

Exhibit D

Terms and Conditions

A. General Terms and Conditions

1. **APPLICABLE LAWS AND COURTS.** This Contract shall be governed in all respects by the laws of the Commonwealth of Virginia and any litigation with respect thereto shall be brought in the courts of the Commonwealth. The agency and the contractor are encouraged to resolve any issues in controversy arising from the award of the contract or any contractual dispute using alternative dispute resolution. The Contractor shall comply with all applicable federal, state and local laws, rules and regulations.

2. **ANTI-DISCRIMINATION.** Contractor certifies and warrants that it shall conform to the provisions of the Federal Civil Rights Act of 1964, as amended, as well as the Virginia Fair Employment Contracting Act of 1975, as amended, where applicable, the Virginians With Disabilities Act, the Americans With Disabilities Act and § 2.2-4311 of the *Virginia Public Procurement Act (VPPA)*.
 - (a) During the performance of this Contract, the Contractor agrees as follows:
 - (1) The Contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of the contractor. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause, including the names of all contracting agencies with which the Contractor has contracts of over \$10,000.
 - (2) The Contractor, in all solicitations or advertisements for employees placed by or on behalf of the contractor, will state that such contractor is an equal opportunity employer.
 - (3) Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting these requirements.
 - (b) The Contractor will include the provisions of paragraphs 1, 2 and 3 above in every subcontract or purchase order over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

3. **ETHICS IN PUBLIC CONTRACTING.** The Contractor certifies and warrants that its proposal has been made without collusion or fraud and that it has not offered or received any kickbacks or inducements from any other supplier, manufacturer or subcontractor in

connection with its proposal, and that it has not conferred on any public employee having official responsibility for this procurement transaction any payment, loan, subscription, advance, deposit of money, services or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value was exchanged.

4. **IMMIGRATION REFORM AND CONTROL ACT OF 1986.** By entering into this Contract with the Commonwealth of Virginia, the Contractor certifies that the Contractor does not, and shall not during the performance of the Contract for goods and services in the Commonwealth, knowingly employ an unauthorized alien as defined in the federal Immigration Reform and Control Act of 1986.
5. **ANTITRUST.** By entering into this Contract, the Contractor conveys, sells, assigns, and transfers to the Commonwealth of Virginia all rights, title and interest in and to all causes of action it may now have or hereafter acquire under the antitrust laws of the United States and the Commonwealth of Virginia, relating to the particular goods or services purchased or acquired by the Commonwealth of Virginia.
6. **PAYMENT.**

(a) To Prime Contractor:

- (1) Invoices for items ordered, delivered and accepted shall be submitted by the Contractor directly to the payment address shown on the purchase order/Contract. All invoices shall show the state contract number and/or purchase order number; social security number (for individual contractors) or the federal employer identification number (for proprietorships, partnerships, and corporations).
- (2) Any payment terms requiring payment in less than 30 days will be regarded as requiring payment 30 days after invoice or delivery, whichever occurs last. This shall not affect offers of discounts for payment in less than 30 days, however.
- (3) All goods or services provided under this Contract or purchase order, that are to be paid for with public funds, shall be billed by the Contractor at the Contract price, regardless of which public agency is being billed.
- (4) The following shall be deemed to be the date of payment: the date of postmark in all cases where payment is made by mail, or the date of offset

when offset proceedings have been instituted as authorized under the Virginia Debt Collection Act.

- (5) Unreasonable Charges. Under certain emergency procurements and for most time and material purchases, final job costs cannot be accurately determined at the time orders are placed. In such cases, contractors should be put on notice that final payment in full is contingent on a determination of reasonableness with respect to all invoiced charges. Charges which appear to be unreasonable will be researched and challenged, and that portion of the invoice held in abeyance until a settlement can be reached. Upon determining that invoiced charges are not reasonable, the Commonwealth shall promptly notify the contractor, in writing, as to those charges which it considers unreasonable and the basis for the determination. A contractor may not institute legal action unless a settlement cannot be reached within thirty (30) days of notification. The provisions of this section do not relieve an agency of its prompt payment obligations with respect to those charges which are not in dispute (*Code of Virginia*, § 2.2-4363).

(b) To Subcontractors:

- (1) The Contractor awarded this Contract is hereby obligated:

1. To pay the subcontractor(s) within seven (7) days of the contractor's receipt of payment from the Commonwealth for the proportionate share of the payment received for work performed by the subcontractor(s) under the Contract; or
2. To notify the agency and the subcontractor(s), in writing, of the Contractor's intention to withhold payment and the reason.

