

MTS' Terms and Conditions for Purchase Orders ("PO") Using Federal Funds

- 1. Equal Employment Opportunity.** Except as otherwise provided under 41 CFR Part 60, all POs issued by MTS that meet the definition of "federally assisted construction contract" in 41 CFR Part 60-1.3 must include the equal opportunity clause provided under 41 CFR § 60-1.4(b), in accordance with EO 11246, "Equal Employment Opportunity" (30 FR 12319, 12935, 3 CFR § 1964-1965 Comp., p. 339), as amended by Executive Order ("EO") 11375, "Amending EO 11246 Relating to Equal Employment Opportunity," and implementing regulations at 41 CFR Part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor."
- 2. Civil Rights.** Seller agrees it will prohibit discrimination based on race, color, religion, sex, sexual orientation, gender identity, or national origin and comply with Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000d, et seq.; Federal Transit Law, 49 U.S.C. § 5332; FTA Circular 4702.1, "Title VI Requirements and Guidelines for Federal Transit Administration Recipients;" 49 CFR Part 21, "Nondiscrimination in Federally-Assisted Programs of the Department of Transportation – Effectuation of Title VI of the Civil Rights Act of 1964", 28 C.F.R. § 50.3, "Guidelines for the enforcement of Title VI, Civil Rights Act of 1964," Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e, et seq.; Title I of the Americans with Disabilities Act, 42 U.S.C. § 12101, et seq.; EO 11246 "Equal Employment Opportunity"; and FTA Circular 4704.1, "Equal Employment Opportunity (EEO) Requirements and Guidelines for Federal Transit Administration Recipients". Seller shall also take affirmative action required by US DOT or DOL regulations, 49 CFR Part 21 or 49 CFR Chapter 60; and facilitate participation by small business concerns owned and controlled by socially and economically disadvantaged individuals required by the Infrastructure Investment and Jobs Act § 11101(e), 49 CFR Part 26 and 49 U.S.C. § 5332.
- 3. Davis Bacon Act, as amended (40 U.S.C. §§ 3141-3148).** When required by Federal program legislation, all prime construction POs in excess of \$2,000 must include a provision for compliance with the Davis-Bacon Act, 40 U.S.C. §§ 3141-3148, as supplemented by Department of Labor ("DOL") regulations, 29 CFR § 5, "Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction." Under this Act, Seller is required to pay wages to laborers and mechanics at a rate not less than the minimum wages specified in a wage determination made by Secretary of Labor. In addition, Sellers shall be required to pay wages not less than once a week. MTS will report all suspected or reported violations to the Federal awarding agency.
- 4. Copeland "Anti-Kickback" Act (40 U.S.C. § 3145 as supplemented by 29 CFR Part 3).** When required by Federal program legislation, all prime construction POs in excess of \$2,000 must include a provision for compliance with the Copeland "Anti-Kickback" Act, as supplemented by Department of Labor regulations, 29 CFR § 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States". Neither Seller nor MTS shall induce, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. MTS will report all suspected or reported violations to the Federal awarding agency.
- 5. Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 3701-3708).** POs in excess of \$100,000 that involve the employment of mechanics or laborers shall comply with 40 U.S.C. §§ 3702 and 3704, as supplemented by Department of Labor regulations, 29 CFR Part 5. Under 40 U.S.C. § 3702, Seller shall compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than 1½ times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. § 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.
