

one or more of the terms and conditions of the Contract or otherwise give rise to any cause of action in any person not a party to the Contract, except as expressly provided elsewhere in the Contract.

1.12.22 Set-off Rights

Metra may, but shall not be obligated to, withhold from and set off against any payment otherwise due and payable by Metra under the Contract, any amount payable by Contractor to Metra under or in connection with the Contract.

1.12.23 Assignment of Contract and Subcontracting

The Contractor agrees that neither this Contract nor any part of it or any of the monies due from this Contract may be assigned without the prior consent of Metra. Any successor or assignee under this Contract will be required to accede to all of the terms, conditions and requirements of this Contract as a condition precedent to such succession or assignment. Assignment of any portion of the work by subcontract must be approved in advance by Metra, in writing. Metra reserves the right to assign performance of all or part of the Contract as advertised, competed, evaluated, and awarded including base and option quantities.

Contractor shall submit a list of Major Subsystems (as defined in Section 2.9.6 below) prior to the associated Milestone payment date, and shall notify Metra immediately if there is any subsequent change of suppliers for such Major Subsystems.

Subcontracting will not release the Contractor from any of its liability under the Contract or release Contractor or any of its sureties from any liability under the sureties. All subcontractors must look only to the Contractor for the payment of claims of any nature whatsoever arising out of the subcontract. The Contractor shall include in all agreements with subcontractors, as pertaining to the Contract, that its subcontractor shall make no claim whatsoever against Metra, its employees, officers, or agents, for any Work performed or thing done by reason of the subcontract, or for any other cause whatsoever that may arise by reason of the relationship created between the Contractor and the subcontractor by the subcontract.

The Contractor shall be responsible for the compliance of its subcontractors with the requirements with all federal, state, and local/municipal laws, ordinances, rules, and regulations (including those of Metra) as may be applicable.

Contractor shall take no action or enter into any agreement which would prevent or prohibit any of its subcontractors from communicating with Metra concerning, and Metra may communicate with any of the Contractor's subcontractors concerning, any matter relevant to the performance of the Contract or to the possible replacement of Contractor with a substitute in the case of an event of default.

Contractor shall cause each Major Subcontractor to file with Metra a debarment certification similar in form and substance to that required of the Contractor. Metra reserves the right to require the Contractor or any Major Subcontractor to reissue an updated certificate from time to time.

1.12.24 Independent Parties

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

1.12.25 Survival

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

Intellectual Property

Data Rights

Indemnification

Governing Law and Choice of Forum

Disputes

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

Confidential Information

Parts Availability Guarantee

Warranty and Reliability

Liquidated Damages

1.12.26 No Obligation by the Regional Transportation Authority

Metra and the Contractor acknowledge and agree that, notwithstanding any concurrence by the Regional Transportation Authority ("RTA") in or approval of the solicitation or award of this Contract, and absent the express written consent by the RTA, the RTA is not a party to this Contract and it shall not be subject to any obligations or liabilities imposed on Metra, Contractor, or any other party (whether or not a party to this Contract).

1.13 INTELLECTUAL PROPERTY

1.13.1 Intellectual Property Indemnification

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

1. Secure for Metra the right to continue using the software, materials, equipment, devices or processes by suspension of the injunction or by procuring a royalty-free license, or licenses;

2. Replace such software, materials, equipment, devices or processes with non-infringing software, materials, equipment, devices, or processes; or
3. Modify them so that they become non-infringing.

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

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

1.13.2 Intellectual Property Warranty

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

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

1.13.3 Tooling Rights

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

For purposes of this Section the terms "sell" and "sale" shall not include transfer of these assets to a successor corporation or other entity that assumes the business and obligations of any Contractor, Subcontractor, Supplier or Manufacturer herein, including obligations arising under the Contract. Upon Contractor's offer of any of the materials described above and Metra's refusal, the Contractor's obligation with regard to Tooling Rights, as it relates to the specific materials offered and refused, shall cease.

1.13.4 Publicity

Metra reserves the right to review and approve all Metra-related material prior to publication. Published information shall be factual and shall in no way imply that Metra endorses the Contractor's firm, service, or product.

1.14 DATA RIGHTS

1.14.1 Proprietary Rights/Rights in Data

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

1.14.1.1 Uses

Metra’s rights under this Technology License shall be limited to its use for the following:

1. Evaluation and qualification for the purposes of future material and/or equipment procurements of systems, subsystems and components of subsystems on the material and/or equipment to be delivered under the Contract;
2. Preparation of specifications for future purchases employing some or all of the Licensed Technology;
3. Maintenance and repair of the material and/or equipment;
4. Overhaul of the material and/or equipment;
5. Manufacture of parts for the material and/or equipment that become unavailable for purchase. The term “unavailable for purchase” means that a part is no longer being manufactured; or an inventory of the part in sufficient quantities to meet Metra’s needs is not available for purchase; or no supplier will sell a part to Metra or cannot supply the part according to a delivery schedule that meets Metra’s needs; or that no supplier will offer the part at a commercially reasonable price. “Unavailable for purchase” can be demonstrated through a public solicitation receiving no responsive and responsible bids or proposals.

1.14.1.2 Limits

Metra shall not have the right under this Technology License either to use the Licensed Technology to manufacture itself, or to have manufactured for it by a third party as a sublicensee of Metra, either the material and/or equipment, systems, subsystems or components thereof, except as specified above.

1.14.2 Software Escrow Account

Prior to Final Acceptance of the first vehicle, the Contractor shall provide Metra a list of all software comprising proprietary works (“Proprietary Software”). Source code for the Proprietary Software and all related documentation required for the use and modification thereof, and any revisions or

derivative works based on the Proprietary Software developed pursuant to the Contractor's performance of the Contract (collectively, "Escrow Materials") shall be deposited in an escrow account with a third party for no less than twenty (20) years. The Contractor shall pay all initial and future costs related to the escrow account as long as Contractor has full ability to choose the Escrow agent; otherwise, the escrow cost shall be borne by Metra. Escrow Materials shall be released in accordance with the explicit terms for release set forth in an Escrow Agreement entered into by the Parties no later than six months prior to Final Acceptance of the first vehicle.