- (2) The Contractor is obligated to pay the subcontractor(s) interest at the rate of one percent per month (unless otherwise provided under the terms of the Contract) on all amounts owed by the Contractor that remain unpaid seven (7) days following receipt of payment from the Commonwealth, except for amounts withheld as stated in (2) above. The date of mailing of any payment by U. S. Mail is deemed to be payment to the addressee. These provisions apply to each sub-tier contractor performing under the primary contract. The Contractor's obligation to pay an interest charge to a subcontractor shall not be construed to be an obligation of the Commonwealth.

- (c) The Commonwealth of Virginia encourages the Contractor and its subcontractors, if any, to accept electronic and charge card payments.

7. **PRECEDENCE OF TERMS.** The following General Terms and Conditions APPLICABLE LAWS AND COURTS, ANTI-DISCRIMINATION, ETHICS IN PUBLIC CONTRACTING, IMMIGRATION REFORM AND CONTROL ACT OF 1986, ANTITRUST, PAYMENT shall apply in all instances. In the event there is a conflict between any of the other General Terms and Conditions and any Special Terms and Conditions in this Agreement, then the Special Terms and Conditions shall apply.
8. **TESTING AND INSPECTION.** The Commonwealth reserves the right to conduct any test/inspection it may deem advisable to assure goods and services conform to the specifications.
9. **CHANGES TO THE CONTRACT.** The parties may agree in writing to modify the scope of the Contract. An increase or decrease in the price of the Contract resulting from such modification shall be agreed to by the parties as a part of their written agreement to modify the scope of the Contract.
10. **REPROCUREMENT COSTS.** In case of Contractor's failure to deliver goods or services in accordance with the Contract terms and conditions and provided such failure to deliver goods or services is not due to a Force Majeure event (as defined in Section 30(E) below) or the acts or omissions of the Commonwealth, the Commonwealth, after due oral or written notice, may procure them from other sources and hold the Contractor responsible for any reasonable and substantiated resulting additional purchase and administrative costs. This remedy shall be in addition to any other remedies which the Commonwealth may have. Notwithstanding the above, to the extent a public access natural gas fueling station constructed by Contractor pursuant to this Agreement and through which Contractor retails natural gas is unable to dispense natural gas to a Commonwealth CNG vehicle due to the station being inoperable for reasons other than a Force Majeure event or Commonwealth act or omission and the Commonwealth has notified Contractor of the issue, Contractor shall be required to reimburse the Commonwealth for the cost of natural gas (at the rates listed in Exhibit E) for the additional mileage the Commonwealth CNG vehicle is required to drive to obtain fuel at the nearest operating natural gas fueling station and for the difference, if any, in the cost of natural gas at the other station if such cost is higher than the rate at the station that is unable to dispense natural gas; provided however, (i) Contractor will not be responsible for any additional costs if there is another natural gas fueling station within a five (5) mile radius of the inoperable station from which the Commonwealth can obtain natural gas and (ii) the Commonwealth acknowledges that each natural gas fueling station constructed by Contractor pursuant to this Agreement and through which Contractor retails natural gas can be shut down for maintenance for a total of ten (10) days each calendar year, but shall not be shut down for more than three (3) consecutive days at any time and Contractor will not be

responsible for any additional costs incurred by the Commonwealth as described in this Section 9, unless such station is inoperable for more than ten(10) days in any calendar year or for more than three (3) consecutive days at any time.

11. **TAXES**. As applicable, sales to the Commonwealth of Virginia are normally exempt from State sales tax. State sales and use tax certificates of exemption, Form ST-12, will be issued upon request. Deliveries against this contract shall usually be free of Federal excise and transportation taxes. The Commonwealth's excise tax exemption registration number is 54-73-0076K.

12. **INSURANCE**. The Contractor certifies that it will have the following insurance coverage at the time the contract is awarded. The Contractor further certifies that it and any of its subcontractors will maintain this insurance coverage during the entire term of the Contract and that all insurance coverage will be provided by insurance companies authorized to sell insurance in Virginia by the Virginia State Corporation Commission.

MINIMUM INSURANCE COVERAGES AND LIMITS REQUIRED:

- (a) Workers' Compensation - Statutory requirements and benefits. Coverage is compulsory for employers of three or more employees, to include the employer. Contractors who fail to notify the Commonwealth of increases in the number of employees that change their workers' compensation requirements under the *Code of Virginia* during the course of the contract shall be in noncompliance with the contract.

 - (b) Employer's Liability - \$100,000.

 - (c) Commercial General Liability - \$1,000,000 per occurrence. Commercial General Liability is to include bodily injury and property damage, personal injury and advertising injury, products and completed operations coverage. The Commonwealth of Virginia must be named as an additional insured and so endorsed on the policy.

