O&M Firm. The O&M Firm is authorized to pursue recovery against any and all parties responsible for Costs caused by damage to the Service Property to the extent permitted by law. The Department will assist the O&M Firm as necessary and will confirm the O&M Firm's authorization to pursue recovery. The Department and O&M Firm agree to coordinate their pursuit of recovery of their respective Costs and Reimbursement with the Insurance Company and its claim for Coverage from the responsible parties, and not to execute any documents or take any action which would impair or limit the others' right to recovery. The Department, O&M Firm and Insurance Company may enter into an agreement for sharing attorney's fees and litigation costs, otherwise each will bear its own fees and costs. The Department, O&M Firm and Insurance Company agree to share any recovery on a pro-rata basis based upon their respective Costs, Reimbursement and Coverage in accordance with Florida law, unless otherwise agreed to in a separate writing.
- (d) The damaged asset is insured by the Department under the Insurance Program (and the Department makes a claim for insurance coverage) and Costs are in excess of \$1,000,000.00.
1. In this situation the Department may be responsible to reimburse the O&M Firm for any Costs incurred in excess of \$1,000,000.00. Under these circumstances the Department retains its rights to pursue recovery against any and all parties for the

amount of any reimbursement made to the O&M Firm in excess of \$1,000,000.00 (hereinafter Reimbursement) and the insurance company retains a subrogated interest in the recovery against any and all responsible parties to the extent of its payment for coverage under the appropriate policy (Coverage). The Coverage may include damages other than the Costs incurred by the O&M Firm. The O&M Firm is authorized to pursue recovery against any and all parties responsible for Costs caused by damage to the Service Property to the extent permitted by law. The Department will assist the O&M Firm as necessary and will confirm the O&M Firm's authorization to pursue recovery. The Department and O&M Firm agree to coordinate their pursuit of recovery of their respective Costs and Reimbursement with the Insurance Company and its claim for Coverage from the responsible parties, and not to execute any documents or take any actions which would impair or limit the others' right to recovery in accordance with Florida law. The Department, O&M Firm and Insurance Company may enter into an agreement for sharing attorney's fees and litigation costs, otherwise each will bear its own fees and costs. The Department, O&M Firm and Insurance Company agree to share any recovery on a pro-rata basis based upon their respective Costs, Reimbursement and Coverage in accordance with Florida law, unless otherwise agreed to in a separate writing.

In paragraphs (c) and (d) above, the O&M Firm shall submit all proposed settlement documentation including but not limited to settlement agreement, release and order of dismissal, for review and approval by the Department's Office of the General Counsel prior to execution. Approval by the Department shall not be unreasonably withheld.

- (e) Failure to coordinate and cooperate in pursuing recovery, or impairment or limitation of a party's right to recovery.
 - 1. With regard to paragraphs (a), (b), (c) and (d), above, if either the Department or the O&M Firm fails to coordinate and cooperate in the pursuit of any recovery under these provisions or impairs or limits the lawful recovery of the other or the Insurance Company, it will be liable to the other and the Insurance Company for reasonable attorneys' fees and costs incurred in compelling coordination and cooperation or correcting any impairment or limitation to its lawful recovery. The O&M Firm shall not be entitled to any Coverage which may be available to the Department from the Insurance Company.

Although the O&M Firm is responsible for repairing damage resulting from an act that is officially declared by the State of Florida as an "act of terrorism", the Department will reimburse the O&M Firm via Supplemental Agreement for "act of terrorism" damage repair costs.

2.8.6 Financial Relief for Severe Incidents

For any single incident, the Department will reimburse the O&M Firm for any damage repair construction costs in excess of \$1,000,000.00.

Such financial relief for severe single incidents does not apply if the incident was caused, created, or magnified by the O&M Firm's failure to fully perform as required by this O&M Services agreement.

2.9 FARE COLLECTION SYSTEM EQUIPMENT

The Fare Collection System to be provided by the Department shall consist of the following main components:

- Cashless Ticket Vending Machine (CTVM) that will accept only credit/debit cards but not cash.
- Full-Service Ticket Vending Machine (FSTVM) that will accept both cash and credit/debit cards for payment and issue change.
- Station Platform Ticket Validators (SPTV) to validate smart cards.
- Handheld Ticket Validators (HHTV) for fare payment inspection and validation.
- Point-of-Sale Machines (POSM) for fare payment and reloading of smart cards at retail outlets.
- Contactless Smart cards (standard and limited use disposable).
- A central data collection and information system (CDCIS) application that will handle credit/debit card processing, transaction and maintenance data processing and reporting, as well as TVM and SPTV configuration.

Each station will include three (3) CTVMs, one (1) FSTVM and four (4) SPTVs.

2.9.1 TVM Consumable Replenishment

The O&M Firm shall replenish printer paper, smart card storage units and empty recirculating units. Smart card storage shall be replenished for all TVMs no less than two times per week. The Department shall furnish contactless smart card and ticket stock.

2.9.2 Equipment Cleaning and Graffiti Removal

The O&M Firm shall be responsible for regular cleaning and graffiti removal of the CTVM, FSTVM, SPTV and HHTV units. The Department shall furnish special tools used to access the fare equipment, a supply of spare parts, and additional vaults and card disposal trays to facilitate changing the recirculating units. The O&M Firm shall be responsible for:

- Clearing of receipt, ticket and card jams.
- Regular cleaning of the interior and exterior of units.
- Removal of graffiti, stickers and other foreign objects.
- At the direction of the Department, replacement of damaged or vandalized external parts and screen protectors, to be provided by the Department.

2.9.3 Training and Qualification

The O&M Firm is responsible for maintaining a trained workforce capable of performing all levels of maintenance on the SunRail fare collection equipment required during the term of the O&M Agreement. Training needs shall be evaluated annually with appropriate training sessions scheduled for employees on a regular basis. Initial training will be provided through the fare collection procurement contracts. The O&M Firm shall provide an adequate staff to perform the Service Levels outlined in Section 2.9.6.

2.9.4 Tools and Test Equipment

The O&M Firm is responsible for providing the basic and necessary tools and test equipment to make repairs to equipment which contains an on board CPU, power supply, electrical control circuits, network communications equipment, and all electro-mechanical devices. The Department shall supply vendor proprietary tools, templates, calipers and other items needed to maintain and align the vending mechanisms.

2.9.5 Support Vehicles

The O&M firm shall be responsible for supplying adequate support vehicles outfitted with tools and storage to perform the Service Levels outlined in Section 2.9.2. All operating costs including vehicle maintenance, fuel, insurance, tolls and vehicle replacement shall be the responsibility of the O&M Firm.

2.9.6 Service Level Agreement (SLA):

The O&M firm shall provide all services in accordance with the following Service Levels:

- The Mean Time to Respond shall be 60 minutes between notification of an incident from either the Department or designee for the OCC or the remote monitoring center, and response by the O&M Firm. Response shall include the generation of a work order and an estimate of arrival at site or actual repair.
- The Mean Time to Repair shall be 48 hours. The O&M Firm will be encouraged to accelerate the Mean Time to Repair for customer facing outages and mission critical equipment items.
- The O&M Firm shall provide a sufficient number of field technicians to the Department during all revenue service hours and shall maintain a local (Orlando Metropolitan Area) point of contact at all times.

The SLA metrics may be adjusted by mutual agreement from time to time to adjust to actual operating conditions and customer service needs.

SECTION 3. SERVICE AND SUPPORT PROPERTY**3.1 RIGHT OF ACCESS**

The Department shall grant the O&M Firm the right to enter upon and use the Service Property, including the VSMF at Rand Yard, for the purposes of performing the O&M Firm's obligations under this Scope of Services.

The Department shall use reasonable efforts to ensure that Other Contractors or Third Parties do not unreasonably interfere with O&M Firm's performance of the O&M Services and that access by Other Contractors or Third Parties to the Service Property is limited to the degree of access granted by the Department or necessary for the performance of the duties of such parties.

3.2 RIGHT TO INSPECT

The Department and its contractors and subcontractors shall have the right to enter upon the Service Property, including the VSMF at Rand Yard, at any time and without notice for purposes of inspecting and examining the Service Property, the Support Property or the Support Inventory, or otherwise monitoring compliance with the terms of the O&M Agreement. The Department's representatives shall carry appropriate identification and authorization as well as utilize approved safety equipment and measures while on the Service Property. The Department shall also have the right to obtain any information related to the O&M Services or to the Service Property, Support Property, or Support Inventory promptly from any management employee of the O&M Firm.

3.3 CONDITION OF PROPERTY

Within 60 Calendar days prior to the Revenue Services Date, the Department and the O&M Firm shall conduct a Joint Audit of the Service Property, including the VSMF at Rand Yard, and Support Inventory. The purpose of such Joint Audit shall be to identify and establish the condition of the Service Property (Condition Assessment) and the quantities and condition of the Support Inventory as of the date of the audit. The Department shall, in its sole discretion correct, remedy, acknowledge, or resolve any previously hidden defects, missing materials, damage to, or failure of the Service Property and Support Inventory revealed by the Joint Audit so as to comply with applicable safety laws or regulations. The Department may request the O&M Firm to correct deficient conditions as Extra Work. The Department shall provide the initial inventory and the O&M Firm is responsible for maintaining the inventory. The O&M Firm shall review the inventory annually and provide recommendations to the Department for removal or addition of items to this inventory based on historical use, availability, and changes to the CFRC infrastructure.

3.4 ALTERATIONS OR MODIFICATIONS

The O&M Firm shall not materially alter or modify, except in accordance with the requirements specified in the O&M Agreement, any of the Service Property, including the VSMF at Rand Yard, or Support Inventory without the prior written approval of the Department. If the O&M Firm determines that such alteration or modification is necessary, it shall notify the Department in writing at least 30 Calendar days prior to the date O&M Firm believes such work should commence, and shall proceed as directed by the Department. Each request from the O&M Firm must describe, in detail, the reason for the proposed modification, the scope of the work, the estimated cost, the labor, materials and

equipment needed, and must contain a detailed schematic of the proposed work and a project schedule identifying the start date, completion date, and significant event dates. At the completion of the work, the O&M Firm shall submit to the Department appropriate documentation, including as-built drawings and any other documentation required by law or regulations. The Department or its subcontractors may remove, at the sole cost and expense of the O&M Firm, any unauthorized alteration or modification that is not removed by the O&M Firm within 24 hours after notice from the Department.

3.5 O&M FIRM'S DUTY OF CARE

During the Term of the O&M Agreement, the O&M Firm shall maintain the Service Property, including the VSMF at Rand Yard, and Support Inventory in accordance with the requirements of the O&M Agreement, applicable warranties, and applicable law. The O&M Firm shall maintain the Service Property and Support Inventory in a condition consistent with the maintenance standards detailed in this Scope of Services. The O&M Firm shall reimburse the Department for the actual costs of any repairs to or maintenance of the Service Property or Support Inventory necessary to return the same to the condition, required by the standards detailed in this Scope of Services, excluding the replacement of obsolete Support Inventory or capital assets.

The Department shall have the right to reject any design, workmanship, or material which does not conform to accepted practice or design of the Department, AREMA, Original Equipment Manufacturer (OEM), or any vendor supplying materials or components, or to the standards as set forth in this Scope of Services. Any such rejection shall be corrected by the O&M Firm to the satisfaction of and at no cost to the Department. Repeated rejections may be cause for the Department to terminate all or a portion of the O&M Services. The currently accepted practice or design of the O&M Firm, OEM, or any other vendor that, in the written opinion of the Department, represents a diminution of value to the user from a previous practice, or design, may be rejected by the Department.

The O&M Firm shall not, without prior Department approval, post or affix any signs, notices, bumper stickers, advertisements or documents or materials of any kind that are not necessary for the performance of O&M Services on the Service Property, Support Property, or Support Inventory. The O&M Firm shall not post or affix any political notices or advertisements on the Service Property, Support Property, or Support Inventory; and shall immediately remove any such notices or advertisements. The O&M Firm shall post personal or union communications only at locations designated by the Department.

3.6 DAMAGE TO SERVICE OR SUPPORT PROPERTY

Responsibility for Material Damage to the Service Property and Support Inventory shall be determined by the Department after joint inspection by the Department and the O&M Firm or their respective designees, and, at the discretion of the Department, representatives of Third Parties. Material Damage that is deemed to have been caused in whole or in part by acts or omissions of the O&M Firm shall be repaired at the O&M Firm's sole expense, and shall include but not be limited to:

- 1) Mechanical, electrical, or engineering defects not found or not corrected by the O&M Firm during the performance of its work in accordance with the O&M Agreement;

- 2) Improper, inadequate, or temporary repairs, adjustments, cleaning, inspections, and renewals carried out by the O&M Firm; or
- 3) Unfit, inferior, un-inspected, or non-compliant material and overhaul services obtained by the O&M Firm.

In calculating the aggregate amount of damage from any occurrence to determine whether damage is Material Damage, the Department and the O&M Firm shall take into account damage to Service Property and Support Inventory and other assets of the Department, and substitute transportation and all other costs estimated by the Department to be necessary or desirable in order to repair or replace property that has suffered Material Damage. The O&M Firm shall submit to the Department within 24 hours of the occurrence of such damage a preliminary report detailing the cause and extent of the damage and estimate of repair costs, and measures undertaken by the O&M Firm to prevent future similar damage. Within 30 Calendar days of the occurrence of the damage, the O&M Firm shall submit to the Department a report further detailing the final estimate of costs of repair or replacement.

Material Damage to the Service Property or Support Inventory not caused in whole or in part by the O&M Firm's acts or omissions shall be repaired by the O&M Firm at the Department's expense and shall be treated as Extra Work. The Department may, in its discretion, elect to have such work performed by Other Contractors, who may, at the Department's discretion, utilize any facility on the Service Property for the performance of such work. O&M Firm shall not charge such Other Contractor for such use of facilities. Support Inventory on hand at such facilities and used by Other Contractors in the repair of Material Damage shall be replaced by the Department or Other Contractors or the appropriate adjustment shall be made to the inventory.

In the event that such work by Other Contractors affects the O&M Firm's performance of the O&M Services, or its use of the Service Property, or Support Inventory such that O&M Firm is unable to comply with the requirements of the O&M Agreement, the Department shall review the incident and determine the responsible party regarding the liquidated damages that would otherwise have been assessable to the O&M Firm.

The O&M Firm may inspect, at its sole discretion and cost, any repairs performed by Other Contractors. In the event that, in the opinion of O&M Firm, repairs by Other Contractors are not performed in accordance with the standards required of the O&M Firm under the O&M Agreement, the O&M Firm shall notify the Department in writing. Any correction or repairs that the Department determines should be made by the O&M Firm to Service Property and Support Inventory as a result of inadequate repairs by Other Contractors shall be performed by such Other Contractor at such Other Contractor's sole cost and expense, or performed by the O&M Firm as Extra Work at the Department's sole discretion.

Where damage to Service Property and Inventory does not constitute Material Damage, the O&M Firm shall determine, to its best ability, the extent and cause of the damage, and provide a written report to the Department no later than the business day following the date on which the O&M Firm became aware of such damage. All damage reports filed pursuant to this paragraph must specify in detail the cause and extent of the damage and the measures taken by the O&M Firm to prevent similar future damage. Unless otherwise directed by the Department, the O&M Firm shall, within 60 calendar days following submission of a damage report, undertake repairs of the damaged Service Property or

Support Inventory at the O&M Firm's sole cost and expense. The O&M Firm shall notify the Department upon completion of such repairs.

The O&M Firm shall promptly repair any damage to the Service Property or Inventory caused by derailments, collisions, or Third Parties that materially affects rail services, without regard for cause or responsibility. The O&M Firm shall maintain accurate cost records pertaining to these activities in the event they are eligible for any reimbursement.

The provisions of this section do not apply to or otherwise affect the O&M Firm's obligation to perform routine maintenance as required by this the O&M Agreement. All costs related to such routine maintenance are included in the Lump Sum Price.

SECTION 4. MAINTENANCE OF VEHICLES

The Department will furnish to the O&M Firm rolling stock as shown in Table 4-1 for use in providing SunRail commuter rail service. The O&M Firm shall have an affirmative obligation to operate the service with the minimum number of train consists required and to undertake periodic reviews of equipment requirements with the goal of maximizing equipment utilization.

Table 4-1 - SunRail (Department) - Fleet of Cars and Locomotives					
Passenger Cars					
Car#	Type	#	Seats*	Year	Manufacturer
2000-2012	Cab Car	13	132	2013	Bombardier
3000-3006	Coach car	7	150	2013	Bombardier
Bi-Level Cars		Total	20		
All Cars		Total	20		
Passenger Locomotives					
Loc#	Type	#	Year	Manufacturer	
100 - 109	GP40WH	10	2013	MPI Remanufactured	

** Accommodates bicyclists and ADA customers and equipped with on-board wheelchair lifts*

All Rolling Stock (i.e., locomotives and passenger cars) operated for SunRail commuter rail service shall, at a minimum, comply with all applicable regulations of the FRA, and recommendations of APTA and Association of American Railroads (AAR). All Rolling Stock shall be maintained in accordance with the O.E.M. manufacturer's specifications and otherwise maintained and worked on in compliance with the latest standards and recommended practices of the AAR, American Public Transportation Association (APTA), and National Fire Protection Association (NFPA), and the latest revisions of the applicable sections of 49 CFR 200 through 239 (FRA) and all other FRA applicable standards and regulations. The work shall also conform to the requirements of the United States Environmental Protection Agency (EPA) and Florida Department of Environmental Protection. O&M Firm shall maintain the rolling stock assets of Department and not consume the value of these assets to reduce O&M Firm costs.

4.1 ROLLING STOCK AVAILABILITY AND FLEET REQUIREMENTS

The O&M Firm shall provide a Fleet Requirement Plan for Rolling Stock as part of the Annual Mechanical Services Plan to support the service levels and quality expectations of the Department. The plan shall be submitted 90 days prior to the Revenue Services Date for Department approval and shall outline the manner in which the available fleet will be used within the guidelines provided below, including the following:

- Train consist requirements by equipment type and day of the week

- Locomotive requirements by day of the week
- Car requirements by car type and day of the week

The O&M Firm must have active train consists available to meet schedule requirements. All train consists will be a locomotive and two cab cars/coaches. One standby two-car consist with locomotive shall be available at the VSMF, five days per week. This to serve as a “hot backup” train should a rescue train be needed.

The O&M Firm shall have locomotives available for revenue service, planned maintenance and non-scheduled maintenance.

The Fleet Requirement Plan will be reviewed jointly by the O&M Firm and the Department to consider alternatives that benefit SunRail either by reducing the equipment count requirement or increasing usage to successfully enhance the service or maintenance practices. Minimum equipment requirements shall be adjusted for conditions beyond the reasonable control of the O&M Firm (e.g., SunRail equipment offline for heavy overhaul without adequate replacement equipment furnished by the Department).

The O&M Firm shall perform all maintenance and repair activities associated with Rolling Stock modifications as directed by the Department. Rolling Stock modifications programs may originate with vendors, suppliers, regulatory agencies and/or the Department. The O&M Firm may be required to supply all labor and materials required to conduct such programs as Extra Work. The Department reserves the right to select a third party contractor to complete such programs.

The Department will provide a long-term Overhaul Schedule for locomotive complete, locomotive HEP, locomotive top deck, locomotive and coach trucks, coaches/cab cars complete; and car and locomotive HVAC units.

4.2 VEHICLE MAINTENANCE PROGRAM OVERVIEW

The O&M Firm shall be responsible for the routine maintenance of the SunRail commuter rail fleet and preventative maintenance as outlined herein..

The O&M Firm shall perform the following inspection and maintenance activities on diesel locomotives, coach cars, and cab cars:

- Daily FRA mandated inspections
- Daily checking of any systems, as required by vehicle manufacturer/supplier
- Corrective maintenance of not more than two (2) hours, including but not limited to:
 - Replace brake shoes
 - Replace seat cushions
 - Replace light bulbs/ballasts
 - Replace headlamps
 - Replace cab control equipment, such as master controller, event recorder radios, public address user interface, PA Amp, etc.
- Troubleshoot electrical and mechanical malfunctions, and replace defective components providing the total time does not exceed two (2) hours.
- Routine interior cleaning

- Weekly inspections or checking of any systems, as required by the vehicle manufacturer/supplier
- Routine lubrication, primarily for diesel locomotives
- Troubleshoot and perform corrective maintenance on specific items that generally require less than two (2) hours of labor, and not requiring cranes, special tools, jacking equipment, etc. An example of which would be changing a defective component in a HVAC unit, and subsequent testing of the heating and cooling system.
- 45 Day Inspections: Lubricate Traction Motors, Tread brake units (all vehicles), Disk Brake units (cars only), check and top off fluids for prime mover and HEP, take fuel and oil samples to be sent to lab.

The O&M Firm shall be responsible for the fueling of locomotives from highway tanker trucks provided by the Department.

The on duty O&M Firm Shift Supervisor shall be the point of contact for normal communications regarding Preventive and Corrective Maintenance and movement of trainsets back and forth between VSMF and Amtrak AutoTrain facility. The O&M Firm shall deliver the trainset to the designated track at the Amtrak AutoTrain facility for Preventive and Corrective Maintenance. Amtrak will return the trainsets to the designated track after the Preventive and Corrective Maintenance has been completed. The O&M Firm shall inspect the trainset on the designated track and return the trainset to the VSMF.

The O&M Firm will be responsible for, purchase of materials and supplies for maintenance, sending components out for reconditioning, coordination of maintenance records and spare parts ordering through the RMIS, QA/QC of repairs, and movement of materials from the VSMF to the Amtrak Auto Train Facility and back, when necessary. Amtrak will provide minor consumables including, but not limited to, rags, cleaning fluids and materials. The O&M Firm will purchase bulk consumables for use at the Amtrak Sanford Auto Train Facility, including but not limited to, engine oil filter, air filters, fuel filters, turbo soakback filters, engine oil, antifreeze and bulk lubricants such as traction motor grease, suspension bearing oil, governor oil and traction motor brushes. The use of these consumables will be tracked by the O&M Firm through the RMIS. The O&M Firm shall include the cost of these consumables in the Lump Sum Price.

The O&M Firm, the Department and Amtrak shall jointly take inventory of capital spares at both facilities on a mutually agreeable regularly scheduled basis. Amtrak has a secure area at Auto Train facility dedicated for SunRail material storage.

Inspection, servicing, maintenance and repairs of all rolling stock shall be carried out in conformance with the maintenance instructions proposed by the O&M Firm and agreed to by the Department.

Six months prior to commencement of SunRail commuter revenue service, the O&M Firm shall prepare a Rolling Stock Maintenance Plan that as part of the Mechanical Services Plan for the SunRail commuter rail system. The O&M Firm should develop the plan and all documentation based upon FRA Requirements, APTA Standards, standard industry practice, and general industry standards, knowledge of the basic EMD platform passenger locomotive and “Go Transit” style low level boarding bi-level. The Plan shall include:

- Inspection Procedures, Intervals and Criteria

- Perform Daily Inspections and Brake Test of Trainsets in VSMF and ready trainsets for daily service
- Test Procedures and Intervals
- Schedule Preventive Maintenance Intervals (Preventive Maintenance)
- Maintenance Procedures
- Special Test Equipment or measuring devices required to perform inspections and tests.
- Discussion of Corrective Maintenance

The specific inspection and servicing needs as well as the scheduled maintenance activities is site specific. Some of the maintenance and inspections will be performed at the VSMF, and some at the Amtrak Sanford Facility. The O&M Firm shall develop the Mechanical Services Plan, sign-off forms for daily, 92 day, 180 day, etc. and preventive maintenance activities, to be approved by the COO. The sign-off forms shall include all inspection, test, preventive maintenance and corrective maintenance activities. These documents shall be comprehensive and include both Preventive Maintenance and Corrective Maintenance. The documents shall include O&M Firm work as well as any work that may be performed by the Department. The O&M Firm shall make these audit records available to the Department for audit.

Car and locomotive daily service and inspections are the responsibility of the O&M Firm at the VSMF in Sanford, Florida.

The following services shall be provided by the O&M Firm at the VSMF:

- Daily inspections, brake tests, cleaning, servicing and minor repairs,
- 45 day Locomotive Inspection
- 45 day car servicing (HVAC filters and lubrication)
- Any and all corrective maintenance and troubleshooting that can be performed at the VSMF Faculty and Storage Yard maintain service
- Fueling and Sanding Locomotives (fuel to be delivered by truck, metered, ticket signed off by O&M Firm and paid directly to fuel delivery contractor by the Department)
- Fuel and Oil Sampling/Testing and corrective action , such as oil changes
- Other Cleaning and servicing

The following services will be provided for the Fleet by the Department or Other Contractors.

- Periodic Maintenance Requirements
 - For Coaches: 184 Day, annual, Four Year Airbrake
 - For Cab Cars: 92 Day, annual, 184 day, bi-annual and Four Year Airbrake
 - For Locomotives: 92 Day, annual, bi-annual and Airbrake
- Periodic inspection, heavy maintenance, and corrective repair activities.
- Washing the train exterior will be performed by Amtrak at the Auto Train facility. The Department has assumed exterior washing of trainsets at least every two weeks in the MOU. The O&M Firm shall be responsible for delivering the train sets to a transfer point.
- The O&M Firm shall be responsible for inspecting the periodic maintenance completed by the Department or Other Contractors.

4.3 ANNUAL MECHANICAL SERVICES PLAN

The O&M Firm shall prepare, for the acceptance of the Department, and implement an annual Mechanical Services Plan which complies with 49 CFR 238.107. This Plan shall include component plans and programs for each functional area of the Mechanical Services. These component plans and programs will constitute the annual Mechanical Services Plan. Contactor shall submit these plans and programs to the Department for review and approval 120 days after Notice to Proceed for Maintenance Mobilization. Thereafter the O&M Firm shall submit these plans and programs by the end of each Calendar Year. The Mechanical Services Plan shall identify the inspection and maintenance activities to be undertaken by the O&M Firm; the O&M Firm's maintenance performance standards; frequencies of tasks; staffing plan; and specific schedules for accomplishing such work. This plan shall be in accordance with FTA and FRA requirements for such plans.

The annual Mechanical Services Plan shall include, but not be limited to, the following components:

- Recommended Capital Improvement Plan
- Rolling Stock Maintenance Plan
- Head-End Power Replacement Plan
- Quality Control Program
- FRA Compliance and Notice of Proposed Rule Changes

The O&M Firm shall update the Mechanical Services Plan as required by changes to the O&M Services, such as increase in size of the fleet, or as directed by the COO. The Plan shall include the work that may be performed by Other Contractors under separate agreement with the Department. The O&M Firm shall make and agree to implement Department requested changes to the Mechanical Services Plan within thirty (30) days of the COO request, or shall suggest, within ten (10) days of the COO's request, alternatives reasonably designed to meet needs as stated in the request.

4.4 PREVENTIVE MAINTENANCE

The O&M Firm shall be responsible for maintaining all Rolling Stock in accordance with manufacturer maintenance standards and a scheduled maintenance program. The scheduled maintenance program may be modified by mutual agreement between the O&M Firm and the Department. New locomotives, overhauled locomotives, new passenger cars, and overhauled passenger cars have identified warranted components during the O&M Services.

The O&M Firm shall provide for all scheduled and unscheduled maintenance and repair of Department equipment, including, without limitation:

- Replacement or repair of failed rotating parts, components, subsystems and support systems, including power assemblies and prime mover-associated components, and locomotive traction motors.
- Locomotive/car wheel truing and replacement of worn, broken or defective wheels and defective or worn brake shoes, brake heads, rigging, and brake discs.
- Replacement or repair of failed radiators, cooling fan motors, dynamic brake grids and grid cooling fans, and control devices and wiring, including Separate Head-End Power package radiator and cooling fan motor on units so equipped.

- Replacement of Separate Head-End Power unit components, including internal and external associated engine components, alternator and associated control circuits, contactors and electrical components in the AC power circuit.
- Running repairs to all electrical parts, air brakes, and car body, including AC and DC wiring and circuitry.
- Replacement of all air hoses and angle cocks.
- Replacement of failed or worn couplers, knuckles, and draft gears, including associated devices.
- Replacement or repair of failed trucks or components.
- Replacement or repair of failed air conditioning equipment.
- Replacement of broken coach and crew seats, including covers, foam, support springs, and arm rests.
- Replacement or repair of defective car doors, door operators, tracks, and electrical switches and safety devices associated with proper door operation.
- Replacement or repair of wheelchair lifts and all related components, wiring and control devices.
- Replacement of broken or damaged glazing, including graffiti, or scratched glazing.
- Replacement or repair of all signage, interior and exterior, that is damaged or defective in both passenger cars and locomotives.
- Repair of dents during routine maintenance, where practicable, and touch up of nicks, scratches, and faded paint.
- Repair of damage due to accidents or vandalism (including graffiti).
- Approved minor modifications.
- Maintain all safety equipment, including fire extinguishers, AED's and first aid kits.

To facilitate movement of equipment within the VSMF, the O&M Firm shall make available qualified maintenance craft personnel to operate the Rolling Stock. The qualified maintenance craftsmen shall operate rail car movers, locomotives, and cab-control cars to move Rolling Stock within the yard limits of VSMF to work and inspection locations at the maintenance facility in support of the mechanical department's needs.

4.5 VEHICLE MAINTENANCE SERVICE STANDARDS

Inspection, servicing, maintenance and repairs of all rolling stock shall be carried out in conformance with the Vehicle Maintenance Service Standards prepared and proposed by the O&M Firm and approved by the COO (as described in Section 4.2). The O&M Firm shall participate in the review and approval of the Vehicle Manuals and Parts Catalogs being provided for cars and locomotives which are in "Exhibit D, Vehicle Design Criteria" to the Standard Written Agreement between the Department and Motive Power, Inc. and "Exhibit D, Vehicle Design Criteria" to the Standard Written Agreement between the Department and Bombardier Transit Corporation, and the provisions for vehicle maintenance are incorporated herein. The O&M Firm should use these documents in preparation of the O&M Firm's Mechanical Services Plan. The O&M Firm's Plan will use the manufacturers' maintenance instructions and manuals as a guide. These instructions and sign-off record sheets shall be generated by the O&M Firm and submitted to the COO for review and approval, and shall include:

- Preventive Maintenance Cars

- Preventive Maintenance Locomotives
- Corrective Maintenance Cars
- Corrective Maintenance Locomotives

Non-Revenue Locomotives

Any switching locomotives or work equipment cars that the O&M Firm may bring on site will require the same preventive and corrective maintenance forms.

The forms will be generated from the O&M Firm's review of:

- Locomotive Service
- Engine Maintenance
- Maintenance Instructions
- Supplier Instructions
- Locomotive operating and service manuals provided by Motive Power, Inc.
- Passenger car manuals provided by Bombardier Transit Corporation

All maintenance, including programmed maintenance, will be performed in accordance with pertinent manuals, and must be done in accordance with manufacturers' or repair O&M Firms' warranty provisions. All maintenance inspections must conform to FRA, and APTA Passenger Rail Equipment Safety Standards (PRESS) rules and regulations.

Legible, full name signatures shall be used on all inspection/maintenance and federally required forms. Each maintenance task item identified on the form shall be signed as complete by the person that performed the task. Completed forms shall be signed by the O&M Firm foreman who is responsible for supervision of the maintenance work, and additionally signed by the manager in charge indicating that the maintenance form has been reviewed. Completed forms shall be available for inspection by COO.

The O&M Firm shall include in the RMIS: maintenance planning tools, generation of sign off sheets, parts catalogs and ordering/scheduling parts and training documentation. The O&M Firm shall generate all of the necessary maintenance records, planning, sign-off sheets, training records and parts history.

Costs for additional work required which may be associated with Department's acquisition of Rolling Stock of a different type than that existing at the Revenue Services Date of the O&M Agreement (e.g., mechanical training, spare parts, etc.) will be compensated for in accordance with the provisions for Extra Work as documented in the O&M Agreement until such time as the work can be included in the next Basic Service Plan.

4.6 ALTERATIONS AND MODIFICATIONS

The O&M Firm shall not undertake any alteration or modification of passenger cars or locomotives without express written permission of the COO. If the modification is originated by the O&M Firm, the O&M Firm shall submit a written description of the work, with sketches and wiring schematics as appropriate, and a detailed cost estimate for approval prior to performing any modifications. During the course of the modification program, the O&M Firm shall submit periodic progress reports at least

monthly and shall keep a permanent record of those units which have been modified. Revised vendor components which replace obsolete components and which may require minor modifications in order to install, shall not be considered modifications under the intent of this section.

The O&M Firm shall perform, or oversee the work performed by others for all maintenance and repair activities associated with Rolling Stock modifications as directed by the Department. Rolling Stock modifications programs may originate with vendors, suppliers, regulatory agencies and/or the Department. The O&M Firm shall supply all labor and materials required to conduct such programs as Extra Work.

4.7 WARRANTY PROVISIONS FOR NON-O&M FIRM WORK

Warranties owned by the Department shall be aggressively administered by the O&M Firm. Inspections, troubleshooting, and repair work shall seek to reveal circumstances where the Department warranties apply. Such work shall be part of the routine duties, and shall not be considered as Extra Work.

Where the warranty covers only material and parts, and not labor, all material and parts may be used by the O&M Firm without cost.

The O&M Firm will prepare and maintain the data necessary to advance claims, both for individual repairs and for fleet defect and field modification programs, and meet locally with Suppliers as the Department requests.

4.8 LOCOMOTIVE MAINTENANCE AND CLEANING

The O&M Firm's maintenance and cleaning specifics for Locomotives are as follows:

All locomotives in service shall be maintained so as to develop their designed horsepower and speed and equipped with a functioning radio. Locomotives must not be operated with non-functional auxiliary equipment except in case of emergency. All trains will be equipped with spare jumper cables located in a readily accessible and standard location. This shall include all cables of non-fixed attachments.

- Locomotives shall not be allowed to idle unnecessarily. The O&M Firm shall follow written instructions for idling and fuel conservation which shall be developed jointly between the O&M Firm and the Department. Automatic fuel shutoff equipment on locomotives shall be maintained in working order at all times. Locomotives shall not be dispatched with fuel leaks.
- Any train in active service having a layover of more than one hour shall be connected to available standby ground power when required. Train shall be retained on ground power during any cleaning or inspection process which requires electrical power. Locomotive Head-End power shall not be used for the equipment prior to twenty minutes before scheduled departure time. All passenger car side doors are to be closed except during cleaning of vestibule steps, and only left in open position twenty minutes before scheduled departure time. Ground power shall be used for layover trains on the storage tracks at VSMF.

- All Federal (EPA), State, and local air pollution control standards shall be met. No adjustment or modification shall be made to any equipment that would affect the emission quality standard.
- Midday Storage of trainsets requires drip pans and pads provided and serviced by the O&M Firm to prevent contamination of ballast by any leaks or spillage.

4.8.1 Daily Cleaning (Locomotives)

The following items shall be addressed on a daily basis on all locomotives by the O&M Firm:

- Clean cab of papers and other debris. Wet mop floor, and clean and wipe walls and bulkhead with approved liquid cleaner.
- Clean nose compartment of papers and debris. Wipe walls and doors with approved liquid cleaner.
- Clean windows and windshields, both interior and exterior surfaces, with approved liquid cleaner and flush with clear water. Ensure all insects are removed from windshield, and that it is free of residue that could cause glaring from opposed lighting conditions. Pressure wash the nose with a handheld pressure washer to remove spotting, debris and bugs.
- Empty trash receptacle and replace trash receptacle liner bag.
- Seats should be clean and in good serviceable condition. Replace if torn or not adjustable.
- Clean floors in engine room.
- Ensure an adequate stock of health and welfare supplies for the engineer.