1.15 CHANGES

1.15.1 Contractor Changes

If the Contractor chooses to propose changed scope, then the Contractor must submit a notice of proposed change to Metra for its prior written approval. The notice should describe the proposed change, identifying the proposed change and stating the reasons for the change, including relevant circumstances, impacts on the schedule, and estimated cost impacts.

Upon receipt of the proposed change notice, Metra will have 20 calendar days to either reject the notice or to request Contractor to submit a detailed Proposal within a specified time period. If Metra accepts the proposed change notice, it may issue an Interim Change Notice specifying the proposed change and action that the Contractor should undertake. The Interim Change Notice may include a not-to-exceed amount for the change based upon the Contractor's estimate. If Metra requests a proposal, then the Contractor's proposal shall set forth any changes to the Total Contract Price, including, if applicable, a line item breakdown and per unit increases, Contract delivery schedule, and/or any technical requirements of the Contract.

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

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

1.15.2 Metra Changes

Metra may obtain changes to the Contract by notifying the Contractor.

Metra may issue an Interim Change Notice specifying the proposed change and action that the Contractor should undertake. Upon receipt of the Interim Change Notice and as soon as reasonably possible, but no later than thirty (30) calendar days, or a date agreed to by the parties, the Contractor shall submit to Metra's Authorized Representative a detailed price and schedule proposal for the Work to be performed. The Contractor's proposal shall set forth any changes to the Total Contract Price, contract delivery schedule, or any technical requirements of the Contract. This Proposal shall be accepted or modified by negotiations between the Contractor and Metra's Authorized Representative. At that time, a Change Order shall be executed in writing by both parties. Disagreements that cannot be resolved within negotiations shall be resolved in accordance with the Disputes clause.

Oral Change Orders are not permitted.

1.15.3 Claims

The Parties shall seek to resolve all disputes regardless of the amount in controversy initially at the project management level. If unresolved at the project management level, the Parties shall seek to resolve all disputes through escalation of the dispute through all levels of an agreed-upon Issue Resolution Ladder (IRL) as a condition precedent to submitting any claim. The IRL at a minimum shall include escalation of the dispute to the Contractor Head of Project Management and METRA's Chief Mechanical Officer, prior to submission of a claim.

The IRL also shall address Metra's review time to make a decision and the Contractor's appeal time of Metra's decision in order to escalate a dispute to each next step in the IRL. Unless otherwise agreed, Metra's review time and the Contractor's appeal time both shall be fifteen (15) calendar days. Any dispute and appeal by the Contractor shall be in writing and include all documents and other information necessary to support the dispute and to address any requests for information from Metra. Failure of the Contractor to appeal a decision at any level of the IRL within the fifteen (15) calendar day period, unless otherwise mutually agreed, will constitute a waiver of the Contractor's right to assert thereafter any claim resulting from Metra's decision on the matter in dispute.

1.15.3.1 Notice of Intent to Claim

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

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

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

1.15.3.2 Claim Submittal

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

1. Detailed factual statement of the claim, with all necessary facts, events, locations, and affected Work.
2. Date of the event giving rise to the claim; if there are continuing or multiple events, provide all dates necessary to support the claim.

3. Names of all persons who made any statements with respect to, or are knowledgeable of, the facts and events giving rise to the claim.
4. Specific provisions of the Contract supporting the claim, with a statement of supporting rationale.
5. Identification of all documents including meeting minutes, transcriptions of oral communications, photographs, videos, tapes, and any other evidence supporting the claim.
6. Detailed analysis of a request for an extension of item.
7. Detailed breakdown of request for additional compensation.

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

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

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

The Contractor shall maintain cost records of all Work, which is the basis of any claim, in the same manner as is required for Changed Work in the Changes clause of this agreement.

1.15.3.3 Claims Process

Within 30 calendar days after the receipt of the claim, Metra shall either render a decision, provide an estimated date when a decision will be made, or request that the Contractor submit additional information and details to establish the facts and contentions involved in the claim.

If Metra does not make a decision within 30 days after it receives all information required to evaluate the claim, or within any extended period mutually agreed to in writing by the parties, the claim shall be deemed rejected by Metra, and the Contractor shall be notified in writing. If the Contractor fails to comply with any provision of this Article in the time and manner specified, it shall waive any relief that might otherwise be due with respect to such claim.

Metra may at its discretion, unilaterally or in agreement with the Contractor, make payments or grant extensions of time on any part of a claim it determines to have been substantiated to its satisfaction. If the Contractor agrees to a final payment or extension of time related to a certain, described portion of its claim, such agreements shall constitute an unconditional release of Metra from any further obligations related to that described portion of the claim.

If Metra finds the claim to have merit, in whole or in part, then Metra and Contractor will negotiate the terms of a Change Order in the Work in compliance with the Changes clause.

If the Contractor and Metra are unable to reach agreement on a Change Order, then Metra may issue a unilateral Change Order. The unilateral Change Order shall constitute a final decision by Metra.

If any claim or portion thereof remains in dispute following a final decision by Metra, then the Contractor may pursue further resolution through the Disputes clause.

Pending final resolution of a claim, the Contractor shall proceed diligently with the performance of its obligations under the Contract in accordance with the written directions of Metra.

1.15.3.4 No Claims after Final Payment

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

1.15.4 Disputes

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

Notice of Dispute. All disputes shall be initiated through a written dispute notice submitted by either party to the other party within fourteen (14) calendar days of the determination of the dispute.

Negotiation between Authorized Representatives. The parties shall attempt in good faith to resolve any dispute arising out of or relating to the Contract promptly by negotiation between individuals who have authority to settle the controversy and who are at a higher level of management than the people with direct responsibility for administration of the Contract. Any party may give the other party written notice of any dispute not resolved in the normal course of business as provided. Within fourteen (14) calendar days after delivery of the dispute notice, the receiving party shall submit to the other party a written response. The dispute notice and written response shall include: (1) a statement of the party's position and a summary of the arguments supporting that position; (2) any evidence supporting the party's position; and (3) the name of the individual who will represent that party and of any others who will accompany the executive in negotiations. Within twenty-eight (28) calendar days after delivery of the dispute notice, the Authorized Representatives of both parties shall meet at a mutually acceptable time and place, and thereafter as they reasonably deem necessary, to attempt to resolve the dispute. All reasonable requests for information by one party to the other shall be honored.