 - (d) Automobile Liability - \$1,000,000 per occurrence.
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13. **DRUG-FREE WORKPLACE**. During the performance of this contract, the contractor agrees to (i) provide a drug-free workplace for the contractor's employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the contractor's workplace and specifying the actions that will be taken against employees for violations of

such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of the contractor that the contractor maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

For the purposes of this section, “*drug-free workplace*” means a site for the performance of work done in connection with a specific contract awarded to a contractor, the employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of the contract.

14. **eVA BUSINESS-TO-GOVERNMENT VENDOR REGISTRATION**. The eVA Internet electronic procurement solution, website portal www.eVA.virginia.gov, streamlines and automates government purchasing activities in the Commonwealth. The eVA portal is the gateway for vendors to conduct business with state agencies and public bodies. All vendors desiring to provide goods and/or services to the Commonwealth shall participate in the eVA Internet eProcurement solution either through the eVA Basic Vendor Registration Service or eVA Premium Vendor Registration Service. All bidders or offerors must register in eVA and pay the Vendor Transaction Fees specified below; failure to register will result in the bid/proposal being rejected.

Effective July 1, 2011, vendor registration and registration-renewal fees have been discontinued. Registration options are as follows:

- (a) eVA Basic Vendor Registration Service: eVA Basic Vendor Registration Service includes electronic order receipt, vendor catalog posting, on-line registration, electronic bidding, and the ability to research historical procurement data available in the eVA purchase transaction data warehouse.
- (b) eVA Premium Vendor Registration Service: eVA Premium Vendor Registration Service includes all benefits of the eVA Basic Vendor Registration Service plus automatic email or fax notification of solicitations and amendments.

Vendor transaction fees are determined by the date the original purchase order is issued and are as follows:

- (c) For orders issued July 1, 2011 thru June 30, 2012, the Vendor Transaction Fee is:
 - (1) DMBE-certified Small Businesses: 0.75%, capped at \$500 per order.
 - (2) Businesses that are not DMBE-certified Small Businesses: 0.75%, capped at \$1,500 per order.
- (d) For orders issued July 1, 2012 and after, the Vendor Transaction Fee is:
 - (1) DMBE-certified Small Businesses: 1%, capped at \$500 per order.

- (2) Businesses that are not DMBE-certified Small Businesses: 1%, capped at \$1,500 per order.

The specified vendor transaction fee will be invoiced, by the Commonwealth of Virginia Department of General Services, approximately 30 days after the corresponding purchase order is issued and payable 30 days after the invoice date. Any adjustments (increases/decreases) will be handled through purchase order changes.

- (e) For fuel purchases where no prior purchase order is issued, the Vendor Transaction Fee shall be 0.50% of the Contractor's invoiced Compression Fee, expressed in dollars and paid quarterly. Each quarterly eVA transaction fee payment shall be submitted to the Commonwealth's contract administrator within 15 days after the end of the quarter and shall be substantiated by an itemized report of the invoiced sales used to calculate the eVA transaction fee payment for that quarter. The report shall be provided in an Excel format and shall include the following itemized data:

- *Purchasing Agency/Entity
- *Contractor's Invoice Number
- *Contractor's Invoice Date
- *Contractor's Invoice Amount
- *Fuel type
- *Unit price
- *Number of units
- *Total Compression Fees

15. **AVAILABILITY OF FUNDS.** It is understood and agreed between the parties herein that the agency shall be bound hereunder only to the extent of the funds available or which may hereafter become available for the purpose of this agreement.

16. **AUTHORIZATION TO CONDUCT BUSINESS IN THE COMMONWEALTH.** The Contractor certifies and warrants that it is and shall remain during the term of the Agreement, authorized to transact business in the Commonwealth as a domestic or foreign business entity if so required by Title 13.1 or Title 50 of the *Code of Virginia* or as otherwise required by law. The Commonwealth may void this Contract at any time should the Contractor fail to remain in compliance with the provisions of this section.

B. Special Terms and Conditions

17. **Acceptance, Testing and Compliance with Specifications.** All materials, equipment, and services provided by Contractor are subject to inspection and testing by the Commonwealth or authorized ordering entity and any that does not meet or exceed the specifications or other requirements of the Contract may be rejected. The Commonwealth or authorized ordering entity shall be given 30 days from the completion of installation by the Contractor (or 30 days after delivery if customer installed) to test, evaluate and accept the materials, equipment, and services delivered or furnished under this Contract (provided that the using agency, in its sole discretion, may accept the same prior to expiration to the 30 day period). If the Contractor's materials, equipment, or services fail to meet the Contract specifications or other requirements, including the specifications of the brand name, or those required by the Contractor's own technical documentation, then the same may be rejected and returned to the Contractor. Such rejection will terminate the applicable Order and exempt the Commonwealth or authorized ordering entity from all costs incurred by the Contractor.