4.8.2 Additional Cleaning (Locomotives)

The following items shall be attended to by the O&M Firm after completion of the required locomotive 45-day inspection and before the locomotive is returned to revenue service:

- Clean the engine room and exterior of the locomotive car body. Special care is to be given to prevent damage to the exterior finish.(weather and facilities permitting).
- Steam clean trucks, fuel tanks, and underside of locomotive.
- Clean cab sidewalls and ceiling and wet mop cab floor.

4.9 PASSENGER CAR MAINTENANCE AND CLEANING

The O&M Firm's maintenance and cleaning specific to passenger cars are as follows:

Damaged seats shall be repaired within 24 hours, with material of comparable type (transportation grade woven fabric) and color to existing. When comparable materials are not available, materials of different type and color may be used with COO written approval.

- Lighting fixtures shall be adequately maintained. All lights must be of the same general color in each car. Defective lights, including overhead reading lights, shall be replaced daily.
- HVAC systems shall be maintained, with thermostatic controls functional and temperature maintained in the range as specified in the appropriate car maintenance manual by vehicle type and in accordance with the Mechanical Service Plan. Pre-season air conditioning and heating inspections shall be completed on all passenger cars prior to seasonal demand. Annually, or as defined by the Mechanical Services Plan, all passenger cars shall have HVAC pre-season inspections completed by March 15 (for air conditioning) and by November 15 (for heating).

- Floor coverings shall be repaired or replaced with materials, approved by the COO, when cracked.
- All doors shall open and close easily and latch properly. Door guides and tracks shall be cleaned and made free of debris during daily cleaning. All passenger enabled door controls shall be functional at dispatch. Bent step-wells shall be straightened within 24 hours. There shall be no loose treads, sills, or other tripping hazards.
- All bridge plates and door sills shall be inspected daily. Any defective bridge plates or damaged sill shall be repaired prior to the next revenue service trip.
- The O&M Firm shall maintain and apply or remove, as required, all decals and signage specified by the Department, ADA, APTA, and FRA standards and/or regulations, including those which may be added/removed or required after the Revenue Services Date.
- Car windows shall be maintained to be transparent in effect as of the Revenue Services Date. Passenger car windows include car body side windows, side door windows, bi-parting door windows, end door windows and all glazing in cab-control area. Broken, cracked or damaged windows shall be replaced in conformance with FRA glazing instructions using same color in all windows of any one car. In addition, all broken or cracked windows shall be taped promptly to prevent spalling. No car shall be operated with more than two cracked or damaged windows except to complete a round trip. All known or reported broken, cracked or damaged windows shall be replaced within three days.
- When a leaky roof or side sheet is detected, the source of the leak must be located and repaired, within one week. Painted surfaces must be retouched with approved paint and colors after repairs. All graffiti shall be removed daily. Offensive graffiti shall be removed prior to train dispatch.
- Cars shall not be dispatched with safety hazards or defects, including but not limited to damaged, frayed or missing holding cords on bike racks. All wheelchair lift equipment in service shall be checked daily and maintained in operable condition. Daily inspection and periodic scheduled maintenance of wheelchair lifts are to be performed as outlined in the Mechanical Services Plan.
- The O&M Firm shall replace damaged or missing signage for priority seating, wheelchair accessibility, bicycle and luggage stowage or any other signage providing information to patrons, as soon as the materials are available along with a replacement car. The O&M Firm shall be responsible for keeping all information racks on board trains stocked with materials approved and provided by the COO. Consists must be checked periodically throughout the day to ensure racks remain neat and stocked with materials.
- Public address systems shall be maintained in working order. In the event that a car is operating with a non-functioning public address system, due to a malfunction after being dispatched, crews will be required to make intelligible announcements in each car at each station. All mechanical and electronic announcements, warning or other indicator systems shall be maintained in working order. Non-functioning equipment shall be replaced prior to dispatch.
- All passenger cars shall have all loose trash (newspapers, paper cups, etc.) picked up and disposed of in receptacles, and trash containers which are located in car vestibules. Toilet compartments shall be emptied after the termination of each one-way trip. Trash bins in the toilet room shall be attached to the wall after cleaning. All toilets shall be serviced prior to the beginning of the first trip of the operating day. Lavatory supplies shall be replenished as needed

prior to each one-way trip. All cab cars shall have the toilets serviced, tank contents removed and tank recharged daily or more often as needed.

4.9.1 Daily Cleaning (Cars)

The O&M Firm shall sweep or vacuum or otherwise make clean and presentable every rail passenger car. The following items shall be addressed on a daily basis on all rail passenger cars:

- Remove debris under and around seats and wall area and vacuum floors.
- Wet mop floors in cab cars and remove grease and oil.
- Clean interior windows and sills with approved cleaner and wiping rag. Any unauthorized markings, dirt or general grime shall be removed daily from the interior windows prior to the first scheduled departure.
- Wet sponge seats where needed. Replace cushion if stained or soiled.
- Clean toilet and sink and check water supply and toilet for proper operations.
- Fill water tank.
- Clean interior and exterior of operating control cabs.
- All litter shall be removed. All beverage spills shall be removed. All chewing gum and like substances shall be removed. Torn advertising placards, damaged public notices, and other unsightly items shall be removed. Stickers, posters, and other unauthorized signs shall be removed, including any tape and adhesive residue. Expired SunRail notices and seat drops shall be removed.
- All cove moldings, joints, seat pedestals, and other interior service must be kept clean. All litter receptacles shall be completely emptied, and, if the receptacles are dirty, washed and sanitized.
- Handprints, footprints, and other dirty conditions on access panels, seats and interior panels, shall be removed.
- Pressure wash the nose with a handheld pressure washer to remove spotting, debris and bugs.

4.9.2 Exterior Washing (Trainsets)

The O&M Firm shall send trainsets to Amtrak AutoTrain facility for a complete exterior washing of all train sets including one locomotive, coach and cab car per train set, every other week. The movement of cars between the VSMF and the Amtrak Sanford AutoTrain Facility for train washing shall be performed on Saturday at a time to be determined with Amtrak.

The O&M Firm shall couple and trainline four trainsets (4 locomotives & 8 coaches/cabcars) into a single train for delivery to the Amtrak AutoTrain facility. The O&M Firm engineer shall deliver the four trainsets to the designated track in the Amtrak AutoTrain facility. An Amtrak engineer shall operate the SunRail trainsets through the train wash and return the trainsets to the designated track. The O&M Firm shall inspect the trainsets on the designated track and return the trainsets to the VSMF. The O&M Firm shall couple and trainline the remaining three trainsets (3 locomotives & 6 coaches/cabcars) into a single train for delivery to the Amtrak AutoTrain facility and shall repeat the switching procedure. The O&M Firm shall separate the trainsets in preparation for revenue service after the train wash is completed.

4.9.3 Additional Cleaning (Cars and/or Trainsets)

When a trainset is returned by Amtrak after 180-day car maintenance, the O&M Firm shall be responsible for heavy car cleaning according to the Mechanical Services Plan. Additionally, during the 180-day inspection of the cars, the following portions of the cars which are not normally cleaned should be cleaned:

- Hand cleaning of seats shells, walls, window masks, doors (but not necessarily all ceiling areas)
- Equipment lockers, vacuumed
- Cab and Cab controls, hand cleaned
- Seat fabrics shall be cleaned by material supplier instructions
- Floors, cleaned in a manner approved by the COO
- HVAC ducts
- Areas not cleaned by car wash, shall be cleaned by hand, these include, undercar equipment, battery boxed, HVAC compartment in roof
- Trucks
- Visible portion of battery box
- Visible portion of main reservoirs
- Diaphragm ends
- Exposed air brake components and piping

4.10 TRAINING AND QUALIFICATION

The O&M Firm is responsible for maintaining a trained workforce capable of performing all levels of maintenance on the SunRail fleet required during the term of the Contract. Training needs shall be evaluated annually with appropriate training sessions scheduled for employees on a regular basis. Initial training will be provided through the car and locomotive procurement contracts, and the O&M Firm will send all shop craft employees to attend, but will be responsible for their employees wages during that Training Program.

4.10.1 Technical Training

The O&M Firm shall establish and maintain a Training Program that complies with the requirements of the FRA 49 CFR 238.109, Training, Qualification and Designation program as described in Section 10, and as approved by the COO.

The O&M Firm shall be responsible for maintaining qualified maintenance persons (QMPs) to perform all applicable inspection work as required by 49 CFR 238. The O&M Firm shall maintain qualified maintenance personnel certified in refrigerant handling in accordance with the Code of Federal Regulations – Part 40. (See also 2.2.2.2)

The O&M Firm shall establish a “Train the Trainer” program, as approved by the COO, with designated instructors to maintain a qualified workforce.

4.10.2 Safety Training

All O&M Firm Contractor Rail Vehicle Maintainer employees are required to have been certified to work by passing a test in conjunction with a Safety Training Course as described in Section 10.

4.11 MAINTENANCE MANAGEMENT SYSTEM

The O&M Firm will provide a workstation, software, software licensing and training to Amtrak, so that Amtrak can input maintenance records, material utilization and any other required information into the O&M Firms Maintenance Management System to meet the O&M Firm needs and all FRA record keeping requirements. The O&M Firm shall provide secure connectivity to the O&M computer network.

4.12 MATERIALS MANAGEMENT PLAN

O&M Firm shall develop and submit for the Department approval a Materials Management Plan as part of the Annual Mechanical Services Plan that will optimize efficiency and reduce inventory cost through forecasting of replenishment requirements as well as control of all phases of the materials handling function, and that will assure that adequate levels of critical inventory are maintained. The Plan shall be presented for the Department review and acceptance and shall be implemented within 120 days of Notice to Proceed for Maintenance Mobilization.

Support inventory must remain on the Department property or stored at Amtrak Auto Train Facility for Preventive and Heavy Corrective Maintenance unless the O&M Firm receives written approval to store such support inventory elsewhere.

All support inventory shall be properly handled and stored by the O&M Firm to prevent damage. Appropriate measures shall be taken to protect support inventory from the effects of precipitation, heat, sun, and other environmental conditions related to time and weather. Support inventory shall be stored so that it does not warp, twist, or otherwise distort during storage. The Department may reject as non-compliant support inventory not stored in conformance with the Contract. Loss of value due to improper handling or storage of support inventory shall be the responsibility of the O&M Firm.

On an annual basis, the Department, the O&M Firm will conduct a joint audit aimed at identifying obsolete material. In accordance with the Department policies and procedures, the O&M Firm shall dispose of any obsolete material identified through this process.

4.12.1 Material Quality Control

O&M Firm shall submit a Material Quality Control Plan for the Department review and approval within 120 days after Notice to Proceed for Maintenance Mobilization. This Plan shall be implemented immediately upon approval and maintained in place throughout the duration of the Contract. At a minimum, the plan shall address inbound inspection of material, management of suppliers, material specification management and disposition of material.

4.12.2 Owner Furnished Inventory

The Department shall purchase all material required for the execution of work for rolling stock maintenance that is of value in excess of \$2,000.00 (OEM list price). All material with list price

of less than \$2,000.00 shall be the responsibility of the O&M Firm to purchase as part of the Lump Sum Price. The COO may authorize the O&M Firm to purchase material with a value in excess of \$2,000.00. The cost of any such authorized purchase shall be reimbursed to the O&M Firm on a monthly basis. All material shall become the property of the Department.

The O&M Firm shall provide consumables to be allocated for normal maintenance activities, such as: sand, governor oil, air compressor oil, traction motor gear lube, traction motor suspension bearing oil, tube grease for bushings and bearings, towels, toilet paper, light bulbs, windshield wipers, liquid soap and rags. The Department shall provide lube oil, and anti-freeze in bulk. The O&M Firm and Amtrak will meter lube oil for HEP and prime mover, and present the Department with a signed "delivery ticket" that shows type of oil, gallons, date/time, locomotive number and who delivered oil. The O&M Firm will call for delivery and sign for diesel fuel for locomotives and the Department will pay the bulk fuel supplier directly based upon metered fuel tickets.

The Department will assign responsibility for certain SunRail commuter service material that is in at the Amtrak Sanford Yard inventory to the O&M Firm. The intent of this Owner Furnished Inventory is to provide baseline inventory for Amtrak to apply to the SunRail commuter service fleet in support of the maintenance operation. The value of this SunRail commuter fleet inventory shall be established at the commencement of this Contract. The content and value of the SunRail commuter service material inventory at the termination of this Contract shall be equal to or greater than the content value of the inventory established at the commencement of the Contract. Content is an assessment by Amtrak and agreed to by the Department of the applicability of the items for use and the appropriateness of the quantity of the items for use in SunRail commuter service operations. Determination of the value of the SunRail commuter service material inventory at the termination of the Contract shall be made jointly by the Department and Amtrak.

4.12.3 Inventory Requirements

The O&M Firm shall present to the Department any Proposed Inventory increases to COO for review. The Inventory shall include all Capital Spares purchased for cars and locomotives. The list will indicate indoor or outdoor storage.

The Inventory Control requirements and procedures as found in Section 2.3.5.7 shall also apply to the O&M Firm's obligations for rolling stock maintenance (with the exception of \$2,000 price threshold for rolling stock replacement parts, as noted in 4.12.2 above).

4.13 LIFE CYCLE MAINTENANCE PROGRAM AND FLEET MANAGEMENT PLAN

The Life Cycle Maintenance (LCM) concept maximizes the availability and functionality of rolling stock through a regular-interval program of planned maintenance events occurring over the useful life of each vehicle. Under the LCM concept, a set of service intervals extending over the life of the vehicle are established and a defined set of inspection and maintenance activities is programmed for each interval. These activities are coordinated sequentially among the maintenance intervals, such that the longer intervals typically include all work conducted in preceding intervals.

The O&M Firm shall develop the LCM Program using industry standards and maintenance practices appropriate for application to SunRail's commuter system fleet, for all maintenance to be performed by both O&M Firm and Amtrak. Once accepted by the Department, it shall be incorporated into the overall SunRail LCM Program that will include daily and other running repair maintenance activities to be performed at the SunRail VSMF and Amtrak Sanford Yard.

4.13.1 Equipment List

The O&M Firm shall provide an Equipment List (ELIST) of maintainable components for each vehicle system. The following systems must be addressed in the ELIST:

System	Description
01	Propulsion (Locomotives and CTC's)
02	Cab Controls (Locomotives and CTC's)
03	Friction Brake
04	Auxiliary Power Supply
05	Car Body Exterior and Interior, AEDs (defibrillators)
06	Door System
07	Truck and Suspension / Coupler and Draft Gear
08	HVAC System
09	Communications, Automatic Train Announcement System and WiFi
10	Main Engine, Air Intake and Exhaust and Cooling System (locomotive only)
11	HEP System
12	Event Recorder
13	Diagnostics (where applicable)

All systems shall be maintained by the O&M Firm to an operable level.

4.13.2 Maintenance Allocation Chart

The ELIST shall be the basis for the development of a Maintenance Allocation Chart (MAC) by the O&M Firm for each vehicle system for each fleet-type. Each MAC will provide a list of items from the ELIST for the subject systems (01 through 13). The MAC will contain the following data relating to each ELIST item:

- OEM Part Number;
- Part Name;
- Part Description;
- Maintenance Required (inspect, calibrate, service, replace, overhaul);
- Ideal Maintenance Interval (expressed in days in service – miles based intervals must be converted);
- Useful Life (days of life of the component provided that all of the prescribed maintenance is performed);
- LCM Interval (actual interval when integrated with the overall LCM Plan);
- Maintenance Location (flat floor, pit track, crane track, etc.).

- Required procedures and special tools

The MACs for each fleet-type shall be submitted to the Department as part of O&M Firm's Annual Mechanical Services Plan Maintenance intervals shall follow normally accepted guidelines. OEM guidelines shall be used as a basis for these intervals

4.14 LCM PROGRAM

O&M Firm shall take the approved MACs and re-order the information to compile an interval-based LCM Program for each fleet-type. The LCM Program shall be submitted to the Department. This program shall take MAC-prescribed maintenance and sort the items by LCM interval to generate an interval-based maintenance program. The intervals shall be coordinated with FRA-mandated inspection and maintenance cycles.

4.14.1 LCM Implementation

The LCM Program shall be applied to the entire SunRail commuter system fleet. O&M Firm shall prepare a maintenance schedule for each fleet-type for the term of the Contract and shall incorporate this schedule within the Maintenance Production Plan. This LCM schedule shall associate each LCM Maintenance Interval with an actual planned maintenance date (Day, Month, Year) for each vehicle in each fleet-type in a manner such that scheduled work is spread out to maximize availability of the fleets. At no time should the LCM Program plan to have more than two (2) CTCs out of service for LCM work. The LCM Program schedule shall take into consideration all requirements relating to fleet availability for revenue service and shall ensure that these requirements are not compromised. This schedule shall form the basis for the annual maintenance program for the fleet.

This method shall be developed and communicated to the Department through the Fleet Management Plan and the Maintenance Production Plan that shall be maintained and transmitted to the Department as indicated.

4.15 FLEET MANAGEMENT PLAN

The O&M Firm shall develop a FTA and FRA compliant Fleet Management Plan as part of the Annual Mechanical Services Plan that establishes the specific maintenance requirements for each coach (CTCs and BTCs) and locomotive in the SunRail commuter system fleet for the term of the maintenance services contract. The plan shall be updated as maintenance events occur and shall be provided to the Department on a monthly basis.

4.16 MAINTENANCE PRODUCTION PLAN REPORT

The O&M Firm shall develop and submit a Weekly Maintenance Production Plan Report that shall provide an overview of planned maintenance activities for the 7 day work week, for all work shifts. The Report shall include a work breakdown detailing the following:

- Planned Date / Time / Shift for Maintenance Activity;

- Vehicle Number for each work activity;
- Scheduled Work - Narrative description of work to be performed;
- Planned Work Location;
- Supervisor Responsible for Work;
- Assigned Resource(s) (Type and Labor Hours Required);
- Material Requirements; and
- Planned Out- of- Service Time (hours) by vehicle;

The Report shall contain the projected work for the upcoming week and the actual work performed for the previous week. In addition to the information listed above, the report for the previous week shall contain the following information:

- Actual Date / Time / Shift;
- Additional Work Performed (if any);
- Actual Work Location (if different);
- Actual Supervisor and Employees Assigned to the Work with a breakdown of Labor Hours;
- Actual Material Consumed (if different); and
- Actual Out- of- Service Time.

The report format shall be submitted by the O&M Firm to the Department for review and approval within 90 days from Notice to Proceed for Maintenance Mobilization. This report shall be submitted to the Department no later than 10:00 am on Monday of each week.

4.16.1 Inspection Standards

Inspections shall be conducted by the O&M Firm in a manner consistent with OEM recommendations. Visual inspections shall be carried out to the fullest extent, utilizing if required, inspection mirrors, feeler gauges, measuring devices and any other apparatus required in performance of the inspection. Where inspection involves the use of equipment requiring calibration, the O&M Firm shall insure that all calibrated equipment is accurately calibrated and that procedures are in place for use of the equipment as well as the maintenance of its accuracy.

4.16.2 Equipment Calibration

The O&M Firm shall identify all tools and test equipment that require calibration, the frequency of calibration and the calibration standards and procedures. The O&M Firm shall be required to maintain a system for tracking the calibration status of the equipment and to be able to recall items for recalibration, as well as items discovered to have been processed with "out of calibration" equipment. The required system shall also provide for clear identification of calibration status and due dates on the calibrated items, retention of current calibration certificates, and storage of calibrated items under conditions that ensure their continued accuracy.

The O&M Firm shall submit a calibration management procedure for the Department review and approval. This procedure shall be included as part of the O&M Firm's Procedures Manual.

4.17 TOOLS

Diagnostic test equipment (laptops and software) is provided by the Department.

4.18 AUTOMATED EXTERNAL DEFIBRILLATORS

The O&M Firm shall procure Automated External Defibrillators (AED) equipment for each coach and cab car in the fleet. The stand-alone, battery-powered AED units procured by the O&M Firm shall be equivalent to devices already in service in other U.S. commuter rail systems for a minimum of two years. Instructions for use of the AED equipment both voice and written, shall be in English. The O&M Firm shall inspect and maintain the AED equipment. The O&M Firm shall be responsible for the training of on-board personnel, supervision of scheduled maintenance, restocking of required AED consumables for adult/child/infant, and creating procedures and verification of compliance during train operations in accordance with industry standards and Florida Statutes 401.2915, 768.13 and 768.1325.

SECTION 5. REPLACEMENT SERVICES**5.1 GENERAL**

In the event Replacement Services are required, the Department may elect, in its sole discretion, to continue operating the SunRail commuter rail system or dispose of the SunRail commuter rail system assets in accordance with law and interlocal agreements. The Department may provide notice to the O&M Firm of its intent to begin providing the O&M Services, and may provide those services itself with its own or other personnel without liability to the O&M Firm (“Replacement Services”). The Department may utilize Replacement Services as a substitute for all or any part of the O&M Services that the O&M Firm is prevented from performing by virtue of a force majeure event or fails or refuses to perform in breach of any provision of the O&M Agreement, and may maintain such Replacement Services in effect until the O&M Firm is able to resume performance of the O&M Services in full compliance with the O&M Agreement. In the event that Replacement Services are implemented due to a breach of the O&M Agreement, the O&M Firm shall be liable to the Department for the costs of such services. The Department shall notify the O&M Firm in writing at least 24 hours prior to implementing Replacement Services.

5.2 COORDINATION WITH CONTRACTOR

In the event the Department elects to provide Replacement Services, it shall take such steps as may be reasonably necessary in order to coordinate the activities of its subcontractors and in-house personnel with the activities of the O&M Firm personnel.

5.3 PRO RATA REDUCTION IN LUMP SUM PRICE

During the period in which the Department utilizes Replacement Services, the O&M Firm shall be entitled to compensation only for the O&M Services that it actually provides, and the Annual Fixed Price for any month in which the Department utilizes Replacement Services shall be reduced on a pro rata basis to reflect that percentage of the total O&M Services performed as Replacement Services.

SECTION 6. COORDINATION WITH FRA AND OTHER RAIL CARRIERS

6.1 FRA COORDINATION

The O&M Firm shall consult, closely coordinate with and receive approval from the Department and the COO, prior to initiating contact with any regulatory agencies, including the Federal Railroad Administration (FRA) or the Federal Transit Administration (FTA). The O&M Firm shall keep the Department fully apprised, both by immediate oral notification and in writing, of any such discussions and negotiations with FRA, FTA or other regulatory personnel.

The O&M Firm shall be responsible for resolving all FRA violations including mitigating circumstances that led to violation, responding to regulators and paying fines. Any and all penalties and fines imposed regarding the violation of State and Federal codes, regulations, and laws shall be paid by the O&M Firm inasmuch as the violation occurs as a result of the O&M Firm's failure to fully perform as required by this O&M Agreement.

The O&M Firm shall develop and augment, for Department approval, all FRA-required plans, programs and documentation required for CFRC and new SunRail commuter rail service. The O&M Firm shall keep all testing results and analysis relative to approved FRA plans and submittals accessible at the OCC. The O&M Firm shall develop all submittals for the Department's written approval 90 days prior to the Revenue Services Date. In cases where the Department has preexisting plans, the O&M Firm shall review said plans and revise them as agreed to by the Department.

6.2 RAIL ACCESS

Under contract to the Department and under the direction of the COO, the O&M Firm will dispatch, manage, direct and control all railroad operations on the corridor and is responsible for issuing all rules, special instructions, timetables, practices, regulations and orders governing the Corridor.

As part of the Department's purchase agreement with CSXT, passenger rail traffic will be allowed access for 19 hours per day with exclusive passenger rail access for 12 hours per day. The Central Florida Operations and Maintenance Agreement (CFOMA) provides for priority of on-time Amtrak trains as outlined in the Amtrak Operating Agreement.

The following describes the initial proposed use of the corridor for train operations.

- Weekdays
 - Exclusive passenger use 12 hrs/day
 - Exclusive freight use 5 hrs/day
 - Mixed traffic use 7 hrs/day
- Weekends
 - Mixed traffic use 24 hrs/day
- Amtrak use - weekdays
 - 6 Amtrak trains per day – between 0530 and 1600

The O&M Firm will manage, direct and control the occupation, use and access to the CFRC in substantially the same manner as provided prior to the sale. The O&M Firm will provide all necessary supervisory personnel, dispatchers and bridge tenders as necessary to perform rail activities for SunRail commuter service, CSXT, Amtrak and FCEN on the CFRC. The O&M Firm will ensure all of the personnel provided are qualified to perform these duties.

6.2.1 Freight Service

Currently, freight rail traffic consists of CSXT through-freight service, CSXT local switching operations and freight transfers from FCEN entering at Robinson Street in Orlando and traveling to CSXT's Taft Yard.

CSX Transportation (CSXT)

The O&M Firm will not apply any restriction that precludes CSXT's provision for rail freight services on the Corridor in accordance with CFOMA. The O&M Firm and CSXT shall each appoint a representative for coordinating activities on the CFRC.

In accordance with CFOMA, CSXT will retain an easement over the CFRC to continue to operate freight on the tracks, including freight movements under contract with FCEN; the O&M Firm shall not provide freight service on the corridor. In the event that a CSXT train becomes disabled on the CFRC, the O&M Firm may provide motive power as may be available to help, move, push or haul the train to a location off of the CFRC or may provide assistance in repairing the disabled equipment. CSXT shall reimburse the Department for providing assistance. The Department will reimburse the O&M Firm in the form of an Emergency Work Order/Supplemental Agreement as outlined in Section 14. Any assistance provided by the O&M Firm to move a disabled CSXT freight train will not be considered as providing freight rail service on the CFRC.

In accordance with CFOMA, CSXT shall, from time to time, operate special/excursion passenger trains over the corridor carrying CSXT employees and invited guests and such trains shall be considered as trains of CSXT. Such trains will not carry members of the general public and all passengers will be considered employees of CSXT.

Florida Central Railroad Company (FCEN)

The O&M Firm shall provide FCEN with access to the CFRC between MP A790.1 and MP A799.7 for the operation of freight service. The O&M Firm and FCEN shall each designate a single representative for coordinating activities on the Corridor.

The O&M Firm shall make every reasonable effort to permit FCEN trains access to all customary stops on the CFRC, to avoid delays to FCEN trains and to not require an FCEN train to depart the CFRC prior to the completion of their freight services and related operations.

6.2.2 Intercity Passenger Service

The schedules and consists of Amtrak Trains shall be consistent with those in effect as of the July 11, 2011 execution date of the Amtrak Operating Agreement. The O&M Firm shall comply with

the provisions of the Amtrak Operating Agreement regarding schedules, late trains, train dispatching, and priority and those provisions are incorporated herein.

Amtrak currently operates two roundtrip passenger trains through the CFRC daily and operates a daily roundtrip Auto Train from north of the CFRC to the Auto Train facility in Sanford, Florida within the CFRC. It is anticipated that Amtrak will continue to operate these trains as scheduled and there are no known plans for increased service. Any increase in Amtrak service will require modification to the existing agreement with Amtrak and the Department.

Amtrak is entitled to implement schedule changes and modification to services, subject to the physical capabilities of the CFRC and the efficiency of other operations.

When either the Department or Amtrak desires to change an existing schedule or operate additional service on the CFRC, other than special trains, a minimum of 60 day's advance written notice shall be given to the other party specifying the desired change in service.

The O&M Firm, on behalf of the Department, shall make every reasonable effort to ensure that the CFRC is operated in a manner that will make it possible to:

- 1) Deliver Amtrak Trains to all scheduled passenger stops on the CFRC by the scheduled time.
- 2) Avoid excessive delays to Amtrak Trains and, consistent with safety, to make up delays incurred on the CFRC or on rail lines of other railroads.
- 3) Not require an Amtrak Train to depart a station prior to completion of customary operations, passenger services or emergency work.

For each train deemed by Amtrak to be late, the Department may be required to pay Amtrak a late train penalty and seek reimbursement from the O&M Firm, depending upon the nature of the delay as set forth in the Amtrak Operating Agreement and the provisions for late train penalties are incorporated herein. The O&M Firm is responsible for documenting Amtrak train corridor arrival and departure data, station dwell time data, and the cause and duration of delays. A weekly report will be provided to the COO by close of business the following Monday (excluding holidays) with a monthly report sent within five (5) calendar days of the end of each month. The COO will provide this information to the Department for calculating and verifying the monthly compensations between Amtrak and the Department. Criteria for defining late trains are contained in Appendix V of the Amtrak Operating Agreement and such provisions regarding late trains are incorporated herein.

O&M Firm on behalf of the Department shall have sole control of the dispatching of Amtrak's Intercity Rail Passenger Trains including the Auto Train, while on the CFRC. Train dispatching and priority shall be conducted in accordance with Appendix VI of the Amtrak Operating Agreement and such provisions regarding dispatching and priority are incorporated herein.

Amtrak Stations

Amtrak shall enter into lease agreements with the Department for the use and occupation of the station facilities adjacent to the CFRC owned by the Department at Orlando and Kissimmee, Florida. Sample lease agreements are included in the Amtrak Operating Agreement, Appendix II

and generally define Amtrak's responsibility for maintenance and operation of these facilities. These leases are subject to change prior to execution by the Department and Amtrak.

The O&M Firm and the Department have the right to enter the facilities leased by Amtrak, if accompanied by an Amtrak employee, to inspect the same to determine if Amtrak is performing in accordance with the covenants of the Lease, and to perform service and maintenance pursuant to its obligations under the Lease.

6.3 OPERATIONS

The Department shall provide all trains, locomotives and rail cars as necessary to operate the SunRail commuter rail service and the O&M Firm shall provide all personnel for the operation of trains, locomotives, railcars and rail equipment over the CFRC. All Amtrak, CSXT, FCEN and O&M Firm personnel who operate trains over the Corridor shall be qualified by the O&M Firm for operations over the CFRC in accordance with the CFRC operating rules and practices. Amtrak, CSXT and FCEN employees previously qualified to operate over the CFRC will be considered qualified as of the Revenue Services Date.

SECTION 7. CORRIDOR MANAGEMENT

7.1 GENERAL

The Department is responsible for the review and approval of all requests for facility encroachments, permits, lease agreements, and requests for rights of entry. The Department is also responsible for the CFRC policies and procedures related to grade crossings, liability issues and claims management, revenue management, implementation of e-RAILSAFE SHORTLINE® and SunRail service/operating policies.

The O&M Firm shall be responsible for the following elements of corridor management:

- Review of permit applications submitted to the Department and providing comments within the specified period
- Coordinate with the COO for determining and scheduling the required on-track worker protection
- Monitoring that all personnel working in the corridor have valid credentials
- Monitoring compliance with lease agreements
- Monitor the corridor for trespass and dumping occurrences and reporting to the COO and local law enforcement

SECTION 8. MANAGEMENT AND PERSONNEL

The O&M Firm shall have responsibility for the day-to-day operations and maintenance of SunRail commuter rail service and the maintenance of the CFRC corridor.

The responsibilities of the Department and COO shall include, but not be limited to having daily oversight of the CFRC, the SunRail commuter rail system and the O&M Services

The O&M Firm will be directly responsible for all reporting including but not limited to:

- a) Periodic Reporting (as detailed in Section 11.1, Reporting and Recordkeeping Requirements)
- b) On-Demand Reporting (as detailed in Section 11.1, Reporting and Recordkeeping Requirements)
- c) Emergency Reporting (as detailed in Section 11.1, Reporting and Recordkeeping Requirements)
- d) CFR Title 49 Testing and Inspection Compliance

8.1 PROVISION OF PERSONNEL

The O&M Firm shall provide and furnish the qualified personnel necessary to operate, maintain and manage the CFRC and SunRail commuter service in a safe and efficient manner. Descriptions for all key positions shall be provided to the COO for review and approval seven (7) days after Notice to Proceed for Maintenance Mobilization. The O&M Firm will provide the organizational chart with names of management personnel to the COO for review and approval seven (7) days after Notice to Proceed for Maintenance Mobilization and shall provide the updated chart on a monthly basis, or immediately upon the request of the COO. The O&M Firm personnel must possess all necessary technical and legal qualifications required by the U.S. Code of Federal Regulations, the Department or other federal or state regulatory bodies, for all employees to perform their job functions. All such personnel will be employees of the O&M Firm or their subcontractor, and all personnel requirements and provisions of the O&M Agreement will apply to subcontractor personnel, as well as O&M Firm personnel.

The O&M Firm shall maintain personnel, including suitable extra board contingencies when appropriate, at a level required to successfully and safely deliver all of the provisions of O&M Services. The level of staffing will be as defined by O&M Firm to meet the minimum operating and maintenance standards, and it may become necessary over time to add or delete positions. With respect to the O&M Firm's organizational structure, the COO shall have the right to approve the creation or deletion of any new positions prior to O&M Firm's implementation of any such decisions. The O&M Firm will give the COO written notice of any key positions that become vacant, or are anticipated to become vacant and the COO shall have the right to approve any candidate proposed for the vacant position. Unless otherwise mutually agreed, any and all vacant positions are to be filled within 30 days of vacancy.

The O&M Firm shall not, without the prior written approval of the Department, enter into any agreements with labor organizations containing provisions that increase the number of permanent employees of the O&M Firm or that increase the overall costs attributable to employees engaged in O&M Services provided on behalf of the Department pursuant to the O&M Agreement over the costs of other employees of the O&M Firm in the same crafts. The O&M Firm shall provide the

Department with current versions of the collective bargaining agreements that the O&M Firm has with the crafts represented in providing O&M Services throughout the term of the O&M Agreement.

In order to ensure that adequate personnel are available to perform the functions described in this Scope of Services, the O&M Firm shall develop and submit to the COO for approval, an annual work force deployment plan. The plan shall indicate personnel assignments by time of day to assure that forces are deployed effectively and efficiently to complete scheduled tasks. The COO reserves the right to request changes and return the plan for revision. Personnel on duty shall, at all times, devote themselves exclusively to the provision of O&M Services. O&M Firm employees are expected to be on the Service Property, or en-route between locations during the work shift. Except in the case of emergency or previous written agreement between the O&M Firm and the Department, the O&M Firm is prohibited from performing work on behalf of others, including, without limitation, other operators on the Service Property without the written approval of the COO.

The O&M Firm shall not assign employees designated to provide O&M Services to perform any other services that the O&M Firm may operate or manage without prior approval of the Department. The Department, through the COO, reserves the right to direct the removal of any individual, including Key Personnel, assigned to perform work under this Scope of Services.

8.2 KEY MANAGEMENT FUNCTIONS

The O&M Firm shall be responsible for managing the following functional areas:

- Management and Administration
- Managing Corridor
- Operations
- Designated Supervisor of Locomotive Engineers (DSLE)
- Safety
- Training
- Security
- Equipment Maintenance
- Communications Maintenance
- Construction Administration
- Field Construction Support and Coordination
- Customer Services
- ADA Compliance
- Stations and Facilities
- Accounting

The O&M Firm shall provide an organizational structure to address these functional areas. Key Management Personnel as provided in the Technical Proposal may not be substituted without prior written approval of the COO.

The O&M Firm agrees that the Key Management Personnel are an essential element of the O&M Agreement. The O&M Firm shall not reassign or reduce the commitment of any such Key Management Personnel during the term of the O&M Agreement without the prior approval of the COO. In the event that replacement of a Key Management Person is required, the O&M Firm will submit a qualified replacement for COO review and approval.