Referral to executive management. If the matter has not been resolved by the Authorized Representatives within twenty-eight (28) calendar days of the dispute notice, then the dispute may be referred to executive management to settle the dispute and who shall likewise meet to attempt

to resolve the dispute. Should the dispute not be resolved by negotiation between Authorized Representatives, Metra's Authorized Representative shall submit a written request for decision to the Metra's Executive Officer along with all documentation and minutes from the negotiations. The Executive Officer shall issue a written decision within fourteen (14) calendar days or a date mutually agreed upon receipt of a request. Within thirty (30) calendar days of the issuance of any administratively final and conclusive decision under this paragraph, the Contractor shall notify in writing of the Contractor's agreement with the final decision. Any dispute that is not resolved by the parties through the operation of the provisions of this paragraph, or any mutually agreed-upon alternative disputes resolution process pursuant, may be submitted to any court in Circuit Court of Cook County, Illinois. Pending final resolution of a dispute hereunder, the Contractor shall proceed diligently with the performance of its obligations under the Contract in accordance with the written directions of Metra.

Alternative dispute resolution. If agreed to by both parties, disputes may be resolved by a mutually agreed-to alternative dispute resolution process that may include structured negotiations different from above, such as mediation or arbitration.

1.16 ILLINOIS FREEDOM OF INFORMATION ACT (FOIA)

1.16.1 Generally

Metra is subject to the Illinois Freedom of Information Act (FOIA), 5 ILCS 140/1 *et seq.* Contractor should assume any materials provided to Metra will be subject to public disclosure. Under FOIA, Metra may exempt trade secrets and commercial or financial information marked as proprietary, privileged or confidential, if such disclosure of the information would cause competitive harm to the Proposer and only as the claim directly applies to the records requested. To the extent Contractor provides Metra records it believes are subject to this provision, it must clearly mark the header or footer of each page of the applicable material as "confidential." If Metra agrees the exemption is applicable, it will withhold the material unless and until it is directed to disclose the information pursuant to law, a court order, subpoena, or decision from the Illinois Attorney General.

1.16.2 Confidential Information

Metra shall employ sound business practices no less diligent than those used for Metra's own confidential information to protect the confidence of all licensed technology, software, documentation, drawings, schematics, manuals, data and other information and material provided by the Contractor pursuant to the Contract that are marked in accordance with Section 1.16.1, to protect against disclosure of such information and material to third parties except as permitted by the Contract and required under law. The Contractor shall be responsible for ensuring that confidential commercial or financial information, trade secrets or proprietary information, bears appropriate notices as described above.

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

information developed in connection with the Work under the Contract shall be used solely for the performance of the Work under the Contract, and shall be held in confidence and not disclosed to any third party without the prior written consent of the Discloser.

1.17 AMERICANS WITH DISABILITIES ACT

The Contractor agrees to comply with, and assure that any subcontractor complies with all applicable requirements of 42 USC 12101 et seq.

1.18 APPROPRIATION

Consistent with Metra's enabling statute, if this Contract is for a period of longer than one year, it is subject to the appropriation of funds by Metra's Board of Directors for each year beyond the first year of the Contract.

1.19 CERTIFICATIONS

As a Condition of award the Contractor and all Subcontractors executed a set of certifications provided by Metra attached in Appendix A. Metra conditioned award of this Contract on the veracity of the executed certifications. If it is discovered that the Contractors' certificates were false at the time of execution, Metra may terminate the Contract and require Contractor reimburse Metra for its costs in identifying and selecting a replacement contractor. In the event a Subcontractors' certificates were false at the time of execution, Metra may require Contractor replace the Subcontractor at no additional cost to Metra.

1.20 INSURANCE REQUIREMENTS

1.20.1 Requirements

Requisition Number: PR0097728

Event: New Battery Powered Trainsets

Effective concurrently with the commencement of the Work, the contractor/vendor shall obtain and maintain throughout the life of the work, the insurance coverage as noted here. With the exception of Products Liability, all coverage needs to be written on an occurrence form. All insurers must carry an AM Best Rating of A-VII or better.

TYPE OF COVERAGE	AMOUNT REQUIRED
1. WORKERS COMPENSATION: a. Coverage A – Statutory b. Coverage B – 7(1)(s)	7(1)(s) Limits of Liability
2. COMPREHENSIVE GENERAL LIABILITY (BROAD FORM): Bodily Injury Liability & Property Damage Liability (combined)	Each Occurrence Aggregate
3. EXCESS COMPREHENSIVE GENERAL LIABILITY- EXCESS OF PRIMARY LIMITS (1), (2), and (4) Bodily Injury Liability & Property Damage Liability (combined)	Each Occurrence Aggregate
4. AUTOMOBILE LIABILITY: Bodily Injury Liability & Property Damage Liability (combined)	Combined Single Limit
5. PRODUCTS LIABILITY	Each Occurrence Aggregate
6. BUILDERS RISK INSURANCE	N/A
7. PERFORMANCE/PAYMENT BOND	Full Value of Contract

Additional Insureds shall be as follows: The Commuter Rail Division of the Regional Transportation Authority, a division of an Illinois municipal corporation, and its affiliated separate public corporation known as the Northeast Illinois Regional Commuter Railroad Corporation, both operating under the service mark Metra as now exists or may hereafter be constituted or acquired, the Regional Transportation Authority, an Illinois municipal corporation and all other railroads operating on Metra property.

All policies must:

- Include a waiver of subrogation, thereby waiving your rights of subrogation against Metra and any additional insureds.

2. Include the Additional Insured Endorsement for all coverages including products and completed operations.
3. Be primary and non-contributory on all coverages.
4. All deductibles applicable to the insurance coverage shall be borne by the contractor/vendor. The certificate of insurance shall clearly state how defense costs (also known as “allocated loss adjustment expenses”) shall apply in terms of the deductible and the insurance limits. (SIR programs are prohibited, unless approved by Metra’s Risk Management Department.).
5. All subcontractors retained or hired for the work shall be required to maintain limits and term equivalent to those required of the prime contractor.

Should any of the above-described policies be cancelled before the expiration date thereof, notice will be delivered in accordance with the policy provisions. Contractor/Vendor will immediately notify Metra of the cancellation, non-renewal, material change or reduction in coverage of any required insurance policy. Such notice shall be sent certified mail to Metra, care of Director of Risk Management, 547 W. Jackson, Suite 1500, Chicago, IL 60661.