- 6. Fair Labor Standards Act (29 U.S.C. § 201).** Seller agrees to comply with the Fair Labor Standards Act to the extent applicable.
- 7. Employee Protective Arrangements (29 U.S.C. § 5333(b)).** Seller agrees to comply with the employee protective arrangements set forth in 49 U.S.C. § 5333(b) regarding DOL certification, special warranty and FTA determinations regarding the applicability of 49 U.S.C. § 5333(b) to funding authorized under USC Title 23.
- 8. Rights to Invention (37 CFR Part 401).** For purchases that constitute funding agreements under 37 CFR § 401.2(a), Seller shall, in the assignment of or performance of experimental, developmental or research work to a small business firm or nonprofit organization, comply with the requirements of 37 CFR § 401 ("Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements") and any implementing regulations issued by the awarding agency.
- 9. Clean Air Act (42 U.S.C. §§ 7401-7671q) and Federal Water Pollution Control Act (33 U.S.C. §§ 1251-1387).** For POs in excess of \$150,000, Seller must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, 42 U.S.C. § 7401-7671q, and the Federal Water Pollution Control Act as amended, 33 U.S.C. §§ 1251-1387. Violations shall be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency ("EPA").
- 10. Environmental Protections.** Seller agrees to comply with all applicable environmental and resource use laws, regulations, and requirements, and follow applicable guidance, now in effect or that may become effective in the future including the Federal Transit Law, 49 U.S.C. § 5323(c)(2) and 23 U.S.C. § 139; National Environmental Policy Act, 42 U.S.C. § 4321, et seq., as limited by 42 U.S.C. § 5159, and CEQ's implementing regulations, 40 CFR Part 1500-1508; "Environmental Impact and Related Procedures," 23 CFR Part 771 and 49 CFR Part 622; EO 11514, as amended; "Protection and Enhancement of Environmental Quality," March 5, 1970, 42 U.S.C. § 4321 note 35 Fed. Reg. 4247; "Interim Guidance on MAP-21 Section 1319, Accelerated Decision-making in Environmental Reviews," January 14, 2013; "SAFETEA-LU Environmental Review Process, Public Law 109-59," 71 Fed. Reg. 66576, November 15, 2006; EO 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations;" "U.S. DOT Order 5610.2(a), "Department of Transportation Updated Environmental Justice Order;" FTA Circular 4703.1, "Environmental Justice Policy Guidance for Federal Transit Administration Recipients;" the Clean Air Act, Clean Water Act, Wild and Scenic Rivers Act of 1968, Coastal Zone Management Act of 1972, the Endangered Species Act of 1973, Magnuson Stevens Fishery Conservation and Management Act, Resource Conservation and Recovery Act, Comprehensive Environmental Response, Compensation, and Liability Act, EO11990 relating to "Protection of Wetlands," and EO 11988, as amended, "Floodplain Management;" 49 U.S.C. § 303 and 23 CFR Part 774; "Parks, Recreation Areas, Wildlife and Waterfowl Refuges, and Historic Sites"; 54 U.S.C. § 306108, National Historic Preservation Act; 54 U.S.C. § 312501, et seq.; Archeological and Historic Preservation Act of 1974, as amended, 36 CFR Part 800 "Protection of Historic Properties," 42 U.S.C. § 1996 American Indian Religious Freedom Act; and EO 13007, "Indian Sacred Sites." Seller also agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.
- 11. Debarment and Suspension and Voluntary Exclusion-Lower Tier Covered Transactions Requirements (EO 12549 And 12689).** Seller represents that neither Seller, its principals; its subcontractors or their principals; the sub-recipients (if applicable) or their principals are suspended, debarred, proposed for debarment, voluntarily excluded

