

**ATTACHMENT - A1**

Liquidated Damages for Failure to Perform

PART and the Contractor (ie. Service Provider) acknowledges and agrees that PART may incur damages if the Contractor fails to meet the requirements set forth in the RFP. PART and the Contractor agree that PART will incur damages if the Company fails to perform the Services. The parties further acknowledge and agree that the damages, which might be reasonably anticipated to accrue as a result of failure to meet one or more of the above, are difficult to ascertain due to their indefiniteness and uncertainty. Accordingly, the Contractor agrees to pay liquidated damages at the rates set forth below.

PART shall monitor its bus services in order to assess the performance of the Service Provider in delivering the Service. The monitoring activities shall include but not be limited to vehicle cleanliness, schedule adherence, maintenance procedures per plans, completed vehicle trips, fare collection and depositing, the on-time and accurate submission of reports, heating and air conditioning system performance, and unsatisfactory/unsafe performance by a driver. PART shall maintain the right to assess liquidated damages against the Service Provider, as set forth herein, based on the Service Provider's failure to meet the established standards. These standards and liquidated damages applicable thereto shall include the following performance criteria and be assessed on the basis of spot checks or the specified number of verifiable passenger complaints in each category.

**The intent of this program is to ensure high quality service, not reduce PART's costs. NOTE: With the exception of inadequate staffing infractions, liquidated damages shall be waived for the first 45 days of in-service operation for any new Contractor, assuming the Contractor has made a good faith effort to effect a smooth transition and start-up.**

**Waiving Damages** - PART reserves the right to waive the imposition of liquidated damages at its discretion. Waiver or failure to assess liquidated damages in any circumstance does not negate or abridge PART's right to assess such damages in the future for the same infraction or infractions of the Contract for which PART previously waived or failed to assess such damages. This provision shall not abridge or affect any other remedy, which PART may have for any damages, which PART may incur in consequence of the failure of the Service Provider to perform in accordance with contract specifications.

**Earn back of Liquidated Damages** – In the event liquidated damages are imposed by PART, then the Service Provider may have the right to recover, at the discretion of PART, any sums assessed against it as liquidated damages by demonstrating either:

**Incorrect Assessment** - The Service Provider had met the applicable service standard and/or that the Service had been delivered in accordance with the Contract.

**Beyond Service Provider's Control** – The event which resulted in a liquidated damage assessment was caused by or attributable to mitigating circumstances beyond the Service Provider's control. The Service Provider shall not be held responsible for failure to provide on-time service due to

accidents, unusual weather or traffic conditions, unavoidable vehicle malfunctions (such as flat tires due to unavoidable road hazards), or naturally occurring disasters, if sufficient documentation is provided to PART.

**Concerns** – Service Provider shall cooperate with PART to fully explore any concerns regarding the Service and performance standards. In its evaluation of liquidated damage assessment, PART will consider the Service Provider’s efforts to complete the following:

**Correction Plans** – The Service Provider may complete written corrective plans for corrective action. Deadlines for corrective action will be established based on what is considered by PART to be an acceptable amount of time.

**Dispute** - In the event of a dispute over the assessment of liquidated damages, any amount of the monthly billing not in dispute shall be made according to normal payment terms.

**Liquidated Damage Basis** - Notwithstanding the above, PART shall impose liquidated damages on the following basis:

All liquidated damage assessments will be made based upon either: one (1) PART staff or agent observation, or two (2) reports/complaints regarding the same infraction by riders, the general public or Service Provider notification.

**ADHERENCE TO SCHEDULE** –

The Service Provider shall strive to maintain on-time performance and every reasonable effort is expected to be made by the Service Provider to operate all Service on schedule. Operational difficulties that result in missed trips or vehicles not operating as required by the RFP must be reported immediately to PART.

PART understands that frequently, the Service Provider has little control over the variable traffic conditions. PART will focus schedule adherence monitoring efforts on the following:

Beginning routes/runs on time; and not leaving scheduled stops (pick up points) early.

However, for all Services, liquidated damages will be assessed for other schedule adherence performance failures due to:

- Drivers being inadequately trained (resulting in unnecessarily slow operation or getting lost);
- Vehicles being improperly maintained (resulting in breakdowns);
- Vehicles being refueled while in service; and
- Relief driver tardiness.

Please note that PART's bus service monitors will obtain the correct time from [www.time.gov](http://www.time.gov). It is expected that the Service Provider's drivers, dispatchers and other supervisory personnel will synchronize their watches accordingly.