In no event, shall the failure by Metra to receive certificates of insurance required hereunder, or to receive them by the date(s) required hereunder, be construed as a waiver of the contractor/vendor’s obligation to obtain the required insurance coverages. Failure by Metra to demand any certificate of insurance or other evidence of full compliance with the insurance requirements set forth herein, or failure by Metra to identify a deficiency in the evidence provided, shall not be construed as a waiver of the obligation to procure, or maintain the insurance required hereunder. The acceptance of delivery by Metra of any certificate of insurance does not constitute approval or agreement that the insurance requirements have been met or that the insurance policies identified in the certificates of insurance are in compliance with such requirements.

1.20.1.1 Commercial General Liability Insurance

The CGL policy shall include the following coverage limits when limits are indicated:

7(1)(s) per occurrence **7(1)(s)** aggregate
aggregate for completed operations & products liability

1.20.1.2 Automobile Liability Insurance

The Automobile policy shall include the following additional coverage limits:

Include “any” auto (i.e., all autos owned by the contractor/vendor as well as hired and non-owned autos used by the contractor/vendor and autos used by the contractor/vendors’ employees while on Metra property).

7(1)(s) for Property Damage (if not combined in single limit)

1.20.1.3 Workers Compensation and Employers Liability Insurance

Workers Compensation Insurance coverage should be at statutory limits.

As a minimum, the Employers Liability policy shall include coverage limits of:

7(1)(s)

for bodily injury by accident
for bodily injury by disease, each employee
aggregate liability

1.20.1.4 Additional Insured shall be as follows:

The Commuter Rail Division of the Regional Transportation Authority, a division of an Illinois municipal corporation and its affiliated separate public corporation known as the Northeast Illinois Regional Commuter Railroad Corporation, both operating under the service mark Metra as now exists or may hereafter be constituted or acquired, and The Regional Transportation Authority, an Illinois municipal corporation.

PLEASE SEND THE CERTIFICATE OF INSURANCE TO:

Ann Hammo
Manager, Risk Management
(312) 322-1455
ahammo@metrarr.com

2 SPECIAL CONDITIONS

2.1 TERM AND ORDER PROCESS

This Contract shall remain effective for all services described herein for a period of 60 months from the date Metra issues Notice to Proceed. The Contractor agrees to complete each phase of the Work in accordance with the schedule and timelines described within this Contract. The Contractor shall complete all services described herein within 144 months of the date Metra issues Notice to Proceed.

The Contractor shall supply a minimum of eight (8) and up to a maximum of sixteen (16) new 2-car battery powered trainsets and the specified parts in accordance with Section 4, Technical Specifications. Metra may issue orders for specified quantities any time within the 60-month period. All orders will be made in writing, and require signed authorization of Metra's Executive Director, or his designee as appointed in writing by either the Executive Director or Metra's Board Chairman. Absent such written authorization, or designation if applicable, no order shall be fulfilled. As listed in the price sheet, any option order that is placed a minimum of 18 months prior to delivery of the last vehicle of the base order (which would allow for continuous production) is priced lower than option orders placed later.

2.2 PAYMENT AND PERFORMANCE BONDS

Both a labor and material payment bond, and a performance bond shall be provided under this Contract, prior to NTP, each individually in the amount of one hundred (100%) of the total contract amount. The bond amount for the value of the total contract amount quoted on the Pricing Schedule shall be a not-to-exceed amount. Metra will only pay the actual bond amount that is paid by the Contractor with proof of the invoice from their Surety (pass-through charge, no additional fees or mark-up of any kind can be added). The additional bonds for change orders are pass-through charges; therefore, no profit, overhead, or any other fee shall be added. If the bond pricing paid for by the Contractor and invoiced by the surety differs from what is quoted in the Price Schedule (e.g., is less than the not-to-exceed amount), the Contractor shall provide a detailed explanation as to why the pricing changed before Metra will reimburse the Contractor for the bonding costs. The surety on each bond must be responsible for one hundred percent (100%) of damages up to one hundred percent (100%) of the total. For any increase in the actual contract price through the duration of the contract, as amended, additional bonding in the amounts stated above must be provided within thirty (30) days' notice from Metra for Metra's review and approval. The surety must be on the most recently published Department of the Treasury's Listing of Approved Sureties (Department Circular 570) throughout the contract, and the surety will be required to assure, in writing, performance of the Contract. Additionally, any attorney-in-fact who signs any bond must attach to that bond an effective copy of his/her power of attorney, as well as a Jurat page. The acceptable bond forms are attached herein (Section 5, Exhibit VII). Should Metra determine not to order any or all of the optional/maximum order, Contractor shall issue an equitable pro rata credit equal to the unused portion of the premium to Metra.

Unless otherwise agreed, both the labor and material payment bond, and performance bond shall be continuously in effect until Conditional Acceptance of the last vehicle. Contractor shall provide a warranty bond equal to ten (10) percent of the total purchase price of the trainsets (and trailer cars, if applicable),

spare parts, and specialty tools, during the duration of and to guarantee the three (3) year warranty on the trainsets (and trailer cars, if applicable), spare parts, and specialty tools, rather than providing payment and performance bonds for one hundred percent of the total purchase price during such 3-year warranty period. The warranty bond shall become effective upon delivery and Conditional Acceptance of the last trainset (and/or trailer cars, if applicable), which shall also mark the expiration of the payment and performance bonds. Should Metra determine not to order any or all of the optional/maximum order, Contractor shall issue an equitable pro rata credit equal to the unused portion of the premium to Metra.

The Contractor's sureties shall be jointly and severally liable under its performance bond to Metra in the event that the Contractor shall breach any of its obligations under this Contract. Contractor acknowledges and agrees that for purposes of this Contract Metra shall not be deemed a merchant pursuant to the Uniform Commercial Code Section 2104.

2.3 KEY PERSONNEL

Contractor must, and where applicable must cause its Major Subcontractors to, include among staff assigned to the Work the persons in the capacities identified in its proposal (the "Key Personnel"). Key Personnel shall devote all of their respective time and efforts to completing their respective tasks in connection with the Work when their respective responsibilities so require, and shall otherwise be reasonably available when and as required by Metra without material conflict with other duties, until completion of the Work. Contractor shall not reassign or replace or permit reassignment or replacement of any Key Personnel without the prior written consent of Metra in each case. Within four (4) weeks after the position of any Key Personnel becomes vacant, Contractor shall replace or cause the replacement of the person previously holding the vacant position with another person who has at least equivalent qualifications, experience, and knowledge as that of the person replaced and who is acceptable to Metra. Metra may request Contractor to replace or cause to be replaced any Key Personnel whom Metra deems in its reasonable discretion to be unsatisfactory.