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from covered transactions, or otherwise disqualified by any federal department or agency from doing business with the Federal Government pursuant to EO 12549 and 12689. 2 C.F.R. 200, Appendix II(1) and 2 C.F.R. 180.220 and 180.300. Seller specifically covenants that neither Seller, its principals, its sub-contractors or their principals, or the sub-recipients (if applicable) or their principals are included on the Excluded Parties List System ("EPLS") maintained by the General Services Administration ("GSA"). MTS reserves the right to cancel the Contract if the Contractor is a federally debarred contractor or a contractor that is presently identified on the list of parties excluded from federal procurement and non-procurement contracts.

12. **Federal Tax Liability and Recent Felony Convictions.** Seller represents and warrants that neither Seller, any lower-tier subcontractors or their respective principals have any unpaid Federal tax liability or were convicted of any federal felony criminal violation within the preceding 24 months.
13. **Byrd Anti-Lobbying Amendment (31 U.S.C. § 1352).** For POs in excess of \$100,000, Seller and its subcontractors shall file the required certification required by 31 U.S.C. § 1352. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. § 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier-to-tier up to MTS.
14. **Flow Down:** Sellers agree to flow down all clauses set forth herein to lower tier subcontractors.
15. **Energy Policy and Conservation Act (42 U.S.C. § 6201).** Seller shall comply with all mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.
16. **Solid Wastes (2 C.F.R. § 200.323).** Seller and MTS must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the EPA at 40 CFR Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.
17. **Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment (2 C.F.R. § 200.216).** Seller shall not obligate or expend federal grant funds to: (1) Procure or obtain; (2) Extend or renew a contract to procure or obtain; or (3) Enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system.

Covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities). (i) For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities). (ii) Telecommunications or video surveillance services provided by such entities or using such equipment. (iii) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of

the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

18. **Domestic Preferences (2 CFR § 200.322).** All federal award recipients, including sub-awardees and subcontractors, should, to the greatest extent practicable, provide a preference for the purchase, acquisition or use of goods, products or materials produced in the U.S. (including but not limited to iron, aluminum, steel, cement and other manufactured products).
19. **Record Retention and Access to Sites (49 U.S.C § 5325(g)).** Seller represents that it shall retain, complete and readily accessible records related this PO and provide sufficient access to inspect and audit those records for a period of 3 years after final payment.
20. **Transit Asset Management (49 CFR §§ 625 and 630).** Seller agrees to comply with 49 CFR § 625 (Transit Asset Management) and 49 CFR § 630 (National Transit Database).
21. **Insurance Requirements.** Seller agrees to comply with insurance requirements identified by MTS and with 42 U.S.C. § 4012a(a) (Flood Disaster Protection Act and 42 U.S.C. § 4001 (National Flood Insurance) and applicable FTQA guidance.
22. **Charter Service and School Bus Operations.** Seller shall not engage in charter service, except as permitted under federal transit laws, 49 U.S.C. § 5323(d), (g), and (r) and 49 CFR Part 604 ("Charter Service.") Seller shall not engage in school bus operations exclusively for the transportation of students or school personnel in competition with private school bus operators, except as permitted by federal transit laws, 49 U.S.C. § 5323(f) or (g) or 49 CFR Part 605 ("School Bus Operations"). Motor Carrier Safety. Seller agrees to comply with the following laws and federal guidance to the extent applicable: 49 CFR Part 387 (Minimum Levels of Financial Responsibility for Motor Carriers as superseded by 49 U.S.C. § 31138(e)(4)); 49 CFR Parts 390 – 397 ("Federal Motor Carrier Safety Regulations"); 49 CFR Part 383 ("Commercial Driver's License Standards, Requirements, and Penalties"), 49 CFR Part 384 ("State Compliance with Commercial Driver's License"); 49 CFR Part 382 ("Controlled Substances and Alcohol Use and Testing") 49 CFR Part 382, and implementing federal guidance, to the extent applicable.
23. **Safe Operation of Motor Vehicles (E.O. 13513 and U.S. DOT 3902.10).** (1) Seller is encouraged to adopt and promote on-the-job seat belt use policies and programs for its employees and other personnel that operate company-owned vehicles, company A-60 rented vehicles, or personally operated vehicles. The terms "company-owned" and "company-leased" refer to vehicles owned or leased either by the Seller or MTS. (2) Seller agrees to adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers, including policies to ban text messaging while using an electronic device supplied by an employer, and driving a vehicle the driver owns or rents, a vehicle Contractor owns, leases, or rents, or a privately-owned vehicle when on official business in connection with the work performed under this Contract.
24. **Alcohol and Drug Misuse.** Seller acknowledges that it will comply with 49 U.S.C. § 5331 and its implementing regulations, 49 CFR Part 655 ("Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations") and 49 CFR Part 40 "Procedures for Transportation Workplace Drug and Alcohol Testing Programs").
25. **Disputes.** Seller agrees to notify the FTA Chief Counsel and FTA Regional Counsel of any current or prospective legal matter that may affect the federal government an include a like obligation in any subcontract for a "covered transaction" under 2 C.F.R. §§ 180.220. Seller additionally agreed to notify the U.S. DOT Inspector General, the FTA Chief Counsel or Regional Counsel of any potential fraud, waste, or abuse occurring on a Project receiving assistance from FTA and include a like obligation in any subcontract.
26. **Fly America (49 U.S.C. § 40118 and 41 CFR Part 301-10).** Seller agrees to comply with 49 U.S.C. 40118 (the "Fly America" Act) in