Acceptance shall be effective for the purpose of determining title to that which is delivered and for making payment, however, acceptance by the Commonwealth or authorized ordering entity following testing and evaluation during the 30 day period shall not be conclusive that the materials, equipment, or services conform in all respects to the Contract specifications and other requirements. In the event that nonconformance therewith is discovered by the Commonwealth or authorized ordering entity after acceptance, whether due to a latent defect or otherwise, the Contractor shall take whatever action is necessary to conform the materials, equipment, or services to the Contract specifications and other requirements, including but not limited to modification or replacement of the same. The Contractor's failure to do so shall constitute breach of Contract.

18. **Advertising.** Contractor shall in no event issue or publish a press release, article, brochure, or other form of publication, promotional materials, or advertisement that includes statements about this Agreement, the Commonwealth and Public Bodies, or in any way use any logo, trademark, or other symbol of the Commonwealth and Public Bodies, without obtaining in advance the Commonwealth's written consent to the form and substance of such issuance, publication, advertisement, or use. Notwithstanding the foregoing, Contractor may identify the Commonwealth as a reference for all prospective customers of Contractor interested in obtaining services that are the same or substantially similar to the services hereunder, unless directed not to do so by the Commonwealth.
19. **Audit.** Contractor shall retain all books, records, and other documents relative to this Contract for five (5) years after final payment, or until audited by the Commonwealth of

Virginia, whichever is sooner. The Commonwealth, and its authorized agents shall have full access to and the right to examine any of said materials during said period.

20. **Authority Retained by Commonwealth.** The Commonwealth shall have and at all times retain the exclusive right and authority to: (i) define, determine, and control the Commonwealth's policies, strategies, objectives, and goals relating to fuel, alternative fuels, vehicles, infrastructure; (ii) define, determine, and alter any or all of the Commonwealth's business processes; (iii) define and prescribe applicable design standards and planning with regard to alternative fuels, vehicles, and related infrastructure for the Commonwealth; and (iv) assess Contractor's quality and performance. Contractor shall at all times, during the initial or any renewal term, perform and provide the services or deliver the products in accordance with the strategies, processes, standards, and policies described in the immediately preceding sentence and in accordance with the Commonwealth's needs, subject to the terms of this Agreement. The Commonwealth may consider, but shall have the right to approve or reject, in its discretion, any and all Contractor proposed decisions with respect to any changes to the planning, design, or standards to any applicable Contractor-provided Product or Service, or that could reasonably be expected to materially increase the Fees payable by the Commonwealth for the Products or Services or to materially increase the costs incurred by the Commonwealth at any time in operating its business. The Commonwealth shall have the right to propose, subject to reasonable change control procedures, which may be established by and between the Parties: (i) to order add, delete, and modify any activity with respect to products, services, or resources used in connection with Contractor's provision of the Products or Services under this Agreement; and (ii) to designate the Commonwealth's requirements for development or enhancement activities with regard to the Commonwealth's fuel, fleet and vehicular infrastructure and related services. Moreover, Contractor shall be required to obtain the prior, written authorization of DGS before: (i) undertaking any activity that is within the exclusive authority of the Commonwealth to order, request, or designate pursuant to the terms hereof; (ii) using in the performance of this Agreement, or otherwise incorporating or introducing into the Commonwealth's environment, any proprietary product or other technology that materially increases, or might reasonably be expected to increase, the cost to the Commonwealth in using, operating, supporting, or maintaining the Products or Services in comparison to the cost that the Commonwealth would otherwise incur in such activities.
21. **Breach.** Contractor shall be deemed in breach of this Agreement if Contractor: (a) fails to provide any product or service by the specified delivery date; or (b) fails to comply with any other term of this Agreement and fails to cure such noncompliance within ten days (or such greater period as is acceptable to the Commonwealth) following Contractor's receipt of a Show Cause Notice identifying such noncompliance,.

The Contractor shall not be in breach of this Agreement if its default was due to causes beyond the reasonable control of, and occurred without any fault or negligence on the part of, both the Contractor and its subcontractors. Such causes may include, but are not restricted to, acts of God or of the public enemy, acts of the Commonwealth in either its sovereign or Contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather.

In the event of breach, in addition to any other remedies provided by law, the Commonwealth may cancel its obligations with respect to any or all unaccepted Products or Services. In no event shall any failure by the Commonwealth to exercise any remedy available to it be construed as a waiver of or consent to any breach.