2.4 QUALITY ASSURANCE PROGRAM

The Contractor shall establish a quality assurance program conforming to the Appendices of the RFP (Mechanical Department Quality Assurance Requirements and Mechanical Quality Plan (MQP)) and the FTA Quality Management System Guidelines (FTA-PA-27-5194-12.1 issued December 2012. In addition, these requirements shall be imposed on all entities within the Contractor's organization and on all manufacturers, subcontractors, and suppliers who will perform work under the Contract to ensure that the quality standards are consistent throughout the entire supply chain and throughout the life of the Contract. The Contractor shall submit their quality assurance program documents to Metra for review and approval by Metra, which approval shall not be unreasonably withheld.

2.5 DELIVERY AND ACCEPTANCE

2.5.1 Generally

The contractor bears full responsibility for all costs for transport of Trainsets and/or Cars to Metra, as well as for delivery of spare parts or components, training materials, manuals, and any related materials shipped to Metra's designated destinations.

All trainsets and/or cars must be delivered to:

Metra's Blue Island Coach Yard

2-32

Initials SRC
Metra

Initials 
Stadler

ATTN: Director-Mechanical
Metra's Rock Island District
2607 West 123rd Street
Blue Island, IL 60406 USA

All spare parts must be delivered to:

Metra Rock Island District
Attn: Storekeeper
147 W. 47th St.
Chicago, Illinois 60609 USA

All maintenance and parts manuals, drawings, and any other final deliverables must be delivered to:

Metra
Attn: Chief Mechanical Officer
547 W. Jackson Blvd.
Chicago, Illinois 60661 USA

The Contractor will use good-faith efforts to effectively manage third-party transportation with a carrier on a daily basis for Trainsets and/or Cars destined for Metra. Contractor shall update Metra on a daily basis with respect to movement of Trainsets and/or Cars.

Testing, issuance of the Certificate of Fitness for Delivery, Conditional, or Final Acceptance will not abrogate any other requirement of the Contract, or estop Metra from asserting its rights with respect to any defect or incompleteness in a car, whether or not then known.

2.5.2 Pre-Shipment Inspection and Fitness for Delivery

A Fitness for Delivery certificate will be issued for each Trainset and/or Car once it has successfully undergone pre-shipment inspection and testing through a Metra approved procedure. Metra shall permit shipment of a Trainset with minor defects or open items approved by the Metra Project Manager that will not affect testing and can easily be corrected after shipment. The Pre-Shipment Inspection report shall be forwarded to Metra and shall be recorded in the Vehicle History Book.

2.5.3 Notice of Arrival

On arrival, each Trainset and/or Car will be carefully inspected by representatives of Metra, the Contractor, and the carrier for damage, loss, vandalism, or other discrepancies incurred during shipping. If there are any open points, these points will be tracked on an open points list. The list shall be final unless items which were not discoverable during inspection arise. The Contractor will be responsible for resolution of any noted issues. Open points which exist at arrival and Conditional Acceptance shall follow the procedure outlined below for resolution of those points. Use of Metra facilities to resolve any issue is at Metra's sole discretion. Any generated report and resolution shall be included in the Vehicle History Book.

2.5.4 Operational Testing

After the notice of arrival, each Trainset and/or Car will undergo operational performance tests as defined in Section 22 of Metra Specification M-22-001 Rev(d). Testing will consist of shop testing the Trainset and/or Car's subsystems and track testing with all subsystems operating. If Metra determines, in its sole discretion, that the Trainset and/or Car does not pass one, all, or any combination of tests, Metra may issue the Contractor a notice of rejection for the Trainset and/or Car listing the items to be remedied or repaired ("Open Items"). Any minor defects that require corrective action but will not materially affect revenue service operations and are not safety critical, shall not result in a notice of rejection. The cost of any retest shall be borne by Contractor.

2.5.5 Conditional Acceptance

If there are no Open Items, Metra will issue Conditional Acceptance. In lieu of a notice of rejection, Metra may issue Conditional Acceptance where the Trainset and/or Cars may, in Metra's sole discretion, operate in supervised revenue service while Contractor remedies or repairs the Open Items. Metra's Conditional Acceptance of a trainset and/or car does not constitute a waiver, nor shall such acceptance obligate Metra to accept any other car with the same or any other non-compliance.

2.5.6 Final Acceptance

Final Acceptance will be issued when all initial corrective actions and any retrofits have been fully completed in response to any remaining Open Item(s), successful operational test runs have been completed, and the vehicle is considered to be fully compliant with the Contract by Metra and consequently ready to be released for general revenue service. In the event the Contractor has met all the requirements under its control for Conditional Acceptance of a vehicle, but a delay by Metra or its Authorized Representative (such as a delay in infrastructure readiness) causes a delay in fulfilling any requirements for Conditional or Final Acceptance, Conditional or Final Acceptance shall be granted without fulfillment of those requirements, and Contractor may be entitled to an equitable adjustment of the Contract price under GC 1.9.

2.5.7 Repairs by Contractor

The Contractor must begin repair work within five (5) working days of Metra's notice of the car's failure to pass any of Metra's tests or inspections. Metra shall make the car available to timely complete repairs. Prior to the expiration of the five (5) working days, Contractor may waive its right to make repairs and allow Metra to complete the repairs.

If the Contractor fails or refuses to initiate the repairs within five (5) working days of Metra's notice of rejection, Metra may elect to perform the repairs during the warranty period. Any repairs conducted by Metra or designees without Contractor's express approval or prior to expiration of the deadlines for commencement or completion of repairs shall be considered unauthorized work and may operate to void the warranty on any affected parts, cars, or trainsets. Any Contractor requirements regarding repairs in this section made by Metra or its designee are subject to this understanding. Contractor will only reimburse Metra for labor on repairs that are the obligation of Contractor to perform..