Liquidated damages shall be imposed if the Service Provider does not meet the following general schedule adherence standards.

**Early Trip** - If a service trip departs in advance of the scheduled departure time at any designated time point, or any scheduled bus stop (boarding location) the liquidated damages shall be three hundred dollars (\$300) per occurrence.

**Late Trip >5 Minutes, <15 Minutes** - If a service trip departs more than five (5) minutes, but less than fifteen (15) minutes following the scheduled departure time at any designated time point or the bus storage yard, the liquidated damages shall be one hundred dollars (\$100) per occurrence.

**Late Trip >15 Minutes** - If a service trip departs more than fifteen (15) minutes following the scheduled departure time at any designated time point or the bus storage yard the liquidated damages shall be one hundred and fifty dollars (\$150) per occurrence.

**Incomplete Trips** - If a service trip is not completed in its entirety, the trip shall be considered a Missed Trip and subject to liquidated damages of three hundred dollars (\$300).

**Missed Trip** - If the Service Provider fails to operate a trip, liquidated damages will be assessed in the amount of three hundred dollars (\$500) per occurrence. The scheduled Revenue Vehicle Hour time for that trip will also be deducted and not paid to the Service Provider. Missed trips also include, interlined, passed, or combined trips. If a service trip departs later than next scheduled departure, at any location along a route it shall also be deemed a missed trip.

#### **PERSONNEL/DUTIES**

**Staffing of Key Positions** – If Service Provider fails to provide a replacement for a key management personnel position within sixty (60) days, PART will deduct the monthly salary and benefits of the vacant position for each full month that the position is vacant and shall impose liquidated damages in the amount of one hundred dollars (\$100) per day for each day that the position remains unfilled.

**Uniforms/Grooming** - If any Service Provider employee fails to comply with PARTS' policies regarding appearance, uniforms or grooming, the liquidated damages will be fifty dollars (\$50) per occurrence.

**Collecting Correct Fares** - If any Service Provider employee fails to collect the correct fare or does not correctly record the fare collected, the liquidated damages will be one hundred dollars (\$100) per occurrence. Liquidated damages for incorrect fare collection may only be invoked on the second or later documented occurrence with any one (1) operator.

**Proper Destination Signs** – For failing to show the proper vehicle message sign(s), including front, side, and rear signs, the liquidated damages will be one hundred dollars (\$100) per occurrence.

**Driver Unsafe Operation of Vehicles** - Unsafe operation of a vehicle will result in three hundred dollars (\$300) in liquidated damages per occurrence.

**Use of PART Technology** – Failing to assign vehicle and driver to the correct run, resulting in inaccurate reporting to PART or the public shall result in liquidated damages of one hundred dollars (\$100) per occurrence. Additional occurrences by the same driver on the same day shall result in liquidated damages of two hundred fifty dollars (\$250).

#### **REPORTING**

**Late/Inaccurate Reports** - If the Service Provider fails to comply with PART’s reporting requirements either by submitting reports after the due date and time or by submitting inaccurate reports, the liquidated damages will be fifty dollars (\$50) for each day the report is overdue.

**Accident/Incident Reporting** - If Service Provider fails to report an accident or incident according to PART’s requirements the liquidated damages will be one hundred dollars (\$100) for the first occurrence, two hundred fifty dollars (\$250) for the second occurrence and five hundred dollars (\$500) for each occurrence thereafter during the Contract term.

**Complaint/Customer Comment Reporting** – If the Service Provider fails to maintain the required Passenger Comment Database, or if the Service Provider fails to report customer comments to PART as required, the liquidated damages will be fifty dollars (\$50) for the first occurrence, and one hundred dollars (\$100) for the second and subsequent occurrences.

#### **MAINTENANCE**

Observation of vehicle maintenance related infractions may be made by PART staff, two (2) verifiable passenger complaints, PART’s agent, or a regulatory/inspection agency:

**Vehicle Cleaning** - If any bus fails to comply with the requirements regarding vehicle cleaning, the liquidated damages will be one hundred fifty dollars (\$150) per occurrence.

**Preventive Maintenance Intervals** – Preventive maintenance shall be performed according to Service Provider’s preventive maintenance program submitted with the RFP, which must be approved by PART prior to start of the Contract. Failure to complete preventive maintenance at

the approved intervals shall result in a liquidated damage assessment of three hundred dollars (\$300) per occurrence and a fifty-dollar (\$50) liquidated damage assessment for each day the maintenance is overdue.