22. **Cancellation of Contract**: The resulting contract may be terminated by either party, without penalty, after the initial twelve (12) months of the contract period upon sixty (60) days written notice to the other party. Any contract cancellation notice shall not relieve the contractor of the obligation to deliver and/or perform on all outstanding orders issued prior to the effective date of cancellation. The Commonwealth shall be obligated for all outstanding Orders, according to the Contract, subsequent to any cancellation.
23. **Contractor / Subcontractor License Requirements**. Contractor certifies and warrants that it and all subcontractors shall be properly licensed by all appropriate and applicable federal, state, and local regulatory authorities in order to provide the materials, products, or services agreed upon under this Agreement, or any exhibit, Order, or addendum attached thereunder.
24. **Contractor's Title to Materials**. No materials or supplies for the work shall be purchased by the Contractor or by any subcontractor subject to any chattel mortgage or under a conditional sales or other agreement by which an interest is retained by the seller. The Contractor warrants that it has clear title to all materials and supplies for which it invoices the Commonwealth or any authorized ordering entity for payment.
25. **Delivery Notification**. The Commonwealth or Public Body using this Agreement shall be notified no less than forty-eight (48) hours, or as specified in the applicable order, prior to delivery of any items so that staff may be available to allow access to the facility and to verify the items received. Notification shall be made to the individual(s) as stated in the applicable ordering document.
26. **Dispute Resolution**. In accordance with Section 2.2-4363 of the Code of Virginia, contractual claims under this Agreement, whether for money or other relief, shall be submitted in writing to the purchasing agency no later than sixty (60) days after final payment; however, written notice of the Contractor's intention to file such claim must be

given to the agency at the time of the occurrence or beginning of the work upon which the claim is based. Pendency of claims shall not delay payment of amounts agreed due in the final payment. The agency shall render a final decision in writing within thirty (30) days after its receipt of the Contractor's written claim.

The Contractor may not invoke any available administrative procedure under Section 2.2-4365 of the Code of Virginia nor institute legal action prior to receipt of the agency's decision on the claim, unless the agency fails to render its decision within thirty (30) days. The decision of the agency shall be final and conclusive unless the Contractor, within six (6) months of the date of the final decision on the claim, invokes appropriate legal action under Section 2.2-4364, Code of Virginia or the administrative procedure authorized by Section 2.2-4365, Code of Virginia.

Upon request from the agency, Contractor agrees to submit any and all contractual disputes arising from this Agreement to alternative dispute resolution. Contractor may invoke ADR procedures at any time and concurrently with any other statutory remedies prescribed by the Code of Virginia.

The Department of General Services, its officers, agents and employees, including, without limitation, the Contracting Officer, are executing this Agreement and any Orders issued hereunder, solely in its or their statutory and regulatory capacities as agent for the Commonwealth agency purchasing and receiving the goods or services need not be joined as a party to any dispute that may arise hereunder.

In the event of any breach by a Public Body, Supplier's remedies shall be limited to claims for damages and Prompt Payment Act interest and, if available and warranted, equitable relief, all such claims to be processed pursuant to this Section. In no event shall Supplier's remedies include the right to terminate any license or support services.

27. **Billing Procedures.**

(a) Conditions of Payment. All deliverables provided by Contractor pursuant to this Contract shall be delivered/provided to the satisfaction of the Public Body and in accordance with all applicable federal, state, and local laws, ordinances, rules, and regulations. Contractor shall not receive payment for defective material or work found by the Public Body to be unsatisfactory, or performed in violation of federal, state, or local laws, ordinances, rules, or regulations.

(b) Invoices.

Invoices shall be rendered promptly to DGS or the purchasing agency named in any order issued pursuant to this Agreement after all deliverables covered by the invoice have been provided. No invoice may include any costs other than those identified in the Agreement or individual order referencing this Contract. Invoice shall provide at a minimum:

- (1) Type and description of the Goods and Service
- (2) Name of Public Body
- (3) Purchase order number, if any
- (4) Invoice number
- (5) Invoice date
- (6) Contract Number and
- (7) Contractor's Taxpayer Identification Number (TIN)

- (c) Credits. Any credits due the Commonwealth under the terms of this Contract may be applied against Contractor's invoices with appropriate information attached.
- (d) No Additional Charges. Except for the fees described in the applicable Exhibit to this Agreement or in a modification executed by both Contractor and DGS (as may be adjusted), neither DGS nor any other Public Body, shall be billed for, or be obligated to pay to Contractor any charges, expenses, or other amounts.
- (e) Non-binding Terms. Any terms and conditions that are typed, printed, or otherwise included in any Contractor invoice rendered pursuant to this Agreement shall be deemed to be solely for the convenience of the parties. No such term or condition shall be binding upon the Public Body, and no action by the Public Body (including, without limitation, the payment of any such invoice in whole or in part) shall be construed as binding the Public Body with respect to any such term or condition, unless the specific term or condition has been previously agreed to by Contractor and the Commonwealth in writing, and is binding upon the Public Body with respect to such invoice by virtue of this Agreement or a binding amendment thereto.