The COO reserves the right at any time to reasonably reject any Key Management Personnel, and the O&M Firm agrees to replace said person within 30 days of written notice of rejection. The COO shall have the right to approve the hiring of all individuals who report directly to the O&M Firm's General Manager provided that such approval shall not be unreasonably withheld. The O&M Firm shall consult with the COO concerning the hiring of all management employees who report directly to individuals who report directly to the General Manager. The O&M Firm will not remove or reassign a General Manager approved by the COO without the prior written consent of the COO. The General Manager will have the authority to discharge and replace the employees of the O&M Firm engaged in O&M Services. The O&M Firm shall bear the relocation and other costs associated with initial key personnel and replacement of personnel during the term of the O&M Agreement. The O&M Firm shall provide appropriate management coverage at all times.

There shall be no periods when O&M Firm managers are all assigned to perform work outside this Scope of Services (e.g., for corporate level meetings, responding to other problems not related to these O&M Services, etc.). Appropriate management representation shall be designated, with COO approval, for all Department-required meetings.

8.2.1 Availability of Personnel

Starting times and workweek schedules for each position will be determined by the O&M Firm and approved by the COO according to operational needs and may be changed by appropriate notice to the COO. Workdays may include the weekend to meet operational needs. Specified personnel will be required for 24-hour, on-call service in accordance with Section 2.8, Incident Management and Notifications.

All employees engaged in the provision of O&M Services shall perform their duties in a safe, professional, efficient and courteous manner, and all employees who deal with the public shall be clean and properly attired while on duty. The O&M Firm shall submit a Code of Conduct and Discipline Policy for all O&M Firm personnel consistent with the State of Florida Employee Code of Conduct for the COO's approval 14 days from NTP. The Department considers any conduct not consistent with the O&M Firm's policy to be "conduct unbecoming an employee," and the O&M Firm shall discipline accordingly an employee whose conduct is not consistent with those objectives. The O&M Firm, at the request of the COO, shall remove from its employment and bar from the Service Property, insofar as this O&M Agreement is concerned, any employee who exhibits conduct unbecoming an employee.

Any and all complaints of "conduct unbecoming an employee" shall be investigated by the O&M Firm and a report provided to the COO with the results of the investigation within a 72 hours of such complaint. Such reports shall include the identity of the employee and the facts and circumstances of the complaint and the results of the investigation by the O&M Firm. Additionally, if the COO is notified of a complaint about an employee by an entity other than the O&M Firm, upon notification the O&M Firm must investigate and similarly report the details and the results of the investigation to the COO within 72 hours of notification.

As outlined in the O&M Firm's Discipline Policy, any employee who continues to work in an unsafe or unprofessional manner after counseling and training shall be subject to removal from

performance of O&M Services, at the discretion of the General Manager. Regardless of any other provisions in the O&M Agreement for removal of employees from performance of O&M Services, if any person employed by the O&M Firm appears to be under the influence of alcohol or drugs or acts in a disorderly or improper manner, the employee shall be immediately removed from the performance of O&M Services.

The COO reserves the right to direct the O&M Firm to reassign any individual for cause. In the event a person holding such a position, including a manager, is reassigned or removed, the O&M Firm shall submit an alternate candidate for COO review and approval within 30 days.

If requested by the COO, the O&M Firm will hold employees out of performance of O&M Services pending a disciplinary hearing into charges of conduct unbecoming an employee, per the Discipline Policy. If the hearing results in a finding of guilt, the employee shall be barred from performance of O&M Services upon written request from the Department. If the employee is returned to service as a result of the hearing, the Department will bear the cost of lost wages for an employee held out of performance of O&M Services when (1) the Department initiated the charge; and (2) an arbitrator rules the discipline assessed was excessive and awards back pay for time lost.

8.3 SUBSTANCE ABUSE PROGRAM

The O&M Firm shall be responsible for their random testing program as required by 49 CFR 219 and will be responsible to submit to the FRA for approval no later than 30 days prior to any covered O&M Firm employees performing covered service under the terms of the O&M Agreement. Prior to submission to the FRA, the O&M Firm shall submit the program to the COO for review and acceptance. Failure to comply is a breach of contract.

The O&M Firm shall report on the status of their random testing program to the COO monthly. The O&M Firm shall change the drug and alcohol testing procedures as and when required by any applicable law or regulation, but shall not make any other changes to these procedures without prior notice to, and acceptance by the COO. Failure to comply is a breach of contract.

8.4 UNIFORM REQUIREMENT

All O&M Firm uniformed employees on or about the Service Property in public areas must be properly attired and groomed and shall treat the public with courtesy, whether on or off duty. Uniformed employees shall only be allowed to smoke on the Service Property in designated smoking areas defined by the Department. The O&M Firm shall require employees to follow established uniform guidelines and to be attired in appropriate uniforms whenever on-duty.

The O&M Firm shall design uniforms and submit uniform guidelines 180 days before Revenue Services Date, for the Department's approval, and supply uniforms for all personnel who interact with the public. The uniform design shall include the approved SunRail logo. The O&M Firm, at its discretion, may opt to have a seasonal uniform. All uniforms shall be professional in appearance and make crew members easily identifiable to the public and SunRail customers.

SECTION 9. LABOR OBLIGATIONS

The O&M Firm shall be solely responsible for determination of and payment of wages and benefits and other terms and conditions of employment for the O&M Services; provided, however, that the O&M Firm shall comply with Fair Labor Standards Act, State of Florida's Department of Labor and if applicable, the Davis-Bacon Wage Act, or other safety or wage/hour laws. The O&M Firm will faithfully comply with the terms and conditions of all applicable agreements with any labor organization representing O&M Firm's employees concerning wages, benefits and terms and conditions (i.e., shifts, starting times, meals periods, etc.) of employment. The O&M Firm will comply with all applicable laws, regulations, rules and procedures respecting employer's liability, worker's compensation, unemployment insurance and other forms of social security or railroad retirement, if applicable, and also with respect to any other proper withholding from wages of employees.

The O&M Firm shall comply with the requirements of the Federal Railroad Administration (FRA) Hours of Service regulations (49 CFR 228) for employees covered by that Part. Employees covered include (1) employees who are actually engaged in or connected with the movement of any train and (2) employees who dispatch, report, transmit, receive, or deliver train orders by any electrical or mechanical device.

The O&M Firm will provide to the Department a Work Stoppage Contingency Plan 120 days after Notice to Proceed Maintenance Mobilization for review and acceptance. The Plan shall describe measures to be taken, in the event of any strike or work stoppage engaged in by O&M Firm personnel, to assure continued and uninterrupted performance of the O&M Firm's Services.

SECTION 10. TRAINING OF O&M FIRM PERSONNEL**10.1 GENERAL**

The O&M Firm, in accordance with CFRC, SunRail, Federal and State regulations and standards, shall develop and implement an ongoing, comprehensive training and certification program (Training Program) for employees who are providing O&M Services including, but not limited to, all craft and management employees. The Department's objective is to have the highest level of trained and skilled staff working on the CFRC and SunRail commuter system. The O&M Firm's training programs will compliment this expectation and emphasize a customer-driven approach. All employees shall be trained and certified as required for the task(s) performed or equipment operated consistent with the requirements in 49 CFR 238.109. The Training Program shall be developed for COO review and approval 90 days after Notice to Proceed. Training shall include those elements required for the performance of duties in addition to specific areas of training for handling hazardous materials, SunRail operations, and safety and security training for new hires consistent with current CFRC and SunRail programs. Training courses shall include provisions for refresher training. In addition, the O&M Firm will designate personnel to receive a Train-the-Trainer course from CSXT so that they shall have the ability to train and qualify the O&M Firm personnel. The O&M Firm designated personnel will be responsible for providing refresher or recertification training for O&M Firm personnel.

All O&M Firm employees shall be trained to be fully qualified and competent to perform their duties for the CFRC and SunRail commuter services. Employees who refuse or decline training and fail to successfully pass certification tests shall not be allowed to hold a position where such certification is required. The O&M Firm shall be required to remove from O&M Services any O&M Firm personnel who fails to successfully complete training required in the Training Program. The O&M Firm may reinstate the removed O&M Firm personnel to O&M Services once the employee successfully completes the required training. The Department reserves the right to review O&M Firm training records and request evidence that the O&M Firm's employees and subcontractors who are providing O&M Services are appropriately trained and certified and have completed appropriate efficiency and competency tests. The FRA and SSO will also be provided access to audit the O&M Firm's training programs.

The O&M Firm shall meet quarterly with Department to review the effectiveness of the Training Program. The O&M Firm shall also provide the Department with a training report furnished to the Department at least two weeks prior to the training review. The O&M Firm is responsible for formulating and coordinating all training activities. The O&M Firm shall provide training within the Service Property, unless prior written approval to hold training elsewhere is provided by the Department. The O&M Firm shall schedule training activities so as to not interfere with its provision of services under the O&M Agreement. The O&M Firm shall provide a schedule of all planned training and upon request shall make available to Department employees (up to 10) and to third-party personnel any training offered to or by its own personnel who are assigned to work under the O&M Agreement. The O&M Firm shall provide at least 14 days notice to the Department of all training offered to or by the O&M Firm for its own personnel prior to the beginning of such training.

All costs for any and all Training will be the responsibility of the O&M Firm. This includes all wages for instructors and students and any wages to back fill the positions for jobs needing to be filled while the students are in Training.

All training courses developed by the O&M Firm shall be specific to CFRC and SunRail commuter service and shall be submitted to the Department for review and approval.

10.2 HAZARDOUS MATERIALS TRAINING REQUIREMENTS

The O&M Firm shall provide training, consistent with the Hazardous Materials Site Specific Health and Safety Plan to O&M Firm personnel who may impact hazardous material transportation safety. O&M Firm shall train O&M Firm personnel on the Material Safety Data Sheets for the hazardous materials stored on the Service Property. O&M Firm employees who inspect or transport hazardous material by rail must have a copy of and comply with the United States Hazardous Materials Instructions for Rail, as well as a copy of the current Emergency Response Guidebook (ERG) readily accessible while on duty.

10.3 FRA COMPLIANT TRAINING COURSES TO BE DEVELOPED

The O&M Firm shall comply with all FRA regulatory requirements and shall develop for the Department's approval a training program that meets all the training requirements, as applicable, of 49 CFR Parts 200 to 299. The Department and FRA shall have access to these records. The Department recognizes that the FRA has issued a Notice of Proposed Rulemaking (NPRM) for Training, Qualification and Oversight for Safety-Related Railroad Employees (49 CFR 243) Rule that, if adopted, may include additional requirements not currently found in 49 CFR 214 and 49 CFR 232. FRA has also issued a NPRM to revise existing regulations for passenger train emergency preparedness, ensure that railroad personnel who communicate and coordinate with first responders during emergency situations receive initial and periodic training and are subject to operational (efficiency) tests and inspections and develop procedures addressing the safe evacuation of passengers with disabilities during emergency situations. The O&M Firm will develop training based on current regulatory requirements at the time of award of contract. The training program will include, at a minimum:

- The O&M Firm will be required to develop for the Department's acceptance, in accordance with 49 CFR 213.7, a comprehensive training program for the application of written Continuous Welded Rail (CWR) procedures, with provisions for annual re-training, for those individuals designated under 49 CFR 213.7(c) as qualified to supervise the installation, adjustment, and maintenance of CWR track and to perform inspections of CWR track. The O&M Firm shall make the training program available for review by FRA and the Department upon request.
- All roadway workers and third party contractors performing O&M Services shall be trained, qualified in, and work in compliance with the CFRC Roadway Worker Safety Protection Plan and all applicable regulations contained in 49 CFR 214. The O&M Firm shall ensure that all personnel affected by the CFRC Roadway Worker Training, in accordance with 49 CFR 214, maintain their qualifications as detailed within the CFRC RWP Safety Plan. Training and qualification records must be maintained by the O&M Firm and made available to the Department upon request.

- The O&M Firm shall ensure that all third party contractors or any other persons to whom the plan may apply meet all applicable requirements of the program prior to performing any work on the CFRC.
- The 49 CFR 217.9, Program of Operational Tests and Inspections. The O&M Firm shall develop a training program and train and qualify managers and supervisors that are responsible for conducting Operational Tests and Inspections and Record keeping.

O&M Firm Testing Officers shall:

- 1) Be qualified on the railroad's operating rules;
 - 2) Be qualified on the operational testing program requirements and procedures relevant to the tests the officer will conduct;
 - 3) Receive appropriate field training, as necessary to achieve proficiency on each operational test the officer is authorized to conduct; and
 - 4) Conduct operational tests as required by this plan.
- The O&M Firm shall also develop, for the Department's approval, a training program that meets the requirements of 49 CFR 217.11. The O&M Firm will train and qualify all employees whose job and/or function requires operating rules qualification in the requirements of 49 CFR 217.11.
 - The O&M Firm shall develop for the Department's approval a training program that meets the requirements of 49 CFR 218.95 subpart F – Handling Equipment, Switches, and Fixed Derails Training Program. The O&M Firm shall develop a schedule to train and qualify all new hire employees whose job and/or function requires initial operating rules qualification in the requirements of 49 CFR 218.95.
 - The O&M Firm will be required to provide a Reasonable Suspicion Training Program for all managers and supervisors as outlined in 49 CFR 219. Training will include classroom and field training. Subject material includes applicable parts of 49 CFR 217 and 49 CFR 218.
 - The O&M Firm will be required to provide covered employees a minimum of two (2) hours of training covering 49 CFR 219 alcohol and substance abuse awareness. All non-covered O&M Firm employees will be provided with substance abuse awareness training in accordance with the CFRC SSPP.
 - The O&M Firm will be required to develop for the Department's approval, in accordance with 49 CFR 220.25, a radio communications instruction and testing program.
 - The O&M Firm will be required to develop for the Department's approval, in accordance with 49 CFR 228, an Hours of Service training program. The O&M Firm shall develop a schedule to train employees whose job function requires that their work hours be reported.
 - The O&M Firm will be required to develop for the Department's acceptance and submittal to the FRA, in accordance with 49 CFR 240, a qualification and certification training program for SunRail locomotive engineers 30 days after Notice to Proceed. Train engineers shall be qualified, certified and trained in accordance with 49 CFR 240 by the O&M Firm's DSLE and shall have a

valid driver's license issued by a state within the United States. All engineers must be able to qualify on SunRail equipment, which includes train handling, operating rules, and physical characteristics through written and oral testing and demonstrated and observed train handling. In addition to the safe operation of the train, engineers must possess specific knowledge to be able to trouble shoot routine mechanical issues en route. The O&M Firm's training program must include provisions for such trouble shooting purposes. Engineers must also be trained on applicable components of PTEPP.

- The O&M Firm will be required to develop for the Department's acceptance, in accordance with 49 CFR 242, a qualification and certification training program for SunRail passenger train conductors. The O&M Firm shall provide conductors that are qualified on Operating Rules, Air Brake Instruction, Safety Rules, PTEPP and Emergency Evacuation procedures, Security Awareness, CPR/AED and First Aid Training, Timetable Special Instructions, basic mechanical troubleshooting, Fare Inspection and ADA and customer service requirements. Conductors shall be trained according to the O&M Firm's training plan and operate the train according to the Department-accepted Train and Engine Crew SOPs that will be developed by the O&M Firm.
- The O&M Firm shall develop a Rolling Stock Training Program for the Department's acceptance, in accordance with 49 CFR 238, for the SunRail Commuter Rail system. The Plan shall, at a minimum, accomplish the following:
 - 1) Identify the tasks related to the inspection, testing, and maintenance required by this Part that must be performed on each type of equipment that the railroad operates
 - a) Develop written procedures for the performance of the tasks.
 - b) Identify the skills and knowledge necessary to perform each task.
 - c) Adopt a training curriculum that includes classroom and "hands-on" lessons designed to impart the skills and knowledge identified as necessary to perform each task. The training curriculum shall specifically address the Federal regulatory requirements contained in this Part that are related to the performance of the tasks identified
 - 2) Require all employees and contractors to pass either a written or an oral examination covering the equipment and tasks for which they are responsible that are required by this part as well as the specific Federal regulatory requirements related to equipment and tasks to achieve and maintain required passenger railcar maintenance qualification.
 - 3) Require all employees and contractors to individually demonstrate "hands-on" capability to successfully perform the tasks required by this part that must be performed as part of their duties.
 - 4) Require supervisors to complete the training program that covers the employees whom they supervise.
 - 5) Requires supervisors to exercise oversight to ensure that all identified tasks are performed in accordance with CFRC SOP's.

- 6) Designate in writing that all applicable O&M Firm personnel and required sub-contractors have the knowledge and skills necessary to perform the safety-related tasks
 - 7) Require periodic refresher training that includes classroom and “hands-on” training, as well as testing, at an interval not to exceed three years.
 - 8) Add new equipment to qualification and designation program prior to its introduction to service.
 - 9) Maintain records adequate to demonstrate that all O&M Firm personnel performing safety related tasks on SunRail passenger equipment are currently qualified to do so. These records shall be adequate to distinguish the qualification so the employee as a qualified person or as a qualified maintenance person.
- The O&M Firm shall develop, for the Department’s approval, a training program for rail vehicle maintenance employees. The O&M Firm shall develop a schedule to train and qualify all new hire employees and shall provide for scheduled refresher courses. This training course shall, at a minimum, include the following:
 - 1) Roadway Worker Protection;
 - 2) Safe work practices on and around railroad equipment;
 - 3) Blue Flag Protection;
 - 4) Materials Handling (HAZMAT);
 - 5) High Voltage Electricity on Applicable Railway Equipment;
 - The O&M Firm shall review the Training, Manuals and Parts Catalog deliverables from MotivePower, Inc. (locomotives) and Bombardier Transit Corporation (coaches and cab cars). The O&M Firm will participate in the review and approval of the Training Plan, Training Documents, and O&M Manuals and Parts Catalogs being provided for cars and locomotives.
 - The O&M Firm shall develop for the Department’s approval a training program that meets the requirements of the 49 CFR 238.109, Training, Qualification and Designation program. The O&M Firm shall develop a schedule to train all employees whose job function requires compliance with 49 CFR 238.109 and shall provide for annual training.
 - OCC Training:
 - 1) O&M Firm’s CFRCC personnel with duties essential to 49 CFR 239, Passenger Train Emergency Preparedness Plan (PTEPP) shall be trained by the O&M Firm in the requirements of the PTEPP to ensure that they are properly prepared to respond to emergency situations. CFRCC personnel shall receive, at a minimum, initial Roadway Worker Protection Training, CFRCC General Operating Procedures, Radio Rules, Security Awareness and CPR/First Aid, in addition to the specific requirements of the CFRC Emergency Preparedness Training Program for CFRCC personnel provided in the PTEPP.
 - 2) Dispatcher qualifications and training shall be consistent with industry standards and subject to the acceptance of the COO. Training shall include, but not be limited to: Safety;

Operating Rules; Physical Characteristics; Emergency Management, Incident Command System (ICS); general troubleshooting and equipment familiarization. The O&M Firm shall also provide on the job training (posting) of sufficient duration as accepted by the COO. Dispatchers shall participate in familiarization training, as accepted by the COO, regarding how to communicate and work effectively with the OCC and local and regional designated Emergency 911 Communications Centers.

10.4 SAFETY AND SECURITY TRAINING REQUIREMENTS

10.4.1 Safety

The O&M Firm will develop and provide applicable safety training, testing and rules qualification for O&M Firm personnel, subcontractors and third-party contractors in accordance with the CFRC's SSPP, SSP, SEPP, Operating and Safety Rule Books and PTEPP. The O&M Firm will develop and provide, in collaboration with the Department's Representatives' and in consultation with the emergency responder organizations and the operating railroads on the CFRC, a training program for emergency responders who could reasonably be expected to respond to a corridor emergency. The O&M Firm will conduct tabletop and other emergency simulations using guidance from Homeland Security Exercise Program (HSEEP), as specified in the PTEPP and SEPP developed by the O&M Firm in collaboration with these groups during the mobilization period to ensure preparedness for passenger train and railroad right-of-way emergencies.

National Incident Management System (NIMS) training from the Federal Emergency Management Agency (FEMA) will be required for all O&M Firm Managers as part of the emergency preparedness planning required within the SSPP to ensure an appropriate response to all incidents and emergencies that occur on the corridor.

The O&M Firm will ensure that facilities maintenance personnel receive railroad safety awareness training and security awareness training in accordance with the Department's requirements.

10.4.2 Security

The O&M Firm will administer security-related training courses, drills and simulations, using guidance from Homeland Security Exercise Program (HSEEP), with O&M Firm personnel and applicable outside agencies, as specified in the CFRC SSP and SEPP and accepted by the Department. This training shall enable O&M Firm personnel to identify, record and report to the proper authorities, as appropriate, any criminal acts, suspicious activities and occurrences, or other security concerns identified within CFRC/SunRail operations.

SECTION 11. ADMINISTRATION**11.1 REPORTING AND RECORDKEEPING REQUIREMENTS**

The O&M Firm shall keep, store, and maintain, during the term of the O&M Agreement, and for three (3) years after the termination or completion of this O&M Agreement full and accurate records of all aspects of its provision of O&M Services and other activities carried out under this O&M Agreement.

The O&M Firm shall maintain and furnish to the COO, in written and in electronic format, the required reports set forth in this Scope of Services. The O&M Firm shall deliver to the COO, for review and approval, all Annual Program Plans including, without limitation, those designated in this Scope of Services 30 days prior to the anniversary date of its initial acceptance.

This section defines when daily, monthly, quarterly, and other reports are due to be submitted to the Department as follows:

- a) Daily Reports shall be submitted to the COO no later than 0700 the following day;
- b) Weekly Reports shall be submitted to the COO no later than close of business on Monday of the following week;
- c) Monthly Reports shall be submitted to the COO within 10 days of the end of the month;
- d) Quarterly Reports shall be submitted to the within 10 days of the end of the quarter;
- e) Annual Reports shall be submitted to the COO no later than the anniversary of the Revenue Services Date, unless otherwise specified;
- f) As Occurs Reports shall be received by the COO no later than 24 hours after the occurrence triggering a report; and
- g) On-Demand Reports shall be prepared by O&M Firm at COO's request, using the RMIS.

The O&M Firm shall submit the following reports and records to the Department or its designee at the intervals indicated in section 11.1.1 through 11.1.7 below.

11.1.1 Annually/Bi-Annually

- a) Bi-Annual Bridge Inspection Report, in accordance with FRA requirements;
- b) An annual report of O&M Firm's Drug and Alcohol 219 program;
- c) Summary report of system-wide ridership count as specified 2.4.3.1. Summaries also shall be provided in required electronic format;
- d) Completion of the annual internal safety audit, summary report of findings with a remedial action plan;
- e) The O&M Firm shall submit to the COO the previous fiscal year's information required for the FTA's National Transit Database (NTD) reports by September 1; and
- f) Thirty (30) days after the end of the Department Fiscal Year, the O&M Firm shall submit an Annual Report which shall include: performance record compared to standards; record of accomplishments including training performed; issues requiring action; recommendations for improvement or changes to the Service; preliminary, unaudited financial report on the

fiscal year; assessment of the condition of all capital property, both rolling stock (include vehicle maintenance and utilization report) and structures; attainment of DBE Goals; a listing of all assets held by or under the control of the O&M Firm the value of which exceeds \$5,000; and a list of all changes during that Department Fiscal Year (additions or deletions) to the inventory of equipment, materials and fixed assets provided to and paid for by the Department.

11.1.2 Quarterly

- a) Training Report, including specific programs, person-hours, and employee performance issues addressed;
- b) Report demonstrating compliance with the Drug and Alcohol 219 program; and
- c) Summary Report of customer complaints, comments and correspondence. The report shall include train number, date of incident, type of comment (such as ADA, announcement, fare inspection, rude employees, etc.), location (if at a station), whether resolved or not, and length of time to resolve.

11.1.3 Monthly

- a) Material control information, by storehouse and stockpile location, together with supporting documentation as follows:
 - 1) Summary of transactions and beginning and ending perpetual inventory balances;
 - 2) List of Detail Issues;
 - 3) List of Detail Adjustments; and
 - 4) List of Detail Receipts.
- b) Material usage and scrap sales reports;
- c) Completed maintenance by equipment number, showing:
 - 1) Wheels trued and changed during month
 - 2) Major components changed out during month
 - 3) Significant maintenance activity, including extraordinary material usage or component failure.
- d) Anticipated maintenance for coming month by equipment number, showing:
 - 1) Wheels to be trued and changed; and
 - 2) Major components to be changed out.
- e) Preventative maintenance for Periodic Brake and Equipment Maintenance Program (as defined in 49 CFR 237.309) by equipment number, showing:
 - 1) Wheels to be trued and changed; and
 - 2) Major components to be changed out.
- f) Equipment history file by equipment number, compiling:
 - 1) Past repairs over last 12 months; and
 - 2) Anticipated and preventative repairs for next month, next 12 months and 4-year Cleaned, Oiled, Tested and Stenciled (COT&S) Program.
- g) Report of replacement of damaged or missing onboard signage for priority seating, wheelchair accessibility, bicycle and luggage stowage or any other signage providing information to PNA/PWDs;

- h) A rail, ballast, tie and switch tie installation report detailing milepost to the nearest tenth mile and the quantity of rail and ballast installed, the number of wood or concrete cross-ties installed, the number of switch ties installed, size, , and track designation;
- i) A statement describing the material usage by material ownership (O&M Firm, Department or third party), and material class;
- j) Engineering/maintenance work performed during the past month and planned for the next month, including comparisons of planned production vs. actual;
- k) Curve Lubricator Report;
- l) Updates to SOGR data base;
- m) In-service rail failures by location, failure type, rail size, and disposition/remediation;
- n) Vegetation removal report (upon request);
- o) Fencing repairs;
- p) On-track equipment maintenance records;
- q) Record of FRA signal tests performed as provided by the Signal Maintenance Firm;
- r) Report of replacement or repair of right-of-way signage;
- s) Summary of right-of-way cleanup activities, including but not limited to special cleanup projects and identification of new problem areas;
- t) Surfacing report, recording by milepost and lineal foot the track footage tamped, regulated, and stabilized. The report also shall include equipment hour readings, any downtime due to equipment breakdowns, the rail temperature at time of surfacing, and amount of raise;
- u) Report on the performance of the employee efficiency testing program including information on distribution and type of tests, as well as failures;
- v) On-time performance and rolling stock availability;
- w) Complaint Report (from consumer reports received during month);
- x) Fare Collection and Inspection Activity Summary report of onboard fare instrument inspections, inspection rates, number of warnings and citations issued, inspection-related incidents, etc. in a format to be agreed upon between the O&M Firm and the Department;
- y) Counts of PNA/PWD boardings and alightings, including summaries by origin/destination stations;
- z) Injuries and fatalities (passenger, employee and third party, including copies of FRA-required reports);
- aa) Employee Injury Statistics Report, including Federal Employers' Liability Act (FELA) or worker's compensation claims filed/paid, the number of FRA reportable employee injuries per 200,000 person hours worked, organized by department (Operations, Maintenance of Equipment, Maintenance of Way, etc.), and trend analysis and recommendations for continuous improvement;
- bb) Report of damage, by accident, vandalism or whatever reason, to any property used in providing the O&M Services where such damage exceeds \$500;
- cc) Monthly Miles and Hours Report, including separately identifying and summarizing statistics for scheduled vs. special service trains;
- dd) Statement of ridership for the month and for the Department Fiscal Year to date, with comparisons to the prior Department Fiscal Year;
- ee) Statement of monthly freight car counts by non-Department railroad including milepost where the cars entered and exited the CFRC;

- ff) Late train report (greater than five minutes), including the cause of the delay for both SunRail and Amtrak service;
- gg) Average passenger counts by train; and
- hh) Report of damage by accident, vandalism or whatever reason, to any property used in providing the O&M Services.

11.1.4 Weekly

The O&M Firm shall provide the COO the following weekly reports:

- a) Track Trouble Log;
- b) Signal Trouble Log as provided by the Signal Maintenance Firm; and
- c) 3 Week schedule of planned maintenance.

11.1.5 Daily

The O&M Firm shall provide, to the COO, the following reports each day 30 minutes prior to the first train departure:

- a) A Summary Report that details the prior day's:
 - 1) Train Operations (on-time performance);
 - 2) Conductors trip reports;
 - 3) Passenger counts (total and by train trip);
 - 4) Service delays (including estimated repair/opening times);
 - 5) Fleet status (including estimated repair/opening times, bad orders);
 - 6) Mainline track status (including estimated repair/opening times);
 - 7) Communications trouble reports;
 - 8) Facility status (including estimated repair/opening times);
 - 9) Rush hour performance report;
 - 10) Station status;
 - 11) Slow orders;
 - 12) Special event activity;
 - 13) Incidents of any denied persons with disability boardings, including stations and reasons for denial;
 - 14) Employee or passenger injuries; and
 - 15) Details of any accidents, incidents, or unusual occurrences during the previous service day.
- b) A Staff Utilization Report that details all assignments of Train and Engine crews, transportation managers, customer service agents, station agents and dispatching center personnel indicating base assignment, assigned person, and vacancy/variance of person and hours. Extra board utilization shall be included.

11.1.6 On Demand Reports

The O&M Firm shall provide the COO the following reports upon demand:

- a) By next day at 1700:
 - 1) Copies of O&M Firm-maintained "Trouble Log" reports which document any and all known unusual occurrences on the Department system, including results of O&M Firm follow-up and closeout;
 - 2) Accident/Incident reports status;
 - 3) Post-incident employee statements;
 - 4) O&M Firm's standard maintenance of equipment conditions, inspection, and test reports; and
 - 5) Any report capable of being generated by RMIS.
- b) Within two weeks of receipt of request:
 - 1) Report on internal service quality monitoring, including identifying trends and areas for improvement in onboard services and the customer experience.

11.1.7 Emergency Reports

After the conclusion of an emergency, in accordance with Sections 2.7.14 and 11.1.8, the O&M Firm shall prepare a written report for submittal to the COO.

11.1.7.1 Personal Injuries, Death, Occupational Illness, Loss of Consciousness, Use of Drugs or Alcohol

This category includes Department and O&M Firm employees, rail passengers, general public at grade crossings, and trespassers. Occupational illness includes inhalation, absorption, ingestion, direct contact, hearing loss, poisonous plants, sunstroke, bites from animals, insects or snakes, etc. Immediate Notification reports (followed by complete record of all reports and correspondence within 24 hours) required for:

- a) Death;
- b) Injuries to employees, the general public, passengers, trespassers, or any other person on Department property;
- c) Assault with knives, firearms;
- d) Occupational illness;
- e) Loss of consciousness; and
- f) Alcohol and drug use.

11.1.7.2 Railroad Disruption

The O&M Firm shall conduct a debrief/critique of all railroad incidents with the COO within 48 hours of a Railroad Disruption.

A Railroad Disruption is an incident involving first responders, the removal of any track from service, or annulment or termination of a train. The Department reserves the right to request a debriefing of any other CFRC incident. The O&M Firm shall utilize Department-approved forms in such debriefings, with results being maintained in the FPSC.

11.1.7.3 Rail Line Maintenance Events

The O&M Firm must furnish the following reports to the COO as indicated below:

- a) Within 24 hours, report defects indicated in a FRA or FPSC inspection and all rail failures, defects, replacements, thermite welds, and weld failures;
- b) Within 48 hours, report defect remedial action;
- c) Upon completion of ultrasonic detector car rail tests, report results;
- d) Daily reports of Ultrasonic rail detectors;
- e) Upon correction or following business day, report remedial action as results from Ultrasonic tests;
- f) Within one business day of testing or receiving testing results, report thermite weld tests. Immediately report any failures;
- g) Prior to start of spray program, report on the use of chemicals for vegetation control;
- h) Within seven (7) calendar days of test completion, report results of track geometry test by exception and in total and an estimated correction date of deviations from maintenance standards. Immediately upon correction, report corrections of track geometry deviations;
- i) Upon the completion of inspection of bridges or fencing, report results within 14 days of completion, detailing deficiencies noted and plans and schedule for repair, if appropriate; and

11.2 ANNUAL O&M SERVICES PLAN AND CAPITAL PLAN / BUDGET PROCESS

11.2.1 Preparation of Annual O&M Services Plan

One hundred and eighty (180) days prior to the beginning of the Department's Fiscal Year for each year during the term of the O&M Agreement, the O&M Firm shall prepare and submit to the COO an Annual O&M Services Plan, which shall include a detailed description of the O&M Services to provide in the next Fiscal Year. The first O&M Services Plan shall be submitted 180 days prior to the Revenue Services Date. The new Annual O&M Services Plan is subject to COO and Department approval. The O&M Firm shall not proceed with any new O&M Services Plan without written approval from the Department.

11.2.2 Preparation of Capital Improvement Plan / Budget

The O&M Firm shall submit 90 days prior to the beginning of the Department's Fiscal Year the O&M Firm's recommendations and budget for the Capital Improvement Plan. This shall include a list of proposed projects including procurements, renovations and other work for equipment and facilities utilized in the provision of the Services which is beyond the scope of the maintenance covered by the O&M Agreement. The O&M Firm shall provide cost estimates for each project of the O&M Capital Improvement Plan. All capital projects and budgets are subject to COO and Department approval and funding. The O&M Firm shall not proceed with any project without written approval from the Department.

11.2.3 O&M Services Plan/Capital Plan Innovations

The O&M Firm may propose innovative O&M services or capital plans including but not limited to alternative transportation services plans, vehicle cleaning practices, vehicle maintenance scheduling, preventive maintenance component repair or replacement schedules,

which the O&M Firm believes appropriate for the CFRC Property and/or SunRail commuter rail service which will result in a cost savings to the Department. Any proposed modifications must be submitted as part of the O&M Firm's Annual O&M Service Plan and Capital Plan/Budget.

The O&M Firm must submit a detailed description of the innovative program, plan or technique, as well as a detailed cost analysis for the Department's consideration. The Department must approve any deviation from the previously submitted Plans in writing. Any documented cost savings due to the innovative program, plan or technique will be equally shared between the Department and the O&M Firm.

SECTION 12. QUALITY CONTROL

The O&M Firm shall develop a Quality Assurance Program Plan (QAPP) in accordance with the CFRC QAPP, Department, FTA, and FRA requirements. The QAPP shall be updated annually and submitted to the COO for review and approval.

The Department reserves the right to conduct unannounced and unscheduled audits to verify compliance with the standards set forth in the O&M Firm's QAPP. A report of the audits and findings shall be provided to the O&M Firm within five (5) business days. Items requiring correction shall be completed within 30 calendar days of notice to the O&M Firm.

12.1 Configuration Control and Protocol

The Department is responsible for oversight of the configuration control process. The O&M Firm shall develop and maintain a configuration management system for system equipment and facilities, to assure that decisions to change or modify designs, equipment and facilities:

- Result after deliberate evaluation by affected units of the organization, and findings of conformance with safety requirements; and
- Are implemented with proper and complete documentation to all affected design/specification records, and to all other affected documents such as operating procedures and training manuals.

The O&M Firm will assure, through procedures and training:

- That additions, modification, or deletion to the existing configuration of CFRC system fixed facilities, SunRail rolling stock, and equipment related to operation of rail rolling stock, are authorized by the Department after evaluation and findings of conformance with safety requirements;
- That additions, modification, or deletion to operating rules, SOPs, and operating or training manuals are reviewed and accepted by the Department;
- That drawings, specifications, rulebooks, operating or training manuals, and related documents, are properly and completely updated to reflect authorized system changes; and
- That procurement or introduction into SunRail commuter rail operations of defective or deficient equipment or replacement parts, as well as unauthorized hazardous materials, is prevented.

Routine maintenance activities, which do not change the function or configuration of a facility, equipment, system, operating rules, SOPs, or operating or training manuals, are not subject to the configuration management process. Any disagreement regarding the determination of routine maintenance shall be made by the COO.