**Vehicles Taken Out of Service** – The Service Provider shall meet or exceed the standards set forth for the operation of all vehicles. The Service Provider shall maintain the vehicles so as to pass inspection and all vehicles must be in compliance with North Carolina Standards. If any Service vehicle is shut down as a result of a failed inspection by any regulatory agency, PART or an agent of PART acting on PART's behalf, the liquidated damages will be three hundred (\$300) per day per vehicle during the shut-down. If the North Carolina Department of Motor Vehicles, the USDOT or other regulatory agency revokes the permits to operate the vehicles in this service as a result of unsatisfactory inspection ratings, the buses shall not operate and a three hundred dollar (\$300) per vehicle per day penalty shall be assessed until a satisfactory inspection report is obtained. In the event that any revenue vehicle is unavailable for service for more than 15 consecutive days, without prior written approval by PART, liquidated damages will be imposed in the amount of one hundred (\$100) per day.

**Heating and Air Conditioning Performance** – If a vehicle is reported to operate without heating or air conditioning or is otherwise in violation of the heating and air conditioning standards, one hundred dollars (\$100) in liquidated damages will be assessed per incident.

**Vehicle Records** – The Service Provider shall maintain a complete and up to date vehicle file. Failure to do so shall result in liquidated damages of fifty dollars (\$50) for each day the records are not available or updated.

**Wheelchair Lifts** – The Service Provider shall ensure that all vehicles in service have operating wheelchair lifts to safely load and unload wheelchair passengers. Failure to do so shall result in a liquidated damage assessment of three hundred dollars (\$300) per occurrence. Failure to cycle a wheelchair lift as part of each vehicle's pre-trip inspection shall result in a liquidated damage assessment of one hundred dollars (\$100) per occurrence.

**Graffiti** – Failure to remove graffiti from vehicles according to PART standards, whether interior or exterior, shall result in an assessment of liquidated damages of three hundred dollars (\$300) per occurrence.

#### **SAFETY AND ENVIRONMENTAL**

**Environmental requirements** – Failure to comply with any federal, state, or local environmental requirements, storm water permit obligations, and failure by Service Provider to correct any violations identified within the time period specified by the investigating agency shall result in a liquidated damage assessment of two hundred fifty dollars (\$250) per occurrence.

**OSHA** – Failure to comply with OSHA Plan/Program and failure to correct any violation identified by OSHA within the time period specified shall result in a liquidated damage assessment of two hundred fifty dollars (\$250) per occurrence

**SAFETY AND SECURITY**

**Breach of Safety and Security** – If the Service Provider incurs a preventable breach of security to PART property for which its staff played a role in the security breach liquidated damages of one thousand dollars (\$1,000) shall be assessed. This applies to any instance in which Server Provider staff fail to follow established safety and security procedures resulting in any of the following: property damage to PART or other on-site contractor property; bodily injury or fatality to PART or other on-site contractor staff; financial loss to PART or other on-site contractors (non-property or bodily injury), e.g., cost of staff hours expended for damage to or tampering with property and facilities due to the security breach.

**Failure to Remedy** – Liquidated damages of five hundred (\$500) shall be imposed for ever day beyond the date of the breach of security that the Service Provider fails to remedy the breach of security.

**Failure to Report** – Failure to immediately report knowledge of a breach of security of any severity level to PART shall result in a liquidated damage assessment of two hundred fifty dollars (\$250) per occurrence. Liquidated damages of one hundred (\$100) shall be imposed for each day that the Service Provider fails to report the Breach of Security beyond the date that it occurred.

The Liquidated Damages set forth in the Contract will not be intended to compensate PART for any damages other than inconvenience. The existence or recovery of such Liquidated Damages shall not preclude PART from recovering other damages which PART can document as being attributable to the above-referenced failures, including but not limited to the cost of internal staff hours or amounts paid to third parties as a result of such problem or delay.

**(Signature on Next Page)**

The Contractor, \_\_\_\_\_, certifies or affirms the expectations for service operated under PART and acknowledges its understanding to perform services adequately to avoid any liquidated damages listed within this section.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature of Contractor's Authorized Official

\_\_\_\_\_  
Name and Title of Contractors Authorized Official

Subscribed and sworn to before me this \_\_\_ day of \_\_\_\_\_, 2022, in the State of ; \_\_\_\_\_  
and the County of \_\_\_\_\_.

Notary Public \_\_\_\_\_

My Appointment Expires \_\_\_\_\_