28. **Indemnification**. Contractor agrees to indemnify, defend and hold harmless the Commonwealth of Virginia, its officers, agents, employees, and public bodies using this Agreement (each an "Indemnitee" and collectively the "Indemnitees") from and against any and all liabilities, damages, losses, claims, expenses, demands, suits, fines and actions of any kind or nature (collectively "Claims"), whether at law or in equity, which may be suffered by, accrued against, charged to, or recoverable from any Commonwealth Indemnitee, by reason of any Claim arising from or related to any act, error or omission, or misconduct of

Contractor, its officers, directors, agents, employees, and subcontractors, during the performance of this Agreement, including without limitation, Claims arising out of or relating to: (a) a violation of federal, state, or other laws or regulations for the protection of persons or members of a protected class or category of persons; (b) bodily injury (including death) or damage to tangible personal or real property; (c) the use of any materials, products, or equipment of any kind or nature furnished by the Contractor or of any services of any kind or nature furnished by the Contractor; or, (d) breaches or any representations made under this Agreement; provided however, that the foregoing indemnity shall not apply to the extent that the applicable Claim is attributable to the willful misconduct or negligence of the using Public Body or to the failure of the using Public Body to use the materials, products, or equipment in the manner already and permanently described by the Contractor on the materials, products or equipment delivered provided, however, that the foregoing indemnity shall not apply to the extent that the applicable Claim resulted from the sole negligence or willful misconduct of the Commonwealth of Virginia, its officers, agents, employees, and public bodies using this Agreement.

29. **Labeling of Hazardous Substances.** As applicable, Contractor certifies and warrants that any item or product delivered under this Contract that is deemed a “Hazardous Substance” as defined by § 1261 of Title 15 of the United States Code (U.S.C.) or “Pesticides” as defined in § 136 of Title 7 of the United States Code, then Contractor will ensure that such items or products are properly labeled as required by the foregoing sections, and by delivering the items or products the Contractor does not violate any prohibitions of Title 15 U.S.C. § 1263 or Title 7 U.S.C. § 136.

30. **Legal Compliance**

(a) General. Each Party shall at all times perform its obligations hereunder in compliance in all material respects with all applicable federal, state, and local laws and regulations of all applicable domestic jurisdictions, and in such a manner as not to cause the other Party to be in violation of any applicable laws or regulations including any applicable requirements of any federal, state, and local authority regulating health, safety, employment, civil rights, the environment, Hazardous Materials, privacy, confidentiality, security, exportation, or telecommunications.

(b) Federal Funding. Without limiting the generality of the foregoing section, Contractor shall at all times comply with all applicable federal laws, rules, regulations, guidelines, and mandates relating to the allocation of federal funds provided or granted to the Commonwealth, including Office of Management and Budget OMB Circular A 87, revised 5/10/04, as amended or superseded; provided that the Commonwealth provides notice to Contractor of the applicable federal

funding criteria or that Contractor is aware of the applicability of such federal funding criteria.

- (c) Permits and Licenses. Except for approvals, permissions, permits, or licenses required by state or federal statute, ordinance, regulation, or other law to be obtained by the Commonwealth (including those required, if any, to permit the Commonwealth to enter into this Agreement), or as provided otherwise elsewhere in this Agreement, Contractor shall obtain and maintain, at its own expense, all approvals, permissions, permits, licenses, and other forms of documentation required in order for the Parties to comply with all existing state or federal statutes, ordinances, regulations, and other laws that are applicable to Contractor's performance of Services hereunder. The Commonwealth reserves the right to reasonably request and review all such applications, permits, and licenses prior to the commencement of performance of any Services hereunder, and Contractor shall promptly comply and cooperate with any such request. Notwithstanding the foregoing, the Commonwealth shall be solely responsible for monitoring, and compliance with, the substantive laws, rules, and regulations applicable to its business.