2.5.8 Repairs by Metra

Metra may, with the approval of the Contractor and/or subject to the requirements and limitations above,, endeavor to make repairs on behalf of the Contractor at any stage prior to a car's Final Acceptance. All repairs made by Metra will be made under the direction of the Contractor.

2.5.9 Parts Used

If Metra performs the repairs on a car, it shall endeavor to do so using Contractor-specified parts available from its own stock or those supplied by the Contractor specifically for this repair. Monthly, or at a frequency to be mutually agreed upon, reports of all repairs covered by this procedure shall be submitted by Metra to the Contractor for reimbursement.

2.5.10 Contractor Supplied Parts

If the Contractor supplies parts for repairs being performed by Metra, these parts shall be shipped prepaid to Metra from any source selected by the Contractor within five (5) Working Days or as mutually agreed upon after receipt of the request for said parts.

2.5.11 Return of Defective Components

The Contractor may request that defective components removed be returned to the manufacturing plant at Contractor's sole cost.

2.5.12 Reimbursement for Labor

Metra shall be reimbursed by the Contractor for labor, subject to the limitations above. The amount shall be determined by multiplying the number of man-hours actually required to correct the defect, rounded to the nearest half-hour, by: (1) Metra's per hour, mechanic, straight time, or overtime wage rate in effect at the time, and (2) Metra's additive for in-shop repairs in effect at the time.

2.5.13 Reimbursement for Parts

The Contractor shall reimburse Metra for parts that Metra supplies or replaces to correct the defects. The reimbursement amount shall be the sum of: (1) Metra's direct purchase cost, (2) material additive cost (Metra's purchase cost or Contractor's catalog price, when parts are supplied by Contractor, multiplied by Metra's additive rate for material handling in effect at the time), and (3) freight charges, where applicable. The material additive rate is subject to an annual adjustment.

2.6 PARTS AVAILABILITY

The Contractor agrees to continuously offer to supply, either directly or through a designated source, within a commercially reasonable period of time in the case of each part ordered, the spare parts and customer-accessible software necessary to maintain and repair the Cars supplied under this Contract, at the then-current or last published in Contractor's catalogs, price list, or other general sales materials, for a period of twenty (20) years after the date of the Final Acceptance of the last Car; provided, however, that if Contractor or its suppliers discontinues the general distribution of such part, it shall make every effort to notify and give Metra the opportunity to make a one-time buy of its requirements. Parts shall be interchangeable with the original equipment.

On receipt of Metra's notice that Contractor has failed to comply with this section, then the Contractor shall provide Metra, within 3 calendar days of Metra's written request, the original suppliers' and/or

manufacturers' part numbers, company names, addresses, telephone numbers, and contact persons' names for all of the specific parts not received by Metra so that Metra may attempt to produce or make such parts.

2.7 WARRANTY AND RELIABILITY

2.7.1 General Warranties

- 1) The Contractor warrants that, at the time of Final Acceptance, all Trainsets and/or Cars, equipment, Work, components and parts, (including and without limitation and as an example, data, manuals, and reliability information), furnished under the Contract shall be:
 - a. In full conformance with all requirements of all provisions of the Contract;
 - b. Free of any and all defects and Deficiencies;
 - c. Fit for their particular purpose;
 - d. Free from any and all liens and other encumbrances;
 - e. Component data or information of the latest configuration employed by the Contractor, Subcontractor, or Supplier in commercial service;
 - f. Accurate, complete, and current.
- 2) The Contractor further warrants that, for the periods of time defined in this Section, all Trainsets and/or Cars, equipment, Work, components and parts shall be, remain and perform free of any and all deficiencies, and shall be, remain and perform in full conformance with all requirements of all provisions of the Contract, and all warranties which extend to the future performance of each of such items.
- 3) Warranties By Others: All warranties and guarantees of any Subcontractor, or Supplier with respect to any Trainsets and/or Cars, equipment, Work, components or parts, whether expressed or implied, are deemed to be for the benefit of Metra and to be obtained by the Contractor for the benefit of Metra, regardless of whether or not such warranties and guarantees have been transferred or assigned to Metra by separate agreement. The Contractor shall enforce such warranties and guarantees on behalf of Metra; provided, however, that if directed by Metra, the Contractor shall require such Subcontractors, and Suppliers to execute such warranties and guarantees directly to Metra. The Contractor shall be jointly and severally liable for any such warranties or guarantees. To the extent that any such warranty or guarantee would be voided by reason of the Contractor's negligence in incorporating any equipment, component or part into the Work, the Contractor shall be responsible, at its sole cost, for correcting such error or omission, without cost or expense to Metra.

- 4) Equipment failures or performance deficiencies due to breach of the Contractor's warranties described above is referred to in this Contract as a "Deficiency."

2.7.2 Availability and Reliability Warranty

- 1) Availability is defined as the ability of the Trainset and/or Car to be assigned to a train at the commencement of the calendar day, following the calendar day inspection pursuant to 49 CFR Part 238.303 and 238.305, with no defects found that prevent the Car from being dispatched. Reliability is defined as the ability to complete the train assignments of the calendar day without Trainset and/or Car failure or degradation of performance such that it causes a train or trains to lose time or result in a schedule delay.

A Trainset and/or Car delay is defined as a Car related, mechanical failure causing a revenue service train to be more than 5 minutes late at its destination terminal; or annulled either at its originating point or en route.

- 2) In addition to the other warranties provided under this Contract, the Contractor further warrants the availability and reliability of the Cars, equipment, components, Work and parts in accordance with the Contract availability and reliability requirements set forth below. Failure to meet the Contract availability or reliability requirements shall also constitute a "Deficiency", and during the warranty period, Contractor shall, at its sole cost and without cost or expense to Metra, take all actions required to correct as promptly as possible the Deficiency and to achieve the specified availability and reliability requirements. In cases where a "Fleet Deficiency" exists, the Contractor shall incorporate at its sole cost such correction into all previously delivered Cars, equipment, components, Work and parts before it may resume deliveries of new Cars or affected components. Such correction shall be incorporated into all undelivered Cars, equipment, components, Work and parts prior to delivery.
- 3) The anticipated availability is 97% exclusive of days when a car is undergoing periodic inspection, programmed maintenance, or is out of service for any reason other than mechanical failure, as determined by Metra.
- 4) The anticipated reliability is 98% for a car that is dispatched, from time of dispatch until the next calendar day inspection, at which time it becomes again subject to the availability target. This requirement is applicable only to mechanical failures, as determined by Metra.
- 5) Achievement of reliability targets will be calculated by dividing the number of days that each Car was available for service in any 184 day Federal Railroad Administration (FRA) inspection period into the number of days or part of a day that the Car became unavailable due to a failure. For example, if the Car was available for service for 88 days between inspections and periodic maintenance, but failed after entering service on 2 days, the reliability rate is 98%, calculated by dividing 86 days by 88 days.