SECTION 13. AUDITS AND INSPECTIONS**13.1 AUDITS**

- a) The O&M Firm will be responsible for the execution of inspections and audits in accordance with their QAPP and the contract documents including:
 - 1) Inspections and audits of purchased materials, equipment and services;
 - 2) Assuring that measuring and test equipment is accurate and adequate for its intended use;
 - 3) Calibration and maintenance of test and measuring equipment, as well as keeping status records;
 - 4) The control of handling, storage, shipping, cleaning, and preservation of materials and equipment;
 - 5) Assuring that fabricated, manufactured, and construction equipment, components, or systems have satisfactorily passed all required inspections and tests in accordance with approved procedures; and
 - 6) Locomotives, coaches and cab cars are maintained in accordance with 49 CFR 229 and 238 and the OEM Maintenance Manuals.
- b) The O&M Firm shall submit an Inspection and Testing Plan 60 days after Notice to Proceed Maintenance Mobilization for review and acceptance by the COO that contains inspection procedures and schedules to confirm all tests are performed in accordance with the CFRC Service Standards.
- c) The O&M Firm shall be required to report non-conformances and correct the non-conformance in accordance with the disposition approved and authorized by the COO.
- d) The O&M Firm shall be responsible for any non-conformance or audit findings, determine the cause of the problem and identify and implement corrective action to preclude recurrence.
- e) The O&M Firm shall be subject to audits and/or quality assurance reviews to be conducted by the Department, FTA and FRA or their agents.

The O&M Firm shall provide oversight of all start-up, test criteria, test acceptance and turnover of the track, facilities and system ready for revenue operations.

The O&M Firm shall perform an annual internal audit at the end of each Department Fiscal Year as directed by the Department to determine compliance with the CFRC SSPP and SSP and fully participate with audits performed by the Department, DHS, FTA, FRA, State Safety Oversight or any other regulatory agency, including making available personnel and records as may be required. The O&M Firm shall prepare a written summary of findings, with a remedial action plan, for COO review within 10 days of the completion of the internal audit. The O&M Firm shall implement corrective actions recommended by the internal audit, after review with and approval by COO. The O&M Firm shall invite and allow the COO to participate in all security-related reviews, including, but not limited to, efficiency tests, internal safety audits, and other reviews of a related nature.

13.1.1 Safety Audits

The O&M Firm will audit the O&M Firm's personnel for compliance. Failure of the O&M Firm's personnel to comply with any part of these safety requirements shall be considered a breach of the

O&M Agreement. The Department reserves the right to conduct unscheduled efficiency tests, safety audits, and other reviews of a related nature,.

Updates and modifications to the SSPP and SSP are made regularly, and the O&M Firm shall participate with the Department during annual review and update of these documents and comply with any and all changes to the plan, as well as participate in the review and update of other safety related documents that are derived from the SSPP and SSP, as required by the COO. The O&M Firm shall be a signatory participant in the CFRC SSPP and SSP, and O&M Firm signatures shall indicate agreement and compliance with the SSP.

The O&M Firm will participate in all audits by outside parties or agencies such as APTA, FTA and FRA. Following receipt of an audit report, the O&M Firm will develop and submit to the COO for approval a Corrective Action Plan within 10 business days for all deficiencies or recommendations that result from the audit. The O&M Firm will be responsible for completion of the Corrective Action Plan.

The CFRC Railroad Worker Protection (RWP) Safety Plan includes procedures to be used for monitoring effectiveness of and compliance with the Department on-track safety program. All O&M Firm personnel must comply with all parts of the program. The O&M Firm shall ensure that all affected persons comply with the program through an audit and inspection program.

13.2 INSPECTIONS

Measurement of adherence to CFRC Service Standards shall be evaluated based on the results of inspections made by a joint inspection team composed of COO and O&M Firm representatives. Such inspection may be unannounced and consist of an examination of selected equipment, as well as the maintenance records. A report of the joint inspection team shall be provided to the Department.

The O&M Firm shall institute a materials quality assurance program designed to maintain inventory conformance with Original Equipment Manufacturer (OEM) specifications and assure that quality materials are applied to Department vehicles as part of the O&M Agreement.

The Department shall, at all times, have safe access to the entire Service Property during O&M Firm's activities and shall be furnished with every reasonable facility for ascertaining that the O&M Firm's materials and workmanship. All work done and all materials furnished by the O&M Firm shall be subject to inspection and approval by the Department or its agents. The Department inspections shall not relieve the O&M Firm of any of its obligations.

SECTION 14. EXTRA WORK ISSUED UNDER SUPPLEMENTAL AGREEMENTS

Extra Work (Extra Work) may include, but is not limited to, the provision of labor, materials, equipment and other services to provide improvements, modifications or additions to the Service Property in addition to normal maintenance as described in this Scope of Services. Extra Work may be known and planned for in advance as part of the Department's long and short-term improvement plan or may arise from an urgent need that cannot be delayed.

Extra Work will be requested by the Department in the form of a Supplemental Agreement. The terms and conditions of the O&M Agreement apply to each Supplemental Agreement which will also contain specific requirements pursuant to requested Extra Work.

Any work performed by the O&M Firm prior to receipt of a Supplemental Agreement issued by the Department shall be considered as unauthorized work, and the O&M Firm shall not be entitled to compensation for said services. In an urgent situation, the Department may issue an Emergency Work Order to the O&M Firm authorizing them to perform specific services. In those cases for any outstanding work necessary, the Department may, as soon as practicable, issue a Supplemental Agreement for the ordered work.

The Department reserves all rights to perform any and all of the work with its own forces or with other Firms and/or individuals retained by the Department. The O&M Firm shall fully cooperate with such other forces to the end that any delay or hindrance to their work will be avoided. The suspension of work or termination of a Supplemental Agreement shall be governed by the O&M Agreement.

14.1 SUPPLEMENTAL AGREEMENT PROCESS

The Department shall issue a Supplemental Agreement Proposal Request (SAPR) to the O&M Firm which will include a scope of work to be performed and a date by which the work shall be completed. The SAPR will state the length of time the O&M Firm has to respond to the Department with a proposal for the work.

The Department will require the O&M Firm to prepare submittals or a proposal, which shall indicate the O&M Firm's planned method for fulfilling the terms of the SAPR. This proposal will also contain details including, but not limited to, a cost estimate for the work, the amount of hours and a schedule to perform the services, the resources to be deployed, the O&M Firm's approach to performing the work, and a proposed total cost. Upon receipt of the proposal, the Department shall evaluate it and confer with the COO and the O&M Firm as necessary. The Department may request the O&M Firm to submit a revised proposal.

Said submittals or work plans shall be subject to the COO's approval prior to the O&M Firm's commencement of work.

14.2 COMPENSATION

The O&M Firm shall be compensated for each Supplemental Agreement and Emergency Work Order pursuant to the respective terms of the Supplemental Agreement or the Emergency Work Order and Exhibit B.

14.3 THIRD-PARTY WORK REQUIRED

14.3.1 General

In addition to the O&M Services and Extra Work, the O&M Firm shall perform work for Third Parties when directed to do so by the COO, such as third party training, wreck clearing, support, and flagging support for utility companies working in the right-of-way. All work performed for a third-party shall be completed in accordance with CFRC Service Standards. Performance of the O&M Services shall not be adversely affected by work by Third Parties.

14.3.2 Compensation

The O&M Firm shall be compensated for such work according to the terms entered into by the O&M Firm and such Third Parties.

14.4 EXCURSION/SPECIAL TRAINS

The O&M Firm shall provide Special Trains, including special event service, and off-line trips (with host railroad pilot, where necessary, paid for by the Department), as directed by the COO. For every Special Train operated, the O&M Firm shall provide a passenger count as directed by the Department with the results provided to the COO within one (1) business day. These will be handled as Extra Work with a Supplemental Agreement.

The O&M Firm shall transport private cars and provide for charters and Excursion Trips on the Service Property as directed by the COO. These will be handled as Extra Work with a Supplemental Agreement.

The O&M Firm shall provide equipment, onboard personnel, and operating services as specified in the Supplemental Agreement.

14.5 ADJUSTMENTS FOR SUBSTANTIAL ECONOMIC IMPACT

Annually, the Department may provide additional compensation to the O&M Firm via Supplemental Agreement if the O&M Firm experiences a combined substantial economic impact during the previous year due to compliance with any of the following four (4) possible occurrences.

- (a) A change to the operations and maintenance requirements, programs or practices for the CFRC.
- (b) A change to any of the policies, procedures, standards, manuals, handbooks, guides, specs, or any other State, Local, or Federal documents used to monitor the performance of this contract.
- (c) Increased maintenance due to the construction of facilities beyond those required for the implementation of CFRC system at the time of the O&M Firm's proposal due date.

- (d) Increased maintenance due to the transfer of ownership to the Department of additional rail facilities extending the rail corridor limits.

A substantial economic impact is defined as documented financial burden on the O&M Firm exceeding five percent (5%) of the annual Lump Sum Price for O&M Services. If additional compensation is warranted, the Department will compensate only for the value of economic impact beyond the five percent (5%) threshold. The five percent (5%) is not cumulative year to year; it is reset each anniversary of commencement date of the term of the contract. The O&M Firm shall track and document all costs associated with the substantial economic impact. The O&M Firm shall submit the documented financial burden to the Department for consideration.

The O&M Firm will not receive any additional compensation for maintenance of projects scheduled to accommodate the SunRail commuter service in the CFRC at the time of the proposal due date.

Similarly, the Department may reduce payment to the O&M Firm if the O&M Firm experiences a combined substantial economic savings during the previous year due to occurrence of any of the following four (4) possibilities:

- (a) A change to the operations and maintenance requirements, programs or practices for the CFRC.
- (b) A change to any of the policies, procedures, standards, manuals, handbooks, guides, specs, or any other State, Local, or Federal documents used to monitor the performance of this contract.
- (c) Reduced maintenance due to the elimination or planned destruction of rail facilities.
- (d) Reduced maintenance due to the transfer of ownership of Department-owned rail facilities within the CFRC to other non-Department entities.

A substantial economic savings is defined as a cost savings exceeding five percent (5%) of the annual contract amount. If cost savings are identified, payment to the O&M Firm will be reduced only for savings greater than the five percent (5%) threshold. The five percent (5%) is not cumulative year to year; it is reset each anniversary of commencement date of the term of the contract.

SECTION 15. INCENTIVES/DISINCENTIVES AND LIQUIDATED DAMAGES**15.1 INCENTIVES/DISINCENTIVES****15.1.1 On-Time Performance***15.1.1.1 On-time Performance*

An on-time train is a scheduled revenue train that arrives at its final destination no more than one minute early or five minutes later than its scheduled arrival time or the lateness is a result of circumstances not under the O&M Firm's control and/or influence, as determined by the Department.

15.1.1.2 Delay Reporting

The O&M Firm must notify the COO within 10 minutes following any train delay, or foreseen delay, in excess of ten (10) minutes with a status of the operational situation and preliminary cause of the delay. The O&M Firm will provide a rush hour performance report to the COO by 0900 and 1830 for all trains in each rush hour indicating either on-time or the delay time with the preliminary reason for delay. The O&M Firm shall provide documentation of the cause of the delay to the COO within twenty-four (24) hours of the delay. Failure to provide appropriate documentation within the prescribed time periods will result in the O&M Firm being assigned the responsibility for the delay. The O&M Firm shall conduct a daily morning briefing call including the general manager and all required craft managers. This shall be to discuss the prior day's performance and any issues for the pending day or of note.

Additionally, the O&M Firm shall not be penalized for delays resulting from maintenance of way programs or operating programs previously specified by and approved by the Department.

The O&M Firm and the COO shall establish the maximum time frame to resolve delays. The Department reserves the right to assess liquidated damages if the time taken by the O&M Firm to resolve the delay exceeds the maximum agreed to time frame.

The General Manager and COO shall meet at least weekly to determine whether the O&M Firm's assertions of delays caused by circumstances not under the O&M Firm's control and/or influence are valid. If agreement is not reached, the situation will be referred to the Department for determination. If the Department agrees that the delay was caused by the O&M Firm the O&M Firm will be assessed Liquidated Damages for those delays.

15.1.1.3 Actual On-Time Performance Percentage

An Acceptably Operated Train is one that is either on time or is late, but its lateness is a result of circumstances not under the O&M Firm's control and/or influence as set forth in Section 15.1.1.1 above. The Actual On-Time Performance is the ratio of Acceptably Operated Trains for a particular month against all trains scheduled in revenue service for that month, expressed as a percentage which shall be calculated and rounded to the nearest one-hundredth percent. Table 15-1 provides the incentives and disincentives for on-time performance.

Table 15-1 Incentives and Disincentives for On-Time Performance

On-Time Performance	Amount of Monthly Payment
99% - 100%	105% of Monthly Invoice
98% - 98.99%	104% of Monthly Invoice
97% - 97.99%	103.5% of Monthly Invoice
96% - 96.99%	102% of Monthly Invoice
95.01% - 95.99%	101% of Monthly Invoice
95%	100% of Monthly Invoice
94% - 94.99%	99% of Monthly Invoice
93% - 93.99%	98% of Monthly Invoice
92% - 92.99%	96.5% of Monthly Invoice
91% - 91.99%	95% of Monthly Invoice
90.01% - 90.99%	93% of Monthly Invoice
Below 90.00%	92% of Monthly Invoice

15.2 LIQUIDATED DAMAGES

The O&M Firm acknowledges that failure to meet the performance measures in this scope of work may cause the Department to incur damages. In the event the O&M Firm fails to meet the performance measures, the Department may exercise the remedy of liquidated damages against the O&M Firm. The O&M Firm agrees that if the Department allows the O&M Firm to continue to perform after failure to meet the performance measures, the Department's action shall in no way act as a waiver on the part of the Department of the liquidated damages due under this contract. The O&M Firm shall pay said sum to the Department not as a penalty, but as liquidated damages. The Department has the right to apply, as payment on such liquidated damages, any money the Department owes the O&M Firm.

15.2.1 Liquidated Damages for Missed Trips

O&M Firm shall be assessed liquidated damages of \$900 for each missed trip. A missed trip is a daily scheduled one-way trip that does not start or complete the trip as published in the schedule, but is a result of circumstances under the O&M Firm's control. These damages are mutually exclusive from and in addition to the damages associated with vehicle defects in Section 15.2.2.

15.2.2 Additional Liquidated Damages

15.2.2.1 *Liquidated Damages for Safety and Reliability Feature Defects*

O&M Firm shall be assessed liquidated damages, for each day in which a trainset is determined to be defective and not available for its next revenue service trip as determined by the COO. Liquidated Damages are listed in Table 15-2.

Table 15-2: Liquidated Damages for Safety and Reliability Feature Defects

Defect	Liquidated Damages
Defective hand brakes	\$100 per train per day
Defective power brakes – Undesired Emergency (UDE)	\$100 per train per day
Failed Class 1A and Class II tests	\$250 per train per day
Locked brakes & slid flats in excess of 1.5 inches	\$500 per train per day
Overheated wheels	\$500 per train per day
Inoperable wheelchair lift	\$100 per train per day
Inoperable bell, horn, windshield wiper, alerter	\$250 per train per day
Ineffective windshield wiper	\$100 per train per day
Inoperable sander	\$250 per train per day
Defective engineer's and observer's seats	\$100 per train per day
Positive Train Control failure	\$500 per train per day
Low water/oil trip	\$500 per train per day
Defective Automatic Train Announcement System	\$100 per train per day
Passenger compartment door will not stay closed	\$1000 per coach per day
Inoperable Toilet	\$250 per train per day
Defective bike rack	\$100 per train per day
Ground fault trip	\$250 per train per day
Ditch, crossing and headlight failures	\$500 per train per day
FRA defects	\$1000 per train per day
Power door failure en-route – door locked out	\$100 per train per day
Defective event recorders	\$1000 per train per day
Any engine protection feature that causes a faulty engine shut down	\$250 per train per day
Defective radio	\$500 per train per day
Safety device not cut in and properly sealed	\$500 per train per day
Inspection paperwork not properly completed	\$500 per train per day
Daily Report not prepared/submitted	\$500 per train per day
Deficiency in staffing levels	\$500 per train per day
AED – defective, missing components	\$500 per train per day

15.2.2.2 Liquidated Damages for Amenity and Comfort Feature Defects

O&M Firm shall be assessed liquidated damages, for each day in which a coach is determined to be defective and not available for its next revenue service trip as determined by the COO. Liquidated Damages are listed in Table 15-3:

Table 15-3: Liquidated Damages for Amenity and Comfort Feature Defects

Defect	Liquidated Damages
Excessive heat (>78 degrees Fahrenheit)	\$250 per coach per day
Inadequate heat (<60 degrees Fahrenheit)	\$250 per coach per day
Absence of ventilation	\$500 per coach per day
Dead batteries/no battery charger	\$100 per coach per day
Lack of general interior lighting (more than 25% of lighting defective)	\$250 per coach per day
PA/IC – improperly adjusted	\$100 per coach per day
PA/IC – inoperative	\$250 per coach per day
Defective WiFi System	\$100 per train per day
Passenger compartment door jams on opening	\$500 per coach per day
Loss of HEP for more than one (1) minute	\$500 per train per day

Cars are considered defective should the automatic controls fail to modulate the temperature as intended, thereby requiring manual intervention. Problems with HEP which do not result in the loss of general lighting, HVAC, and other HEP-dependent functions will not be recorded as failures during service.

15.2.2.3 Liquidated Damages for Dirty Cars

O&M Firm shall be assessed liquidated damages of \$500 per day for each coach that the Department finds dirty at that day's service initiation. Cars will be considered either dirty or clean, based on the evaluation criteria to be agreed upon by the O&M Firm and the Department prior to initiation of SunRail commuter service.

15.2.2.4 Liquidated Damages for Service Property Maintenance

The O&M Firm shall be assessed liquidated damages, for each instance of non-compliance of maintenance of the Service Property as determined by the COO. Liquidated Damages are listed in Table 15-4.

Table 15-4: Liquidated Damages Maintenance non-Compliance

Compliance Item	Liquidated Damages
Defective Station PA or PAT System	\$100 per station per day
Defective Station Variable Message Sign	\$100 per station per day
Defective Station CCTV Camera	\$500 per camera per day
Defective Station Platform Lighting/Emergency Lighting	\$500 per station per day
Defective Emergency Call Box (ECB)	\$500 per ECB per day
TVM Malfunction directly related to O&M support functions	\$100 per TVM per day

15.3 FINES AND PENALTIES

The O&M Firm shall be responsible for resolving all FRA violations including mitigating circumstances that led to violation, responding to regulators and paying penalties and fines. Any repairs, replacements, or resolutions to FRA violations shall be made as soon as possible after violation occurs but in no case shall the time to resolve violation exceed thirty (30) days. Any and all penalties and fines assessed by State or Federal authorities regarding the violation of State and Federal codes, regulations, and laws shall be paid by the O&M Firm if the violation occurs as a result of the O&M Firm's failure to fully perform as required by this O&M Services agreement, as determined by the COO.

SECTION 16. ENVIRONMENTAL SERVICES

The O&M Firm shall operate, maintain, and service all environmental systems on the Service Property. The O&M Firm shall provide and maintain as an agent for the Department, the environmental plans, permits, certificates and licenses necessary to perform O&M Services.

The O&M Firm shall furnish all labor, materials, tools, and equipment to operate, test, service, maintain, and repair the Department environmental systems at facilities throughout the Service Property. The O&M Firm shall retain the services of properly certified and licensed Hazardous Materials Disposal personnel and other properly qualified Environmental staff as needed to perform the specialized services included in this Section.

The O&M Firm shall properly dispose of any waste or hazardous material generated while performing O&M Services throughout the Service Property. Disposal and storage of waste and hazardous material shall be in accordance with all applicable Federal, State, and local regulations. The O&M Firm shall minimize storage of waste and hazardous waste material on the Service Property.

The O&M Firm shall monitor and notify the designated Department personnel immediately by phone of any incident with possible environmental impacts, regardless of who the responsible party is, such as diesel fuel spills, illegal disposal of hazardous material on the Service Property, and spills from rail cars. This notification will not relieve the O&M Firm from its obligation to initiate and supervise cleanup and disposal of spilled material.

16.1 ENVIRONMENTAL PLANS, PERMITTING AND REPORTING

The O&M Firm shall comply with and maintain current all appropriate plans, permits, certificates, and licenses relating to the Service Property and systems and facilities used in performing the O&M Services.

No later than 90 days prior to the Revenue Services Date of the O&M Agreement, the O&M Firm shall submit for Department review and approval an Environmental Compliance Program for Operations to manage the transfer, updating, implementing, and record keeping for all plans, permits, licenses, and certificates as part of the RMIS. The Environmental Compliance Program for Operations shall discuss any mitigation commitments and include a listing of all required permits and a schedule for transferring those permits into the O&M Firm's name as an agent for the Department. Applicable permits will be transferred to the O&M Firm prior to the Revenue Services Date. The Program shall be submitted in an electronic format and shall include, but not be limited to, compliance with all Federal, State and local environmental laws and regulations.

The Environmental Compliance Program for Operations shall also specify the procedures to be followed during fuel handling activities within the Service Property, both for locomotives and on-track equipment. The O&M Firm shall monitor fuel deliveries, document observations on a Department-approved checklist and maintain them for not less than 36 months.

No later than 90 days prior to the Revenue Services Date of the O&M Agreement, the O&M Firm shall submit for Department review a draft Emergency-Spill Response/SPCC plan, including a chain

of command for spills throughout the Service Property, regardless of source. A final Emergency Spill Response/SPCC plan for each facility shall be adopted within 90 days of the Revenue Services Date. The plan shall be updated on an annual basis and provided to the Department by the start of each Fiscal Year.

The O&M Firm shall complete periodic inspections, sampling, and reporting requirements necessary to maintain all environmental permits, certificates, licenses.

Applications for extensions or renewals of permits, certificates, and licenses relating to the Service Property, Support Property and systems will be prepared and forwarded to the COO 90 days prior to expiration. The O&M Firm shall maintain the tracking of permits, certificates and licenses.

The O&M Firm shall coordinate with the COO in the procurement of any permits that must be obtained by either the Department or O&M Firm, including without limitation, preparation of permit applications and preparing responses to questions and comments on the permit applications. The O&M Firm will be responsible for modifications or improvements to the physical infrastructure of the Service Property as related to permits, certificates and licenses. The O&M Firm shall provide any recommendations, as appropriate, to facilitate compliance with environmental regulations, or the requirements of the permits, certificates, or licenses.

In compliance with Occupational Safety and Health Administration (OSHA) requirements, the O&M Firm shall maintain a Material Safety Data Sheet (MSDS) center at the VSMF with MSDS information for all chemicals used in the operation. The MSDS center shall be at a mutually agreed upon location and available to all personnel.

16.2 REGULATED AND HAZARDOUS WASTE AND MATERIAL

The Department shall be the Generator for all waste related to routine maintenance or operations, and the O&M Firm shall be Generator for waste related to spills or other occurrences related to the O&M Firm's errors or failure to fully perform as required by this O&M Services agreement. Any regulated waste or spent hazardous materials located on the Service Property shall be disposed of by the O&M Firm in accordance with all applicable environmental regulations.

The O&M Firm shall take immediate actions to comply with all applicable laws and regulations and permit conditions concerning the release of any contaminant on or along the Service Property without regard to source. The O&M Firm and subcontractors shall comply with all written policies maintained by the Department or applicable regulatory agencies pertaining to environmental compliance and response policies and procedures, including coordination with the COO.

Should the O&M Firm encounter previously unknown materials which the O&M Firm reasonably believes to be hazardous, the O&M Firm shall cease work in the affected areas and report conditions to the designated Department personnel.

16.2.1 Hazardous Material Spills

The O&M Firm shall immediately notify the Department of any hazardous material spills. The O&M Firm shall develop and implement a plan to address such incidents safely and efficiently and be fully responsible for the containment and cleanup of any contaminants spilled onto the

Service Property or others' property. Any and all hazardous material spills on the Service Property, including, without limitation, diesel fuel, effluent from the O&M Firm or the Service Property facilities, solvents or cleaning solutions, must be reported immediately to the Department. The O&M Firm shall return the work area to its original conditions after conducting work efforts included in this Section.

16.2.2 Hazardous Material Storage

Storage of hazardous materials shall be limited to areas as indicated by the Spill Prevention Control and Countermeasures Plan (SPCC) and in compliance with codes and regulations. Where facilities for storage may not exist, the O&M Firm shall provide the needed facilities or store off site.

16.2.3 Hazardous Material Disposal

Disposal of any regulated materials such as petroleum based products, antifreeze, oils, lubricants, paint, fluorescent light bulbs, railroad ties, drip pans, and batteries shall be disposed of in accordance with federal, state and local requirements. Disposal of defective or obsolete batteries shall begin within one (1) week of removal from service and completed within 60 days. Battery disposal and storage sites shall be in accordance with OSHA regulations. All O&M Firm designated/utilized hazardous material disposal sites or disposal personnel shall have the appropriate State licenses. Oil and engine coolant and any other waste or hazardous material drainings shall be captured and disposed of in accordance with applicable Federal, State, and local environmental regulations. The O&M Firm shall also provide for recovery of HVAC refrigerant.

16.2.4 Hazardous Material Transportation

The O&M Firm shall ensure that containers used for storage and transportations of waste materials meet applicable Federal, State, and local requirements for labeling, storage, disposal, and transportation of waste materials. The O&M Firm shall conduct any and all testing of waste materials to be transported and disposed off-site, if required, to determine proper and legal methods for transport and disposal.

The O&M Firm shall only utilize appropriately licensed personnel to transport regulated or hazardous waste. Waste must be appropriately containerized for shipment. The O&M Firm shall produce hazardous waste manifest forms as required for the transportation and disposal of hazardous wastes. The O&M Firm shall provide the appropriate copies of the completed hazardous waste manifest to the facility supervisor and to the COO. Copies of all waste management documentation, including material handling, manifests, bills-of-lading, weight slips, and receiving facility receipts shall be kept on site and copy provided to the COO.

16.3 ENVIRONMENTAL SYSTEMS

The O&M Firm shall utilize qualified personnel to test, operate, maintain and service various environmental systems located throughout the Service Property. The environmental systems include but are not limited to the Oil/Water Separator System and stormwater systems.

Environmental services shall be directly performed and coordinated by qualified personnel. Any spills or overloading of oil/water separators or other storm water managements systems due to services performed under the O&M Agreement shall be rectified by the O&M Firm. Service of these systems shall be performed by the O&M Firm on an as-needed basis.

The O&M Firm shall provide copies of correspondence with Federal, State and local regulatory agencies regarding the environmental systems to the COO. The O&M Firm shall notify the COO immediately of any malfunctions observed and recommend immediate action, if required. The O&M Firm shall provide written documentation to the Department providing detailed information and recommend a course of action regarding the malfunction and a recommendation for remediation within 24 hours.

Malfunctions of environmental equipment or systems which can be rectified through minor repairs must be repaired by the O&M Firm in a timely manner, so as not to result non-compliance of any permit or permit conditions. The O&M Firm shall respond immediately upon becoming aware of a malfunction or to a request by the COO for emergency repairs.

16.4 SPARE PARTS

The O&M Firm must maintain spare parts in order to complete expedient repairs to environmental systems, and associated equipment and appurtenances whenever possible. The O&M Firm shall maintain an updated inventory of tools and parts recommended by the equipment manufacturers of the various environmental systems serviced. A copy of the inventory and spare parts and tools must be provided to the COO and maintained at each facility. The O&M Firm must use new parts to make repairs and replacements to the Service Property's environmental systems.

16.5 EMERGENCY RESPONSE

The O&M Firm shall respond to spills and environmental emergencies at all times regardless of cause as described in Section 2.8. The O&M Firm shall retain qualified personnel that shall respond immediately in the event of uncontained releases of hazardous materials or incidents involving biohazards, including fatal incidents or major injuries on the Service Property. Services provided by the O&M Firm shall include all labor, tools, equipment, materials, testing, and reporting associated with providing services.

16.6 HEALTH AND SAFETY PLANNING AND WORK AREA SECURITY

The O&M Firm shall adhere to all applicable health and safety laws and comply with appropriate work practices when performing O&M Services and shall ensure that work areas are secured when work is not being performed and otherwise secured during the work to prevent inadvertent access to work areas by unauthorized or unqualified persons. The O&M Firm shall develop and implement a Hazardous Materials Site Specific Health and Safety Plan (HMSSHASP) for all the O&M personnel working with or exposed to hazardous materials or other contaminated materials as part of their work. The plan shall be submitted to the designated Department personnel for review no later than 30 days of the Revenue Services Date and shall include, but not be limited to, provisions related to the following:

- Metals (primarily lead and arsenic), petroleum hydrocarbons, and poly-nuclear aromatic hydrocarbons may be present in the ballast and sub-ballast.
- Timber cross ties on the property contain creosote. New and used cross/switch ties may only be stored at locations approved by the COO.
- Some bridges and structures may have paint containing lead.

The HMSSHASP shall be prepared following the guidelines of the United States Department of Labor, OSHA 29 CFR 1910.

SECTION 17. RESPONSIBILITIES UPON TERMINATION OR COMPLETION OF AGREEMENT

In the event that the O&M Firm is terminated or is not selected or designated as the Department's O&M Firm beyond the term of this O&M Agreement, the O&M Firm shall be obligated to carry out such Agreement termination and transition activities as shall be required by the Department to preserve and protect the operational integrity of the SunRail commuter service, maintain the obligations and requirements of the CFRC and to provide a smooth transition to the Successor O&M Firm.

17.1 CONVEYANCE OF RECORDS AND DOCUMENTS

The O&M Firm shall transition the RMIS that had been developed for the provision of O&M Services to the Department. The RMIS refers to the entire integrated network including software, hardware, network servers, and storage devices.

No later than 60 days prior to the termination or completion of the O&M Agreement, the O&M Firm shall furnish to the Department all records and documents as requested by the Department, to include, without limitation, the items listed below to the extent they exist in the O&M Firm's possession. Additionally all reports and notifications specified in the Required Reports and Notifications section of the Scope of Services shall be made current and complete at the time of the termination or completion of the O&M Agreement. Any such reports or notifications which normally may not be due at the time of the final day of O&M Firm responsibility, particularly in the case of early termination or completion, shall be completed on a pro-rated basis to the final day of the O&M Agreement. Where practicable, all records and documents will be delivered in electronic format with hard copy. The data shall reflect conditions and status as of the final day of O&M Firm responsibility under the O&M Agreement.

The above notwithstanding, any and all reports or other documents which relate to National Transportation Safety Board (NTSB), FRA or FPSC findings or deficiencies shall be made available to the Department immediately upon termination or completion of the O&M Agreement. The O&M Firm also shall, upon termination or completion of the O&M Agreement, furnish all older records and documents covering information in the RMIS.

The records and documents to be furnished in their original format include, but are not limited to:

- a) Current Timetable, Slow Orders, General Orders and copies of all such Timetables, Slow Orders and General Orders since the Revenue Services Date;
- b) All Standard Operating Procedures and Plans developed for Department as identified in this Scope of Services;
- c) Maintenance, Repair, Inspection and Modification Project records for each Department locomotive, passenger car, maintenance of way rolling stock support equipment, and item of shop or work equipment for which warranty/repair records are kept;
- d) Inventory of all assets, materials, supplies, spare parts, etc. provided or paid for by the Department, including identification of all new, secondhand/reusable, and scrap materials where applicable, and a current pricing (valuation) of all such inventory;
- e) Rail vehicle maintenance information system and material management system databases, in Department-approved format;

- f) Data, software, hardware and documentation, developed under this agreement shall remain the property of the Department;
- g) Records of all environmental spills, noise and hazardous material notices, warnings, violations, etc. since the Revenue Services Date;
- h) All accident, fatality or other injury and property damage records, reports, claims and correspondence (including current, unsettled claims) since the Revenue Services Date; including those related to:
 - 1) O&M Firm personnel (employees)
 - 2) Grade crossing accidents
 - 3) Motor vehicle accidents
 - 4) Trespassers
 - 5) Invitees (passengers, O&M Firms, etc)
 - 6) Lost time due to injury reports
- i) All interrogatories from regulatory or other agencies, including responses and documentation;
- j) All manuals, warranty documents and agreements for Department-provided equipment, machinery, components, vehicles, trailers, etc.;
- k) Copies of all utility, service or and contracts since the Revenue Services Date;
- l) All O&M Firm correspondence files (material related to the Department);
- m) Quarterly and Annual Training Reports since the Revenue Services Date;
- n) All proficiency, efficiency and drug testing records since the Revenue Services Date;
- o) All communication with Federal Communications Commission (FCC) authorities, location of radio transmitters, receivers, leased lines, rented communication services, etc.;
- p) All inspection reports, including track inspection, switch inspection and corrective actions;
- q) Names and telephone numbers of all business contacts with emergency cranes for derailments, police, ambulance, and Hazmat contacts;
- r) Current Purchase Orders issued but not fulfilled and reimbursable expenses for labor, material and other expenses not billed; and
- s) Assigned and assignable subcontractor agreements;

17.2 AUDIT OF SERVICE PROPERTY AND SERVICE EQUIPMENT CONDITION

For the purpose of verifying that Service Property and Service Equipment transferred to the O&M Firm on the Revenue Services Date is returned to the Department on the termination or completion date in like or better condition, normal wear and tear expected, an audit of the condition of Service Property and Service Equipment will be conducted. The audit must be completed prior to the last day of the O&M Agreement term.

For the purposes of this section, the audit of the condition of the Service Property shall consist of a joint O&M Firm/Department/Successor O&M Firm hi-rail inspection and a physical inspection of other Department properties and facilities, to be conducted on or about the termination or completion date. The audit of the condition of the Service Equipment will consist of a video record of the interior and exterior of each unit of Department rolling stock (passenger cars and locomotives).

A comparison of the results of these contract termination audits will be made with the initial list of Service Property, Service Equipment and other Department provided assets as of the Revenue Services Date. For any Service Property or Service Equipment determined by the Department to be in a lesser or poorer condition than that existing as a matter of record as evidenced by the initial and termination audits described above, normal wear and tear expected, and where such lesser or poorer condition the Department may, at its option require: (1) that the O&M Firm correct, at O&M Firm's expense, such condition; (2) that the O&M Firm pay the Department an amount in cash representing the then current cost of rectifying such condition; or (3) a combination of (1) and (2).

17.3 COOPERATION WITH SUCCESSOR O&M FIRM

The O&M Firm shall be obligated to provide a "best effort" level of cooperation, as determined by the COO, with the Successor O&M Firm to help ensure a smooth transition to the Successor O&M Firm. Such cooperative efforts will include, without limitation, the following:

- a) Provision of copies of all current O&M Firm labor agreements with crafts represented in providing O&M Services;
- b) Provision of access for Successor O&M Firm personnel to the current O&M Firm's personnel for the purpose of providing relevant information regarding the Service Property, Service Equipment and operations;
- c) Attendance by the current O&M Firm personnel at such joint transition meetings as may reasonably be required by Department or the Successor O&M Firm; and
- d) Provision of sufficient management and supervisory personnel by the current O&M Firm during the initial seven days of the Successor O&M Firm's operations conducted by Successor O&M Firm to assure a smooth and efficient service transition.

SECTION 18. POTENTIAL ADDITIONAL SERVICES

Potential additional services are herein described solely for informational purposes and are not to be included in the lump sum price for this scope of services. These additional services are contemplated by the Department and may or may not be provided, at the Department's sole discretion, by Other Contractors, or the O&M Firm. When and if such services are sought additional information will be provided.

18.1 POSITIVE TRAIN CONTROL (PTC)

The Department will be required to follow the FRA-approved version of the CFRC Positive Train Control Implementation Plan (PTCIP) for the CFRC. A PTC Contractor may be retained by the Department to design, procure, install, and perform system integration and testing of the PTC System. The PTC Contractor shall coordinate and determine the exact method of installation, commissioning and testing of the PTC Back Office Systems, wayside PTC systems and communications systems.