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accordance with the General Services Administration's regulations at 41 CFR Part 301-10, which provide that recipients and subrecipients of Federal funds and their contractors are required to use U.S. Flag air carriers for U.S. Government-financed international air travel and transportation of their personal effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter of necessity, as defined by the Fly America Act. Seller shall submit, if a foreign air carrier was used, an appropriate certification or memorandum adequately explaining why service by a U.S. flag air carrier was not available or why it was necessary to use a foreign air carrier and shall, in any event, provide a certificate of compliance with the Fly America requirements. The Seller agrees to include the requirements of this section in all subcontracts that may involve international air transportation.

- 27. Buy America (49 U.S.C. § 5323(j) and 49 CFR Part 661).** Seller agrees to comply with 49 U.S.C. § 5323(j) and 49 C.F.R. Part 661, which provide that Federal funds may not be obligated unless steel, iron, and manufactured products used in FTA-funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 C.F.R. § 661.7, and include final assembly in the United States for 15 passenger vans and 15 passenger wagons produced by Chrysler Corporation, and microcomputer equipment and software. Separate requirements for rolling stock are set out at 49 U.S.C. § 5323(j)(2)(C) and 49 C.F.R. § 661.11. Rolling stock must be assembled in the United States and have a 70 % domestic content.
- 28. Cargo Preference (46 U.S.C. § 1241 and 46 CFR Part 381).** Seller agrees: a. to use privately owned United States-Flag commercial vessels to ship at least 50 % of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to the underlying contract to the extent such vessels are available at fair and reasonable rates for United States-Flag commercial vessels; b. to furnish within 20 working days following the date of loading for shipments originating within the United States or within 30 working days following the date of loading for shipments originating outside the United States, a legible copy of a rated, "on-board" commercial ocean bill-of-lading in English for each shipment of cargo described in the preceding paragraph to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590 and to the FTA recipient (through the contractor in the case of a subcontractor's bill-of-lading.) c. to include these requirements in all subcontracts issued pursuant to this contract when the subcontract may involve the transport of equipment, material, or commodities by ocean vessel.
- 29. Seismic Safety (42 U.S.C. § 7701 et seq. 49 CFR Part 41).** Seller agrees that any new building or addition to an existing building will be designed and constructed in accordance with the standards for Seismic Safety required in Department of Transportation Seismic Safety Regulations 49 CFR Part 41 and will certify to compliance to the extent required by the regulation. The contractor also agrees to ensure that all work performed under this contract including work performed by a subcontractor is in compliance with the standards required by the Seismic Safety Regulations and the certification of compliance issued on the project. Bus Testing (49 U.S.C. § 5318(e) and 49 CFR Part 665). Seller agrees that when the PO is for the purchase of buses, Seller will comply with 49 U.S.C. § 5318, as amended by MAP-21, and FTA's implementing regulation at 49 CFR Part 665 and shall perform the following: 1) A manufacturer of a new bus model or a bus produced with a major change in components or configuration shall provide a copy of the final test report to the recipient at a point in the procurement process specified by the recipient which will be prior to the recipient's final acceptance of the first vehicle; (2) A manufacturer who releases a report under paragraph 1 above shall provide notice to the operator of the testing facility that the report is available to the public; (3) If the manufacturer represents that the vehicle was previously tested, the vehicle being sold should have the identical configuration and major components as the vehicle in the test report, which must be provided to the recipient prior to recipient's final acceptance of the first vehicle. If