2.7.3 Time Periods of the Warranties

Basic Warranty: The warranty period will commence on Conditional Acceptance. The warranty period on any part or subsystem that is non-confirming at the time Conditional Acceptance is granted shall not commence until all Open Items have been corrected. The warranty period shall be effective for a time period of three (3) years (except as extended elsewhere in the Contract) after such Conditional Acceptance. The warranty for Special Tools, as defined in the technical specifications, including, without limitation, Diagnostic and Test Equipment shall be for a time period of three (3) years after Delivery to Metra.

- 1) Warranty for Certain Components: Warranties shall commence upon Acceptance as provided in the Paragraph herein entitled Basic Warranty, but shall have time periods as follows:
 - a. Warranted for a period of (10) years:
 - i. Carbody;
 - ii. Door Panels;
 - iii. Floor materials and/or coverings, if applicable;
 - iv. Truck frame, bolster, equalizers, hangers, and spring plank.
 - b. The warranty for a fleet defect on any component that Metra designates prior to Contract award as being non-service proven shall be for five (5) years. Non-service proven is defined as a component or system that has been used less than three (3) years in North American or European commuter rail and/or freight railroad applications, or less than three (3) years in North American or European rail transit or light rail applications.
 - c. The warranty for spare parts shall be for the lesser of three (3) years after delivery of the parts or two (2) years after the part is put into service, unless the part is a component or part thereof to which an Extended Warranty defined by this Section
- 2) Subcontractor Warranties: Any warranty from a Subcontractor or Supplier or manufacturer to the Contractor, which exceeds the above time periods, shall be extended to Metra for the same time period as given to the Contractor.

2.7.4 Warranty Notice

Metra will provide the Contractor with notice of breach of any warranty, including, without limitation, notice of a Deficiency, within 7 calendar days after Metra observes and verifies any failure, malfunction, or condition of, any Car, equipment, Work, component or part, that the failure, malfunction or condition arises from a Deficiency or other breach of warranty existing or occurring within any of the applicable warranty periods ("Notice").

2.7.5 Engineer & Service Representatives

Within 3 calendar days of written notice from Metra, the Contractor shall at its own expense, have a competent engineering representative(s) available to assist Metra in the solution of

engineering or design problems within the scope of the specifications that may arise during the warranty period. In addition, a service representative shall be available, on Metra property, within 2 calendar days of written notification from Metra. These requirements do not relieve the Contractor of any other responsibilities under this Contract. The obligation to provide engineering services applies for the warranty period starting from the time the last Car is conditionally accepted.

2.7.6 Corrective Work Requirements

- 1) Promptly upon receipt of notice from Metra, but in any event not later than 2 calendar days thereafter, unless Metra agrees to a longer interval, the Contractor, at its sole cost, and without cost or expense to Metra, shall commence and thereafter prosecute with due diligence using qualified personnel, all activities necessary to investigate, analyze, diagnose and determine the cause and extent of the Deficiency or other breach of warranty, and the proper correction action, in conformance with the provisions of this Contract and shall promptly report the causes, extent and proposed corrective action to Metra in writing.
- 2) Promptly upon the approval of Metra, the Contractor, at its sole cost, and without cost or expense to Metra, shall commence and thereafter prosecute with due diligence, using qualified personnel, appropriate action, within the time period and in the manner provided for in this section to correct the Deficiency. Corrective action shall include without limitation, adjustment, repair, replacement, reengineering and redesign as appropriate to fully and completely address and remedy the Deficiency or other problem in each affected Car, equipment, Work, component or part, so that the item and the Car shall perform as specified by the Contract, and to ensure that the Deficiency will not recur. The Contractor shall promptly and diligently pursue all corrections to their complete, satisfactory conclusion. All corrections shall comply with all requirements of the Contract and shall not result in any Car, equipment, Work, component or part failing to comply with any requirement of any provision of the Contract. All corrections shall employ and require only parts that perform comparably to that originally intended by the Contract, and of cost comparable to the cost of the deficient part prior to correction. The Contractor shall perform, at its sole cost, any tests that Metra may reasonably require to verify that any correction made by the Contractor will correct the Deficiency and that the correction will comply with all requirements of the Contract.
- 3) All corrections covered by warranty shall be without cost or expense to Metra. Contractor shall also bear all costs and expenses of removal, replacement and reinstallation and testing of other equipment, components, Work and parts necessary to gain access to the Deficiency or to accommodate the correction. The Contractor shall also bear all transportation costs for or associated with any Deficiency or correction.
- 4) Where practicable, the Contractor shall provide all facilities and equipment necessary to carry out the investigations, analyses and diagnoses needed to

determine the cause and extent of the Deficiency or other breach of warranty, and to complete all correction thereof and all associated Work.

- 5) The Contractor shall promptly provide to Metra, without cost or expense to Metra, all updated parts manuals and maintenance manuals that include all information related to any correction.
- 6) During the Warranty Period, the Contractor shall reimburse Metra for all Metra costs and expenses reasonably incurred in the investigation, analysis, diagnosis or correction of any Deficiency caused by Contractor or its Subcontractors.
- 7) The Contractor shall be liable for any and all injury, loss or damage to any Car, equipment, Work, component or part, or other Metra property, caused by Metra authorized repairs, provided that such repairs were done in accordance with Contractor manuals and instructions. While on Metra's premises, the Contractor shall keep such premises in a neat and orderly condition and, unless otherwise specified in the Contract Documents, title to any demolished materials and equipment, waste, and rubbish is vested in Contractor and such material shall be disposed of off the premises by Contractor at its sole expense.
- 8) In addition to correction of any Deficiency, the Contractor, at its sole cost, shall correct without cost or expense to Metra any other Car, equipment, component, Work or part that was caused to be damaged or adversely affected by a Deficiency.
- 9) All corrected components and parts used, and repairs made, to correct deficiencies shall be subject to acceptance by Metra and shall be subject to the same requirements as are set forth in the Contract for the original components.
- 10) If a correction hereunder has required the Contractor to reengineer or redesign a component, the Contractor shall, without cost to Metra and at Contractor's sole cost, replace all Metra owned spare parts comprising that component with the corrected items or detail parts.