It is the Department's intent for the PTC Contractor to provide all equipment necessary for the implementation of PTC. Provisions are included in locomotive and cab car design for the PTC equipment. The Department may request Other Contractors, or the O&M Firm, hereafter in this Section 18.1 called "Supporting Firm" to perform services in support of PTC implementation including but not limited to the following items.

18.1.1 Operations and Equipment

The Supporting Firm may be responsible for the vehicle segment of PTC, including, but not limited to, the installation of all of the PTC onboard equipment components and hardware, the interface to all existing onboard systems, the overall maintenance of the system. The vehicle segment of the Department's PTC System consists of a train management computer, data display, locomotive/cab car systems interface and communications interfaces.

The O&M Firm may coordinate with the PTC Contractor all operational related aspects of PTC including, but not limited to, dispatcher training and supervision, creating operating rules and procedures and verification of compliance during train operations.

18.1.2 PTC Infrastructure Installation and Equipment

The Supporting Firm may receive required training; coordinate and participate in integration testing, interoperability testing and commissioning of the entire PTC system and all SunRail vehicles with all parties affected by the PTC system.

The Supporting Firm may be responsible for version control, distribution and configuration management of the Vital PTC software as described in the CFRC Software Management Control Plan.

Supporting Firm Support for PTC Deployment

The Department has established a goal of placing PTC into service with PTC System Certification from the Federal Railroad Administration (FRA) through the submission of an

acceptable PTCSP prior to October of 2015. The PTC Contractor is anticipated to begin installation in the 4th Quarter of 2013 and continue to the 4th Quarter of 2014. It is the Department's intent to achieve FRA PTC System Certification by September 30, 2015 and to deploy PTC on the entire mainline in the 4th quarter of 2015. It is expected the PTC System for the entire 61.35 mile corridor will be installed by the PTC Contractor in the new Phase 1 (IOS) signal system and the existing signal system for Phase 2 South and Phase 2 North.

The PTC Contractor, the Supporting Firm, the Phase 2 South Construction Contractor and Phase 2 North Construction Contractor may coordinate system integration and commissioning the PTC system for revenue service for the entire corridor including all testing, documentation, submittals and interoperability coordination required to obtain FRA Certification.

18.2 SUPPORT SERVICES FOR PHASE 2 SOUTH AND PHASE 2 NORTH CONSTRUCTION

The Department may request an Other Contractors or the O&M Firm perform support services during construction of the Phase 2 South portion and the Phase 2 North of the SunRail system. Phase 2 is described below.

18.2.1 Phase 2 South and Phase 2 North Overview

- Phase 2 South - Sand Lake Road in Orange County to Poinciana in Osceola County
 - 17.2 miles; 4 stations; anticipated opening – 2016
- Phase 2 North – DeBary Station north to DeLand Amtrak station in Volusia County
 - 12 miles; 1 station; anticipated opening – 2016
- Peak service every 30 minutes – 0530 to 0830 and 1530 to 1830 on weekdays;
- Off-peak service every 120 to 150 minutes; and
- Exclusive operating windows designated for commuter rail service.
- Freight operating windows for Phase 2 South and the Phase 2 North SunRail service same as Phase 1;
- Interlocal Funding, Operating and Governance Agreements approved by local funding partners in Orange, Osceola and Volusia counties, where Phase 2 South and the Phase 2 North stations are proposed;
- Capital upgrades include adding 2nd mainline track and trestle bridges, grade crossings and wayside signals;
- Phase 2 South and the Phase 2 North procurements secured for locomotives, coaches and cab cars; ticket vending machines; insurance; public involvement/marketing;;
- Phase 2 Station design replicates Phase 1 stations; and
- VSMF complete for Phase 1 and Phase 2 South and the North operations, with layover facility at Poinciana for Phase 2 South operations).

18.3 GRADE CROSSINGS AND CONTROL POINTS

The Department may request an Other Contractor or the O&M Firm to procure, install, test and place in service track, roadway, signal and communications infrastructure including:

- Upgrades to highway-rail grade crossings to be determined by the Department
- Procurement, installation, testing and placing in service the universal crossovers at MP 774.8.

- Procurement, installation, testing and placing in service the universal crossovers at MP 787.0.

18.4 FARE COLLECTION SYSTEM EQUIPMENT

18.4.1 Cash Collection

The Department may request the O&M Firm to contract with a separate entity to provide secure cash handling, transportation and processing of cash receipts from the 12 FSTVM's. The separate entity shall be licensed, bonded and insured in accordance with Florida Statutes.

18.4.2 Fare Collection Equipment Operations and Maintenance, Level 1

Following system acceptance of the fare collection system and conclusion of the warranty period, the O&M Firm may provide minor service repairs/troubleshooting of fare collection equipment (TVMs, FSTVMs, SPTVs, HHTVs, POSMs), as follows.

Level 1 (minor) servicing and maintenance shall include:

- Troubleshooting of faulty equipment after an occurrence by following instructions/protocol provided in equipment training manuals. This shall occur as the first step in the process in repairing equipment prior to escalating technical support from the fare collection vendor during warranty period or prior to escalating to the Department after the warranty period expires.
- Replacement of easily accessed parts such as bulbs, belts, fuses, cables, fasteners, and other minor parts.
- Removal and replacement of major modules with authorization the Department.
- Perform component level repair of major modules
- Rebooting of on-board computers with authorization from the Department.
- Troubleshooting and resetting of associated communications equipment such as routers, switches, and wireless access points.
- Replacement of batteries.
- Restoration of power by checking fuses breakers and plugs.
- Lubrication of parts as needed.
- Check the secure fastening of devices to stations platforms and tighten as necessary.
- Performance scheduled preventative maintenance with authorization from the Department.
- Support software downloads and upgrades with authorization from the Department.
- Point of Sale Machines support including calls from retailers, repair and replacement.
- Completion of work order documents and reports by the end of each business day.

18.4.3 Fare Collection Equipment Operations and Maintenance, Level 2

The Department may request an Other Contractor or the O&M Firm to provide intermediate service repairs/troubleshooting of fare collection equipment (TVMs, FSTVMs, SPTVs, HHTVs, POSMs), as follows.

Level 2 (intermediate) servicing and maintenance may include but is not limited to :

- Maintenance of revenue modules, vaults, and other secured revenue items shall be performed in the presence of approved SunRail staff, revenue contractor staff, or after the removal of funds from the module/unit to be repaired.
- Perform component level repair as practical to return units to operation as quickly as possible.
- Perform on-site service and module replacement
- Support downloads, version upgrades, bug fixes, patches and other software / computer hardware items.
- Diagnose failed units using the remote monitoring system and direct the work of field staff to return units to operation as quickly as possible.

18.5 FARE COLLECTION BACK OFFICE SERVICES

The Department may request an Other Contractor or the O&M Firm, to operate and maintain the back office services required for system fare collection. All fare collection and validation equipment shall communicate with the central data collection and information system (CDCIS) for transfer of all stored data and transfer of equipment parameters. The CDCIS will be an "ACCOUNT BASED SYSTEM" and all fare product and customer information will reside on the account level and not on the smart card itself. The fare collection back office services may consist of the following main components:

- Support the monitoring and control of all equipment and devices connected to the fare collection network
- Support credit/debit card processing and transaction between fare collection equipment, CDCIS and third-party financial clearinghouse
- Support the data processing and reporting associated with the fare collection system
- Support the communication and seamless interface with the www.sunrail.com website including, but not limited to, on-line ticket purchases, reloading of smart cards and smart card registration
- Provide operations and maintenance of the following subsystems and applications to support an account based back office
 - Data Storage Computer (DSC)
 - Fare Processor
 - Device Management System (DMS)
 - Regional Clearinghouse Application (RCA)
 - Online Ticketing Application (OTA)
 - Customer Administration Application (CAA)
 - System Status and Security Monitoring Application (SSSMA)
 - Servers
 - Work Stations
 - Any Additional Equipment required for the safe and reliable operation of the CDCIS system. Additional equipment would be purchased as optional equipment.
- Resolve fare payment issues related to:
 - Smart card malfunctions/troubleshooting, auto-replenishments, lost or stolen smart cards
 - Reporting and replacement of lost, stolen or damaged registered smart cards and responding to value restoration requests
 - Smart card registration and auto-replenishment set-up, modifications and discontinuance;

- Adding stored value and/or multi-ride pass to accounts
- Complaints with use of smart cards, TVMs and/or SPTVs and discrepancies with accounts
- Prices for fare products
- Account statements
- Registration of smart cards and balance protection
- Refunds

18.6 STATION MAINTENANCE AND HOUSEKEEPING SERVICES

The Department may request an Other Contractor or the O&M Firm, to maintain and perform housekeeping at the station platforms and parking lots. These responsibilities may include the maintenance and operations of the vehicular, bicycle, bus and pedestrian access to the Station Platform and to and within the Station Property, including but not limited to sidewalks, stairs, handicapped access, walkways, access roads and bicycle facilities.

Housekeeping services shall consist of the following main components:

Immediate Cleaning Response

- Immediately respond to report of incidents involving feces, urine, blood, vomit or miscellaneous spills on station platforms. Miscellaneous spills include fluids which would limit the effectiveness of the abrasive character of the platform material and cause the potential for a slip and fall. Aesthetic spills do not require immediate cleaning response.
- Immediately respond to report of any broken glass on station platform.
- Immediately respond to report of offensive graffiti. Offensive graffiti includes but is not limited to that which is pornographic, racist, sexist, hate-related, profane, or foul. Offensive is defined as distasteful, disgusting or revolting, causing a reasonable person embarrassment.
- Immediate response to the items listed above shall be not more than 2 hours on the scene from time of notification.

Daily Cleaning - Non-Peak Hours

General cleaning services will be performed at each station from Sunday through Thursday.

- Cleaning will be documented and performed to allow a clean platform prior to the first train in the morning.
- Cleaning Sunday through Thursday will include:
 - Remove all graffiti
 - Remove all unauthorized stickers, decals or posters
 - Sweep platform and associated walkways, excluding pedestrian crossovers located between platforms within the Corridor
 - Remove debris and trash from platforms, benches and walkways, excluding pedestrian crossovers located between platforms within the Corridor
 - Remove stains, spills, and gum from platforms, walkways, benches, handrails, fixtures, passenger amenities, phones, TVMs, ticket validators, and water fountains. Stains include spots, tarnish, blemishes, and discolorations larger than the size of a US Mint dime.

- Remove bird/animal droppings from all platform areas. Droppings include dung or feces from all birds and animals.
- Remove trash from trash containers and replace plastic trash bags. Trash shall be hauled off of the Station Property after collection.
- Remove cobwebs, egg sacs and nests from platforms, benches, fixtures, canopies and railings
- Wipe down all surfaces of TVMs and validators
- Wipe inside of trash containers (clear) and tops and sides of containers
- Clean any display cases (bulletin boards for schedule information, etc.)
- Wipe down emergency call phone and customer information phone
- Wipe, clean and disinfect water fountains
- Clean feet and fingerprints marks from support structures, posts, walls, and fixtures. These include dirt, soil and grease marks.

Monthly Cleaning – Non-Peak Hours

- Hand wipe and clean station signage, excluding electronic message signs or signage between the platforms in the CFRC
- Thorough cleaning of canopy support structures
- Pressure washing of platforms, walkways, benches, canopy support structures and tactile strips. Pressure washing must be performed during weekends.
- Hand wipe and clean all variable message signs
- Hand wipe and clean all TVMs and validators

Maintenance and Housekeeping – Station Property

- Twice daily trash removal from all receptacles and once daily trash pick-up from the platform, grounds, landscaping, drainage systems, and parking lot. Trash shall be hauled off Station Property after collection;
- Routine maintenance and repair of the parking surface, drainage systems, hardscape, landscaping and irrigation, lighting, signage and utilities, pedestrian, bicycle, bus and vehicular access areas, and traffic control devices located within the boundaries of the Station Property;
- Routine mowing, edging, clipping and weeding of any turf and landscaping; Periodic pest control for Station Property. Periodic shall be defined as the same timeframe as utilized for the other public facilities within the Local Government Partner's control; and
- Overall maintenance which keeps all aspects of the Station Property in the State of Good Repair.

18.7 SAFETY AND SECURITY SERVICES PRIOR TO REVENUE SERVICES DATE

The Department may request an Other Contractor or the O&M Firm, to maintain safety and security at the station platforms and parking lots prior to Revenue Services Date. The O&M Firm shall be responsible for:

- Maintenance of station platform and parking lot lighting
- Maintenance of the CCTV systems on the station platforms

- Monitoring of the station platforms
- Security patrols of the station areas

18.8 CORRIDOR MANAGEMENT

The Department may request an Other Contractor or the O&M Firm to assist the Department with managing requests for Right of Entry permitting, Right of Way leases, underground and overhead structure installations, highway-rail grade crossing upgrades /modifications and railroad protective services.

18.9 BUS BRIDGE

The Department may request an Other Contractor the O&M Firm to assist with provision of service during service disruptions on or off the SunRail property which result in delays in excess of 30 minutes or cancellation of scheduled trips. A bus bridge is the substitution of buses in lieu of rail service due to any scheduled or unscheduled event that may disrupt rail service. The operational goal during service disruptions is to restore service as quickly as possible and to provide a seamless transition from rail to bus then back to rail. The provision of replacement bus service and the operating requirements for that service will vary depending on the location of the service disruption, the expected duration of the disruption, the time of day, and the impact on SunRail service.

SECTION 19. CLAIMS AND DISPUTES REVIEW BOARD**19.1. CLAIMS BY O&M FIRM****19.1.1. General**

When the O & M Firm deems that additional compensation is due for work or materials not expressly provided for in the contract or which is by written directive expressly ordered by the Department, or for other matters arising out of the work on the contract, the O&M Firm shall notify the Department.

Submission of timely notice of intent to file a claim, and the certified written claim, together with full and complete claim documentation, are each a condition precedent to the O&M Firm bringing any circuit court, arbitration, or other formal claims resolution proceeding against the Department for the items and for the sums or time set forth in the O&M Firm's certified written claim. The failure to provide such notice of intent, certified written claim and full and complete claim documentation within the time required shall constitute a full, complete, absolute and irrevocable waiver by the O&M Firm of any right to additional compensation for such claim.

19.1.2. Notice of Claim for Compensation:

Where the O&M Firm deems that additional compensation is due for extra work to be performed as directed by the Department under the contract, the O&M Firm shall notify the Department in writing of the intention to make a claim for additional compensation before beginning the work on which the claim is based. If such notification is not given and the Department is not afforded the opportunity for keeping strict account of actual labor, material, equipment, and time, the O&M Firm waives the claim for additional compensation for extra work. Such notice by the O&M Firm, and the fact that the Department has kept account of the labor, materials and equipment, and time, shall not in any way be construed as establishing the validity of the claim or method for computing any compensation for such claim.

Where the O&M Firm deems that additional compensation is due for a matter arising out of the work on the contract other than for extra work to be performed, the O&M Firm shall notify the Department in writing of the intention to make a claim for additional compensation as soon as reasonably possible after the O&M Firm becomes aware of the matter on which the claim is based, but not later than 30 days after the date of the occurrence of the event on which the claim for additional compensation would be based. If such notification is not given the O&M Firm waives the claim for additional compensation for the matter. Such notice by the O&M Firm, and the fact that the Department has kept account of any items in regard to the matter, shall not in any way be construed as establishing the validity of the claim or method for computing any compensation for such claim.

Within 90 calendar days after end of the termination of the FDOT services period (seven years from the commencement date of Revenue Service), the O&M Firm shall submit, full and complete claim documentation as described in 19.1.3 and duly certified pursuant to 19.1.7.

If the O&M Firm fails to submit a certificate of claim as described in 19.1.7, the Department will so notify the O&M Firm in writing. The O&M Firm shall have ten calendar days from receipt of the notice to resubmit the claim documentation, without change, with a certificate of claim as described in 19.1.7, without regard to whether the resubmission is within the applicable 90 calendar day deadline for submission of full and complete claim documentation. Failure by the O&M Firm to comply with the ten calendar day notice shall constitute a waiver of the claim.

19.1.3. Content of Written Claim

As a condition precedent to the O&M Firm being entitled to additional compensation under the Contract, for any claim, the O&M Firm shall submit a certified written claim to the Department which will include for each individual claim, at a minimum, the following information:

- a) A detailed factual statement of the claim providing all necessary dates, locations, and items of work affected and included in each claim;
- b) The date or dates on which actions resulting in the claim occurred or conditions resulting in the claim became evident;
- c) Identification of all pertinent documents and the substance of any material oral communications relating to such claim and the name of the persons making such material oral communications;
- d) Identification of the provisions of the Contract which support the claim and a statement of the reasons why such provisions support the claim, or alternatively, the provisions of the Contract which allegedly have been breached and the actions constituting such breach;
- e) A detailed compilation of the amount of additional compensation sought and a breakdown of the amount sought as follows:
 - (1) documented additional job site labor expenses;
 - (2) documented additional cost of materials and supplies;
 - (3) a list of additional equipment costs claimed, including each piece of equipment and the rental rate claimed for each;
 - (4) any other additional direct costs or damages and the documents in support thereof;
 - (5) any additional indirect costs or damages and all documentation in support thereof.

Further, the O&M Firm shall be prohibited from amending either the bases of entitlement or the amount of any compensation stated for any and all issues claimed in the O&M Firm's written claim submitted hereunder, and any circuit court, arbitration, or other formal claims resolution proceeding shall be limited solely to the bases of entitlement and the amount of any compensation stated for any and all issues claimed in the O&M Firm's written claim submitted hereunder. This shall not, however, preclude the O&M Firm from withdrawing or reducing any of the bases of entitlement and the amount of any compensation stated for any and all issues claimed in the O&M Firm's written claim submitted hereunder at any time.

19.1.4. Action on Claim

The Department will respond within 90 calendar days of receipt of a complete claim submitted by an O&M Firm in compliance with 19.1.3. Failure by the Department to respond to a claim within 90 days after receipt of a complete claim in compliance with 19.1.3 constitutes a denial of the claim by the Department. If the Department finds the claim or any part thereof to be valid, such partial or whole claim will be allowed and paid for to the extent deemed valid as provided in the contract, by supplemental agreement. No circuit court or arbitration proceedings on any claim, or a part thereof, may be filed until after the end of the termination of the FDOT services period (seven years from the commencement date of Revenue Service) or denial hereunder, whichever occurs last.

19.1.5. Pre-Settlement and Pre-Judgment Interest

Entitlement to any pre-settlement or prejudgment interest on any claim amount determined to be valid subsequent to the Department's receipt of a certified written claim in full compliance with 19.1.3, whether determined by a settlement or a final ruling in formal proceedings, the Department shall pay to the O&M Firm simple interest calculated at the Prime Rate (as reported by the Wall Street Journal as the base rate on corporate loans posted by at least 75% of the nations 30 largest banks) as of the 60th calendar day following the Department's receipt of a certified written claim in full compliance with 19.1.3, such interest to accrue beginning 60 calendar days following the Department's receipt of a certified written claim in full compliance with 19.1.3 and ending on the date of final settlement or formal ruling.

19.1.6. Mandatory Claim Records

After giving the Department notice of intent to file a claim for additional compensation for extra work or for additional compensation for a matter arising out of work on the contract other than for extra work, the O&M Firm must keep daily records of all labor, material and equipment costs incurred for operations affected by the extra work or the matter. These daily records must identify each operation affected by the extra work or the matter as nearly as possible. The Department may also keep records of all labor, material and equipment used on the operations affected by the extra work or the matter. The O&M Firm shall, once a notice of intent to claim has been timely filed, and not less than weekly thereafter as long as appropriate, provide the Department a copy of the O&M Firm's daily records and be likewise entitled to receive a copy of the Department's daily records. The copies of daily records to be provided hereunder shall be provided at no cost to the recipient.

19.1.7. Certificate of Claim

When submitting any claim, the O&M Firm shall certify under oath and in writing, in accordance with the formalities required by Florida law, that the claim is made in good faith, that the supportive data are accurate and complete to the O&M Firm's best knowledge and belief, and that the amount of the claim accurately reflects what the O&M Firm in good faith believes to be the Department's liability. Such certification must be made by an officer or director of the O&M Firm with the authority to bind the O&M Firm.

19.1.8. Non-Recoverable Items

The parties agree that for any claim the Department will not have liability for the following items of damages or expense:

- (a) A loss of profit, incentives or bonuses;
- (b) Any claim for other than extra work or matters arising under the contract for which additional compensation is claimed;
- (c) Consequential damages, including, but not limited to, loss of bonding capacity, loss of bidding opportunities, loss of credit standing, cost of financing, interest paid, loss of other work or insolvency;
- (d) Acceleration costs and expenses, except where the Department has expressly and specifically directed the Contractor in writing, "to accelerate at the Department's expense," nor
- (e) Attorney fees, claims preparation expenses and costs of litigation.

19.1.9. Exclusive Remedies

Notwithstanding any other provision of this Contract, the parties agree that the Department shall have no liability to the O&M Firm for expenses, costs, or items of damages other than those, which are specifically identified as payable in the claims for compensation under 19.1. In the event of any legal action for additional compensation, the O&M Firm agrees that the Department's liability will be limited to those items which are specifically identified as payable in the for claims for compensation under 19.1.

19.1.10. Settlement Discussions

The content of any discussions or meetings held between the Department and the O&M Firm to settle or resolve any claims submitted by the O&M Firm against the Department shall be inadmissible in any legal, equitable, arbitration or administrative proceedings brought by the O&M Firm against the Department for payment of such claim. Dispute Resolution Board proceedings are not settlement discussions, for purposes of this provision.

19.1.11. Personal Liability of Public Officials

In carrying out any of the provisions of the Contract or in exercising any power or authority granted to the Secretary of Transportation, Department, or any of their respective employees or agents, there shall be no liability on behalf of any employee, officer or official of the Department for which such individual is responsible, either personally or as officials or representatives of the Department. It is understood that in all such matters such individuals act solely as agents and representatives of the Department.

19.1.12. Auditing of Claims

All claims filed against the Department shall be subject to audit at any time following the filing of the claim, whether or not such claim is part of a suit pending in the Courts of this State. The audit may be performed, at the Department's sole discretion, by employees of the Department or by any independent auditor appointed by the Department, or both. The audit may begin after ten days written notice to the O&M Firm, subcontractor, or supplier. The O&M Firm, subcontractor, or supplier shall make a good faith effort to cooperate with the auditors. As a condition precedent to recovery on any claim, the O&M Firm, subcontractor, or supplier must retain sufficient records, and provide full and reasonable access to such records, to allow the Department's auditors to verify the claim and failure to retain sufficient records of the claim or failure to provide full and reasonable access to such records shall constitute a waiver of that portion of such claim that cannot be verified and shall bar recovery thereunder. Further, and in addition to such audit access, upon the O&M Firm submitting a written claim, the Department shall have the right to request and receive, and the O&M Firm shall have the affirmative obligation to provide to the Department, copies of any and all documents in the possession of the O&M Firm or its subcontractors, materialmen or suppliers as may be deemed relevant by the Department in its review of the basis, validity or value of the O&M Firm's claim.

Without limiting the generality of the foregoing, the O&M Firm shall upon written request of the Department make available to the Department's auditors, or upon the Department's written request for copies provide copies at the Department's expense, any or all of the following documents:

1. Daily time sheets and foreman's daily reports and diaries;
2. Insurance, welfare and benefits records;
3. Payroll register;
4. Earnings records;
5. Payroll tax return;
6. Material invoices, purchase orders, and all material and supply acquisition Contracts;
7. Material cost distribution worksheet;
8. Equipment records (list of company owned, rented or other equipment used);
9. O&M Firm rental agreements and subcontractor invoices;
10. Subcontractor payment certificates;
11. Canceled checks for the project, including, payroll and vendors;
12. Job cost report;
13. Job payroll ledger;
14. General ledger, general journal, (if used) and all subsidiary ledgers and journals together with all supporting documentation pertinent to entries made in these ledgers and journals;
15. Cash disbursements journal;
16. Financial statements for all years reflecting the operations on this contract;
17. Income tax returns for all years reflecting the operations on this contract;
18. All documents which reflect the O&M Firm's actual profit and overhead during the years this Contract was being performed and for each of the five years prior to the commencement of this Contract;
19. All documents related to the preparation of the O&M Firm's bid including the final calculations on which the bid was based;

20. All documents which relate to each and every claim together with all documents, which support the amount of damages as to each claim;
21. Worksheets used to prepare the claim establishing the cost components for items of the claim including, but not limited to, labor, benefits and insurance, materials, equipment, subcontractors, and all documents that establish which time periods and individuals were involved, and the hours and rates for such individuals.

19.2. O&M DISPUTES REVIEW BOARD

For this Contract, an O&M Disputes Review Board will be established to assist in the resolution of claims for compensation arising out of the work on the Contract.

19.2.1. Purpose

The Board will provide special expertise to assist in and facilitate the timely and equitable resolution of claims between the Department and the O&M Firm in an effort to avoid disputes and future claims about compensation. It is not intended for the Department or the O&M Firm to default on their normal responsibility to cooperatively and fairly settle their differences by indiscriminately assigning them to the Board. It is intended that the Board encourage the Department and O&M Firm to resolve potential disputes or claims about compensation without resorting to this alternative resolution procedure. The Board will be used when normal Department-O&M Firm dispute or claim resolution is unsuccessful. Either the Department or the O&M Firm may refer a claim to the Board. Referral to the Board should be initiated as soon as it appears that the normal dispute resolution effort is not succeeding. Referral to the Board is accomplished by providing a position paper outlining the nature and scope of the claim and describing the basis for entitlement to the claim. Only claims that have been duly preserved under the terms of the Contract as determined by the Board will be eligible to be heard by the Board. Claims that are referred to the Board must be in compliance with 19.1. It is a condition of this Contract that the parties shall use the Dispute Review Board. The completed DRB hearing of any unresolved claims is a condition precedent to the Department or the O&M Firm having the right to initiate arbitration, other alternative resolution procedures, or to file a lawsuit, as provided by law, on such unresolved claims.

The recommendations of the Board will not be binding on either the Department or the O&M Firm. The Board will fairly and impartially consider claims referred to it and will provide written recommendations to the Department and O&M Firm to assist in the resolution of these claims.

19.2.2. Continuance of Work:

During the course of the Disputes Review Board process, the O&M Firm will continue with the work as directed by the Department in a diligent manner and without delay or otherwise conform to the Department's decision or order, and will be governed by all applicable provisions of the Contract. Throughout any protested work, the O&M Firm will keep complete records of extra costs and time incurred. The O&M Firm will permit the Department and Board access to these and any other records needed for evaluating the claims.

19.2.3. Membership:

The Disputes Review Board will consist of one member selected by the Department and approved by the O&M Firm, and one member selected by the O&M Firm and approved by the Department. The first two members will mutually select and agree on the third member. Normally, the third member will act as Chairman for all Board activities.

19.2.4. Qualification:

It is desirable that all Board members have at least ten years of experience in the railroad operations and railroad maintenance industry, the interpretation of contract documents, and in contract dispute resolution. The goal in selecting the third member is to complement the railroad operations and railroad maintenance experience of the first two members, to provide leadership for the Board's activities, and to provide expertise in the area of administering alternative contract resolution proceedings. It is imperative that Board members not show or be perceived as showing partiality to either the O&M Firm or the Department. A Board member shall not have any conflict of interest, which could affect their ability to act in a disinterested and unbiased manner.

19.2.5. Conflict of Interest:

A person selected to the Board shall submit to the party appointing him/her a resume covering his/her applicable education and experience, a list of all DRBs, with meeting frequencies, on which he/she currently serves, and a disclosure statement covering, but not limited to, any of the following categories of relationships or prior involvement in this project:

- a) Any direct or indirect ownership or financial interest in the O&M Firm awarded the contract for this Operations and Maintenance project, the CEI consulting firm on the project, any subcontractor or supplier on the project or any business of another Board member.
- b) Current employment by the Department, the O&M Firm awarded the contract, or the CEI consulting firm on the project. Service as a Dispute Review Board Member shall not be construed to be employment.
- c) Current employment by any subcontractor or supplier on the project.
- d) Current employment by a consulting engineering firm that will be seeking future contracts for CEI services from the Department.
- e) Within the two year period immediately prior to award of the contract, employment by: the Central Office of the Department; the Department's District or Turnpike in which the project is located; the Department, as a consultant in the District or Turnpike in which the project is located; the O&OM Firm awarded the contract, the CEI consulting firm on the project, any subcontractor or supplier on the project or any business of another Board member. Service as a Dispute Review Board Member shall not be construed to be employment.
- f) A close personal relationship with any key individual in any firm involved in the contract.
- g) A prior involvement in the project of a nature, which might be construed as compromising his/her ability to act impartially in carrying out the duties of the Board.
- h) A contract as a consultant to the O&M Firm awarded the contract.
- i) A contract as a consultant with any subcontractor or supplier on the project.

- j) Current full-time employment by a Department prequalified contractor or consultant. An industry expert the Board proposes to select, as provided in 19.2.9 (b), shall also submit to the parties prior to their agreement to that expert's use a resume covering his/her applicable education and experience and a disclosure statement regarding the categories listed in this 19.2.5.

19.2.6. Disqualification:

Category (a), (b), (c), (e), and (j) relationships listed in 19.2.5 shall disqualify a person from serving on the Board for this project. The other categories of relationships or prior involvement in this project listed above will be considered by the O&M Firm and the Department in arriving at their decision as to whether or not to accept a person as a member of the Board.

If during the life of the contract, a Board member is made aware that a firm of which he/she is an employee is involved in the contract as a subcontractor or supplier, he/she shall immediately give notice to the Department and the O&M Firm. Upon receiving such notification, the Department or the O&M Firm may, within ten (10) days, give notice that this Board member is no longer acceptable and a new Board member shall be selected and approved as provided above. In no event, shall a Board member participate in a hearing by the Board of dispute involving a firm by which he is employed. The Department may disqualify a person from serving on future Disputes Review Boards for Department projects who submits a disclosure statement which fails to provide accurate and complete disclosure of a relationship that prohibits him/her from serving on the Board for this project or one of the possible conflicts of interest listed above. Category (a), (b), (c), (e), and (j) relationships listed in 19.2.5 shall also disqualify a person from serving as an industry expert, as provided in 19.2.9 (b), to advise the Board for this project. The other categories of relationships or prior involvement in this project listed above will be considered by the O&M Firm and the Department in arriving at their decision as to whether or not to accept a person as an industry expert advising the Board. If during the life of the contract, an industry expert advising the Board is made aware that a firm of which he/she is an employee is involved in the contract as a subcontractor or supplier, he/she shall immediately give notice to the Department and the O&M Firm. Upon receiving such notification, the Department or the O&M Firm may, within ten (10) days, give notice that this industry expert is no longer acceptable

19.2.7. Selection of Members:

Every attempt shall be made by the Department and the O&OM Firm to complete the selection of Disputes Review Board members and execute the "Disputes Review Three Party Agreement" OPERATIONS AND MAINTENANCE, as soon as possible after the execution of the O&M Agreement but not later than 30 days thereafter. The Department and the O&M Firm shall select their Board members and give the other party notice of the person they have selected to serve as a member of the Board. This notice shall be accompanied by the resume and disclosure statement submitted by that person. Within ten (10) days of receiving the notice of selection of a Board member, the Department and the O&M Firm shall review the accompanying resume and disclosure statement, make such inquires as each deems necessary and notify the other party in writing as to whether or not the person selected is acceptable. Failure to give this notice within the ten (10) days allowed shall be construed to be acceptance. If a person selected is not acceptable to the other party, the party who

selected that person shall within five (5) days select another person and provide to the other party to the contract a notification accompanied by a resume and disclosure statement. Once the O&M Firm and the Department have agreed upon the first two members of the Board they shall immediately notify those members of their approval. Within one week of this notification, the first two members of the Board shall select the third member and give written notice to the O&M Firm and the Department accompanied by that person's resume and disclosure statement.

Within ten (10) days of receiving the notice of selection of a third member of the Board, the Department and the O&M Firm shall review the accompanying resume and disclosure statement, make such inquiries as each deems necessary and notify the first two members in writing as to whether or not the person selected is acceptable. If a person selected is not acceptable to the O&M Firm or the Department the first two members of the Board shall immediately select another person and provide notification accompanied by a resume and disclosure statement. Failure to give this notice within the ten (10) days allowed shall be construed to be acceptance.

If, (1) the Department or the O&M Firm fail to provide the other party notice of selection of a Board Member within the time specified, herein; (2) the first two members of the Board fail to provide notice to the parties of their selection of the third member of the Board within the times specified, herein; or (3) the parties are unable to agree on appointment of a Board member within 60 days after award of the contract, that member shall be appointed by mutual consent of Chief Executive Officer of the Central Florida Rail Commission and the Chief Executive Officer (or person with highest officer title) of the O&M Firm. Immediately after agreement is reached on all members of the Board the O&M Firm, the Department and the members of the Board shall proceed with execution of the "Disputes Review Board Three Party Agreement." The execution of that agreement will not modify the requirements, terms or conditions of this Section 19.1. If during the life of the contract, a Board member has a discussion regarding employment or entered into any agreement for employment after completion of the contract with the Department, the O&M Firm or any subcontractor or supplier on the project, he/she shall immediately disclose this to the O&M Firm and the Department and shall be disqualified from serving on the Board. Should the Department and the O&M Firm mutually agree to terminate a "Disputes Review Board Three Party Agreement," the existing "Disputes Review Board Three Party Agreement" will remain in force until replaced by another a fully executed "Disputes Review Board Three Party Agreement." If, after the end of the termination of the FDOT services period (seven years from the commencement date of Revenue Service) there are unresolved claims remaining, the "Disputes Review Board Three Party Agreement" shall remain active and in full force and effect for up to 365 calendar days after the end of the termination of the FDOT services period, or all unresolved disputes and claims are resolved, whichever shall occur first, so that the Board may continue in operation to resolve disputes and claims.

19.2.8. Limitation for Referral of Claims to the Board

Any claims that were not resolved prior to the end of termination of the FDOT services period (seven years from the commencement date of Revenue Service) must be referred to the Board within 180 calendar days after the end of the termination of the FDOT services period. Only duly preserved claims will be eligible to be heard by the Board. Failure to submit all claims to the Board within

aforementioned timeframe after the end of the termination of that FDOT services period constitutes an irrevocable waiver of the O&M Firm's claim.

19.2.9. Basis of Payment:

- a) Regular DRB Meeting: A per day cost of \$6,000 has been established by the Department to reimburse the O&M Firm for providing compensation to the three members of the Disputes Review Board. This amount will be paid to the O&M Firm for each day the Disputes Review Board is convened for regular DRB project meetings. For each day of the meeting, the O&M Firm shall compensate each Disputes Review Board member a sum of \$2,000. Such payment will be full compensation to the Board member for salary and all travel expenses (air fare, rental or personal automobile, motel room, meals, etc.) related to membership on the Board. Do not pay prior to the execution of the Three Party Agreement.
- b) Hearing: A per hearing cost of \$8,000.00 has been established by the Department to provide compensation for all members of the Disputes Review Board for participation in an actual hearing. For each hearing, the O&M Firm shall compensate the Disputes Review Board chairman the sum of \$3,000.00 for participation in the hearing, while the remaining two members will receive \$2,500.00 each.

Such payment will be full and complete compensation to the Board members for all expenses related to the hearing. This includes travel, accommodations, meals, pre- and post- hearing work, review of position papers and any rebuttals, conducting the hearing, drafting and issuance of recommendations, readdressing any requests for clarification. It is not intended for hearings to last longer than a single day, however, in some cases they may. Any additional time and/or compensation for a hearing would only be allowed upon prior written approval of the Department and the O&M Firm. If an additional day(s) is granted for the hearing, each board member will be compensated \$1,000 per day and such payment will be full and complete compensation for all expenses related to this additional day hearing.