- (d) Debarment and Suspension. Contractor certifies that it and its affiliates, including any officers or principals therefore:
 - (1) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any state or federal department or agency;
 - (2) Have not, within the three (3) year period preceding this Agreement, been convicted of or had a civil judgment rendered against any of them for: the commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, State, or local) transaction; violation of federal or State antitrust statutes; or the commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
 - (3) Are not presently indicted or otherwise criminally or civilly charged by a governmental entity (federal, State or local) with commission of any of the offenses described in paragraph (b); and
 - (4) Have not, within the three (3) year period preceding this Agreement, had one or more public transaction (federal, State or local) terminated for cause or default.

Contractor shall require each of its subcontractors to certify to Contractor as to the matters set forth in paragraphs (i) through (iv) above, with respect to such subcontractor and its officers and principals.

During the Term of this Agreement, in the event Contractor, or any of its subcontractors, including any officer or principal thereof, (a) is or becomes debarred, suspended, declared ineligible, or voluntarily excluded from covered transactions by any governmental entity (federal, State or local) or is indicted, charged or convicted, or has a civil judgment rendered against them for any offenses described in subsection (ii), above, or (b) is proposed for debarment, then Contractor shall provide DGS with a reasonably detailed written notice of such fact promptly following Contractor's receipt of formal notice.

31. **Miscellaneous**

- (a) Assignment of Contract. This Contract shall not be assignable by the Contractor in whole or in part without the written consent of the Commonwealth.

Except for permitted subcontracting, neither this Agreement, nor any interest herein, nor any of the rights and obligations of Contractor hereunder, may be directly or indirectly assigned, sold, delegated, or otherwise disposed of by Contractor, in whole or in part, without the prior written consent of the Commonwealth. Any assignment made by Contractor in violation of this Section shall be null and void and of no force and effect.

- (b) Counterparts. This Agreement may be executed in one or more duplicate counterparts. Each such counterpart, if executed by both Parties, shall be deemed an original, and such counterparts together shall constitute one and the same Agreement. This Agreement shall not be deemed executed unless and until at least one counterpart bears the original signature of each Party's designated signatory. The Parties agree that a facsimile or a signature which is scanned and emailed may substitute for and have the same legal effect as the original signature.
- (c) Expenses. Each Party shall be solely responsible for all expenses paid or incurred by it in connection with the planning, preparation, negotiation, and consummation of this Agreement.
- (d) Relationship Between and Legal Status of Parties. This Agreement shall in no event be construed in such a way that either Party constitutes, or is deemed to be, the representative, agent, employee, partner, or joint venturer of the other Party. Contractor is and shall at all times be an independent contractor with regard to all

performance under this Agreement. Neither Party shall have the authority to enter into any agreement, nor to assume any liability, on behalf of the other Party, nor to bind or commit the other Party in any manner, except as expressly provided herein. Contractor's and its subcontractors' employees shall remain the respective employees of Contractor or its subcontractors, as applicable, and Contractor and its subcontractors shall have sole responsibility for all such employees, including responsibility for payment of all compensation to them, the provision of employee benefits to them, and responsibility for injury to them in the course of their employment. Contractor and its subcontractors shall be responsible for all aspects of labor relations with such employees, including their hiring, supervision, evaluation, discipline, firing, wages, benefits, overtime, and job and shift assignments, and all other terms and conditions of their employment, and the Commonwealth shall have no responsibility whatsoever for any of the foregoing.

- (e) Non Exclusive Remedies. Unless expressly provided otherwise in this Agreement, no remedy set forth in this Agreement shall be exclusive of any other remedy and each such remedy shall be in addition to and not in lieu of every other remedy given hereunder, or now or hereafter existing or available at law, in equity, by statute, or otherwise.
- (f) Force Majeure. In the event that Contractor is prevented from performing its duties and obligations pursuant to this Agreement by circumstances beyond its control, including, without limitation, fires, floods, third party labor disputes, the interruption of utility services, the cessation of providing necessary products or services to Contractor by any supplier to Contractor, war, acts of terrorism, or Acts of God (hereinafter referred to as "Force Majeure"), then Contractor shall be excused from performance hereunder during the period of such disability. Contractor shall use commercially reasonable efforts to correct whatever events or circumstance cause the Force Majeure event.
- (g)

32. **Most Favored Customer.** Contractor agrees that no other Public Body within the Commonwealth of Virginia will be given more favorable pricing than the pricing set forth in Exhibit E (fuel pricing) and Exhibit F (vehicle conversion services). Subject to the preceding sentence, if Contractor sells its goods or services to any public entity at a price more favorable than those provided hereunder, this Contract shall be deemed to be amended as of the date of such other arrangements to incorporate those more favorable prices, and the Contractor shall immediately notify DGS of such change. This section shall not apply to pricing granted by Contractor to Public Bodies for which Contractor has entered into an agreement pursuant to Exhibit H of this Comprehensive Agreement, to construct a fueling station with the Public Body's capital.