2.7.7 Fleet Deficiency Remedy

- 1) A Fleet Deficiency exists when a warranty repair or redesign to the same components, equipment or materials in the same application is required for twenty percent (20%) or more of the Cars then accepted by Metra under this Contract. Upon Metra's notice to the Contractor that a Fleet Deficiency exists, the Contractor shall promptly, but in any event not later than 2 calendar days after such notice, unless Metra agrees to a longer interval, commence and thereafter prosecute with due diligence and using qualified personnel, all activities necessary to investigate, analyze and diagnose the cause and extent of the Fleet Deficiency and the proper correction thereof. The Contractor shall promptly provide a written report to Metra describing the cause and extent of the Fleet Deficiency and the Contractor's proposed correction thereof. The Contractor shall submit for Metra's approval and,

following Metra approval, shall promptly implement and satisfactorily complete Metra approved corrections of all affected components, at the Contractor's sole cost and at no cost or expense to Metra, as promptly as practicable and in no event later than three (3) months after Metra's initial notice to Contractor of the Fleet Deficiency, and in compliance with the requirements Section 2.7.6 Corrective Work Requirements. The Contractor shall make the correction to all equivalent components in the fleet, not just those in which a failure or malfunction has occurred, including without limitation, all components for which any warranty period has expired, and to all equivalent Metra-owned spare parts.

- 2) The Fleet Deficiency remedy provided for in this paragraph is in addition to, and shall not be construed as a limitation of, any other rights or remedies provided for by this Article or any provision of this Contract or the law.

2.7.8 Timeliness

Time is of the essence in the corrections of all Deficiencies to be undertaken under all applicable warranties. Unless otherwise directed in Metra's notice to Contractor of a Deficiency, the Contractor shall commence correction of the Deficiency at the time specified by Metra, but in no event later than forty-eight (48) hours after the Notice, unless Metra agrees to a longer interval. To ensure timely corrections, the Contractor shall make provisions to have available all necessary facilities and special equipment, and shall use such qualified engineers and product and system specialists as are necessary, including diversion of such persons from the Contractor's other operations or from the operations of its Subcontractors and Suppliers. Contractor shall also use additional shifts and Work on weekends and holidays, as necessary, to complete timely corrections in accordance with this Section.

2.7.9 Use of Metra-Owned Spare Parts

At the sole discretion of Metra, as determined on a case-by-case basis, Metra owned spare parts may be utilized by the Contractor for correction purposes if the Contractor's replacement part is not immediately available. The Contractor must replace each borrowed part with an equivalent (like-for-like) part within thirty (30) calendar days. Consequently a new part must be replaced with new, a UTEX part replaced with UTEX or new. All costs associated with replacing the spare parts shall be borne by the Contractor. In some cases, a Metra-owned replacement part may be manufactured or remanufactured by a different source than that of the Contractor. In instances where "non-OEM" components are utilized in the repair due to unavailability of an immediate contractor-supplied replacement, the Contractor will be responsible for all costs arising from the removal of a borrowed part and subsequent installation of the contractor's part following the initial repair operation. Consequently, to avoid compensating Metra for repetitive repair operations, the Contractor is encouraged to maintain a sufficient quantity of spare replacement parts available for prompt delivery to Metra.

2.7.10 Delays and Disruption

To prevent delays and disruption to Metra's operations, Metra shall have the right to the continued use of any deficient Car, equipment, component, Work or part, until it can be

safely taken out of service and made available to Contractor to correct the Deficiency. Provided, however, that if continued use of the car, equipment, component, Work or part causes additional direct or consequential damage of any kind, Contractor shall not be in any way responsible for such damage.

2.7.11 Repairs by Metra

In the event Contractor fails to comply with Section 2.7.6, Corrective Work Requirements, or with prior approval of Contractor, Metra may investigate, analyze, diagnose and perform the redesign, replacement, or repair of any Deficiency, as Contractor's agent, and Contractor shall pay Metra for such Work. Contractor shall, if required by Metra, supply components, materials, or equipment within ten (10) days after Metra's request in each case. Contractor shall pay Metra the cost of the warranty Work for: (a) outside engineering fees and (b) labor supplied by Metra by multiplying the number of man-hours of Metra labor actually supplied to correct the defect by the wage rate and percent shop overhead. The cost of moving the Cars(s) if such action is necessary, all applicable freight charges, and Metra's material additives in effect at the time on components, materials, supplies, or equipment furnished by Contractor (subject to yearly adjustment by Metra, based on Metra's material additive rate(s) in effect at time of Work), within thirty (30) days of Metra's invoice. Any warranty work conducted by Metra or designees without Contractor's prior written approval or prior to expiration of the deadline for commencement in Section 2.7.6, Corrective Work Requirements, or completion of repairs shall be considered unauthorized work and may void the warranty on any affected parts, cars, or trainsets. Any Contractor requirements regarding repairs in this section made by Metra or its designee are subject to this understanding. Contractor will only reimburse Metra for labor on repairs that are the obligation of Contractor to perform.

2.7.12 Warranties of the Corrected Components

The Contractor warrants each corrected component for the remainder of the warranty originally applicable to the component, or for a period of one (1) year from the date of Metra's acceptance of the corrected component, whichever is greater.

2.7.13 No Waiver

No inspection, test, acceptance of, or payment to the Contractor for, any Car, equipment, component, Work or part, or for any other purpose shall relieve the Contractor from any duty under, or be deemed to be a waiver of any Warranty, or other right or remedy pursuant to, this Article, the Contract or the law.

2.7.14 No Increase in Maintenance or Operating Costs

Unless there is a scope change requested or required by Metra, in no case shall any correction of any Deficiency, whether pursuant to any warranty or otherwise, call for, require or result in any increase in any maintenance, inspection or test requirement or frequency, or in any additional maintenance, inspection or test requirement, or operating costs beyond that specified in the Contract or in the original edition of the maintenance manual.