If the Board believes that expert advice regarding a particular highly technical subject in dispute would be of assistance to them, it may bring in up to two industry experts for advice, provided however that any person the Board proposes to select shall have provided the resume and disclosure statement in accordance with 19.2.5, and is not disqualified as stated in 19.2.6, and the Department and the O&M Firm have agreed in writing prior to the use of these experts. These industry experts brought in are not Board members and have no vote. These industry experts will be compensated at the same hearing cost rate as Board Members. Such payment will be full and complete compensation to the experts for all expenses related to the hearing. This includes travel, accommodations, meals, pre- and post- hearing work, and as requested by the Board review of position papers and any rebuttals, presence at or review of the hearing, oral advice to and/or drafting and issuance of advice to the Board, and participation in readdressing any requests for clarification

If the Board desires special services, such as legal consultation, accounting, data research, and the like, Department and the O&M Firm must agree in writing prior to use of these special services.

The Department will reimburse the O&M Firm for all Board hearing cost expenses (Board compensation, industry expert advisors, and special services) incurred if the findings of the Board are in favor of the O&M Firm. If the findings are in favor of the Department, the Department will not

reimburse the O&M Firm for all Board expenses incurred. If the Board rules on multiple issues during a single hearing, Department reimbursement to the O&M Firm is based on ratio of findings (e.g., if Board hears four issues, regardless of importance or value, and rules favorably for the O&M Firm on three of them, the Department reimburses O&M Firm for 75% of Board costs).

The Department will prepare and mail minutes and progress reports, will provide administrative services, such as conference facilities and secretarial services, and will bear the cost of these services.

STANDARD CONTRACT TERMS AND CONDITIONS

The following form PUR 1000 is a standard contract terms form that the Department includes in all procurements, except that paragraphs 5, 11, 19, 20, 22, 23, 25, 26, 27, 29, 31, 35, 40, 41, and 42 do not apply to this Request for Proposal. Deletion of these paragraphs shall not be deemed to be deletion of content contained elsewhere and the substance of these excepted paragraphs may be addressed in other locations in the procurement documents. That substance located elsewhere continues to apply regardless of this exception paragraph.

State of Florida
PUR 1000
General Contract Conditions
Central Florida Rail Corridor Operations and Maintenance

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1. Definitions. The definitions contained in s. 60A-1.001, F.A.C. shall apply to this agreement. The following additional terms are also defined:

(a) "Contract" means the legally enforceable agreement that results from a successful solicitation. The parties to the Contract will be the Customer and Contractor.

(b) "Customer" means the State agency or other entity identified in a contract as the party to receive commodities or contractual services pursuant to a contract or that orders commodities or contractual services via purchase order or other contractual instrument from the Contractor under the Contract. The "Customer" may also be the "Buyer" as defined in the PUR 1001 if it meets the definition of both terms.

(c) "Product" means any deliverable under the Contract, which may include commodities, services, technology or software.

(d) "Purchase order" means the form or format a Customer uses to make a purchase under the Contract (e.g., a formal written purchase order, electronic purchase order, procurement card, contract or other authorized means).

2. Purchase Orders. In contracts where commodities or services are ordered by the Customer via purchase order, Contractor shall not deliver or furnish products until a Customer transmits a purchase order. All purchase orders shall bear the Contract or solicitation number, shall be placed by the Customer directly with the Contractor, and shall be deemed to incorporate by reference the Contract and solicitation terms and conditions. Any discrepancy between the Contract terms and the terms stated on the Contractor's order form, confirmation, or acknowledgement shall be resolved in favor of terms most favorable to the Customer. A purchase order for services within the ambit of section 287.058(1) of the Florida Statutes shall be deemed to incorporate by reference the requirements of subparagraphs (a) through (f) thereof. Customers shall designate a contract manager and a contract administrator as required by subsections 287.057(14) and (15) of the Florida Statutes.

3. Product Version. Purchase orders shall be deemed to reference a manufacturer's most recently release model or version of the product at the time of the order, unless the Customer specifically requests in writing an earlier model or version and the contractor is willing to provide such model or version.

4. Price Changes Applicable only to Term Contracts. If this is a term contract for commodities or services, the following provisions apply.

(a) Quantity Discounts. Contractors are urged to offer additional discounts for one time delivery of large single orders. Customers should seek to negotiate additional price concessions on quantity purchases of any products offered under the Contract. State Customers shall document their files accordingly.

(b) Best Pricing Offer. During the Contract term, if the Customer becomes aware of better pricing offered by the Contractor for substantially the same or a smaller quantity of a product outside the Contract, but upon the same or similar terms of the Contract, then at the discretion of the Customer the price under the Contract shall be immediately reduced to the lower price.

(c) Sales Promotions. In addition to decreasing prices for the balance of the Contract term due to a change in market conditions, a Contractor may conduct sales promotions involving price reductions for a specified lesser period. A Contractor shall submit to the Contract Specialist

documentation identifying the proposed (1) starting and ending dates of the promotion, (2) products involved, and (3) promotional prices compared to then-authorized prices. Promotional prices shall be available to all Customers. Upon approval, the Contractor shall provide conspicuous notice of the promotion.

(d) Trade-In. Customers may trade-in equipment when making purchases from the Contract. A trade-in shall be negotiated between the Customer and the Contractor. Customers are obligated to actively seek current fair market value when trading equipment, and to keep accurate records of the process. For State agencies, it may be necessary to provide documentation to the Department of Financial Services and to the agency property custodian pursuant to Chapter 273, F.S.

(e) Equitable Adjustment. The Customer may, in its sole discretion, make an equitable adjustment in the Contract terms or pricing if pricing or availability of supply is affected by extreme and unforeseen volatility in the marketplace, that is, by circumstances that satisfy all the following criteria: (1) the volatility is due to causes wholly beyond the Contractor's control, (2) the volatility affects the marketplace or industry, not just the particular Contract source of supply, (3) the effect on pricing or availability of supply is substantial, and (4) the volatility so affects the Contractor that continued performance of the Contract would result in a substantial loss.

~~**5. Additional Quantities.** For a period not exceeding ninety (90) days from the date of solicitation award, the Customer reserves the right to acquire additional quantities up to the amount shown on the solicitation but not to exceed the threshold for Category Two at the prices submitted in the response to the solicitation.~~

6. Packaging. Tangible product shall be securely and properly packed for shipment, storage, and stocking in appropriate, clearly labeled, shipping containers and according to accepted commercial practice, without extra charge for packing materials, cases, or other types of containers. All containers and packaging shall become and remain Customer's property.

7. Inspection at Contractor's Site. The Customer reserves the right to inspect, at any reasonable time with prior notice, the equipment or product or plant or other facilities of a Contractor to assess conformity with Contract requirements and to determine whether they are adequate and suitable for proper and effective Contract performance.

8. Safety Standards. All manufactured items and fabricated assemblies subject to operation under pressure, operation by connection to an electric source, or operation involving connection to a manufactured, natural, or LP gas source shall be constructed and approved in a manner acceptable to the appropriate State inspector. Acceptability customarily requires, at a minimum, identification marking of the appropriate safety standard organization, where such approvals of listings have been established for the type of device offered and furnished, for example: the American Society of Mechanical Engineers for pressure vessels; the Underwriters Laboratories and/or National Electrical Manufacturers' Association for electrically operated assemblies; and the American Gas Association for gas-operated assemblies. In addition, all items furnished shall meet all applicable requirements of the Occupational Safety and Health Act and state and federal requirements relating to clean air and water pollution.

9. Americans with Disabilities Act. Contractors should identify any products that may be used or adapted for use by visually, hearing, or other physically impaired individuals.

10. Literature. Upon request, the Contractor shall furnish literature reasonably related to the product offered, for example, user manuals, price schedules, catalogs, descriptive brochures, etc.

~~**11. Transportation and Delivery.** Prices shall include all charges for packing, handling,~~

~~freight, distribution, and inside delivery. Transportation of goods shall be FOB Destination to any point within thirty (30) days after the Customer places an Order. A Contractor, within five (5) days after receiving a purchase order, shall notify the Customer of any potential delivery delays. Evidence of inability or intentional delays shall be cause for Contract cancellation and Contractor suspension.~~

12. Installation. Where installation is required, Contractor shall be responsible for placing and installing the product in the required locations at no additional charge, unless otherwise designated on the Contract or purchase order. Contractor's authorized product and price list shall clearly and separately identify any additional installation charges. All materials used in the installation shall be of good quality and shall be free of defects that would diminish the appearance of the product or render it structurally or operationally unsound. Installation includes the furnishing of any equipment, rigging, and materials required to install or replace the product in the proper location. Contractor shall protect the site from damage and shall repair damages or injury caused during installation by Contractor or its employees or agents. If any alteration, dismantling, excavation, etc., is required to achieve installation, the Contractor shall promptly restore the structure or site to its original condition. Contractor shall perform installation work so as to cause the least inconvenience and interference with Customers and with proper consideration of others on site. Upon completion of the installation, the location and surrounding area of work shall be left clean and in a neat and unobstructed condition, with everything in satisfactory repair and order.

13. Risk of Loss. Matters of inspection and acceptance are addressed in s. 215.422, F.S. Until acceptance, risk of loss or damage shall remain with the Contractor. The Contractor shall be responsible for filing, processing, and collecting all damage claims. To assist the Contractor with damage claims, the Customer shall: record any evidence of visible damage on all copies of the delivering carrier's Bill of Lading; report damages to the carrier and the Contractor; and provide the Contractor with a copy of the carrier's Bill of Lading and damage inspection report. When a Customer rejects a product, Contractor shall remove it from the premises within ten days after notification or rejection. Upon rejection notification, the risk of loss of rejected or non-conforming product shall remain with the Contractor. Rejected product not removed by the Contractor within ten days shall be deemed abandoned by the Contractor, and the Customer shall have the right to dispose of it as its own property. Contractor shall reimburse the Customer for costs and expenses incurred in storing or effecting removal or disposition of rejected product.

14. Transaction Fee. The State of Florida has instituted MyFloridaMarketPlace, a statewide eProcurement System ("System"). Pursuant to section 287.057(22), Florida Statutes, all payments shall be assessed a Transaction Fee of one percent (1.0%), which the Contractor shall pay to the State, unless exempt pursuant to 60A-1.032, F.A.C.

For payments within the State accounting system (FLAIR or its successor), the Transaction Fee shall, when possible, be automatically deducted from payments to the Contractor. If automatic deduction is not possible, the Contractor shall pay the Transaction Fee pursuant to Rule 60A-1.031(2), F.A.C. By submission of these reports and corresponding payments, Contractor certifies their correctness. All such reports and payments shall be subject to audit by the State or its designee.

Contractor shall receive a credit for any Transaction Fee paid by the Contractor for the purchase of any item(s) if such item(s) are returned to the Contractor through no fault, act, or omission of the Contractor. Notwithstanding the foregoing, a Transaction Fee is non-refundable when an item is rejected or returned, or declined, due to the Contractor's failure to perform or comply with specifications or requirements of the agreement.

Failure to comply with these requirements shall constitute grounds for declaring the Contractor in default and recovering procurement costs from the Contractor in addition to all outstanding fees. **CONTRACTORS DELINQUENT IN PAYING TRANSACTION FEES MAY BE SUBJECT TO BEING REMOVED FROM THE DEPARTMENT OF MANAGEMENT SERVICES' VENDOR**

LIST AS PROVIDED IN RULE 60A-1.006, F.A.C.

15. Invoicing and Payment. Invoices shall contain the Contract number, purchase order number if applicable, and the appropriate vendor identification number. The State may require any other information from the Contractor that the State deems necessary to verify any purchase order placed under the Contract.

At the State's option, Contractors may be required to invoice electronically pursuant to guidelines of the Department of Management Services. Current guidelines require that Contractor supply electronic invoices in lieu of paper-based invoices for those transactions processed through the system. Electronic invoices shall be submitted to the Customer through the Ariba Supplier Network (ASN) in one of the following mechanisms – EDI 810, cXML, or web-based invoice entry within the ASN.

Payment shall be made in accordance with sections 215.422 and 287.0585 of the Florida Statutes, which govern time limits for payment of invoices. Invoices that must be returned to a Contractor due to preparation errors will result in a delay in payment. The Customer is responsible for all payments under the Contract. A Customer's failure to pay, or delay in payment, shall not constitute a breach of the Contract and shall not relieve the Contractor of its obligations to the Department or to other Customers. A vendor ombudsman has been established within the Department of Financial Services. The duties of this individual include acting as an advocate for vendors who may be experiencing problems in obtaining timely payment(s) from a state agency. The Vendor Ombudsman may be contacted at (850) 413-5516 or by calling the Division of Consumer Services at 1-877-693-5236.

16. Taxes. The State does not pay Federal excise or sales taxes on direct purchases of tangible personal property. The State will not pay for any personal property taxes levied on the Contractor or for any taxes levied on employees' wages. Any exceptions to this paragraph shall be explicitly noted by the Customer in the special contract conditions section of the solicitation or in the Contract or purchase order.

17. Governmental Restrictions. If the Contractor believes that any governmental restrictions have been imposed that require alteration of the material, quality, workmanship or performance of the products offered under the Contract, the Contractor shall immediately notify the Customer in writing, indicating the specific restriction. The Customer reserves the right and the complete discretion to accept any such alteration or to cancel the Contract at no further expense to the Customer.

18. Lobbying and Integrity. Customers shall ensure compliance with Section 11.062, FS and Section 216.347, FS. The Contractor shall not, in connection with this or any other agreement with the State, directly or indirectly (1) offer, confer, or agree to confer any pecuniary benefit on anyone as consideration for any State officer or employee's decision, opinion, recommendation, vote, other exercise of discretion, or violation of a known legal duty, or (2) offer, give, or agree to give to anyone any gratuity for the benefit of, or at the direction or request of, any State officer or employee. For purposes of clause (2), "gratuity" means any payment of more than nominal monetary value in the form of cash, travel, entertainment, gifts, meals, lodging, loans, subscriptions, advances, deposits of money, services, employment, or contracts of any kind. Upon request of the Customer's Inspector General, or other authorized State official, the Contractor shall provide any type of information the Inspector General deems relevant to the Contractor's integrity or responsibility. Such information may include, but shall not be limited to, the Contractor's business or financial records, documents, or files of any type or form that refer to or relate to the Contract. The Contractor shall retain such records for the longer of (1) three years after the expiration of the Contract or (2) the period required by the General Records Schedules maintained by the Florida Department of State (available at: <http://dliis.dos.state.fl.us/barm/genschedules/gensched.htm>). The Contractor agrees to reimburse the State for the reasonable costs of investigation incurred by the Inspector General or other authorized State official for investigations of the Contractor's compliance with the terms

of this or any other agreement between the Contractor and the State which results in the suspension or debarment of the Contractor. Such costs shall include, but shall not be limited to: salaries of investigators, including overtime; travel and lodging expenses; and expert witness and documentary fees. The Contractor shall not be responsible for any costs of investigations that do not result in the Contractor's suspension or debarment.

~~**19. Indemnification.** The Contractor shall be fully liable for the actions of its agents, employees, partners, or subcontractors and shall fully indemnify, defend, and hold harmless the State and Customers, and their officers, agents, and employees, from suits, actions, damages, and costs of every name and description, including attorneys' fees, arising from or relating to personal injury and damage to real or personal tangible property alleged to be caused in whole or in part by Contractor, its agents, employees, partners, or subcontractors, provided, however, that the Contractor shall not indemnify for that portion of any loss or damages proximately caused by the negligent act or omission of the State or a Customer.~~

~~Further, the Contractor shall fully indemnify, defend, and hold harmless the State and Customers from any suits, actions, damages, and costs of every name and description, including attorneys' fees, arising from or relating to violation or infringement of a trademark, copyright, patent, trade secret or intellectual property right, provided, however, that the foregoing obligation shall not apply to a Customer's misuse or modification of Contractor's products or a Customer's operation or use of Contractor's products in a manner not contemplated by the Contract or the purchase order. If any product is the subject of an infringement suit, or in the Contractor's opinion is likely to become the subject of such a suit, the Contractor may at its sole expense procure for the Customer the right to continue using the product or to modify it to become non-infringing. If the Contractor is not reasonably able to modify or otherwise secure the Customer the right to continue using the product, the Contractor shall remove the product and refund the Customer the amounts paid in excess of a reasonable rental for past use. The customer shall not be liable for any royalties.~~

~~The Contractor's obligations under the preceding two paragraphs with respect to any legal action are contingent upon the State or Customer giving the Contractor (1) written notice of any action or threatened action, (2) the opportunity to take over and settle or defend any such action at Contractor's sole expense, and (3) assistance in defending the action at Contractor's sole expense. The Contractor shall not be liable for any cost, expense, or compromise incurred or made by the State or Customer in any legal action without the Contractor's prior written consent, which shall not be unreasonably withheld.~~

~~**20. Limitation of Liability.** For all claims against the Contractor under any contract or purchase order, and regardless of the basis on which the claim is made, the Contractor's liability under a contract or purchase order for direct damages shall be limited to the greater of \$100,000, the dollar amount of the contract or purchase order, or two times the charges rendered by the Contractor under the purchase order. This limitation shall not apply to claims arising under the Indemnity paragraph contain in this agreement.~~

~~Unless otherwise specifically enumerated in the Contract or in the purchase order, no party shall be liable to another for special, indirect, punitive, or consequential damages, including lost data or records (unless the contract or purchase order requires the Contractor to back-up data or records), even if the party has been advised that such damages are possible. No party shall be liable for lost profits, lost revenue, or lost institutional operating savings. The State and Customer may, in addition to other remedies available to them at law or equity and upon notice to the Contractor, retain such monies from amounts due Contractor as may be necessary to satisfy any claim for damages, penalties, costs and the like asserted by or against them. The State may set off any liability or other obligation of the Contractor or its affiliates to the State against any payments due the Contractor under any contract with the State.~~

~~**21. Suspension of Work.** The Customer may in its sole discretion suspend any or all activities~~

under the Contract or purchase order, at any time, when in the best interests of the State to do so. The Customer shall provide the Contractor written notice outlining the particulars of suspension. Examples of the reason for suspension include, but are not limited to, budgetary constraints, declaration of emergency, or other such circumstances. After receiving a suspension notice, the Contractor shall comply with the notice and shall not accept any purchase orders. Within ninety days, or any longer period agreed to by the Contractor, the Customer shall either (1) issue a notice authorizing resumption of work, at which time activity shall resume, or (2) terminate the Contract or purchase order. Suspension of work shall not entitle the Contractor to any additional compensation.

~~**22. Termination for Convenience.** The Customer, by written notice to the Contractor, may terminate the Contract in whole or in part when the Customer determines in its sole discretion that it is in the State's interest to do so. The Contractor shall not furnish any product after it receives the notice of termination, except as necessary to complete the continued portion of the Contract, if any. The Contractor shall not be entitled to recover any cancellation charges or lost profits.~~

~~**23. Termination for Cause.** The Customer may terminate the Contract if the Contractor fails to (1) deliver the product within the time specified in the Contract or any extension, (2) maintain adequate progress, thus endangering performance of the Contract, (3) honor any term of the Contract, or (4) abide by any statutory, regulatory, or licensing requirement. Rule 60A-1.006(3), F.A.C., governs the procedure and consequences of default. The Contractor shall continue work on any work not terminated. Except for defaults of subcontractors at any tier, the Contractor shall not be liable for any excess costs if the failure to perform the Contract arises from events completely beyond the control, and without the fault or negligence, of the Contractor. If the failure to perform is caused by the default of a subcontractor at any tier, and if the cause of the default is completely beyond the control of both the Contractor and the subcontractor, and without the fault or negligence of either, the Contractor shall not be liable for any excess costs for failure to perform, unless the subcontracted products were obtainable from other sources in sufficient time for the Contractor to meet the required delivery schedule. If, after termination, it is determined that the Contractor was not in default, or that the default was excusable, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the Customer. The rights and remedies of the Customer in this clause are in addition to any other rights and remedies provided by law or under the Contract.~~

24. Force Majeure, Notice of Delay, and No Damages for Delay. The Contractor shall not be responsible for delay resulting from its failure to perform if neither the fault nor the negligence of the Contractor or its employees or agents contributed to the delay and the delay is due directly to acts of God, wars, acts of public enemies, strikes, fires, floods, or other similar cause wholly beyond the Contractor's control, or for any of the foregoing that affect subcontractors or suppliers if no alternate source of supply is available to the Contractor. In case of any delay the Contractor believes is excusable, the Contractor shall notify the Customer in writing of the delay or potential delay and describe the cause of the delay either (1) within ten (10) days after the cause that creates or will create the delay first arose, if the Contractor could reasonably foresee that a delay could occur as a result, or (2) if delay is not reasonably foreseeable, within five (5) days after the date the Contractor first had reason to believe that a delay could result. **THE FOREGOING SHALL CONSTITUTE THE CONTRACTOR'S SOLE REMEDY OR EXCUSE WITH RESPECT TO DELAY.** Providing notice in strict accordance with this paragraph is a condition precedent to such remedy. No claim for damages, other than for an extension of time, shall be asserted against the Customer. The Contractor shall not be entitled to an increase in the Contract price or payment of any kind from the Customer for direct, indirect, consequential, impact or other costs, expenses or damages, including but not limited to costs of acceleration or inefficiency, arising because of delay, disruption, interference, or hindrance from any cause whatsoever. If performance is suspended or delayed, in whole or in part, due to any of the causes described in this paragraph, after the causes have ceased to exist the Contractor shall

perform at no increased cost, unless the Customer determines, in its sole discretion, that the delay will significantly impair the value of the Contract to the State or to Customers, in which case the Customer may (1) accept allocated performance or deliveries from the Contractor, provided that the Contractor grants preferential treatment to Customers with respect to products subjected to allocation, or (2) purchase from other sources (without recourse to and by the Contractor for the related costs and expenses) to replace all or part of the products that are the subject of the delay, which purchases may be deducted from the Contract quantity, or (3) terminate the Contract in whole or in part.

~~**25. Changes.** The Customer may unilaterally require, by written order, changes altering, adding to, or deducting from the Contract specifications, provided that such changes are within the general scope of the Contract. The Customer may make an equitable adjustment in the Contract price or delivery date if the change affects the cost or time of performance. Such equitable adjustments require the written consent of the Contractor, which shall not be unreasonably withheld. If unusual quantity requirements arise, the Customer may solicit separate bids to satisfy them.~~

~~**26. Renewal.** Upon mutual agreement, the Customer and the Contractor may renew the Contract, in whole or in part, for a period that may not exceed 3 years or the term of the contract, whichever period is longer. Any renewal shall specify the renewal price, as set forth in the solicitation response. The renewal must be in writing and signed by both parties, and is contingent upon satisfactory performance evaluations and subject to availability of funds.~~

~~**27. Purchase Order Duration.** Purchase orders issued pursuant to a state term or agency contract must be received by the Contractor no later than close of business on the last day of the contract's term to be considered timely. The Contractor is obliged to fill those orders in accordance with the contract's terms and conditions. Purchase orders received by the contractor after close of business on the last day of the state term or agency contract's term shall be considered void.~~

~~Purchase orders for a one-time delivery of commodities or performance of contractual services shall be valid through the performance by the Contractor, and all terms and conditions of the state term or agency contract shall apply to the single delivery/performance, and shall survive the termination of the Contract.~~

~~Contractors are required to accept purchase orders specifying delivery schedules exceeding the contracted schedule even when such extended delivery will occur after expiration of the state term or agency contract. For example, if a state term contract calls for delivery 30 days after receipt of order (ARO), and an order specifies delivery will occur both in excess of 30 days ARO and after expiration of the state term contract, the Contractor will accept the order. However, if the Contractor expressly and in writing notifies the ordering office within ten (10) calendar days of receipt of the purchase order that Contractor will not accept the extended delivery terms beyond the expiration of the state term contract, then the purchase order will either be amended in writing by the ordering entity within ten (10) calendar days of receipt of the contractor's notice to reflect the state term contract delivery schedule, or it shall be considered withdrawn.~~

~~The duration of purchase orders for recurring deliveries of commodities or performance of services shall not exceed the expiration of the state term or agency contract by more than twelve months. However, if an extended pricing plan offered in the state term or agency contract is selected by the ordering entity, the contract terms on pricing plans and renewals shall govern the maximum duration of purchase orders reflecting such pricing plans and renewals.~~

~~Timely purchase orders shall be valid through their specified term and performance by the Contractor, and all terms and conditions of the state term or agency contract shall apply to the recurring delivery/performance as provided herein, and shall survive the termination of the~~

~~Contract.~~

~~Ordering offices shall not renew a purchase order issued pursuant to a state term or agency contract if the underlying contract expires prior to the effective date of the renewal.~~

28. Advertising. Subject to Chapter 119, Florida Statutes, the Contractor shall not publicly disseminate any information concerning the Contract without prior written approval from the Customer, including, but not limited to mentioning the Contract in a press release or other promotional material, identifying the Customer or the State as a reference, or otherwise linking the Contractor's name and either a description of the Contract or the name of the State or the Customer in any material published, either in print or electronically, to any entity that is not a party to Contract, except potential or actual authorized distributors, dealers, resellers, or service representative.

~~**29. Assignment.** The Contractor shall not sell, assign or transfer any of its rights, duties or obligations under the Contract, or under any purchase order issued pursuant to the Contract, without the prior written consent of the Customer. In the event of any assignment, the Contractor remains secondarily liable for performance of the contract, unless the Customer expressly waives such secondary liability. The Customer may assign the Contract with prior written notice to Contractor of its intent to do so.~~

30. Antitrust Assignment. The Contractor and the State of Florida recognize that in actual economic practice, overcharges resulting from antitrust violations are in fact usually borne by the State of Florida. Therefore, the contractor hereby assigns to the State of Florida any and all claims for such overcharges as to goods, materials or services purchased in connection with the Contract.

~~**31. Dispute Resolution.** Any dispute concerning performance of the Contract shall be decided by the Customer's designated contract manager, who shall reduce the decision to writing and serve a copy on the Contractor. The decision shall be final and conclusive unless within twenty one (21) days from the date of receipt, the Contractor files with the Customer a petition for administrative hearing. The Customer's decision on the petition shall be final, subject to the Contractor's right to review pursuant to Chapter 120 of the Florida Statutes. Exhaustion of administrative remedies is an absolute condition precedent to the Contractor's ability to pursue any other form of dispute resolution; provided, however, that the parties may employ the alternative dispute resolution procedures outlined in Chapter 120.~~

~~Without limiting the foregoing, the exclusive venue of any legal or equitable action that arises out of or relates to the Contract shall be the appropriate state court in Leon County, Florida; in any such action, Florida law shall apply and the parties waive any right to jury trial.~~

32. Employees, Subcontractors, and Agents. All Contractor employees, subcontractors, or agents performing work under the Contract shall be properly trained technicians who meet or exceed any specified training qualifications. Upon request, Contractor shall furnish a copy of technical certification or other proof of qualification. All employees, subcontractors, or agents performing work under the Contract must comply with all security and administrative requirements of the Customer and shall comply with all controlling laws and regulations relevant to the services they are providing under the Contract. The State may conduct, and the Contractor shall cooperate in, a security background check or otherwise assess any employee, subcontractor, or agent furnished by the Contractor. The State may refuse access to, or require replacement of, any personnel for cause, including, but not limited to, technical or training qualifications, quality of work, change in security status, or non-compliance with a Customer's security or other requirements. Such approval shall not relieve the Contractor of its obligation to perform all work in compliance with the Contract. The State may reject and bar from any facility for cause any of the Contractor's employees, subcontractors, or agents.

33. Security and Confidentiality. The Contractor shall comply fully with all security procedures of the United States, State of Florida and Customer in performance of the Contract. The Contractor shall not divulge to third parties any confidential information obtained by the Contractor or its agents, distributors, resellers, subcontractors, officers or employees in the course of performing Contract work, including, but not limited to, security procedures, business operations information, or commercial proprietary information in the possession of the State or Customer. The Contractor shall not be required to keep confidential information or material that is publicly available through no fault of the Contractor, material that the Contractor developed independently without relying on the State's or Customer's confidential information, or material that is otherwise obtainable under State law as a public record. To insure confidentiality, the Contractor shall take appropriate steps as to its personnel, agents, and subcontractors. The warranties of this paragraph shall survive the Contract.

34. Contractor Employees, Subcontractors, and Other Agents. The Customer and the State shall take all actions necessary to ensure that Contractor's employees, subcontractors and other agents are not employees of the State of Florida. Such actions include, but are not limited to, ensuring that Contractor's employees, subcontractors, and other agents receive benefits and necessary insurance (health, workers' compensations, and unemployment) from an employer other than the State of Florida.

~~**35. Insurance Requirements.** During the Contract term, the Contractor at its sole expense shall provide commercial insurance of such a type and with such terms and limits as may be reasonably associated with the Contract. Providing and maintaining adequate insurance coverage is a material obligation of the Contractor. Upon request, the Contractor shall provide certificate of insurance. The limits of coverage under each policy maintained by the Contractor shall not be interpreted as limiting the Contractor's liability and obligations under the Contract. All insurance policies shall be through insurers authorized or eligible to write policies in Florida.~~

36. Warranty of Authority. Each person signing the Contract warrants that he or she is duly authorized to do so and to bind the respective party to the Contract.

37. Warranty of Ability to Perform. The Contractor warrants that, to the best of its knowledge, there is no pending or threatened action, proceeding, or investigation, or any other legal or financial condition, that would in any way prohibit, restrain, or diminish the Contractor's ability to satisfy its Contract obligations. The Contractor warrants that neither it nor any affiliate is currently on the convicted vendor list maintained pursuant to section 287.133 of the Florida Statutes, or on any similar list maintained by any other state or the federal government. The Contractor shall immediately notify the Customer in writing if its ability to perform is compromised in any manner during the term of the Contract.

38. Notices. All notices required under the Contract shall be delivered by certified mail, return receipt requested, by reputable air courier service, or by personal delivery to the agency designee identified in the original solicitation, or as otherwise identified by the Customer. Notices to the Contractor shall be delivered to the person who signs the Contract. Either designated recipient may notify the other, in writing, if someone else is designated to receive notice.

39. Leases and Installment Purchases. Prior approval of the Chief Financial Officer (as defined in Section 17.001, F.S.) is required for State agencies to enter into or to extend any lease or installment-purchase agreement in excess of the Category Two amount established by section 287.017 of the Florida Statutes.

~~**40. Prison Rehabilitative Industries and Diversified Enterprises, Inc. (PRIDE).** Section 946.515(2), F.S. requires the following statement to be included in the solicitation: "It is expressly understood and agreed that any articles which are the subject of, or required to carry out, the Contract shall be purchased from the corporation identified under Chapter 946 of the~~

~~Florida Statutes (PRIDE) in the same manner and under the same procedures set forth in section 946.515(2) and (4) of the Florida Statutes; and for purposes of the Contract the person, firm, or other business entity carrying out the provisions of the Contract shall be deemed to be substituted for the agency insofar as dealings with such corporation are concerned." Additional information about PRIDE and the products it offers is available at <http://www.pridefl.com>.~~

~~**41. Products Available from the Blind or Other Handicapped.** Section 413.036(3), F.S. requires the following statement to be included in the solicitation: "It is expressly understood and agreed that any articles that are the subject of, or required to carry out, this contract shall be purchased from a nonprofit agency for the Blind or for the Severely Handicapped that is qualified pursuant to Chapter 413, Florida Statutes, in the same manner and under the same procedures set forth in section 413.036(1) and (2), Florida Statutes; and for purposes of this contract the person, firm, or other business entity carrying out the provisions of this contract shall be deemed to be substituted for the State agency insofar as dealings with such qualified nonprofit agency are concerned." Additional information about the designated nonprofit agency and the products it offers is available at <http://www.respectofflorida.org>.~~

~~**42. Modification of Terms.** The Contract contains all the terms and conditions agreed upon by the parties, which terms and conditions shall govern all transactions between the Customer and the Contractor. The Contract may only be modified or amended upon mutual written agreement of the Customer and the Contractor. No oral agreements or representations shall be valid or binding upon the Customer or the Contractor. No alteration or modification of the Contract terms, including substitution of product, shall be valid or binding against the Customer. The Contractor may not unilaterally modify the terms of the Contract by affixing additional terms to product upon delivery (e.g., attachment or inclusion of standard preprinted forms, product literature, "shrink wrap" terms accompanying or affixed to a product, whether written or electronic) or by incorporating such terms onto the Contractor's order or fiscal forms or other documents forwarded by the Contractor for payment. The Customer's acceptance of product or processing of documentation on forms furnished by the Contractor for approval or payment shall not constitute acceptance of the proposed modification to terms and conditions.~~

~~**43. Cooperative Purchasing.** Pursuant to their own governing laws, and subject to the agreement of the Contractor, other entities may be permitted to make purchases at the terms and conditions contained herein. Non-Customer purchases are independent of the agreement between Customer and Contractor, and Customer shall not be a party to any transaction between the Contractor and any other purchaser. State agencies wishing to make purchases from this agreement are required to follow the provisions of s. 287.042(16)(a), F.S. This statute requires the Department of Management Services to determine that the requestor's use of the contract is cost-effective and in the best interest of the State.~~

~~**44. Waiver.** The delay or failure by the Customer to exercise or enforce any of its rights under this Contract shall not constitute or be deemed a waiver of the Customer's right thereafter to enforce those rights, nor shall any single or partial exercise of any such right preclude any other or further exercise thereof or the exercise of any other right.~~

~~**45. Annual Appropriations.** The State's performance and obligation to pay under this contract are contingent upon an annual appropriation by the Legislature.~~

~~**46. Execution in Counterparts.** The Contract may be executed in counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.~~

~~**47. Severability.** If a court deems any provision of the Contract void or unenforceable, that provision shall be enforced only to the extent that it is not in violation of law or is not otherwise unenforceable and all other provisions shall remain in full force and effect.~~

Central Florida Rail Corridor, Operations and Maintenance Services

EXHIBIT "B"

METHOD OF COMPENSATION

1.0 PURPOSE:

This Exhibit defines the limits of compensation to be made to the Vendor for the services set forth in Exhibit "A" Scope of Services and the method by which payments shall be made.

This is a Term Contract for an Indefinite Quantity whereby the Vendor agrees to furnish services during a prescribed period of time. The specific period of time completes such a contract. Execution of this Agreement does not guarantee that any of the work will be authorized.

2.0 FUNDING

For the satisfactory performance of the Services detailed in the Contract, the Vendor shall be paid up to the Amount as shown in each Letter of Authorization, Emergency Work Order, or Supplemental Agreement.

The total amount of this agreement is expected to be funded by multiple appropriations and the State of Florida's performance and obligation to pay under this contract is contingent upon annual appropriation by the Legislature. The Department, based on need and availability of budget, may increase or decrease the amount of funding available and may add additional funding as the Department determines is appropriate.

There is no budgetary Ceiling for this contract. Funding for services will be authorized on an as needed basis by Letter of Authorization or Supplemental Agreement.

Currently Funding in the amount of \$419,066.36 for fiscal year 2013/2014 is available for "Operations and Maintenance Mobilization Services" under this contract. Therefore, it is agreed that the Vendor will not be obligated to perform services nor incur costs which would result in exceeding the funding currently approved, nor will the Department be obligated to reimburse the Vendor for costs or make payments in excess of currently established funding.

The Department will issue a "Notice to Proceed" for the commencement of Operations Mobilization.

The Department will issue a "Notice to Proceed" for the commencement of Maintenance Mobilization.

At such time as funding is made available for Operations Services the Department will issue a written "Letter of Authorization" authorizing the additional funds.