the configuration or components are not identical, the manufacturer shall provide a description of the change and the manufacturer's basis for concluding that it is not a major change requiring additional testing; and (4) If the manufacturer represents that the vehicle is "grandfathered" (has been used in mass transit service in the United States before October 1, 1988, and is currently being produced without a major change in configuration or components), the manufacturer shall provide the name and address of the recipient of such a vehicle and the details of that vehicle's configuration and major components. No Obligation by the Federal Government. Seller acknowledges and agrees and covenants to include a like provisions in subcontracts at any tier that notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of this Contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this Contract and shall not be subject to any obligations or liabilities to MTS, Seller, or any other party (whether or not a party to that contract) pertaining to any matter resulting from this Contract.

- 30. Program Fraud and False or Fraudulent Statements and Related Acts (31 U.S.C. § 3801 et seq, 49 CFR Part 31 18, U.S.C. § 1001, 49 U.S.C. § 5307).** (1) The Seller acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § 3801 et seq. and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its actions pertaining to this Project. Upon execution of the Contract, the Seller certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the Contract or the FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, the Seller further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Seller to the extent the Federal Government deems appropriate. (2) The Seller also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on the Seller, to the extent the Federal Government deems appropriate. (3) The Seller agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.
- 31. Federal Privacy Act Requirements (5 U.S.C. § 552).** Seller and its subcontractors shall be obligated to comply with 5 U.S.C. § 552 when the Seller administers any system of records on behalf of the Federal Government under any contract. (1) The Seller agrees to comply with, and assures the compliance of its employees with, the information restrictions and other applicable requirements of the Privacy Act of 1974, 5 U.S.C. § 552a. Among other things, the Seller agrees to obtain the express consent of the Federal Government before the Seller or its employees operate a system of records on behalf of the Federal Government. The Seller understands that the requirements of the Privacy Act, including the civil and criminal penalties for violation of that Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of the underlying contract. (2) The Seller also agrees to include these requirements in each subcontract to administer any system of records on behalf of the Federal Government financed in whole or in part with Federal assistance provided by FTA.
- 32. Intellectual Property Rights (7 CFR Part 401 and 49 CFR Parts 18 and 19).** Seller and MTS agree the for any FTA-funded research projects for the development of a product or information, the Federal Government reserves a royalty-free, non-exclusive and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use, for Federal Government purposes. Seller and MTS further agree to take the actions identified in 37 CFR Part 401 to protect intervention

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rights with respect to any patent and to include a similar provision in all subcontracts at any tier.

33. Access Requirements for Persons with Disabilities (49 U.S.C. § 531(d)). Seller shall comply with 49 U.S.C. § 5301(d), stating Federal policy that the elderly and persons with disabilities have the same rights as other persons to use mass transportation services and facilities and that special efforts shall be made in planning and designing those services and facilities to implement that policy. Seller shall also comply with all applicable requirements of Sec. 504 of the Rehabilitation Act (1973), as amended, 29 U.S.C. § 794, which prohibits discrimination on the basis of handicaps; and the Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. § 12101 et seq., which requires that accessible facilities and services be made available to persons with disabilities, including any subsequent amendments thereto.

34. Veterans Employment (49 U.S.C. § 5325(K)). If Seller is working on construction contracts that are capital project funded shall give a hiring preference, to the extent practicable, to veterans (as defined in section 2108 of title 5) who have the requisite skills and abilities to perform the construction work required under the contract. This subsection shall not be understood, construed or enforced in any manner that would require an employer to give preference to any veteran over any equally qualified applicant who is a member of any racial or ethnic minority, female, an individual with a disability, or former employee.