33. **Orders.** Public Bodies may order products or services from this Contract by any of the following methods:
- (a) For conversion services, a purchase order (PO) shall be issued by the Public Body. For those Public Bodies required to use eVA and those that choose to use eVA for their purchasing requisitions, the PO's shall be processed through eVA.
 - (b) For fuel purchases, the Public Body shall use the Clean Energy fuel card.

UNDER NO CIRCUMSTANCES SHALL ANY AUTHORIZED USER OR OTHER ENTITY HAVE THE AUTHORITY TO MODIFY THIS AGREEMENT.

34. **Personnel Conflict of Interest.** The Commonwealth's policies expressly prohibit it and its employees from engaging in activities involving a conflict of interest. Contractor shall not at any time during the Term of this Agreement knowingly employ or otherwise engage any Commonwealth employee for any purpose in any way related to Contractor's performance of its obligations hereunder. Contractor shall at all times exercise reasonable care and diligence to prevent any actions, circumstances, or conditions that could result in a conflict between Contractor (or any of its employees, agents, or Subcontractors) and the best interests of the Commonwealth. Such efforts by Contractor shall include establishing reasonable precautions to prevent its employees, agents, and Subcontractors from making, receiving, providing, or offering to any employees of the Commonwealth any gifts, entertainment, payments, loans, or other considerations that could appear to or be deemed to, or create the impression of an attempt to, influence individuals to act in a manner contrary to the best interests of the Commonwealth.
35. **Prime Contractor Responsibilities.** Contractor shall be responsible as the Prime Contractor for completely supervising and directing all work under this Contract and all subcontractors that it may utilize, using Contractor's best skill and attention. Subcontractors that perform work under this Contract shall be responsible to the prime contractor. Contractor agrees that it is as fully responsible for the acts and omissions of its subcontractors and of persons employed by the Contractor, as it is for the acts and omissions of its own employees.
36. **Product Availability/Substitution**
Substitution of a product, brand or manufacturer during the term of this Agreement is expressly prohibited unless approved in writing by the Commonwealth Contacting Officer. The Commonwealth may, at its discretion, require the Contractor to provide a substitute item of equivalent or better quality subject to the approval of the Contracting Officer, for a price no greater than the Contract price, if the product for which the Contract has been awarded becomes unavailable to the Contractor.

37. **Security Compliance.** Contractor agrees to materially comply with all provisions of any then current written security procedures of the Commonwealth or any Authorized user as are pertinent to Contractor's operation and have been supplied to Contractor by such Authorized User and further agrees to comply with all applicable federal, state and local laws and regulations. For any individual Commonwealth location, security procedures may include but not be limited to: background checks, records verification, photographing, and fingerprinting of Contractor's employees or agents. Contractor may, at any time, be required to execute and complete, for each individual Contractor employee or agent, additional forms which may include non-disclosure agreements to be signed by Contractor's employees or agents acknowledging that all Commonwealth information with which such employees and agents come into contact while at the Commonwealth site is confidential and proprietary. Any unauthorized release of proprietary information by the Contractor or an employee or agent of Contractor shall constitute a breach of this Contract.

Contractor shall indemnify, defend, and hold DGS, or other Commonwealth Authorized User, their officers, directors, employees and agents harmless from and against any and all fines, penalties (whether criminal or civil), judgments, damages and assessments, including reasonable expenses suffered by, accrued against, or charged to or recoverable from DGS, the Commonwealth Authorized User, their officers, directors, agents or employees, directly arising from Contractor's failure to perform its obligations pursuant to this Section.

38. **Subcontracts.** No portion of the work shall be subcontracted without prior written consent of DGS. In the event that the Contractor desires to subcontract some part of the work specified herein, the Contractor shall furnish DGS with the names, qualifications and experience of their proposed subcontractors. The Contractor shall, however, remain fully liable and responsible for the work to be done by its subcontractor(s) and shall assure compliance with all requirements of this Contract.

39. **Use of Affiliates and Subcontractors.** No portion of the work shall be subcontracted without prior written consent of the Commonwealth. In the event that the Contractor desires to subcontract some part of the work specified herein, the Contractor shall furnish the Commonwealth Contracting Officer with the names, qualifications and experience of their proposed subcontractors. The Contractor shall, however, remain fully liable and responsible for all work to be done by its subcontractor(s) and shall assure compliance with all requirements of the Contract.

40. **Work Site Damages.** Any damages to existing utilities, equipment or finished surfaces resulting from Contractor's actions in the performance of this Contract shall be repaired to the Commonwealth's satisfaction at the Contractor's expense.