At such time as funding is made available for Maintenance Services the Department will issue a written "Letter of Authorization" authorizing the additional funds.

The Department will issue a "Notice to Proceed" for the commencement of Operations and

Maintenance Services.

Letters of Authorization shall be used for the annual appropriation of funds necessary for Operations and Maintenance Services, and funding for Incentive payments. Each letter of Authorization shall show the amount authorized under that specific Letter of Authorization, and the Total contract amount authorized to date for Operations and Maintenance Services and for Incentive payments.

Total amount of Funding under this contract will increase or decrease according to the total of all Letters of Authorization, Supplemental Agreements and Dis-incentive and liquidated damages reductions. Funding for each Letter of Authorization and Supplemental Agreement shall be authorized by the Department prior to the commencement of any services.

Annually on the anniversary date of the Notice to Proceeds for Operations and Maintenance Services the Department will issue a Letter of Authorization for the upcoming years Operations and Maintenance Services and any amount deemed necessary to fund that years Incentive payments.

At the Department's option additional services or commodities necessary for the successful completion of the contract may be added through one or more Supplemental Agreements contingent upon legislative appropriation, budget and funding approval. The Department, based on need and availability of budget, may increase the Contract amount by supplemental agreement. The amount for each Supplemental Agreement will be negotiated between the Vendor and Department. Once an amount is agreed to by both the Department and Vendor funding will be authorized and a Supplemental Agreement will be issued for the required services. Additions and changes to the funding, services or commodities required by Exhibit "A" Scope of Services will be made by Supplemental Agreement.

The Department may supplement this contract for an adjustment for Substantial Economic Impact as described and defined in the contract. The amount for the Substantial Economic Impact will be negotiated between the Vendor and Department. Once an amount is agreed to by both the Department and Vendor funding will be authorized and a Supplemental Agreement will be issued.

At the Department's sole discretion the Department may authorize Emergency Services by Emergency Work Order as described in the contract. In the event that Emergency Services are required the Vendor and the Department shall negotiate an acceptable price for the work and secure funding prior to issuing the Emergency Work Order. Funding in the amount of \$150,000.00 for Emergency Work Orders has been authorized and is available at this time. Nothing under this section shall preclude the Department from securing the services of another vendor to provide any Emergency Work.

3.0 COMPENSATION

3.1 Progress Payments:

3.1.1 Maintenance Mobilization Services:

Vendor shall be compensated for Maintenance Mobilization Services at the Monthly amount shown in Table 1 below.

3.1.2 Operations Mobilization Services:

Vendor shall be compensated for Operations Mobilization Services at the Monthly amount shown in Table 1 below.

3.1.3 Operations Services: Base Year:

Vendor shall be compensated for Operations Services at the Monthly amount shown in Table 1, below for the Base Year.

3.1.4 Maintenance Services: Base Year:

Vendor shall be compensated for Maintenance Services at the Monthly amount shown in Table 1, below for the Base Year.

3.1.5 Operations Services Years two through seven:

3.1.6 Maintenance Services Years two through seven:

During years two through seven the Vendor shall be compensated as follows:

The Lump Sum amount for the first twelve month period of "Operations Services and Maintenance Services" is the Base Year, and shall be considered the Base Year for future year payments. The annual Lump Sum amount for the second through seventh years of the contract shall include an adjustment in compensation based on the Base Year Lump Sum amount. Annually the Lump Sum amount shall be adjusted based on the Association of American Railroads (AAR) cost index as follows. Consistent with the AAR Cost Indexes, the base year for payment adjustment purposes shall be established as a cost index of 100 for the first full year of the Operations and Maintenance Contract. After the completion of the base year and annually throughout the life of the Contract the Contract payments shall be adjusted on the Notice to Proceed date for Operations Services and on the Notice to Proceed date for Maintenance Services from the base year 100 index based on the previous four quarter average of the published AAR All-Inclusive Index Less Fuel with Forecast Error adjustment. The amount of the AAR Index adjustment may be positive or negative. The adjustment will be based on the calculation below:

BY = Base year = the average of the first four quarters of Revenue Service for the O&M as reported in the AAR all inclusive index less fuel. This will be constant throughout the contract term.

CY = Current Year = Average of the most current four quarters index as reported in the AAR all inclusive index less fuel.

Using the base year and current year information as reported in the AAR all inclusive index less fuel

Annual Price adjustment percentage = $((CY - BY)/BY) \times 100$

No extra work, optional services, economic impact payments, supplemental work, Incentives, dis-incentives or liquidated damages amounts will be included in the calculation of the annual cost adjustment.

Vendor shall be compensated monthly the Lump Sum Amount for Operations Services and Maintenance Services as shown below for year one. Vendor will be paid the Lump Sum amount for full and proper completion of all the required services as required by the Contract. The monthly amount shall be inclusive of all time, effort, and expenses of the Vendor in performing the required services. The Vendor will be paid when the required services have been accepted by the Department, and properly invoiced by the Vendor during the billing period.

TABLE 1,

Operations and Maintenance Mobilization Services, Operations and Maintenance Services
Monthly Lump Sum Amount

Operations Mobilization \$47,665.88, Monthly Lump Sum Amount

Maintenance Mobilization \$57,100.71, Monthly Lump Sum Amount

Operations Services \$536,620.86, Monthly Lump Sum Payment
YR 1, Base Year

Maintenance Services \$1,080,044.10, Monthly Lump Sum Payment
YR 1, Base Year

3.2 Emergency Work Orders and Supplemental Agreement Services:

The Vendor will receive progress payments for Emergency Work Orders and Supplemental Agreements based on the percentage of services that have been completed and accepted by the Department during the billing period or as negotiated for each Emergency Work Order or Supplemental Agreement.

The Department may supplement this contract for an adjustment for Substantial Economic Impact as described and defined in the contract. Once an amount for the Substantial Economic Impact is agreed to by both the Department and Vendor funding will be authorized by Supplemental Agreement and a one-time Lump Sum payment will be made.

3.3 Incentive Payments:

The Vendor will receive payment for Incentives in accordance with Exhibit "A", Scope of Services, Table 15-1 Section 15.1.1.3,

3.4 Liquidated Damages and Work Performed by Others:

The Vendor will be assessed Liquidated Damages and dis-incentives in the amounts shown and under the circumstances defined in the contract. Liquidated Damages and dis-incentives will be assessed and deducted from the monthly Lump Sum invoice as per section 5.0 below.

The Vendor's monthly invoice shall be reduced by any amounts due the Department for work done by others as described in Exhibit "A", Scope of Services, Section

2.3.1.2, and Section 5.3.

3.5 At the sole discretion of the Department, the Department may reimburse the Vendor for the actual cost of inventory items costing in excess of \$1,000.00 as related to Exhibit "A", Scope of services, Section 2.3.5.7 "replacement of Inventory"

4.0 DETAILS OF COSTS AND FEES:

Operations and Maintenance Services:

The Lump Sum Monthly payment amounts for the performance of the Operations Services and Maintenance Services are detailed in Section 3. above. Payment of the lump sum amounts will constitute full compensation for the work and no additional compensation will be paid for overhead, operating margin, expenses, travel, costs, or any other matter.

Emergency Work Orders and Supplemental Agreements:

The Lump Sum Amount for the performance of the Emergency Work Orders and Supplemental Agreements will be negotiated by the Department and Vendor. The amount of each Supplemental Agreement and will be included in the contract Total Amount upon execution. Payment of the vendor for this work will constitute full compensation for the work and no additional compensation will be paid for overhead, operating margin, expenses, travel, costs, or any other matter.

Actual Cost Inventory Items:

The vendor shall receive Lump Sum payments for actual cost inventory items in the amounts approved by the Department at intervals no more than monthly. Payment of the vendor for these commodities will constitute full compensation for the and no additional compensation will be paid for overhead, operating margin, expenses, travel, costs, or any other matter.

5.0 INVOICING PROCEDURE

Operations and Maintenance Services:

Monthly at the time of invoice the Vendor shall submit 4 invoices (3 copies) in a format acceptable to the Department. Payment shall be made to the Vendor for the monthly Lump Sum Amount due as approved by the Department.

Incentive Payments:

Monthly at the time of invoice vendor shall submit a separate invoice for any incentive payments they believe are due. The Project Manager shall verify that an incentive payment is due prior to approving any invoice. In the event that an incentive payment is due, payment will be made for the corresponding event. The Department reserves the right to process an incentive payment separately from the associated monthly invoice.

Reduction for Liquidated Damages Dis-Incentives and for Work Performed by Others:

Monthly at the time of invoice the Project Manager shall verify that no Liquidated Damages or Dis-incentive reductions are due prior to approving any invoice. In the event that liquidated damages are due, the invoice shall be reduced by the amount due for the corresponding event. The Department reserves the right to reduce any payment by any amount due under the Liquidated Damages or dis-incentives provisions within this contract.

Monthly at the time of invoice the Project Manager shall verify that no replacement work reductions are due prior to approving any invoice. In the event that replacement work reductions are due, the invoice shall be reduced by the amount due for the corresponding event. The Department reserves the right to reduce any payment by any amount due for work performed by others as described in Exhibit "A" Scope of Services, Section 2.3.1.2 and Section 5.3 of this contract.

Invoices shall be submitted to: Florida Department of Transportation
SunRail Project Manager
719 S. Woodland Blvd.
DeLand, FL 32720

Disadvantaged Business Reporting: The Vendor will access the Departments Equal Opportunity Compliance System located at:
<http://www.dot.state.fl.us/equalopportunityoffice/eoc.shtm> to report DBE usage

Actual Cost Inventory Items:

Invoices for Actual Cost Inventory items shall be delivered to and approved at the sole discretion of the Department. The Vendor shall submit monthly invoices in a format acceptable to the Department.

6.0 PROJECT CLOSEOUT

If requested, the Vendor will permit the Department to perform, or have performed, an audit of the records of the Vendor and any or all subvendors to support the compensation paid the Vendor. The audit will be performed as soon as practical after completion and acceptance of the contracted services. In the event funds paid to the Vendor under this agreement are subsequently properly disallowed by the Department because of accounting errors or changes not in conformity with this Amendment, the Vendor agrees that such disallowed amounts are due to the Department on demand. Further, the Department will have the right to deduct from any payment due the Vendor under any other contract any amount due the Department.

7.0 TANGIBLE PERSONAL PROPERTY:

This contract does not include the purchase of Tangible Personal Property as defined in Chapter 273, F.S., and is acquired in accordance with Rule 60A-1.017, Florida Administrative Code.

*Florida Department of Transportation
District 5*

EXHIBIT “C”

**REQUIRED CONTRACT PROVISIONS FOR
FEDERAL TRANSIT ADMINISTRATION FEDERAL-
AID CONTRACT**

For

Central Florida Commuter Rail Transit (CFCRT)
Operations and Maintenance

Financial Projects Number(s): 412994-8-82-1

Federal Aid Project Number(s): N/A

Contract Number: _____

REQUIRED CONTRACT PROVISIONS FOR
FEDERAL TRANSIT ADMINISTRATION FEDERAL-AID
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I. FLY AMERICA REQUIREMENTS

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

II. CARGO PREFERENCE REQUIREMENTS

Cargo Preference - Use of United States-Flag Vessels - The Vendor agrees: a. to use privately owned United States-Flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to the underlying contract to the extent such vessels are available at fair and reasonable rates for United States-Flag commercial vessels; b. to furnish within 20 working days following the date of loading for shipments originating within the United States or within 30 working days following the date of leading for shipments originating outside the United States, a legible copy of a rated, "on-board" commercial ocean bill-of-lading in English for each shipment of cargo described in the preceding paragraph to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590 and to the FTA recipient (through the contractor in the case of a subcontractor's bill-of-lading.) c. to include these requirements in all subcontracts issued pursuant to this contract when the subcontract may involve the transport of equipment, material, or commodities by ocean vessel.

III. ENERGY CONSERVATION

The Vendor agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.

IV. CLEAN WATER

(1) The Vendor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.

The Vendor agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

(2) The Vendor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

V. LOBBYING

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

APPENDIX A, 49 CFR PART 20--CERTIFICATION REGARDING LOBBYING

Certification for Contracts, Grants, Loans, and Cooperative Agreements

(To be submitted with each bid or offer exceeding \$100,000)

The undersigned [Vendor] certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for making lobbying contacts to an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form--LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions [as amended by "Government wide Guidance for New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96)]. Note: Language in paragraph (2) herein has been modified in accordance with Section 10 of the Lobbying

Disclosure Act of 1995 (P.L. 104-65, to be codified at 2 U.S.C. 1601, *et seq.*)]

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31, U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

[Note: Pursuant to 31 U.S.C. § 1352(c)(1)-(2)(A), any person who makes a prohibited expenditure or fails to file or amend a required certification or disclosure form shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such expenditure or failure.]

The Vendor, _____, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. A 3801, *et seq.*, apply to this certification and disclosure, if any.

_____ Signature of Vendor's Authorized Official

_____ Name and Title of Vendor's Authorized Official

_____ Date

VI. ACCESS TO RECORDS

The following access to records requirements apply to this Contract:

1. Where the Purchaser is not a State but a local government and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 C.F.R. 18.36(i), the Vendor agrees to provide the Purchaser, the FTA Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of the Vendor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions. Vendor also agrees, pursuant to 49 C.F.R. 633.17 to provide the FTA Administrator or his authorized representatives including any PMO Contractor access to Vendor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311.

2. Where the Purchaser is a State and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 C.F.R. 633.15, Vendor agrees to provide the Purchaser, the FTA Administrator or his authorized representatives, including any PMO Contractor, access to the Vendor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311. By definition, a major capital project excludes contracts of less than the simplified acquisition threshold currently set at \$100,000.
3. Where the Vendor enters into a negotiated contract for other than a small purchase or under the simplified acquisition threshold and is an institution of higher education, a hospital or other non-profit organization and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 C.F.R. 19.48, Vendor agrees to provide the Purchaser, FTA Administrator, the Comptroller General of the United States or any of their duly authorized representatives with access to any books, documents, papers and record of the Vendor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions.
4. Where any Purchaser which is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 U.S.C. 5325(a) enters into a contract for a capital project or improvement (defined at 49 U.S.C. 5302(a)1) through other than competitive bidding, the Vendor shall make available records related to the contract to the Purchaser, the Secretary of Transportation and the Comptroller General or any authorized officer or employee of any of them for the purposes of conducting an audit and inspection.
5. The Vendor shall provide to the U.S. Secretary of Transportation and the Comptroller General of the United States, or their duly authorized representatives, access to all third party records as required by 49 U.S.C. section 5325 (g). The Vendor shall further provide sufficient access to third party procurement records as needed for compliance with Federal laws and regulations or to assure Project management as determined by FTA.
6. The Vendor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
7. The Vendor agrees to maintain all books, records, accounts and reports required under this contract for a period of not less than three years after the date of termination or expiration of this contract, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case Vendor agrees to maintain same until the Purchaser, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. Reference 49 CFR 18.39(i)(11).
8. Vendor shall also include in its subcontracts the requirement that the subcontractors shall provide to the U.S. Secretary of Transportation and the Comptroller General of the United States or their duly authorized representatives access to all third party contract records as required by 49 U.S.C. section 5325 (g), and shall further provide sufficient access to third party procurement records as needed for compliance with Federal laws and regulations or to

assure Project management as determined by FTA.

VII. FEDERAL CHANGES

Vendor shall at all times comply with all applicable Federal laws, regulations, and directives, including without limitation those listed directly or by reference in the Master Agreement between the Florida Department of Transportation and FTA, as they may be amended or promulgated from time to time during the term of this contract, except to the extent that FTA determines otherwise in writing, which Master Agreement is hereby incorporated herein by this reference. All standards or limits in the Grant Agreement or Cooperative Agreement for the Project, and in the Master Agreement, are minimum requirements, unless modified by FTA.

Vendor's failure to so comply shall constitute a material breach of this contract.

VIII. CLEAN AIR

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

(2) The Vendor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

IX. RECYCLED PRODUCTS

Recovered Materials - The Vendor agrees to comply with all the requirements of Section 6002 of the Resource Conservation and Recovery Act (RCRA), as amended (42 U.S.C. 6962), including but not limited to the regulatory provisions of 40 CFR Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 CFR Part 247.

X. CONTRACT WORK HOURS AND SAFETY STANDARDS

The Vendor is required to comply with employee protection requirements for nonconstruction employees of the Contract Work hours and Safety Standards Act, as amended, 40 U.S.C. section 3701 et. seq., in particular section 102 of that Act at 40 U.S.C.

3702, and the implementing regulations 29 C.F.R Part 5, in particular at 5.5 (b) as follows:

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

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

3) **Withholding for unpaid wages and liquidated damages** - The Department shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.

(4) **Subcontracts** - The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraphs (1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this section.

XI. NO OBLIGATION BY THE FEDERAL GOVERNMENT

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

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

XII. PROGRAM FRAUD AND FALSE OR FRAULENT STATEMENTS OR RELATED ACTS

(1) The Vendor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § 3801 et seq. and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its actions pertaining to this Project. Upon execution of the underlying contract, the Vendor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, the Vendor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Vendor to the extent the Federal Government deems appropriate.

(2) The Vendor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. § 5307, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on the Vendor, to the extent the Federal Government deems appropriate.

(3) The Vendor agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

XIII. GOVERNMENT-WIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

The Vendor is required to comply with 2 CFR 1200 and 2 CFR 180, Subpart 3, and must include the requirement to comply with 2 CFR 180, Subpart 3, as supplemented by 2 CFR 1200, in any lower tier covered transaction it enters into. By signing and submitting its bid or proposal, the bidder or proposer certifies as follows:

The certification in this clause is a material representation of fact relied upon by the Department. If it is later determined that the bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available to the Department, the Federal Government may pursue available remedies, including but not limited to

suspension and/or debarment. The bidder or proposer agrees to comply with the requirements of 2 CFR 1200 and 2 CFR 180, Subpart C, while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

XIV. PRIVACY ACT

Contracts Involving Federal Privacy Act Requirements - The following requirements apply to the Vendor and its employees that administer any system of records on behalf of the Federal Government under any contract:

(1) The Vendor agrees to comply with, and assures the compliance of its employees with, the information restrictions and other applicable requirements of the Privacy Act of 1974,

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

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

XV. CIVIL RIGHTS REQUIREMENTS

Civil Rights - The following requirements apply to the underlying contract:

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

(2) Equal Employment Opportunity - The following equal employment opportunity requirements apply to the underlying contract:

(a) Race, Color, Creed, National Origin, Sex - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal

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

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

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

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

XVI. TRANSIT EMPLOYEE PROTECTIVE AGREEMENTS

Transit Employee Protective Provisions. (1) The Vendor agrees to comply with applicable transit employee protective requirements as follows:

(a) General Transit Employee Protective Requirements - To the extent that FTA determines that transit operations are involved, the Vendor agrees to carry out the transit operations work on the underlying contract in compliance with terms and conditions determined by the U.S. Secretary of Labor to be fair and equitable to protect the interests of employees employed under this contract and to meet the employee protective requirements of 49 U.S.C.A 5333(b), and U.S. DOL guidelines at 29 C.F.R. Part 215, and any amendments thereto. These terms and conditions are identified in the letter of certification from the U.S. DOL to FTA applicable to the FTA Recipient's project from which Federal assistance is provided to support work on the underlying contract. The Vendor agrees to carry out that work in compliance with the conditions stated in that U.S. DOL letter. The requirements of

this subsection (1), however, do not apply to any contract financed with Federal assistance provided by FTA either for projects for elderly individuals and individuals with disabilities authorized by 49 U.S.C. § 5310(a)(2), or for projects for nonurbanized areas authorized by 49 U.S.C. § 5311. Alternate provisions for those projects are set forth in subsections (b) and (c) of this clause.

(b) Transit Employee Protective Requirements for Projects Authorized by 49 U.S.C. § 5310(a)(2) for Elderly Individuals and Individuals with Disabilities - If the contract involves transit operations financed in whole or in part with Federal assistance authorized by 49 U.S.C. § 5310(a)(2), and if the U.S. Secretary of Transportation has determined or determines in the future that the employee protective requirements of 49 U.S.C. § 5333(b) are necessary or appropriate for the state and the public body subrecipient for which work is performed on the underlying contract, the Vendor agrees to carry out the Project in compliance with the terms and conditions determined by the U.S. Secretary of Labor to meet the requirements of 49 U.S.C. § 5333(b), U.S. DOL guidelines at 29 C.F.R. Part 215, and any amendments thereto. These terms and conditions are identified in the U.S. DOL's letter of certification to FTA, the date of which is set forth Grant Agreement or Cooperative Agreement with the state. The Vendor agrees to perform transit operations in connection with the underlying contract in compliance with the conditions stated in that U.S. DOL letter.

(c) Transit Employee Protective Requirements for Projects Authorized by 49 U.S.C. § 5311 in Nonurbanized Areas - If the contract involves transit operations financed in whole or in part with Federal assistance authorized by 49 U.S.C. § 5311, the Vendor agrees to comply with the terms and conditions of the Special Warranty for the Nonurbanized Area Program agreed to by the U.S. Secretaries of Transportation and Labor, dated May 31, 1979, and the procedures implemented by U.S. DOL or any revision thereto. The most current revision is the Special Warranty For Application To Other Than Urbanized And Over-The-Road Bus Accessibility Projects dated October 1, 2008.

(2) The Vendor also agrees to include the any applicable requirements in each subcontract involving transit operations financed in whole or in part with Federal assistance provided by FTA.

XVII. PARTICIPATION BY DISADVANTAGED BUSINESS ENTERPRISES

The Vendor shall agree to abide by the following statement from 49 CFR 26.13 (b). This statement shall be included in all subsequent agreements between the Vendor and any sub-vendor or contractor:

The contractor, sub-recipient or subcontractor shall not discriminate on the basis of race, color, national origin or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR part 26 in the award and

administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate.

Also, it is required, pursuant to 49 CFR 26.29 (a), that Vendor shall pay its subcontractors performing work related to this contract for satisfactory performance of that work no later than 30 days after the Vendor's receipt of payment for that work from the Department.

Also, the Vendor is required to pay its subcontractors performing work related to this contract for satisfactory performance of that work no later than 30 days after the Vendor's receipt of payment for that work from the Department.

XVIII. ACCESS FOR INDIVIDUALS WITH DISABILITIES

Vendor agrees to comply with 49 U.S.C. Section 5301(d), which states the Federal policy that elderly individuals and individuals with disabilities have the same right as other individuals to use public transportation services and facilities, and that special efforts shall be made in planning and designing those services and facilities to implement transportation accessibility rights for elderly individuals and individuals with disabilities. The Vendor also agrees to comply with all applicable provisions of section 504 of the Rehabilitation Act of 1973, as amended, 29. U.S.C. Section 794, and all applicable provisions of the American with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. Sections 12101 *et. seq.* , and all applicable provisions of the Architectural Barriers Act of 1968, as amended, 42 U.S. C. sections 4151 *et. seq.*, and with other laws and amendments thereto pertaining to access for individuals with disabilities that may be applicable. In addition, the Vendor agrees to comply with applicable implementing Federal regulations, and any later amendments thereto, and agrees to follow applicable Federal implementing directives, except to the extent FTA approves otherwise in writing.

XIX. BUY AMERICA REQUIREMENTS

The Vendor agrees to comply with 49 U.S.C. 5323(j) and 49 C.F.R. Part 661, and any amendments thereto, which provide that Federal funds may not be obligated unless all steel, iron, and manufactured products used in FTA-funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver, or except as provided in 49 C.F.R. 661.11. General waivers are listed in 49 C.F.R. 661.7 Separate requirements for rolling stock are set out at 49 U.S.C. 5323(j)(2)(C) and 49 C.F.R. 661.11.

A bidder or offeror must submit to the FTA recipient the appropriate Buy America certification (below).

If steel, iron, or manufactured products (as defined in 43 CFR 661.3 and 661.5) are being procured, the appropriate certificate as set forth below shall be completed and submitted by

each bidder or offerer in accordance with the requirement contained in 43 CFR 661.13(b).
Certificate of Compliance with Buy America Requirements

The bidder or offeror hereby certifies that it will comply with the requirements of 49 U.S.C. 5323(j)(1) and the applicable regulations in 49 C.F.R. Part 661.

Date _____

Signature _____

Company _____

Name _____

Title _____

Certificate of Non-Compliance with Buy American Requirements

The bidder or offeror hereby certifies that it cannot comply with the requirements of 49 U.S.C. 5323(j), but it may qualify for an exception pursuant to 49 U.S.C. 5323(j)(2), as amended, and the applicable regulations in 49 C.F.R. 661.7.

Date _____

Signature _____

Company _____

Name _____

Title _____

If buses or other rolling stock (including train control, communication, and traction power equipment) are being procured, the appropriate certificate as set forth below shall be completed and submitted by each bidder in accordance with the requirement contained in 49 CFR 661.13 (b).

Certificate of Compliance with Buy America Rolling Stock Requirements

The bidder or offeror hereby certifies that it will comply with the requirements of 49 U.S.C. 5323(j) and the applicable regulations at 49 CFR 661.11.

Date _____

Signature _____

Company _____

Name _____

Title _____
Certificate of Non-Compliance with 49 U.S.C. 5323(j)(2)(C) Buy American Rolling Stock Requirements

The bidder or offeror hereby certifies that it cannot comply with the requirements of 49 U.S.C. 5323(j), but may qualify for an exception to the requirement consistent with 49 U.S.C. 5323(j)(2) (C) and the applicable regulations in 49 CFR 661.7.

Date _____

Signature _____

Company _____

Name _____

Title _____

XX. DRUG AND ALCOHOL TESTING

The Vendor agrees to establish and implement a drug and alcohol testing program that complies with 49 CFR Parts 655, produce any documentation necessary to establish its compliance with Parts 655, and permit any authorized representative of the United States Department of Transportation or its operating administrations, the State Oversight Agency of Florida, or the Florida Department of Transportation, to inspect the facilities and records associated with the implementation of the drug and alcohol testing program as required under 49 CFR Parts 655 and review the testing process. The Florida Department of Transportation will hereafter set the date before which Vendor must certify annually its compliance with its compliance with Parts 655 and the date before which it must submit the Management Information System (MIS) reports to

<http://transit-safety.fta.dot.gov/DrugAndAlcohol/DAMIS/default.asp>

and Vendor shall comply with those dates for certification and submitting the MIS reports. To certify compliance the contractor shall use the "Substance Abuse Certifications" in the "Annual List of Certifications and Assurances for Federal Transit Administration Grants and Cooperative Agreements," which is published annually in the Federal Register.

XXI. SENSITIVE SECURITY INFORMATION

Vendor must protect, and take measures to ensure that its subcontractors protect, "sensitive security information" made available during the administration of the contract or subcontract to ensure compliance with 49 U.S.C. Section 40119 (b) and implementing DOT regulations, "Protection of Sensitive Security Information," 49 CFR Part 15, and with 49 U.S.C. Section

114 (r) and implementing Department of Homeland Security regulations, “Protection of Sensitive Security Information,” 49 CFR 1520.

XXII. INTELLIGENT TRANSPORTATION SYSTEMS

Intelligent transportation system (ITS) property and services provided by Vendor must comply with the National ITS Architecture and Standards to the extent required by Section 5307(c) of SAFETEA-LU, FTA Notice, “FTA National ITS Architecture Policy on Transit Projects,” 66 FR 1455 *et. seq.*, January 8, 2001, and later published policies or implementing directives FTA may issue.

XXIII. INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS

The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1F, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Vendor shall not perform any act, fail to perform any act, or refuse to comply with any Florida Department of Transportation requests which would cause Florida Department of Transportation to be in violation of the FTA terms and conditions.

CENTRAL FLORIDA COMMUTER RAIL TRANSIT
EXHIBIT "D"
SOFTWARE CODE AND DESIGN MATERIAL ESCROW AGREEMENT

This Agreement made this ____ day of _____, 20__ between the State of Florida, Department of Transportation, with a principal office at 719 South Woodland Boulevard, DeLand FL 32720 (the "Department"), and Bombardier Mass Transit Corporation of 101 Gibraltar Road, Suite 112, Horsham PA 19044 ("Vendor"), the Florida Department of Financial Services ("Escrow Agent") and by the subcontractors additionally executing this Agreement either on the original or in separate counterparts ("Subcontractors");

WITNESSETH:

WHEREAS, Vendor and Department have entered into a Standard Written Agreement ("Sales Contract") whereby Vendor will license to Department certain previously developed software code and documentation; and

WHEREAS, the Sales Contract requires Vendor to deposit in escrow with Escrow Agent certain source code and other materials (the "Deposit Materials"); and

WHEREAS, the Deposit Materials are owned by Vendor;

WHEREAS, the availability of the Deposit Materials is critical to Department in the conduct of its business and, therefore, Department needs access to the Deposit under certain limited circumstances; and

WHEREAS, Vendor and Subcontractors desire to have availability of the Deposit Materials limited to occurring only under certain circumstances; and

WHEREAS, Vendor, Subcontractors and Department desire to establish an arrangement to provide for the retention, administration and controlled access of the Deposit Materials; and

WHEREAS, Escrow Agent has agreed to accept, hold and release the Deposit Materials under the terms and conditions of this Agreement;

NOW, THEREFORE, in consideration of the premises, promises, representations, understandings and the mutual covenants contained herein, the Department, the Vendor, Subcontractors and the Escrow Agent hereby agree as follows:

ARTICLE 1 -- DEPOSITS

1.1. Obligation of the Vendor. The Vendor has the responsibility to ensure all Subcontractors from which Deposit Materials are required according to the Sales Contract will execute this Agreement prior to the Notice to Proceed. Upon completion of such execution by all required Subcontractors, the Vendor will provide the Department with the Agreement's signature pages executed by all

required Subcontractors.

- 1.2. Obligation to Make Deposit. Vendor and/or Subcontractors shall deliver the Deposit Materials to Escrow Agent at the times stated in the Sales Contract. The Deposit Materials shall include, but not be limited to, a copy of the documented source code, libraries, other source components, compilers, and linkers so that, when compiled, linked and otherwise manipulated to create the runtime/executable image for the delivered software, creates a complete and fully operational run-time/executable version of the delivered software. Vendor and/or Subcontractors shall notify the Department in writing of the time and place of the delivery of the Deposit Materials no less than one week in advance. Notwithstanding anything to the contrary, the Deposit Materials shall only include Vendor's proprietary software and intellectual property.
- 1.3. Identification of Tangible Media. Prior to the delivery of the Deposit Materials to Escrow Agent, Vendor or Subcontractor shall conspicuously label for identification each document, magnetic tape, disk, or other tangible media upon which the Deposit Materials are written or stored. Additionally, Vendor or Subcontractor shall complete Appendix "A" to this Agreement by listing each such tangible media by the item label description, the type of media and the quantity. Appendix "A" shall be signed by Vendor or Subcontractor and delivered to Escrow Agent with the Deposit Materials. A copy of Appendix "A" is attached hereto and incorporated herein.
- 1.4. Deposit Inspection. When Escrow Agent receives the Deposit Materials and the Appendix "A", it will conduct a deposit inspection by visually matching the labeling of the tangible media containing the Deposit Materials to the item descriptions and quantity listed on the Appendix "A". In addition, Department may elect to cause a verification of the Deposit Materials at the time of delivery in accordance with Section 1.6 below at Department's expense. Vendor or Subcontractor shall have the right to be present at the verification.
- 1.5. Acceptance of Deposit. At completion of the deposit inspection and a verification, if elected, if Escrow Agent determines that the labeling of the tangible media matches the item descriptions and quantity on Appendix "A", Escrow Agent will date and sign Appendix "A" in triplicate, with Vendor or Subcontractor, Department, and Escrow Agent each retaining an original. If Escrow Agent determines that the labeling does not match the item descriptions or quantity on Appendix "A" or the verification elected by the Department is not satisfactory, Escrow Agent will (a) note the discrepancies in writing on Appendix "A"; (b) date and sign Appendix "A" in triplicate with the exceptions noted; and (c) reject the delivery of the Deposit Materials. Vendor and/or Subcontractor shall be obligated to promptly correct the discrepancies and redeliver the Deposit Materials in accordance with the delivery procedures contained in this Agreement; provided that this provision shall not relieve the Vendor from the consequences of failing to properly deliver the Deposit Materials in accordance

with the requirements of the Sales Contract.

- 1.6. Vendor's and Subcontractor's Representations. Vendor and Subcontractor represents as follows, with relation to their respective Deposit Materials:
- (a.) They lawfully possesses and will possess full right, title and interest to all of the Deposit Materials deposited with Escrow Agent;
 - (b.) With respect to all of the Deposit Materials, they have the right and authority to grant to Department the rights as provided in this Agreement;
 - (c.) The Deposit Materials are not and will not be subject to any lien or other encumbrance;
 - (d.) The Deposit Materials consist of the proprietary technology and other materials identified in the Sales Contract; and
 - (e.) The Deposit Materials are readable and useable in their current form or, if any portion of the Deposit Materials is encrypted, the decryption tools and decryption keys have also been deposited.
- 1.7. Verification. In a verification, Department may evaluate the deposit to verify the deposit of: (a) Deposit Materials required and fully complying with the Sales Contract; and (b)(i) the hardware and software configurations reasonably necessary to maintain the Deposit Materials; (ii) the hardware and software configurations reasonably needed to compile the Deposit Materials; and (iii) the compilation instructions.
- 1.8. Deposit Updates. Vendor and Subcontractor shall update the Deposit Materials within ten business (10) days of each release of a new version, patch, upgrade or alteration of the product/system integrated in the equipment which is subject to the Sales Contract. It is understood that "Updates" will be limited only to updates necessary to keep the vehicle operational in manner intended at the end of the warranty period. Such updates will be added to the existing deposit. All deposit updates shall be listed on a new Appendix "A". The processing of all deposit updates shall be in accordance with Sections 1.3 through 1.7 above. All references in this Agreement to the Deposit Materials shall include the initial Deposit Materials and any such new versions, patches, updates or alterations.
- 1.9. Removal of Deposit Materials. The Deposit Materials may be removed and/or exchanged only as provided in this Agreement.

ARTICLE 2 -- CONFIDENTIALITY AND RECORD KEEPING

- 2.1. Confidentiality. Escrow Agent shall maintain the Deposit Materials in a secure, locked facility which is accessible only to authorized representatives of Escrow Agent. Escrow Agent shall have the obligation to use the same standard the

Escrow Agent uses to protect its own confidential information, but in no event, less than a reasonable standard of care, to protect the confidentiality of the Deposit Materials. Except as provided in this Agreement, Escrow Agent shall not disclose, transfer, make available, or use or access the Deposit Materials. Escrow Agent will not be required to fail to comply with Chapter 119, Florida Statutes, or disobey any order from a court or other judicial tribunal.

ARTICLE 3 -- GRANT OF RIGHTS TO DEPARTMENT

- 3.1. Title to Media. Effective upon the occurrence of a Release Condition, Vendor and Subcontractor hereby transfer to Department the title to the media upon which the proprietary technology and materials are written or stored. However, this transfer does not include the ownership of the proprietary technology and materials contained on the media such as any copyright, trade secret, patent or other intellectual property rights.
- 3.2. Right to Deposit Materials. Upon the occurrence of a Release Condition the Department shall be entitle to use the Deposit Materials to continue the operations of the SunRail system in accordance with the original intent of the Sales Contract.

ARTICLE 4 -- RELEASE OF DEPOSIT

- 4.1. Release Conditions. As used in this Agreement, "Release Conditions" shall mean the existence of any one or more of the following circumstances, uncorrected for more than ten (10) days:
 - (a.) If a Vendor or Subcontractor is no longer in business, or no longer supports the product and has not transferred the rights to the design to another entity that does support the product;
- 4.2. Filing for Release. If Department believes in good faith that a Release Condition has occurred, Department shall provide to Vendor and Subcontractor written notice of the occurrence of the Release Condition. Vendor and/or Subcontractor shall have fifteen (15) business days from its receipt of such notice to notify the Department of its agreement to the release or file an action for a Declaratory Judgment to have a court determine whether a Release Condition has occurred.
- 4.3. Release of Deposit. Upon the Vendor's or Subcontractor's agreement, or the entry of a Declaratory or other form of Judgment ruling that a Release Condition has occurred, Escrow Agent shall release the Deposit Materials to the Department. The Department shall provide Escrow Agent with a copy of Vendor's or Subcontractor's agreement or any Judgment authorizing release of the Deposit Materials along with instructions as to how the release shall occur.

- 4.4. Right to Use Following Release. Upon release of the Deposit Materials in accordance with this Article 4, Department shall have the right to use the Deposit Materials for the sole purpose of continuing the benefits afforded to Department by the Sales Contract. Department shall be obligated to maintain the confidentiality of the released Deposit Materials subject to Section 2.1 of this Agreement and the right to make the Deposit Materials available to the Department's vendors for the sole and exclusive purpose of continuing the benefits provided under the Sales Contract.

ARTICLE 5 -- TERM AND TERMINATION

- 5.1. Term of Agreement. This Agreement shall be effective during the period that the equipment for which Deposit Materials have been provided remains in use. The Department shall notify Vendor and/or Subcontractor and Escrow Agent at such time that the equipment for which Deposit Materials have been provided no longer remains in use.
- 5.2. Disposition of Deposit Materials Upon Termination. Subject to the provisions concerning release of the Deposit Materials, upon expiration of this Agreement, Escrow Agent shall deliver the Deposit Materials in accordance with instructions of Vendor or Subcontractor. If there are no instructions, Escrow Agent may return the Deposit Materials to Vendor or Subcontractor who has made the deposit in a manner chosen by Escrow Agent. Escrow Agent shall have no obligation to return the Deposit Materials if the Deposit Materials have been released to the Department in accordance with Article 4.
- 5.3. Survival of Terms Following Termination. Upon termination of this Agreement, the following provisions of this Agreement shall survive:
- (a.) Vendor's and Subcontractor's Representations (Section 1.6);
 - (b.) The obligations of confidentiality with respect to the Deposit Materials including the provisions of Section 2.1;
 - (c.) The rights granted in the sections entitled Right to Deposit Materials (Section 3.2) and Right to Use Following Release (Section 4.4), if a release of the Deposit Materials has occurred prior to termination;
 - (d.) The provisions of Article 6; and
 - (e.) Any provisions in this Agreement which specifically state they survive the termination of this Agreement.

ARTICLE 6 -- GENERAL PROVISIONS

- 6.1. Dispute Resolution. Escrow Agent shall act in accordance with any agreement

between Vendor and/or Subcontractor and Department or any court judgment and may, in addition, pursue and rights and remedies that Escrow Agent has under the law. The Department shall notify Escrow Agent of any agreement between Vendor and/or Subcontractors and Department or of any judgment.

- 6.2. Entire Agreement. This Agreement, which includes exhibits described and incorporated herein, embodies the entire understanding among the parties with respect to its subject matter and supersedes all previous communications, representations or understandings, either oral or written. Department's only obligations to Vendor or Subcontractors are as set forth in this Agreement. No amendment or modification of this Agreement shall be valid or binding unless signed by the parties hereto.
- 6.3. Notices. All notices, invoices, payments, deposits and other documents and communications shall be given to the parties at the addresses specified below. It shall be the responsibility of the parties to notify each other as provided in this Section in the event of a change of address. The parties shall have the right to rely on the last known address of the other parties. Unless otherwise provided in this Agreement, all documents and communications may be delivered by First Class mail.

Vendor: Bombardier Mass Transit Corporation of 101 Gibraltar Road, Suite 112,
Horsham PA 19044

Department: Florida Department of Transportation,
District Five
Attn: SunRail Project Manager
719 South Woodland Boulevard
DeLand, FL 32720

Escrow Agent: Florida Department of Financial Services
Bureau of Collateral Management
Division of Treasury
200 East Gaines Street
Tallahassee, FL 32399-0300

Subcontractor: At the address provided in the signature block.

- 6.4. Severability. In the event any provision of this Agreement is found to be invalid, voidable or unenforceable, the parties agree that unless it materially affects the entire intent and purpose of this Agreement, such invalidity, voidability or unenforceability shall affect neither the validity of this Agreement nor the remaining provisions herein, and the provision in question shall be deemed to be replaced with a valid and enforceable provision most closely reflecting the intent

and purpose of the original provision.

6.5. Successors and Assignment. This Agreement shall be binding upon and shall inure to the benefit of the successors and assigns of the parties. The Department may assign this Agreement with prior written consent of the Vendor; provided, however, that no consent is required in order for the Department to assign this Agreement to the Central Florida Commuter Rail Commission or such other governmental entity established to take over SunRail after expiration of the Department's period of operation.

6.6. Controlling Law. This Agreement is to be governed and construed in accordance with the laws of Florida, without regard to its conflict of law provisions. The parties consent to the jurisdiction of the appropriate state court.

6.7. Time is of the essence in the performance under this Agreement.

IN WITNESS WHEREOF, the Parties have executed this Agreement the day and year first above written.

State of Florida
Department of Transportation

Bombardier Mass Transit Corporation

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

Department

Vendor

Legal Review

State of Florida
Department of Financial Services

District Chief Counsel

By: _____

Name: _____

Title: _____

Date: _____

Escrow Agent

(Name of Subcontractor)

By: _____

Name: _____

Title: _____

Address:

Date: _____

Subcontractor

(Name of Subcontractor)

By: _____

Name: _____

Title: _____

Address:

Date: _____

Subcontractor

(Name of Subcontractor)

By: _____

Name: _____

Title: _____

Address:

Date: _____

Subcontractor

(Name of Subcontractor)

By: _____

Name: _____

Title: _____

Address:

Date: _____

Subcontractor

APPENDIX A

DESCRIPTION OF DEPOSIT MATERIALS

Company Name: _____.

Company Address: _____

Contract Number: ITN-DOT-08-09-5003-CCC

Product Name: _____ Version: _____

DEPOSIT MATERIAL DESCRIPTION:

Quantity Media Type & Size Label Description of Each Separate Item

- _____ Disk 3.5" or _____
- _____ DAT tape _____mm
- _____ CD-ROM
- _____ Data cartridge tape _____
- _____ TK 70 or _____ tape
- _____ Magnetic tape _____
- _____ Documentation
- _____ Other _____

PRODUCT DESCRIPTION:

Environment: _____

DEPOSIT MATERIAL INFORMATION:

Is the media or are any of the files encrypted? Yes / No If yes, please include any passwords and the decryption tools.

Encryption tool name _____ Version: _____

Hardware _____ required:

Software required: _____

Other required information: _____

I certify for Vendor that the above described Deposit Materials have been transmitted to Department:

Signature: _____

Print Name: _____

Date: _____

**DISPUTES REVIEW BOARD
THREE PARTY AGREEMENT**

THIS THREE PARTY AGREEMENT, hereinafter called "**AGREEMENT**", made and entered into this _____ day of _____, 20__, between the State of Florida Department of Transportation, an agency of the State of Florida, hereinafter called "**DEPARTMENT**"; and _____, hereinafter called the "**O&M FIRM**"; and the Disputes Review Board, hereinafter called the "**BOARD**", and consisting of three members: _____, _____ and _____,

WITNESSETH, that

WHEREAS, the **DEPARTMENT** is now engaged in the Operations and Maintenance of the Central Florida Rail Corridor Operations and Maintenance (FPID 412994-8-82-01), and

WHEREAS, the Contract # _____ provides for the establishment and operation of the **BOARD** to assist in resolving claims; and

WHEREAS, the **BOARD** is composed of three members, one selected by the **DEPARTMENT**, one selected by the **O&M FIRM**, and the third member selected by these two;

NOW THEREFORE, in consideration of the terms, conditions, covenants, and performance contained herein, or attached and incorporated and made a part hereof, the parties hereto agree as follows:

I

DESCRIPTION OF WORK

In order to assist in the resolution of claims between the **O&M FIRM** and the **DEPARTMENT**, the **DEPARTMENT** has provided in the Contract # _____, the Agreement between the **DEPARTMENT** and the **O&M FIRM**, hereinafter called the "O&M AGREEMENT" for the establishment of the **BOARD**. The purpose of the **BOARD** is to fairly and impartially consider claims for compensation placed before it and to provide written recommendations for resolution of these claims to both the **DEPARTMENT** and the **O&M FIRM**. The members of the **BOARD** shall perform the services necessary to participate in the **BOARD**'s actions as designated in Section II, Scope of Work.

II

SCOPE OF WORK

The Scope of Work of the **BOARD** includes, but is not limited to, the following:

A. Operations: The **BOARD** will formulate its own rules of operation. It is not desirable to adopt inflexible rules for the internal operation of the **BOARD**. The procedures will be kept flexible to adapt to changing situations.

The **BOARD** members shall meet and visit the Operations and Maintenance project site to keep abreast of operations and maintenance activities and to develop a familiarity with the work in progress. The frequency of this visit shall be at least annually, and the schedule of these visits shall be as mutually agreed between the **DEPARTMENT** and the **O&M FIRM**.

The project site visits will cover all active segments of the work. The **BOARD** will be accompanied by representatives of both the **DEPARTMENT** and the **O&M FIRM**. No party shall unilaterally seek any **BOARD** member's advice or consultation, nor shall any **BOARD** member(s) provide unilateral advice or consultation to the **DEPARTMENT** or the **O&M FIRM**.

B. Procedure and Schedules for Dispute Resolution Hearing: Claims for compensation will be considered as quickly as possible, taking into consideration the particular circumstances and the time required to prepare detailed documentation. Steps may be omitted as agreed by the **DEPARTMENT** and the **O&M FIRM** and the time periods stated below may be shortened in order to hasten resolution. Referral to the **BOARD** is accomplished by providing a position paper outlining the nature and scope of the dispute and claim and describing the basis for entitlement to the claim. Only claims for compensation that have been duly preserved under the terms of the Contract as determined by the **BOARD** will be eligible to be heard by the

BOARD. Claims that are referred to the **BOARD** must be in compliance with the O&M AGREEMENT, Scope of Services 19-1.

a. If the **O&M FIRM** objects to any decision by the Department on all or part of a Claim, the **O&M FIRM** may file a written protest with the Department, within 15 days after receipt of the decision, stating clearly and in detail the basis for the objection.

b. The Department will consider the written protest and make a decision on the basis of the pertinent O&M AGREEMENT provisions, together with the facts and circumstances involved in the dispute. The Department's decision will be furnished in writing to the **O&M FIRM** within 15 days after receipt of the **O&M FIRM's** written protest.

c. The Department's decision will be final and conclusive on the subject, unless a written appeal to the Department is filed by the **O&M FIRM** within 15 days of receiving the decision. Should the **O&M FIRM** preserve its appeal of the Department's decision, the matter can be referred to the **BOARD** by either the **DEPARTMENT** or the **O&M FIRM**.

d. Upon receipt by the **BOARD** of a written duly preserved protest of a decision on a Claim from either the **DEPARTMENT** or the **O&M FIRM**, it will first be decided when to conduct the hearing. For an urgent matter, the **BOARD** will meet at its earliest convenience.

e. Either party furnishing any written evidence or documentation to the **BOARD** shall do so a minimum of 15 days prior to the date the **BOARD** sets to convene the hearing for the claim, and will at the same time furnish copies of such information to the other party. If the **BOARD** requests any additional documentation or evidence prior to, during, or after the hearing, the **DEPARTMENT** and/or **O&M FIRM** will provide the requested information to the **BOARD** and to the other party.

f. The **O&M FIRM** and the **DEPARTMENT** will each be afforded an opportunity to be heard by the **BOARD** and to offer evidence.

g. The **BOARD's** recommendations for resolution of the dispute will be given in writing to both the **DEPARTMENT** and the **O&M FIRM**, within 15 days of completion of the hearing. In cases of extreme complexity, both parties may agree to allow additional time for the **BOARD** to formulate its recommendations. The **BOARD** will focus its attention in the written report to matters of entitlement and allow the parties to determine the monetary damages. Once Entitlement is determined, the parties should timely, within 60 calendar days, proceed to negotiate monetary changes. Upon both parties having made reasonable efforts to negotiate such monetary damages provided sufficient documentation is available, and such negotiations are at an impasse, the **BOARD** shall be notified of the impasse, and upon the request of both parties shall then proceed to schedule a hearing to make a recommendation as to monetary damages.

h. Within 15 days of receiving the **BOARD's** recommendations, both the **DEPARTMENT** and the **O&M FIRM** will respond to the other and to the **BOARD** in writing, signifying either acceptance or rejection of the **BOARD's** recommendations. The failure of either party to respond within the 15 day period will be deemed an acceptance of the **BOARD's** recommendations by that party and shall preclude any further pursuit of this issue before this **BOARD** or any successive **BOARD**. If the **DEPARTMENT** and the **O&M FIRM** are able to resolve the dispute with or without the aid of the **BOARD's** recommendations, the **DEPARTMENT** will promptly process any required changes to the O&M AGREEMENT.

i. Should the dispute remain unresolved, either party may seek reconsideration of the decision by the **BOARD** only when there is new evidence to present. No provisions in this **AGREEMENT** will abrogate the **O&M FIRM's** responsibility for preserving a claim in accordance with the O&M AGREEMENT, Scope of Services 19-1.

Although both the **DEPARTMENT** and the **O&M FIRM** should place great weight on the **BOARD's** recommendation, it is not binding on the parties. If the **BOARD's** recommendations do not resolve the dispute, all written recommendations of the **BOARD** will be admissible as evidence in any subsequent arbitration, or circuit proceedings, as provided by law.

C. **BOARD** Consideration of Disputes or Claims: The **BOARD** may request that written documentation and arguments from both parties be sent to each member and to the other party for study before the hearing begins.

Upon receipt by the **BOARD** of a written referral of a claim, from either the **O&M FIRM** or the **DEPARTMENT**, the **BOARD** shall convene to review and consider the claim. The time and location of **BOARD** hearing shall be determined by the **DEPARTMENT**, the **O&M FIRM**, and the **BOARD**. Both the

DEPARTMENT and the **O&M FIRM** shall be given the opportunity to present their evidence and documentation at the hearing.

It is expressly understood that the **BOARD** members are to act impartially and independently in the consideration of the Contract provisions, and the facts and conditions surrounding any written referral of a dispute or claim presented to the **BOARD** by the **DEPARTMENT** or the **O&M FIRM**, and that the **BOARD's** recommendations concerning any such dispute or claim are advisory. **BOARD** members shall not discuss or communicate any matters relating to any aspect of the Operations and Management project except at duly scheduled meetings of the **BOARD** except for communications between the Chairman and other parties on administrative matters relating to the operation of the **BOARD**.

The third member of the **BOARD** will act as Chairman of all the hearings and meetings, or he/she may designate one of the other members. While the **BOARD** will keep a record of its sessions during the consideration of a dispute, it may not be necessary for the **BOARD** to keep a formal record. This will depend on the nature and magnitude of the dispute and on the attitude of the parties. If possible, hearings should be kept informal. Although discouraged, formal records of the **BOARD** hearings may be transcribed by a court reporter if requested by one party and agreed upon by all parties. Audio and/or video recording of the meeting is discouraged. Such recordings may only be made at the agreement of all parties.

The **DEPARTMENT** and the **O&M FIRM** must each have a representative at all hearings. The **O&M FIRM** will first present its analysis of the claim, followed by the **DEPARTMENT's** position. Each party will then be allowed successive rebuttals until all aspects are fully covered. The **BOARD** members may ask questions, request clarification, or ask for additional data. In large or complex cases, additional hearings may be necessary in order to consider and fully understand all of the evidence presented by the parties.

During the hearings, no **BOARD** member will express any opinion concerning the merit of any facet of the case.

At the conclusion of a hearing, the **BOARD** will meet in private to formulate recommendations, which must be supported by two or more members. All **BOARD** deliberations will be conducted in private, with all individual views kept strictly confidential. The **BOARD's** recommendations and discussions of its reasoning will be submitted as a written report to both parties. The recommendations will be based on the pertinent O&M AGREEMENT provisions and the facts and circumstances involved in the claim.

Either the **DEPARTMENT** or the **O&M FIRM**, or both, may seek reconsideration of a recommendation to the **BOARD**. However, reconsideration will be allowed only when there is new evidence to present.

D. **BOARD** Member Replacement: Should the need arise to appoint a replacement **BOARD** member, the replacement **BOARD** member shall be appointed in the same manner as the original **BOARD** members were appointed. The selection of a replacement **BOARD** member shall begin promptly upon notification of the necessity for a replacement and shall be completed within 30 calendar days. This **AGREEMENT** will be supplemented to indicate change in **BOARD** membership.

III

O&M FIRM RESPONSIBILITY

The **O&M FIRM** shall furnish to the **BOARD** three sets of all pertinent documents which are or may become necessary for the **BOARD** to consider, except documents furnished by the **DEPARTMENT**, to perform their function. Pertinent documents are the claim for compensation, and other documents which are used in the performance of the work or in justifying or substantiating the **O&M FIRM's** position. A copy of such pertinent documents must also be furnished to the **DEPARTMENT**.

Except for its participation in the **BOARD's** activities as provided in the O&M AGREEMENT and in this **AGREEMENT**, the **O&M FIRM** will not solicit advice or consultation from the **BOARD** or any of its members on matters dealing in any way with the project, the conduct of the work, or resolution of problems.

IV

DEPARTMENT RESPONSIBILITIES

Except for its participation in the **BOARD's** activities as provided in the O&M AGREEMENT and in this **AGREEMENT**, the **DEPARTMENT** will not solicit advice or consultation from the **BOARD** or any of its members on matters dealing in any way with the project, the conduct of the work, or resolution of problems.

The **DEPARTMENT** shall furnish the following services and items:

A. Contract Related Documents: The **DEPARTMENT** shall furnish the **BOARD** three copies of the O&M AGREEMENT, supplemental agreements, written instructions issued by the **DEPARTMENT** to the **O&M FIRM**, or other documents pertinent to the performance of the O&M AGREEMENT and necessary for the **BOARD** to perform its function. A copy of such pertinent documents must also be furnished to the **O&M FIRM**.

B. Coordination and Services: The **DEPARTMENT**, in cooperation with the **O&M FIRM**, will coordinate the operations of the **BOARD**. The **DEPARTMENT**, through the Chief Operating Officer, will arrange or provide conference facilities at or near the Contract site and provide secretarial and copying services.

V

TIME FOR BEGINNING AND COMPLETION

The **BOARD** is to remain in operation for up to 365 calendar days after the termination of the FDOT services period (seven years from commencement date of Revenue Service), or until all claims are resolved, whichever shall occur first. Any claims that were not resolved prior to the end of termination of the FDOT services period (seven years from the commencement date of Revenue Service) must be referred to the Board within 180 calendar days after the end of the termination of the FDOT services period. Only duly preserved claims will be eligible to be heard by the Board. Failure to submit all claims to the Board within the aforementioned 180 calendar days after the end of the termination of the FDOT services period constitutes an irrevocable waiver of the O&M Firm's claim.

VI

PAYMENT

Basis of Payment:

a) Regular DRB Meeting: A per day cost of \$6,000 has been established by the **DEPARTMENT** to reimburse the **O&M FIRM** for providing compensation to the three members of the Disputes Review Board. This amount will be paid to the **O&M FIRM** for each day the Disputes Review Board is convened for regular DRB project meetings. For each day of the meeting, the **O&M FIRM** shall compensate each Disputes Review Board member a sum of \$2,000. Such payment will be full compensation to the **BOARD** member for salary and all travel expenses (air fare, rental or personal automobile, motel room, meals, etc.) related to membership on the Board.

b) Hearing: A per hearing cost of \$8,000.00 has been established by the **DEPARTMENT** to provide compensation for all members of the Disputes Review Board for participation in an actual hearing. For each hearing, the **O&M FIRM** shall compensate the Disputes Review Board chairman the sum of \$3,000.00 for participation in the hearing, while the remaining two members will receive \$2,500.00 each. Such payment will be full and complete compensation to the **BOARD** members for all expenses related to the hearing. This includes travel, accommodations, meals, pre- and post- hearing work, review of position papers and any rebuttals, conducting the hearing, drafting and issuance of recommendations, readdressing any requests for clarification. It is not intended for hearings to last longer than a single day, however, in some cases they may. Any additional time and/or compensation for a hearing would only be allowed upon prior written approval of the **DEPARTMENT** and the **O&M FIRM**. If an additional day(s) is granted for the hearing, each board member will be compensated \$1,000 per day and such payment will be full and complete compensation for all expenses related to this additional day hearing.

If the **BOARD** believes that expert advice regarding a particular highly technical subject in dispute would be of assistance to them, it may bring in up to two industry experts for advice, provided however that the person the **BOARD** proposes to select shall have provided the resume and disclosure statement in accordance with the O&M AGREEMENT, Scope of Services 19.2.5, is not disqualified as stated in Scope of Services 19.2.6, and the **DEPARTMENT** and the **O&M FIRM** have agreed in writing prior to the use of these experts. These industry experts brought in are not **BOARD** members and have no vote. These industry experts shall be compensated at the same hearing cost rate as the non-chairman **BOARD** Members. Such payment will be full

and complete compensation to the experts for all expenses related to the hearing. This includes travel, accommodations, meals, pre- and post- hearing work, and as requested by the **BOARD** review of position papers and any rebuttals, presence at or review of the hearing, oral advice to and/or drafting and issuance of advice to the **BOARD**, and participation in readdressing any requests for clarification

If the **BOARD** desires special services, such as legal consultation, accounting, data research, and the like, **DEPARTMENT** and the **O&M FIRM** must agree in writing prior to use of these special services.

The **BOARD** members shall comply with all applicable portions of 48 CFR 31 (Federal Acquisition Regulations: Contract Cost Principals and Procedures). The chairman shall transmit an invoice to the **O&M FIRM**, with a copy to the **DEPARTMENT**.

The **DEPARTMENT** will reimburse the **O&M FIRM** for all **BOARD** hearing cost expenses (**BOARD** compensation, industry expert advisors, and special services) incurred if the findings of the **BOARD** are in favor of the **O&M FIRM**. If the findings are in favor of the **DEPARTMENT**, the **DEPARTMENT** will not reimburse the **O&M FIRM** for all **BOARD** expenses incurred. If the **BOARD** rules on multiple issues during a single hearing, **DEPARTMENT** reimbursement to the **O&M FIRM** is based on ratio of findings (e.g., if **BOARD** hears four issues, regardless of importance or value, and rules favorably for the **O&M FIRM** on three of them, the **DEPARTMENT** reimburses **O&M FIRM** for 75% of **BOARD** costs).

The Department will prepare and mail minutes and progress reports, will provide administrative services, such as conference facilities and secretarial services, and will bear the cost of these services.

Inspection of Costs Records: The **BOARD** members shall keep available the cost records and accounts pertaining to this **AGREEMENT**, for inspection by representatives of the **DEPARTMENT** and the Federal Transit Administration, for a period of three years after the last day after the term of the **O&M AGREEMENT**, at which time all such cost records and accounts shall be delivered to the **DEPARTMENT** for further retention as may otherwise be required. If any litigation, claim, or audit arising out of, in connection with, or related to the **O&M AGREEMENT** is initiated before the expiration of the three year period, the cost records and accounts shall be retained until such litigation, claim, or audit involving the records is completed.

VII

ASSIGNMENT OF TASKS OF WORK

The **BOARD** members shall not assign any of the work of this **AGREEMENT**.

VIII

TERMINATION OF AGREEMENT

This **AGREEMENT** may be terminated by mutual agreement of the **DEPARTMENT** and the **O&M FIRM** at any time, upon not less than four weeks' written notice to all other parties. **BOARD** members may withdraw from the **BOARD** by providing four weeks' written notice to all other parties. This **AGREEMENT** will remain in force until another Dispute Review Board Three Party Agreement to replace it has been fully executed. **BOARD** members may be terminated for cause or without cause only by his/her original appointer; i.e., the **DEPARTMENT** may only terminate the **DEPARTMENT**-appointed member, the **O&M FIRM** may only terminate the **O&M FIRM**-appointed member, and the first two members must agree to terminate the third member, except in the instance of an apparent conflict of interest, when a member may be terminated for cause by a vote of both of the other two members plus either the **DEPARTMENT** or the **O&M FIRM**. In the event that the **O&M FIRM** and the **DEPARTMENT** cannot agree on a new **BOARD** within 60 days of the **BOARD**'s termination, the new **BOARD** will be selected by the Chief Executive Officer of the Central Florida Rail Commission and the Chief Executive Officer (or person with highest officer title) of the **O&M FIRM**.

IX LEGAL RELATIONS

The parties hereto mutually understand and agree that each **BOARD** member in the performance of duties on the **BOARD** is acting in the capacity of an independent contractor and not as an agent or employee of either the **DEPARTMENT** or the **O&M FIRM**.

The **DEPARTMENT** and the **O&M FIRM** agree that no **BOARD** member shall be personally liable for any act or omission in the scope of their capacity as a **BOARD** member pursuant to this **AGREEMENT**, unless such **BOARD** member acted in bad faith or with malicious purpose or in a manner exhibiting wanton and willful disregard of their responsibilities hereunder.

This **AGREEMENT** creates no third party rights on behalf of any person or entity.

X VENUE, APPLICABLE LAW

In the event that any party deems it necessary to institute legal action or other proceedings to enforce any right or obligation under this **AGREEMENT**, the parties hereto agree that any such action against the **DEPARTMENT** shall be brought in Leon County and that any cause of action against the **O&M FIRM** or **BOARD** Members shall be brought in the appropriate venue according to Florida law. The parties hereto agree that this **AGREEMENT** shall be interpreted in accordance with Florida law.

XI PUBLIC RECORDS

Each **BOARD** member, **O&M FIRM**, and the **DEPARTMENT** shall allow public access to all documents, papers, letters, and other material made or received by the parties to this **AGREEMENT**, in accordance with the provisions of Chapter 119, Florida Statutes. Failure to grant such public access may be grounds for immediate unilateral cancellation of this **AGREEMENT** by the **DEPARTMENT**. However, upon receipt of any such public records request, the parties hereto shall immediately notify the **DEPARTMENT** and obtain prior written consent from the **DEPARTMENT** before releasing such records.

The **BOARD** members shall maintain all documents, papers, letters, and other material made or received by the members pursuant to their performance pursuant to this **AGREEMENT** for a period of three years following the last day of the term of the **O&M AGREEMENT**; or in the event that any litigation, claim, or audit arising out of, in connection with, or related to the **O&M AGREEMENT** is initiated before the expiration of the three year period, all documents, papers, letters, and other material made or received by the members pursuant to their performance pursuant to this **AGREEMENT** shall be retained until such litigation, claim, or audit involving the records is completed; at which time all such documents, papers, letters, and other material shall be delivered to the **DEPARTMENT** for further retention as may otherwise be required.

XII NO BONUS

The parties hereto agree that they shall not agree to pay or receive any commission, percentage, bonus, or consideration of any nature, other than the payment provided for in Section VI above, for their performance and services under this **AGREEMENT**.

XIII NO CONFLICT

The members of the **BOARD** agree individually that they do not now and during the term of this **AGREEMENT** will not have any direct or indirect ownership or financial interest in the **O&M FIRM** awarded the contract for this O&M project, the CEI consulting firm on this project, any subcontractor or supplier of the project, or any business of another **BOARD** member. The members of the **BOARD** affirm and agree that except for services as a **BOARD** member on other **DEPARTMENT** projects, that they have not within the two year period immediately prior to the award of the **O&M AGREEMENT** been an employee, subcontractor, or consultant to the **O&M FIRM**, the CEI consulting firm on for this project, any subcontractor or supplier of the project, or any business of another **BOARD** member, and that during the term of this **O&M AGREEMENT** they

shall not become so involved. The members of the **BOARD** also agree that they have not within the two years immediately prior to the award of the O&M AGREEMENT been employed by the Central Office of the **DEPARTMENT**, the **DEPARTMENT'S** District or Turnpike in which the project is located, or as a consultant for the **DEPARTMENT** in the District or Turnpike in which the project is located. Furthermore, the members of the **BOARD** affirm that they are not employed by the **DEPARTMENT**, the **O&M FIRM** awarded the contract, the CEI consulting firm on the project or a CEI consulting firm that has on-going work or contracts pending in the District in which the O&M AGREEMENT is located. Finally, the members of the **BOARD** agree that they are not a full-time employee of a **DEPARTMENT** prequalified contractor or prequalified consultant.

If during the life of the O&M AGREEMENT, a **BOARD** member is made aware that a firm of which he/she is an employee is involved in the contract as a subcontractor or supplier, he/she shall immediately give notice to the **DEPARTMENT** and the **O&M FIRM**. Upon receiving such notification, the **DEPARTMENT** or the **O&M FIRM** may, within ten (10) days, give notice that this **BOARD** member is no longer acceptable and a new **BOARD** member shall be selected and approved. In no event, shall a **BOARD** member participate in a hearing by the **BOARD** of a dispute involving a firm by which he is employed. If during the life of this contract, a **BOARD**-member has a discussion regarding employment or entered into any agreement for employment after completion of the contract with the **DEPARTMENT**, the **O&M FIRM** or any subcontractor or supplier on the project, he/she shall immediately disclose this to the **O&M FIRM** and the **DEPARTMENT** and shall be disqualified from serving on the Board.

XIV FEDERAL REVIEW

The Federal Transit Administration shall have the right to review the work in progress and reserves the right to concur in any settlement of any claim.

XV CERTIFICATION OF THE BOARD MEMBERS AND THE DEPARTMENT

Attached hereto as Exhibits are the "CERTIFICATION OF THE BOARD MEMBERS" and "CERTIFICATION OF STATE DEPARTMENT OF TRANSPORTATION".

XVI E-VERIFY

Vendor/O&M FIRM:

1. shall utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the Vendor/O&M FIRM during the term of the contract; and
2. shall expressly require any subcontractors performing work or providing services pursuant to the state contract to likewise utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the subcontractor during the contract term.

IN WITNESS WHEREOF, the parties hereto have executed this **AGREEMENT** as of the day and year first above written.

BOARD MEMBER

Name: _____

Signature: _____

Title: _____

BOARD MEMBER

Name: _____

Signature: _____

Title: _____

BOARD MEMBER

Name: _____

Signature: _____

Title: _____

O&M FIRM

Name: _____

Signature: _____

Title: _____

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION

Name: _____

Signature: _____

Title: DISTRICT MAINTENANCE ENGINEER

Approved as to Form Only this
_____ day of _____, 20_____

Chief Counsel

**EXHIBIT A
CERTIFICATION OF BOARD MEMBERS**

The undersigned hereby certify that he/she represents the firm located at the indicated address and that neither the undersigned nor the firm represented has:

a) employed or retained for a commission, percentage, brokerage, contingent fee, or other consideration, any firm or person (other than a bona fide employee working solely for him/her or the firm indicated below) to solicit or secure this **AGREEMENT**; or

b) agreed, as an express or implied condition for obtaining this **AGREEMENT**, to employ or retain the services of any firm or person in connection with carrying out this **AGREEMENT**; or

c) paid, or agreed to pay, to any firm, organization or person (other than a bona fide employee working solely for him/her or the firm indicated below) any fee, contribution, donation, or consideration of any kind for, or in connection with, procuring or carrying out this **AGREEMENT**; except as here expressly stated (if any):

I acknowledge that this certification may be furnished to the State Department of Transportation and the Federal Transit Administration, U.S. Department of Transportation, in connection with this **AGREEMENT** involving participation of Federal Transit Administration funds, and is subject to applicable state and federal laws, both criminal and civil.

Name

Signature

Date

Title

Firm Address

Firm Represented

Name

Signature

Date

Title

Firm Address

Firm Represented

Name

Signature

Date

Title

Firm Address

Firm Represented

EXHIBIT B
CERTIFICATION OF STATE DEPARTMENT OF TRANSPORTATION

I hereby certify that I am the District Maintenance Engineer _____ - _____ of the State of Florida Department of Transportation, of the District in which the Central Florida Rail Corridor is to be operated and maintained, and that the above signatories have not been required, directly or indirectly as an express or implied condition in connection with obtaining or carrying out this **AGREEMENT** to:

- a) employ or retain, or agree to employ or retain, any firm or person; or
- b) pay, or agree to pay, to any firm, person, or organization, any fee, contribution, donation, or consideration of any kind; except as here expressly stated (if any):

I acknowledge that this certificate may be furnished the Federal Transit Administration, U.S. Department of Transportation, in connection with this **AGREEMENT** involving participation of Federal Transit Administration funds, and is subject to applicable state and federal laws, both criminal and civil.

(Date)

(Signature)

(Name)

PERFORMANCE BOND

KNOW ALL MEN BY THESE PRESENTS: That we, Bombardier Mass Transit Corporation

(name)
(hereinafter called Vendor) of 101 Gibraltar Road, Suite 112, Horsham, PA 19044
(address)

and
(name) (hereinafter called Surety) of

(address),
duly authorized to do business in the State of Florida, are held and firmly bound unto the State of Florida in the full and just
sum of * See Below Dollars (\$ 19,399,979.52),

lawful money of the United States of America, to be paid to the Florida Department of Transportation (hereinafter called the
Department), to which payment will and truly to be made we bind ourselves, our heirs, executors, administrators, successors and
assigns, jointly and severally and firmly by these presents;

WHEREAS, the above Vendor has subscribed to an agreement with the Department to bear the date of _____,
for contractual services agreement in connection with

Central Florida Rail, Corridor (CFRC) Operations and Maintenance

*Nineteen million, three hundred ninety nine thousand, nine hundred seventy nine dollars and 52 cents

_____ in Volusia, Seminole, Orange and Osceola County(ies),

particularly known as Contract No.

(hereinafter called the Agreement), upon certain terms and conditions in said Agreement more particularly mentioned; and

NOW, THEREFORE, The condition of this obligation is such that if the above Vendor in all respects will comply with the terms
and conditions of said Agreement, and its obligations thereunder, including the Scope of Services, Specifications, General Conditions,
Special Conditions, Bid Blank therein referred to and made a part thereof, and such alterations as may be made in said conditions and
specifications, as therein provided for; and, further, if such Vendor will promptly make payment to all persons supplying labor, material,
equipment and supplies, used directly or indirectly by the said Vendor or any subcontractor(s) in the prosecution of the work provided
for in said Agreement, and promptly will pay all State Workers' Compensation and Unemployment Compensation taxes incurred in the
performance of the said Agreement and will pay to the Department any amount in money or property, the Department may lose or be
overcharged or otherwise defrauded of, by reason of any wrongful or criminal act of the Vendor, its agents, or employees, then this
obligation is to be void; otherwise, to be and remain in full force and virtue in law.

WITNESS the signature of the Vendor and the signature of the Surety by _____ its

(Agent or Attorney-in-Fact, or otherwise)
with seals of said Vendor and Surety hereunto affixed this _____ day of _____,

Surety
BY: _____
Signature
TITLE: _____
Attorney-in-Fact/Agent (Surety Seal)

Vendor
BY: _____
Authorized Signature(s)
TITLE: _____

ATTEST: _____
Secretary/Notary

Name/Telephone #: _____
Address: _____

BY: _____
Signature

NOTE: Attach Power of attorney showing authority of Surety's Agent or Attorney-in-Fact. This bond is not for public works contracts required by
Section 255.05, Florida Statutes.